




2012

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 2013, allowing for current constraints in production of statistics.



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Editorial

of Christian Noyer

ACP Chairman and Governor of the Banque de France



The financial performance of French banks and insurers was held back in 2012 by stagnating economic activity in France and a contraction in the rest of the euro area. Even so, funding conditions improved markedly and solvency levels strengthened overall.

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France's six main banking groups¹ generated net income attributable to equity holders of 8.4 billion euros in 2012, down 42% on the 14.5 billion euros reported in 2011. But these results were affected by significant exceptional items, notably losses on disposals of Greek subsidiaries and goodwill amortisation.

Measured by net banking income, the groups' aggregate income declined 7% to 135 billion euros. The results were dented by an upward revaluation of own debt, paradoxically reflecting improved market perception of French banks.

The cost of risk decreased almost 29% over 12 months, though 2011 had been marked by writedowns on Greek securities. Overlooking this impact, 2012 actually saw a gradual increase in the cost of risk, in line with the difficult economic situation.

French banks' restructuring efforts also weighed on profitability but will enable them to consolidate their position and performance. This will limit their risk in a persistently uncertain environment.

While 2011 saw tight refinancing conditions for the French banking system, the French banks' liquidity positions improved significantly in 2012. Their overall loan to deposit ratio declined sharply, their liability structure gradually lengthened and their regulatory liquidity ratio improved substantially.

In terms of solvency, the steps French banks have taken to strengthen their capital bases – essentially by retaining their profits – and adjust their balance sheets in a targeted fashion have

enabled them to easily meet the 9% Core Tier One ratio target set by the European Banking Authority (EBA) on 30 June 2012. French banks are also able to honour their promises to the market to meet ratios of more than 9% in 2013 under the new Basel III rules.

In the insurance sector, earnings reported by the main groups active on the French market² have risen relative to 2011, which was affected by substantial impairment losses on investments due to the sovereign debt crisis.

The sector's profitability remains satisfactory overall, with rising revenues in non-life business and an increase in income from life insurance.

In the non-life segment, higher revenues stemmed both from fee increases and from firm control of management costs. For the first time, the life segment reported a net outflow amounting to almost 6 billion euros. But this trend, which started in the second half of 2011, tailed off as 2012 progressed; and the first figures for 2013 indicate a return to net inflows.

Solvency margins widened further relative to 2011. This was mainly because of the impact of falling interest rates on bond prices, which generated higher unrealised capital gains.

In this uncertain environment, the ACP has had to maintain a high degree of vigilance. The International Monetary Fund (IMF) has recognised the value of its activities and the French financial system's resilience amid extremely difficult macroeconomic and financial conditions.

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In 2012, the ACP exercised its role in difficult conditions for the financial sector, which continued to suffer from the consequences of the crisis and from mounting risk aversion among

1. BNP Paribas, Société Générale, groupe Crédit Agricole, BPCE, groupe Crédit Mutuel, la Banque Postale.
2. Allianz, AXA, CNP, Generali.

economic agents. The deceleration in economic growth led the ACP to step up its monitoring of credit risks on companies and individuals.

The ACP bases its supervision activities on analyses that aim to identify the main risks to which the financial system is exposed. It has therefore paid particular attention to the action plans drawn up by banks to comply with their future regulatory ratios.

The ACP made certain that insurers carefully managed the current situation marked by historically low yields. At the same time, and given its integrated authority over both banks and insurance companies, it has paid particular attention to cross-exposures between the two sectors and, more generally, to the linkages that tie them together.

Households' savings and investment behaviour and its impact on the prudential situation at banks and insurers were another focus of attention for the ACP in 2012. It is still too early to assess the final impact of higher deposit ceilings for Livret A and LDD passbook accounts, where inflows at this stage stem largely from other banking products. The ACP will continue its analytical work in 2013.

The ACP continued with its activities and inspections related to consumer protection. It has favoured a targeted approach focused on access to banking services, borrower documentation compliance, of complaints handling, marketing of life insurance policies and management of unclaimed life policies.

The ACP/AMF Joint Unit, which after three years of existence has established itself as an active coordinator for the two authorities, plays an important role. The combined arrangements for gathering information on customers' knowledge of life insurance and financial instruments are proof of this claim, as is the enhancement of the public information website "*Assurance Banque Épargne Info Service*".

The ACP's activities in marketing practices have an international dimension. The Authority is part of FinCoNet, the International Financial Protection Network, that seeks international collaboration on bank customer protection.

All these initiatives bring the supervisor closer to consumers and help strengthen public confidence in the authorities' role.

When carrying out its duties, the ACP seeks to increase the financial system's resilience. The IMF's judgement, expressed in the conclusions of its report on the stability of the French financial system (Financial Sector Assessment Program, FSAP), lends credibility to the ACP's efforts to meet the objectives assigned to it.

According to the IMF, the French regulatory and supervisory system is of a very high level and the French authorities are particularly well-informed about the quality of banking assets.

This assessment highlighted the ability of banks and insurers to withstand "intense stress" scenarios. Even so, banks have to continue consolidating their wholesale funding arrangements, and even though they have large enough reserves of collateral to cope with a lengthy downturn in market conditions.

Adapting the financial system to the new international rules was the main focus of the ACP's activity in 2012 and will remain so in 2013.

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International developments remained an important part of the ACP's activities in 2012, with an emphasis on implementing the new post-crisis regulatory framework.

Although work on the new capital requirements was already well advanced, the European draft directive and regulations, known as the CRD 4 package, had still to be finalised. Agreement was reached on implementation in 2014. Throughout 2012, the ACP made major efforts to participate in the drafting of implementation documentation, notably rules incorporating the numerous technical standards prepared by the EBA.

Above all, the ACP was a key driver in French-led negotiations to obtain a significant change in

draft regulations on liquidity. The amendments made in early 2013 to the Basel Committee's December 2010 draft on the one-month liquidity ratio or Liquidity Coverage Ratio are a real improvement. Apart from the phased introduction of the new requirements out to 2019, the widening of the range of assets that can meet the liquidity rules and the calibration of these assets better reflect the lessons learned from the crisis, and offer a far more satisfactory framework.

In the insurance sector, the postponement of Solvency II decided in 2012 should not overshadow the efforts already made in this area. First, an impact assessment study concerning long-term guarantees was launched to enable the trilogue (the European Commission, Parliament and Council) to close discussions on Omnibus II

sometime in 2013. Second, and in coordination with European Insurance and Occupational Pensions Authority at European level, some of the stabilised parts of the package, notably on governance and ORSA³ (pillar 2) as well as reporting, will be put in place in January 2014. The ACP is resolutely committed, along with the main institutions in the financial industry, to early implementation of some of the settled parts of Solvency II.

In addition, 2012 was a year of preparation for implementation of the Globally Systematically Important Institutions package for banks. It was also a year of intense methodological work to draft a similar framework for insurers, which is likely to be finalised in 2013.

In short, the regulatory framework continues to evolve and the ACP is taking the necessary steps to ensure that the financial sector is actively preparing for the changes in the best possible conditions.

2013 will be another challenging year for the ACP.

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Three years after it was established, the ACP is about to become the ACPR (*Autorité de contrôle prudentiel et de résolution*), and will play a full part in the new Banking Union. Given the qualities it has shown throughout its three-year existence, there can be no doubt over its ability to meet these challenges.

3. Own Risk and Solvency Assessment.

Interview

with Danièle Nouy

ACP Secretary General

This 2012 annual report coincides with the ACP's third birthday.

What is your assessment of the road travelled so far?

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The ACP has fulfilled the tasks entrusted to it by law. It has ensured financial stability in a very difficult period requiring close monitoring of banks and insurance entities. It has strengthened consumer protection, a new task that did not exist in this form until 2010. It has also stood out as a major player in regulatory change by participating actively in discussions both at home and at international level.

Meanwhile, the ACP has swiftly developed into a vital component of the *Banque de France*, in a sign of its successful backing by the central bank.

The ACP has increased its staff numbers, which made these activities possible by enabling it to strengthen its oversight capacity. The recruitment drive was associated with a major training push, which has helped to integrate and retain staff. The ACP has successfully completed numerous projects and represented France in a very efficient manner in many European and international negotiations.

In addition, 2012 was a year of consolidation that confirmed the ACP's strong performance. The Authority has now matured after three years of existence. Its track record is impressive, with an overall achievement of sustained action for the common good.

In concrete terms, what were the main work streams in 2012?

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In 2012, the ACP exercised its role amid difficult conditions for financial institutions, which continued to suffer from the consequences of the crisis and from mounting risk aversion among economic agents. The deceleration in economic growth led the ACP to pursue and step up its

monitoring of credit risk for businesses and individuals and ensure adequate risk coverage. The ACP also organised its ongoing and on-site supervision based on analyses that aim to identify the main risks to which the financial system is exposed.

In 2012, the French banking sector continued its preparations for Basel III, whose provisions will be made applicable in the European Union by the CRD 4 Directive and Regulation package. These reforms will strengthen the single market through a body of unified rules in which national options and discretion are greatly reduced.

As part of this, in 2012 the ACP continued its regular reviews of the individual solvency and liquidity trajectories of France's banks. It also monitored this area through the Basel III *Quantitative Impact Study* (QIS), in which more than 200 banks, including 10 from France, participated from 26 Basel Committee member countries.

The ACP was an active participant in the proposed reforms to banking structures, following announcements by France's President and European initiatives (Liikanen Commission).

In 2012, ACP staff worked hard on Solvency II, taking part in European negotiations and transposition efforts, while also providing support for preparations by the French market.

In addition to pursuing ongoing initiatives, we also concentrated on getting ready for major upcoming projects, which will require considerable effort by the ACP and entities alike. I am thinking for example of the long-term guarantee impact assessment and efforts to ready entities for future reporting requirements.

At the same time, many initiatives were conducted to strengthen **supervision of business practices** at credit institutions, insurance companies and intermediaries. These inspections revealed room for improvement in areas such as the access to banking services, "remote banking", account procedures, compliance of commercial and advertising documentation, and complaints handling. Improvements could also be made



when gathering know-your-customer information for life insurance policies, in order to provide appropriate advice, and when marketing policies whose units comprise complex instruments. The ACP/AMF Joint Unit also put a new version of the “*Assurance Banque Épargne Info Service*” website online to better inform financial services consumers of their rights.

The anti-money laundering and counter terrorist financing team was heavily involved in revisions to Financial Action Task Force recommendations, which concern not only the content but also the structure of all international standards.

What other projects are in the pipeline in 2013?

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With the ongoing financial crisis, the ACP has to remain particularly vigilant. This implies frequent contact with supervised institutions and entities, plus information-gathering with prompt response and processing times.

- In terms of prudential supervision, thanks to the commitment of our staff, we will continue with our close monitoring of all institutions via ongoing and on-site inspections. Thematic on-site inspections will be backed up with surveys conducted by the Research Directorate on the impact of the regulatory framework.
- It will also be necessary to continue and refine our contribution to the development of international prudential standards with Basel III and Solvency II.

We will therefore have to monitor the **banking sector's** implementation of the new national rules and how they adapt to the French economic and financial environment. We will have to validate approaches to capital requirements, and work within colleges of supervisors will be extended.

In the **insurance sector**, concerning Solvency II, on-site inspections of internal models will continue, and ACP teams will monitor the impact assessment on long-term guarantees and EIOPA stress tests.

Consumer protection will remain an ACP priority. There are numerous and wide-ranging issues in this area. There will be further progress on this year's themes, plus new themes such as integration of consumer protection rules into the internal control framework, and inspection of underwriters and banking and payment services intermediaries.

2013 is the year of preparation for the Banking Union. What impact will this single supervisory mechanism have on the ACP's operations?

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This year the ACP will have to be prepared for the introduction of the European Banking Union. In 2013, banking supervision directorates are closely involved in terms of their organisation and operations in the run-up to the Single Supervisory Mechanism and then for effective implementation of the Banking Union.

This will mean a heavy workload, a large amount of travel and a significant number of secondments to Frankfurt.

The objective of the Banking Union is to strengthen financial stability within the euro area and minimise the cost to European citizens of bank failures. The first stage – before bank resolution and deposit guarantees – consists in setting up a European banking supervisor.

The creation of the Banking Union is a real opportunity for the ACP because it will facilitate and broaden our work. Successfully establishing the single supervisory system and contributing to its smooth operation will require the very best brains both in Frankfurt and among the national supervisors, and the ACP has plenty of those! To achieve success, those participating in the project will have to be highly motivated, and the ACP and the *Banque de France* must take steps to encourage candidates for the positions created in Frankfurt and prepare them for the selection process.

For the *Banque de France* and the ACP, the establishment of the European Banking Union will be facilitated by the fact that our organisation, based on supervision backed by a central bank, is perfectly in line with the European project.

Either way, the ACP will remain closely involved in preparing decisions and assessing cases, in line with what happens with monetary policy. By and large, the national authorities will still be responsible for putting decisions into practice and carrying out supervision. It seems likely that issues will be “escalated” to the central authority, just as they are passed on today to the ACP College. Our day-to-day work will gain from this international dimension as well as from our participation in the governance of the whole.

In practice, how will the European Central Bank and national supervisors divide up their work?

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The operational division of tasks has not yet been completely finalised, but the ECB will be given full responsibility for banking supervision in the euro area with direct jurisdiction over systemically important banks. The criteria used to identify these banks suggest that a significant portion of our banking system will come under direct ECB supervision. Other banks will remain under ACP supervision, with the ECB retaining a right to examine them as well.

For the ECB, we are obviously talking about a major organisational change, as it will be charged with new missions. To prepare for this change, a working group has been set up to coordinate the work being carried out to make the single supervisory mechanism operational. The mapping of the European banking sector is currently in the works. The legal structure and questions related to information-gathering are also on the agenda. ACP representatives are taking part in this work.

Staffing will be an important issue for the ECB, both in quantitative and qualitative terms. Supervisors from the various national authorities will be seconded to it, and we will be encouraging interest from our best people.

In closing, could you say a few words on resolution?

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The ACP will soon give way to the ACPR (*Autorité de contrôle prudentiel et de résolution*), a new authority for prudential supervision and resolution, which will have broad powers on resolution. I have no doubt that the new body, with its firm foundations, will distinguish itself in successfully carrying out its new tasks.



Overview of the ACP



The *Autorité de contrôle prudentiel* (ACP) was founded on 9 March 2010 as the body responsible for supervising the banking and insurance sectors in France.

The Authority's main duty is to ensure the stability of the financial system and protect the customers, policyholders, members and beneficiaries of institutions subject to its supervision.

The ACP is an independent administrative authority attached to the *Banque de France* and funded by contributions from reporting institutions.

To help it discharge its responsibilities, the ACP has a College, a Sanctions Committee, an Audit Committee, a Scientific Consultative Committee and various other consultative committees. Its staff of nearly 1,100 employees, overseen by the General Secretariat, makes every effort to ensure that the French financial sector is supervised effectively.

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Two key issues for the ACP: the Banking Separation and Regulation Act and the European Banking Union

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Focus on the ACP's main communication activities in 2012

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Statutory objectives and structure

1.1 STATUTORY OBJECTIVES OF THE ACP

The Authority's statutory objectives are set out in Article L.612-1 of the Monetary and Financial Code.

The ACP “is 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 Authority supervises those institutions' compliance with the legislation and regulations referred to in that article.

As such, the ACP:

- issues licences and authorisations as laid down in legislation and regulations;
- conducts ongoing supervision of the financial position and operating conditions of the institutions subject to its supervision, including in particular their compliance with solvency requirements and liquidity maintenance rules. The ACP ensures that insurance institutions are in a position to honour their commitments to their policyholders, members, beneficiaries and reinsured companies at all times, and that they actually honour those commitments in practice. It also ensures that procedures for appointing and running insurance institutions' decision-making and executive bodies comply with the relevant regulations.
- supervises compliance with rules designed to protect customers. These rules arise, in particular, from legislation and regulations, codes of conduct approved at the request of professional associations or industry best practices that the Authority either observes or recommends. The ACP also checks that reporting institutions have adequate

resources and appropriate procedures in place to comply with these rules. In relation to this statutory objective, it cooperates with the *Autorité des marchés financiers* (AMF) through an entity common to both institutions, the Joint Unit.

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. **It thus contributes to achieving the goal of financial stability in Europe and to more closely aligning national and European supervisory practices.**

1.2 JURISDICTION

Article L.612-2 of the Monetary and Financial Code stipulates which entities are subject to supervision by 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 and entities authorised to act as custodians or administrators of financial instruments (referred to in points 4 and 5 of Article L. 542-1, 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 help create activities or develop employment under a government contract);
- 8) electronic money institutions.

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 points 1) and 2), subject to the AMF's powers with regard to the supervision of conduct of best practice rules and other professional obligations.

For the purposes of supervising the entities referred to in point 3), the ACP may request the opinion of the *Banque de France* as the entity responsible for supervising the proper functioning and security 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 2010, the ACP's jurisdiction was extended to microcredit associations and foundations that apply for authorisation to raise debt in accordance with prudential regulations appropriate to the characteristics of such entities. A decree dated 11 April 2012 and published in the *Official Journal of the French Republic* on 13 April 2012 stipulated that such non-profit associations and recognised public interest foundations would henceforth be authorised by the ACP upon the recommendation of a special committee reporting to the minister with responsibility for the economy¹.

Decree 2010-411 of 27 April 2010 detailed specific arrangements for the ACP's supervision of the banking and financial activities of the Caisse des Dépôts et Consignations group, on behalf of its Supervisory Board, based on an internal model – the “prudential model” – previously defined by the Board.

In the insurance sector:

- 1) insurance companies providing 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 mutual insurance holding companies referred to in Article L. 111-4-2 of that same code;
- 4) 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 sole purposes of Title VI, 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, 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 Housing Code;
- 8) securitisation vehicles carrying insurance risk, referred to in Article L. 313-20 of the Construction and Housing Code;
- 9) all the aforementioned entities operating in France under the principle of freedom of establishment or freedom to provide services, as regards compliance with the provisions applicable to them.

1. Two associations are currently subject to supervision by the ACP: ADIE (*Association pour le droit à l'initiative économique* – “Association for the Right to Economic Initiative”) and Créasol. Supervision of these entities relies on the submission of *ad hoc* financial documents setting out their activities and financial structure. The ACP renewed its authorisation of both of these microcredit organisations in 2012.

1 OVERVIEW OF THE ACP

↳ 1) Statutory objectives and structure

↳ 1.2 Jurisdiction

The ACP may also extend its supervision to:

- any entity that has received a subscription or management mandate from an undertaking engaging in insurance activities;
- 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 point 3) or 4) above and an entity wishing to join or belonging to said body.

ENHANCED COMMUNICATION

The ACP regularly informs reporting institutions and the public about its activities and the areas on which it is focusing.

› ACP conferences

In 2012, the Authority held four conferences to reach out to the market. Events of this type encourage dialogue with professionals from the banking and insurance industries and provide opportunities to inform them about key issues related to their business.

› Publications

Throughout the year, the ACP publishes a variety of documents aimed at keeping the market informed of its work.

- A bi-monthly review aimed at market professionals, ***La Revue de l'Autorité de contrôle prudentiel***, covers the activities of the ACP College and regulatory developments affecting the financial sector.

- The ACP's research is published in a review² titled *Analyses et Synthèses* (containing analysis and comment on research carried out into risks in the banking and insurance sectors). From 2013 onwards, this is supplemented by *Débats économiques et financiers* (containing articles intended to foster discussion on banking and insurance economics, regulation and prudential policy).

› Websites

- All regulations, reviews and other documents published by the ACP are available through its website at **www.acp.banque-france.fr**
- A new version of the *Assurance Banque Épargne Info Service* website (**www.abe-infoservice.fr**) was launched in 2012 as part of the work of the ACP/AMF Joint Unit. The site is designed to provide the public with information on rights and procedures relating to banking, insurance and financial investment (see point 4 of Chapter 3, "Activities of the ACP/AMF Joint Unit").

2. ACP economists also contribute to working documents produced by the *Banque de France*, which are more strictly academic in nature (available from the "Economics & Statistics" section of the *Banque de France* website: www.banque-france.fr).

1.3 STRUCTURE OF THE ACP

The ACP consists of a number of bodies that enable it to fulfil its statutory objectives. The organisational structure meets several essential requirements, including independence, collegial governance, representation of a broad range of expertise, as well as effective and responsive decision-making.

A | The College

The College of the ACP has 19 members and is chaired by the Governor of the *Banque de France*. It has several configurations depending on the issues being addressed.

The plenary session of the College deals with general supervisory and financial stability issues, as well as making decisions on issues affecting the Authority's operations, e.g. setting supervisory priorities, voting on the budget and establishing organisational and operating principles.

Two Sub-Colleges,³ one for banking, the other for insurance, each of which has eight members from the plenary College, have jurisdiction over specific matters and general issues relating to the respective sectors.

The College also meets in **restricted session** (also consisting of eight members) to deal 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.

Chapter 5 of this report expands upon the composition of the ACP's Sanctions Committee.



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

1 OVERVIEW OF THE ACP

↳ 1) Statutory objectives and structure

↳ 1.3 Structure of the ACP

THE ACP COLLEGE



^ First row, from left to right:

- Jérôme Haas,
- Delphine d'Amarzit
(General Directorate of Treasury),
- Jean-Philippe Thierry,
Vice-Chairman of the ACP,
- Robert Ophèle,
Second Deputy Governor of
the *Banque de France*,
- Danièle Nouy,
Secretary General of the ACP,

- Christian Noyer,
Chairman of the ACP,
- Anne Le Lorier,
First Deputy Governor
of the *Banque de France*,
- Gérard Rameix,
- Jean-Philippe Vachia.

Second row, from left to right:

- Dominique Thiry,
- Hélène Rey,
- Philippe Mathouillet,
- Emmanuel Constans,
- Monique Millot-Pernin,
- Dominique Hoenn,
- Francis Assié,
- Lucien Uzan.

Back row, from left to right:

- Jean-Marie Levaux,
- Christian Poirier,
- Thierry Coste,
- Philippe Auberger,
- François Lemasson.

COMPOSITION OF THE ACP COLLEGE

PLENARY SESSION

(at 31 December 2012)

Chairman:

- 01|Christian Noyer**
or the designated Deputy Governor,
02|Robert Ophèle

A Vice-Chairman with professional experience in insurance, appointed by the ministers with responsibility for the economy, social security and mutual insurance:

- 03|Jean-Philippe Thierry**,
Vice-Chairman of the *Autorité de contrôle prudentiel* (ACP)

The other members of the ACP College are:

- 04|Jérôme Haas**, Chairman of the *Autorité des normes comptables* (the French national accounting standards board)
05|Gérard Rameix, Chairman of the *Autorité des marchés financiers* (AMF)
06|Philippe Auberger, appointed by the president of the National Assembly
07|Monique Millot-Pernin, appointed by the president of the Senate

Appointed at the recommendation of the Vice-Chairman of the *Conseil d'État*:

- 08|Olivier Fouquet**, *conseiller d'État*

Appointed at the recommendation of the Chairman of the *Cour de Cassation*:

- 08|Francis Assié**, *conseiller*

Appointed at the recommendation of the Chairman of the *Cour des comptes*:

- 09|Jean-Philippe Vachia**,
conseiller maître

Appointed for their expertise in customer protection or quantitative or actuarial techniques or other areas that help the Authority fulfil its statutory objectives:

- 10|Emmanuel Constans**
11|Hélène Rey

Appointed for their expertise in insurance, mutual insurance, provident institutions or reinsurance:

- 12|Jean-Marie Levaux**
13|Philippe Mathouillet
14|Dominique Thiry
15|Lucien Uzan

Appointed for their expertise in banking, payment services or investment services:

- 16|Thierry Coste**
17|Dominique Hoenn
18|François Lemasson
19|Christian Poirier

RESTRICTED SESSION

(at 31 December 2012)

Chairman:

- Christian Noyer**
or the designated Deputy Governor,
Robert Ophèle

Vice-Chairman:

- Jean-Philippe Thierry**

Chairman of the *Autorité des normes comptables* (the French national accounting standards board):

- Jérôme Haas**

Conseiller maître at the *Cour des comptes*:

- Jean-Philippe Vachia**

Appointed for their expertise in banking:

- François Lemasson**
Christian Poirier

Appointed for their expertise in insurance:

- Jean-Marie Levaux**
Lucien Uzan

BANKING SUB-COLLEGE

(at 31 December 2012)

Chairman:

- Christian Noyer**
or the designated Deputy Governor, **Robert Ophèle**

Vice-Chairman:

- Jean-Philippe Thierry**

Conseiller d'État:

- Olivier Fouquet**

Expert member:

- Emmanuel Constans**

Appointed for their expertise in banking:

- Thierry Coste**
Dominique Hoenn
François Lemasson
Christian Poirier

INSURANCE SUB-COLLEGE

(at 31 December 2012)

Chairman:

- Jean-Philippe Thierry**

Governor or Deputy Governor of the *Banque de France*:

- Christian Noyer**
or **M. Robert Ophèle**

Conseiller at the *Cour de cassation*:

- Francis Assié**

Conseiller at the *Cour des comptes*:

- Jean-Philippe Vachia**

Appointed for their expertise in insurance:

- Jean-Marie Levaux**
Philippe Mathouillet
Dominique Thiry
Lucien Uzan

Furthermore, the Director General of the Treasury or his or her representative sits on the College in all its configurations, and the Director of the Social Security administration or his or her representative sits on the Insurance Sub-College or other configurations dealing with entities governed by the Mutual Insurance Code or the Social Security Code. While they do not have a vote, they are entitled to request that matters be deliberated a second time.

1 OVERVIEW OF THE ACP

↳ 1) Statutory objectives and structure

↳ 1.3 Structure of the ACP

B | The Audit Committee

The ACP has formed an Audit Committee to make sure its resources are used appropriately. As a consultative body, the committee mainly gives prior opinions on the following:

- the ACP's preliminary budget, before it is adopted by the College,
- the budget outturn report for the previous year,
- the rebilling agreements for resources and services provided by the *Banque de France*, before they are approved.

A decision was made in 2012 to change the composition of the Audit Committee, which now has five members.

COMPOSITION 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*

Thierry Coste

Monique Millot-Pernin

C | The Scientific Consultative Committee and other consultative committees

The College has formed a number of consultative committees to assist it with specific topics.

The **Consultative Committee on Prudential Affairs** is tasked with giving its opinion prior to adoption on ACP instructions governing periodic

prudential filings by reporting institutions. Draft versions of explanatory notices and guides are also referred to the committee. (Details of the committee's activities in 2012 can be found in Chapter 6).

COMPOSITION OF THE CONSULTATIVE COMMITTEE ON PRUDENTIAL AFFAIRS

(at 31 December 2012)

- **Dominique Thiry**, Chairman
- **Dominique Hoenn**, Vice-Chairman

Members appointed from entities reporting to the ACP:

Insurance sector

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

Banking sector

- **Francis Canterini**, Crédit Agricole
- **Benoît Catherine**, Exane
- **Christian Lajoie**, BNP Paribas
- **Catherine Meritet**, Société Générale
- **Éric Spielrein**, RCI Banque

The following professional associations are also represented on 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 des sociétés financières* (ASF)
- *Association française des marchés financiers* (AMAFI)
- *Fédération bancaire française* (FBF)

Caisse des dépôts et consignations also appoints a representative.

The Consultative Committee on Business Practices gives an opinion on draft recommendations falling within its areas of expertise, goes deeper into issues relating to business practices identified by the ACP and

gathers information and suggestions from its members on customer protection. (Details of the committee's activities in 2012 can be found in Chapter 3).

COMPOSITION OF THE CONSULTATIVE COMMITTEE ON BUSINESS PRACTICES

(at 31 December 2012)

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

Five members are chosen for their expertise acquired by participating in associations representing personal or business customers, savers' associations, charities operating in this area and the consumer institute INC:

- **Jean Berthon**, FAIDER
- **Pierre Cernesson**, *Confédération nationale des associations familiales catholiques*
- **Olivier Gayraud**, *Consommation logement et cadre de vie*
- **Valérie Gervais**, AFOC
- **Romain Girard**, *Fédération nationale familles rurales*

Four members are chosen for their expertise acquired within a credit institution, an insurance institution or an industry group:

- **Pierre Bocquet**, FBF
- **Alain Lasseron**, ASF
- **Christophe Ollivier**, FNMF
- **Philippe Poiget**, FFSA

Two members are chosen for their expertise acquired within an insurance intermediary, a banking and payment services intermediary or an industry group:

- **Philippe De Robert**, *Fédération nationale des agents généraux d'assurance*
- **Sophie Ho Thong**, *Association professionnelle des intermédiaires en crédits*

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

- **Raphaëlle Bertholon**, SNE CGC

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

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

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

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

1 OVERVIEW OF THE ACP

↳ 1) Statutory objectives and structure

↳ 1.3 Structure of the ACP

The **Consultative Committee on Anti-Money Laundering** is tasked with giving an opinion on draft versions of instructions, guidelines and other ACP documents dealing with *anti-money*

laundering and counter-terrorist financing. (Details of the committee's activities in 2012 can be found in Chapter 4.)

COMPOSITION OF THE CONSULTATIVE COMMITTEE ON ANTI-MONEY LAUNDERING

(at 31 December 2012)

- **M. Francis Assié**, Chairman
- **M. François Lemasson**, Vice-Chairman

Five members are appointed from entities reporting to the ACP:

Insurance sector

- **Gaël Buard**, Natixis Assurances
- **Philippe Giraudel**, Groupama
- **Hubert Marck**, AXA
- **Paul-Henri Mezin**, Malakoff Médéric group
- **Catherine Petapermal**, La France Mutualiste

Eight members are 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 represented on 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'assurance* (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 also appoints a representative.

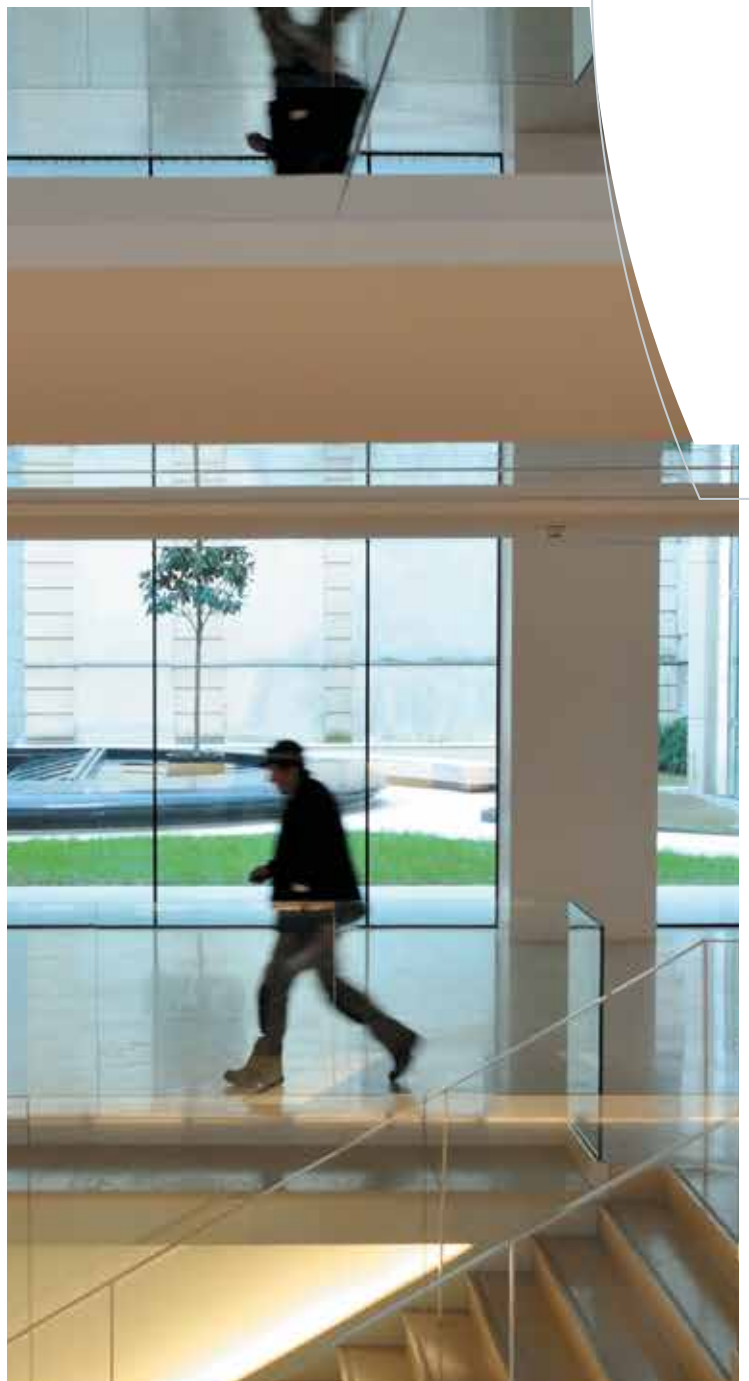
The duties of the **Scientific Consultative Committee** are to promote synergies between financial research and prudential supervision and to keep abreast of developments liable

to affect the banking and insurance sectors. (Details of the committee's activities in 2012 can be found in Section 2 of Chapter 2).

COMPOSITION OF THE SCIENTIFIC CONSULTATIVE COMMITTEE

(at 31 December 2012)

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



2

ACP General Secretariat

The ACP's operational departments come under the umbrella of the General Secretariat. It is chaired by a Secretary General, Danièle Nouy, who authorises expenditure within the budget approved by the College. The Secretary General

is assisted by a First Deputy Secretary General, Cyril Roux, and three other Deputy Secretaries General, Édouard Fernandez-Bollo, Fabrice Pesin and Frédéric Visnovsky.

THE DEPUTY SECRETARIES GENERAL OF THE ACP



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

The Authority is attached to the *Banque de France* so that, for its supervisory duties, it can benefit from the 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 all the ACP's staff;
- The ACP uses the *Banque de France*'s resources, which are invoiced by the *Banque de France*;
- The ACP has its own budget, which is an annex to the central bank's budget.

The *Banque de France* collects reporting institutions' contributions to supervisory costs and transfers them in full to the ACP. It may also top up these contributions with additional allocations. This provision remains exceptional.

When it was formed, the ACP had fewer than 900 staff. With 1,092 staff at 31 December 2012, the Authority's ambitious recruitment drive has clearly borne fruit. Three quarters of all new staff have been recruited into the divisions responsible for oversight, with prudential supervision in the insurance and banking sectors receiving a significant boost, together with oversight of business practices.

RECRUITMENT OF STAFF WITH SCIENTIFIC BACKGROUNDS

Ever since it was established, the ACP has continuously worked to supplement recruitment via internal transfers and examinations organised by the *Banque de France* by proactively recruiting both experienced professionals and top-flight young scientists. Between July 2011 and December 2012, the Authority recruited 29 junior scientific executives under permanent contracts to meet the needs of its insurance supervision departments and the Research and International Affairs divisions. These appointees are graduates of prestigious schools of engineering (41%), actuarial schools and universities (35%), and *écoles normales supérieures*

(higher teacher training colleges) or political science institutes (24%). The ACP has achieved these results by pursuing a policy of partnering with engineering and actuarial schools and playing an active role in recruitment forums.

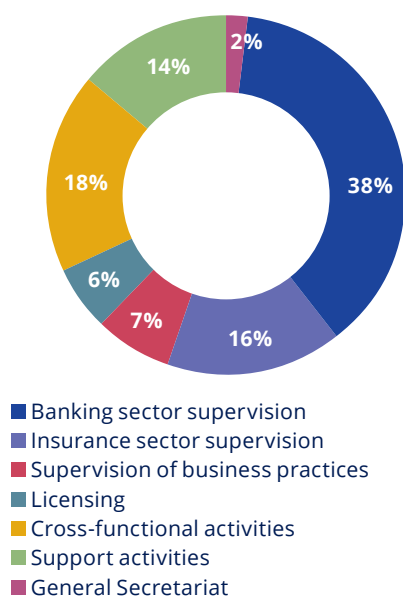
Furthermore, the ACP has also contributed to training for students, hosting 37 official interns in 2012 (24 of whom on long-term internships). Similarly, in 2012 the Authority introduced apprenticeship contracts and hosted a CIFRE⁴ research contract for the first time.

4. CIFRE: *convention industrielle de formation par la recherche*/industrial agreement on training through research.

1 OVERVIEW OF THE ACP

↳ 2) ACP General Secretariat

BREAKDOWN OF THE WORKFORCE



As regards activity, two thirds of the ACP's staff are responsible for ongoing and on-site supervision of reporting institutions on an individual basis, monitoring of business practices, and licensing and authorisation of institutions. A further 18% are assigned to cross-disciplinary activities, consisting of macro-prudential supervision, international work on preparing regulations, legal activities and other cross-cutting activities (including in particular methodological work). The remaining 14% of the workforce are involved in providing support services, which include human resources management, training, communication, financial control and budgeting, premises, facilities management and IT resources and systems management.

INCLUSION OF THE *COMMISSAIRES CONTRÔLEURS DES ASSURANCES* WITHIN THE *CORPS DES MINES*

A decree dated 1 March 2012 incorporated the *Commissaires contrôleurs des assurances* into the *Corps des Mines*. Those *Commissaires contrôleurs* already holding positions within the ACP were placed on secondment. This merger completed ongoing work to make the *Corps des Mines* the main inter-ministerial body responsible for regulation, from the industrial and technological sectors through to the financial sector.

It established the duty of the *Corps des Mines* to serve government and public authorities such as the ACP. The statutes of the *Corps des Mines* now stipulate that its engineers take part in regulating and supervising the financial sector. Postings within the ACP will be proposed to new engineers within the *Corps des Mines* when they complete their training.

TRAINING IS ESSENTIAL TO INTEGRATING AND UPSKILLING NEW STAFF

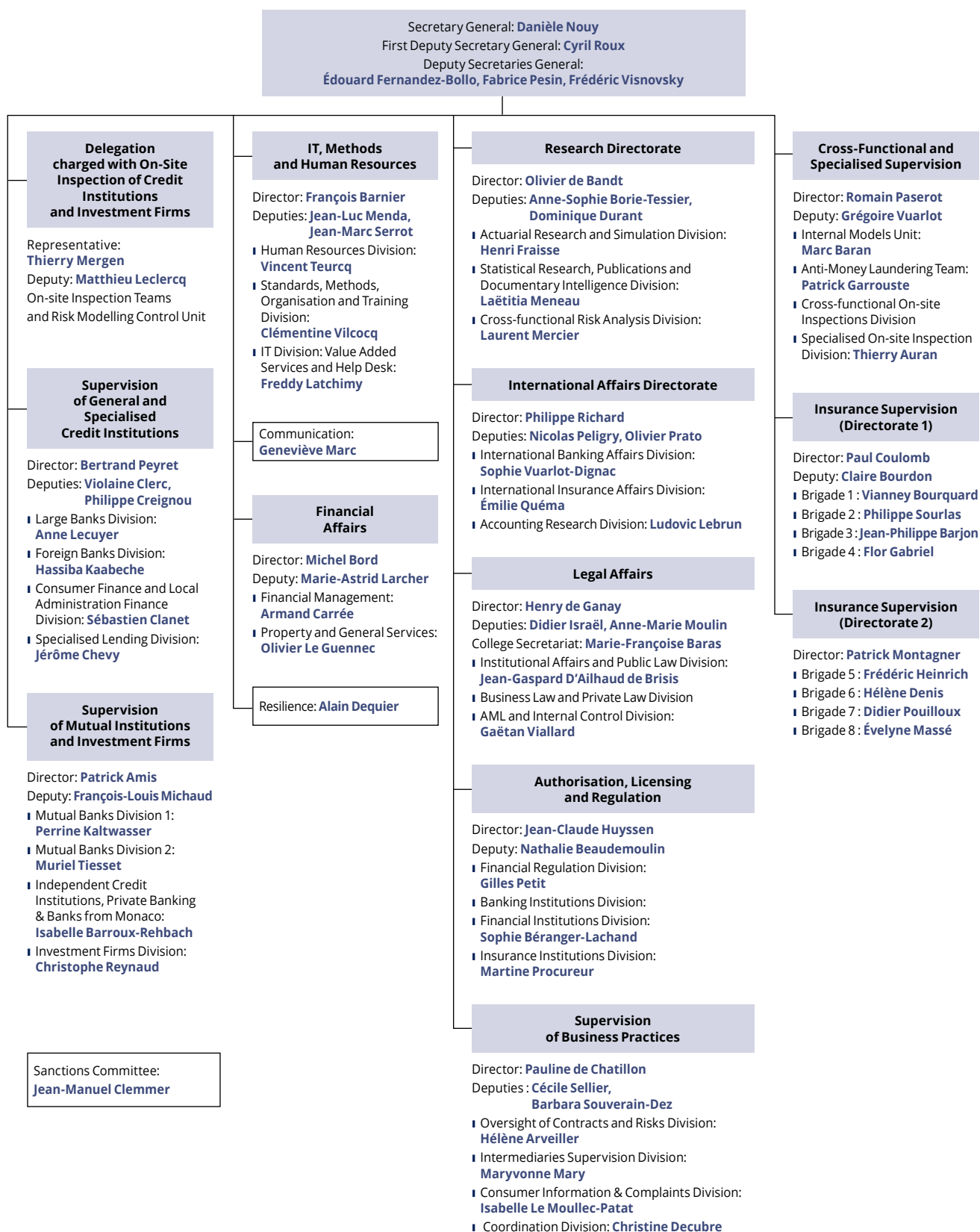
In 2012, the ACP continued and stepped up its training efforts to support new staff members and maintain the level of knowledge within ACP departments against a backdrop of substantial regulatory change.

The Authority held monthly welcome sessions and ran three induction courses for new recruits. In addition to initial training, the emphasis was placed on training to prepare for

the entry into force of the new Basel III and Solvency II regulations, as well as management training (including training for new managers and training in co-development and the prevention of psychosocial risks).

Staff received a total of approximately 57,000 hours' training in 2012, stable relative to the previous year.

ACP ORGANISATION CHART (at 1 march 2013)



1 OVERVIEW OF THE ACP

↳ 2) ACP General Secretariat

THE MANAGEMENT BOARD OF THE ACP



^
From left to right:
Back row: Patrick Amis, Thierry Mergen, Patrick Montagner, Pauline de Chatillon, Romain Paserot, Michel Bord, Olivier de Bandt, Jean-Claude Huyssen, Philippe Richard.
Front row: Henry de Ganay, François Barnier, Paul Coulomb, Bertrand Peyret.

Activities of the ACP College

College activity in figures...

498

decisions in 2012,
mainly consisting of:

- **452** decisions on individual situations
- **16** decisions on general issues
- **17** decisions on the ACP's organisation and General Secretariat

These decisions included:

51

administrative enforcement measures or other binding measures of a similar nature

9

decisions to initiate disciplinary proceedings

23

injunctions concerning capital adequacy requirements

3.1 DECISIONS ON GENERAL ISSUES

The ACP's College has adopted a number of decisions on general issues, in particular to clarify which information must be submitted to it, after consulting interested parties. These decisions are published in the ACP's official register, available through its website at www.acp.banque-france.fr



1 OVERVIEW OF THE ACP

↳ 3) Activities of the ACP College

↳ 3.1 Decisions on general issues

DECISIONS ON GENERAL ISSUES ADOPTED IN 2012

■ INSTRUCTIONS

Instruction 2012-I-01	on the procedure for requesting an opinion on the appointment of statutory auditors and special examiners
Instruction 2012-I-02	on the removal of Table ENGCT_INT on credit risk arising on international activities
Instruction 2012-I-03	amending the annex to Instruction 2011-I-06 on the cover ratio for mortgage credit institutions and home loan companies
Instruction 2012-I-04	on information about anti-money laundering and counter-terrorist financing systems
Instruction 2012-I-05	on the collection of information about compensation
Instruction 2012-I-06	on the content of applications to amend risk transfer agreements
Instruction 2012-I-07	on the questionnaire on enforcement of customer protection rules
Instruction 2012-I-08	amending the licensing application form for credit institutions providing investment services
Instruction 2012-I-09	amending the licensing application form for investment firms

■ RECOMMENDATIONS

Recommandation 2012-R-01	concerning the marketing to retail customers of loans exposed to foreign exchange risk
Recommandation 2012-R-02	on the marketing of time deposits accounts
Recommandation 2013-R-01	on gathering customer information in the framework of the duty to provide advice on life insurance policies (adopted by the ACP College in December 2012)

■ GUIDELINES

Guidelines on business relationships and occasional customers

■ POSITIONS

Position 2012-P-01	Position 2012-P-01 on implementation by payment services providers of anti-money laundering and counter-terrorist financing vigilance measures in relation to funds transmission services
Position 2012-P-02	on the placement and marketing of financial instruments

3.2 INDIVIDUAL DECISIONS

Issues relating to individual entities are examined by the sectoral sub-colleges and the College meeting in restricted session. They relate in particular to licensing applications and, for institutions that are already licensed, to applications for changes of situation, authorisations and waivers provided for in regulations, as well as supervisory follow-up action, which may include injunctions, administrative enforcement measures and the initiation of sanction proceedings, as the case may be.

In 2012, the College adopted a total of 452 measures affecting individual institutions.

A | Licensing and authorisation

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

Pursuant to Article L.612-2 of the Monetary and Financial Code, when an institution is issued with a licence, it acquires a status that brings it under the ACP's scope of supervision. Generally speaking, the College pays particularly close attention to the quality of licensing applications, which are often backed up by commitments or conditions. 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. This list is published in the Licenses and authorisations section of the ACP's website.

The College examined a large number of activities subject to authorisation in 2012: any amendment to or renewal of a licence issued by the College must be referred to it, and it can also withdraw licences.

Regulations also stipulate that reporting institutions must obtain authorisation from the College to carry out certain transactions or use internal approaches for calculating regulatory ratios. The College can also grant temporary waivers.

B | Supervision

The College is charged with setting supervisory priorities, both for its main focal areas and for the 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 findings of individual inspections carried out the previous year as well as general issues of financial stability that inform its thinking.

Also, in the course of the year, the College makes very important decisions concerning institutions in the banking and insurance sectors. These decisions take into account supervisory findings and follow a procedure that ensures that all sides of a case are heard.



1 OVERVIEW OF THE ACP

↳ 3) Activities of the ACP College

↳ 3.2 Individual decisions

POWERS OF THE ACP COLLEGE AS REGARDS ADMINISTRATIVE ENFORCEMENT

Strictly speaking, the ACP's jurisdiction in relation to administrative enforcement concerns the powers set out in Articles L. 612-30 to L. 612-34 of the Monetary and Financial Code. These are **the power to issue warnings and cease-and-desist orders, require institutions to submit to recovery programmes, issue protective measures and place institutions under provisional administration.**

More broadly, the ACP has **a range of other powers** aimed at preventing breaches and quickly rectifying the situations of supervised entities. In the insurance sector, the Authority can, in particular, require institutions to submit recovery plans and short-term funding plans, as laid down in Articles R. 323-2 and R. 323-3 of the Insurance Code.

In the banking sector, the Authority can issue injunctions pursuant to Article L. 511-41-3 of the Monetary and Financial Code. It can use this procedure to require credit institutions to take all necessary steps to restore or strengthen their financial position or improve their management methods,

or to require them to hold capital in excess of the minimum amount laid down in regulations (a so-called Pillar 2 measure).

Where a supervised entity breaches the obligation to submit documents requested by the Secretary General, the ACP can also issue an injunction combined with a coercive fine (Article L. 612-25, Monetary and Financial Code).

Finally, the College has the power to initiate disciplinary proceedings and refer cases to the Sanctions Committee (see Chapter V for details of the activities of the Sanctions Committee).

Using these powers is critical to the effectiveness of the ACP's supervisory policy. The measures adopted by the Authority ensure that its actions have preventive and corrective force to meet the twin objectives of maintaining financial stability and protecting customers.

ENFORCEMENT MEASURES

- Warnings
- Cease-and-desist orders
- Recovery programmes
- **Protective measures**
- Appointment of a provisional administrator

PROTECTIVE MEASURES

- Placement under special supervision
- Limitation or temporary prohibition of certain activities
- Suspension, restriction or temporary prohibition of the free disposal of some or all of the supervised entity's assets
- Order to suspend or limit the payment of surrender values, the right to execute arbitrage transactions, the payment of policy loans or the right of opt-out
- Transfer, without consultation, all or part of the institution's portfolio of insurance contracts or mutual instalments
- Prohibition or limitation on the dividend payments to shareholders or returns on membership shares
- Suspension of one or more of the supervised entity's senior executives

C | Administrative enforcement measures

The ACP College adopted 51 final decisions in 2012 (63 including to renew measures already adopted).

The ACP uses cease-and-desist orders to correct breaches of mandatory provisions (a power which the College has delegated to the Chairman – see delegation decision 2010-10 of 12 April 2010, as amended, published in the *Official Journal*). These orders were used more widely in 2012: 7 measures were issued in the year, while another 5 were initiated. These measures related to prudential ratios (liquidity, solvency, key risks, etc.), internal control and anti-money laundering and counter-terrorist financing.

The College required eight institutions (six insurance institutions and two banks) to submit **recovery programmes** (Article L. 612-32, Monetary and Financial Code), **safeguarding programmes** (Article R. 510-4, Mutual Insurance Code) or **restructuring programmes** (Article R. 931-5-2, Social Security Code) for its approval. Five programmes were approved by the ACP; the other were still in the process of being submitted or approved at the year-end. The content of these programmes mainly focused on restoring or strengthening the institution's financial position or improving governance or internal control. In many cases, several of these areas were addressed simultaneously.

The College placed one insurance institution and three banks belonging to the same group **under special supervision**. This was the first time the ACP had formally used this power – inherited from ACAM – outside the insurance sector.

The College also issued two measures to **limit or prohibit activities**, with the aim of either protecting customers or preventing the institution's financial position from deteriorating.

Concerning customer protection, as laid down in Article L. 612-30 of the Monetary and Financial Code, the ACP used its power to **issue warnings**, on one occasion, against an insurance broker. The intermediary in question was using its website to market unit-linked life insurance policies with complex financial instruments as underlying assets. The site did not contain sufficient information for members of the public to be aware either of the nature of the underlying investment vehicles or of the full range of risks inherent in the products on offer. The practices adopted by this intermediary were therefore liable to harm the customers' interests by failing to conform both to ACP Recommendation 2010-R-01 concerning the marketing of unit-linked life insurance policies with complex financial instruments as underlying assets and to Recommendation 2011-R-02 on advertising communications for unit-linked life insurance policies with debt securities as underlying assets.

Various measures were adopted in the area of anti-money laundering and counter-terrorist financing (AML/CTF), another cross-cutting area along with customer protection, with particular emphasis on cease-and-desist orders (AML/CTF activities are expanded upon in Chapter 4). In addition, to make its actions more effective, the ACP is entitled to **use its powers in combination whenever it considers that the remedy it is targeting would be better achieved by doing so**.

1 OVERVIEW OF THE ACP

↳ 3) Activities of the ACP College

↳ 3.2 Individual decisions

For example, the College decided in 2012 to initiate disciplinary proceedings against a credit institution to sanction serious and persistent past breaches of regulatory provisions. At the same time, the institution was asked to submit a recovery programme to ensure that, in the future, it would implement corrective measures for issues falling outside the scope of the statement of objections. The College initiated disciplinary proceedings against another institution as well as placing it under special supervision.

The ACP College also **combined administrative enforcement measures**, either to more effectively monitor the recovery of a group and its component entities, or, in the case of a single supervised entity, to ensure that appropriate corrective action was taken via targeted measures. For one insurance company, the College asked the parent company to submit a recovery programme, which it subsequently approved, and decided, at the same time, to place one of the group's entities under special supervision. This approach encouraged both the parent company and the group entity that was most in need of recovery measures to more effectively implement corrective action, closely supervised by the ACP, with the aim of restoring the group's overall position.

For another institution, the College decided to temporarily prohibit activities, as provided in Article L.612-33-2 of the Monetary and Financial Code, in order to protect the interests of customers. Concurrently, the Chairman decided to order the institution to comply with certain regulatory provisions concerning its conduct of business.

Finally, one credit institution against which the ACP had initiated disciplinary proceedings in late 2011 was also placed into provisional administration in 2012.

In 2012, for the first time, the College used its power to **issue injunctions combined with coercive fines** against three insurance institutions and one company in the banking sector to force them to submit periodic financial statements. The Monetary and Financial Code stipulates that coercive fines, the amount and effective date of which are set by the College, may not exceed 15,000 euros per day. The fines were paid by two institutions, each having failed twice to defer to injunctions within the stipulated timescales. In 13 other cases, the procedure for issuing an injunction combined with a coercive fine was closed after being initiated, with the institutions in question having submitted the required documents. Some other cases were not referred to the College: the institutions in **question submitted the required statements or documents** as soon as the Secretary General initiated a preliminary inter partes phase.

D | Opening of disciplinary proceedings

The College initiated **nine disciplinary proceedings in 2012**, all of which were referred to the Sanctions Committee. These were all cases in which disciplinary proceedings were initiated directly, meaning that they did not follow a previous ACP sanction or a failure to comply with an administrative enforcement measure. While the three proceedings initiated in 2011 all related to breaches of internal control rules and/or AMF/CTF rules, the cases referred to the committee in 2012 included one in the prudential arena (failure to comply with ratios/submit statements) and three relating to customer protection.

Furthermore, where an institution continues to engage in breaches that it has previously been ordered to correct, particularly where these are repeat offences for which the ACP has already adopted administrative enforcement measures, or a sanction, the College is, in principle, asked to examine the institution's specific circumstances. Following examination, the College may decide to initiate disciplinary proceedings.

Similarly, the College may be asked to examine evidence of further serious breaches by a previously sanctioned entity.

With this in mind, the ACP **monitors** institutions' response to the measures it adopts, including action to rectify previously sanctioned breaches; where necessary, such monitoring includes on-site inspections. Monitoring arrangements in relation to certain administrative enforcement measures, such as recovery programmes and special supervision, are laid down in the Monetary and Financial Code. In other cases where binding measures (warnings, cease-and-desist orders, limitations or prohibitions of activity, injunctions, sanctions, etc.) are used to ensure an institution takes corrective action, specific monitoring arrangements are put in place on a case-by-case basis.



4

Reporting on the ACP's activities

4.1 PARLIAMENTARY HEARINGS

The ACP Chairman, Governor of the *Banque de France*, and the Secretary General regularly attend hearings before committees of the Senate and of the National Assembly. The table below details all hearings held in 2012.

Parliamentary hearings attended by the ACP in 2012

DATE	TOPIC	REQUESTED BY	ACP REPRESENTATIVE
15 FEBRUARY 2012	Panel discussion on Basel III	Senate Finance Committee and European Affairs Committee	Danièle Nouy , ACP Secretary General, and Frédéric Visnovsky , ACP Deputy Secretary General
16 FEBRUARY 2012	Panel discussion on Omnibus II	European Parliament	Danièle Nouy , ACP Secretary General
3 APRIL 2012	Capital and asset flight and its tax impacts	Senate Enquiry Committee	Édouard Fernandez-Bollo , ACP Deputy Secretary General
17 APRIL 2012	Review of ECB financing facilities	Senate Finance Committee	Christian Noyer , Governor of the <i>Banque de France</i> and ACP Chairman
30 MAY 2012	National register of consumer loans	Senate Inter-Committee Working Group	Fabrice Pesin , ACP Deputy Secretary General
24 JULY 2012	Implementation of the 29 June 2012 agreement on the growth pact and the banking union	National Assembly Finance Committee and European Affairs Committee	Christian Noyer , Governor of the <i>Banque de France</i> and ACP Chairman
3 OCTOBER 2012	Crédit Immobilier de France	Panel discussion chaired by Antoine Crombez, Finance Committee administrator	Cyril Roux , ACP First Deputy Secretary General
9 OCTOBER 2012	Banking union	Senate Finance Committee	Danièle Nouy , ACP Secretary General and Édouard Fernandez-Bollo , ACP Deputy Secretary General
	Consumer lending – 2013 Budget Bill	Damien Abad, <i>rapporteur</i> , National Assembly Economic Affairs Committee	Fabrice Pesin , ACP Deputy Secretary General
16 OCTOBER 2012	Banking union; status of French banks	Senate Finance Committee	Christian Noyer , Governor of the <i>Banque de France</i> and ACP Chairman
24 OCTOBER 2012	Euro area government debt crisis and the role of banks	Economic section of the Economic, Social and Environmental Council	Robert Ophèle , Deputy Governor of the <i>Banque de France</i>
	Financing of the economy by banks	National Assembly Finance, Mainstream Economy and Budget Control Committee	Christian Noyer , Governor of the <i>Banque de France</i> and ACP Chairman
7 NOVEMBER 2012	Bill on the formation of the <i>Banque publique d'investissement</i>	National Assembly Finance Committee	Michel Cardona , ACP Deputy Secretary General
27 NOVEMBER 2012	Key issues relating to the financing of the economy and taxation of saving income: current arrangements and proposed changes	National Assembly Taskforce on Taxation on Savings Income	Jean-Philippe Thierry , ACP Vice-Chairman, and Fabrice Pesin , Deputy Secretary General

4.2 IMF ASSESSMENT OF FRENCH FINANCIAL SECTOR SUPERVISION

In October 2011, the International Monetary Fund (IMF) began an assessment of France's financial sector under the Financial Sector Assessment Program (FSAP), compliant to Article IV of the IMF's Articles of Agreement. The assessment concluded on 20 December 2012 with the publication of a report.

The FSAP is a joint initiative between the IMF and the World Bank. It offers member countries a comprehensive, in-depth analysis of their financial system in the broadest sense (i.e. banking, insurance and financial markets) and its supervision. The FSAP is part of the IMF's bilateral surveillance of member countries' circumstances and their macroeconomic and financial policy. Originally a voluntary initiative, the programme is now mandatory for 25 countries, including France, that are considered systemically important. It is also an important part of the IMF's bilateral surveillance activities.

The FSAP analysis consisted of two on-site inspections conducted by the IMF experts in charge of the assignment, the first from 10 to 27 January and the second from 30 May to 13 June 2012. An extensive series of discussions and interviews were scheduled both with industry professionals and with the financial authorities, including the ACP, in conjunction with the *Banque de France* (BDF), the *Autorité des marchés financiers* (AMF) and the French Treasury (*DG Trésor*). The assessment was coordinated by a steering committee made up of representatives from *DG Trésor*, BDF, the ACP and the AMF.

The assessment was divided into two segments. The first consisted in evaluating the extent to which French practices complied with international standards and codes. The areas examined were supervision of banks (compliance with Basel Core Principles, with the assessment being coordinated by the ACP), insurance (Insurance Core Principles, assessment coordinated by the ACP), financial markets (IOSCO principles, assessment coordinated by the AMF), and the



clearing and settlement system (CPSS-IOSCO principles, assessment coordinated by the BDF). The second segment took a more forward-looking approach. It enabled the IMF to conduct exhaustive studies of various characteristics and provisions specific to the French financial sector, specifically the real estate market, stress testing (ACP) and crisis management (BDF). Interviews were conducted with financial sector participants, notably banks and insurers, firstly to gauge the quality of risk management and the proper application of prudential rules and secondly to assess relationships with supervisory authorities.

On 20 December 2012, the IMF's Executive Board concluded the Article IV consultation with France, in parallel with the FSAP component. The Board's assessment was positive, agreeing in particular with the FSAP's conclusions on the high standard of supervision and the resilience of the financial sector. The Board did, however, point out that banks were overly dependent on market refinancing and it called on the French authorities to channel savings into banks and long-term savings vehicles more effectively. (For more information, see the inset under point 2 of Chapter II on stress testing under the FSAP.)

5

Two key issues for the ACP: the Banking Separation and Regulation Act and the European Banking Union

5.1 BANKING SEPARATION AND REGULATION ACT

The Banking Separation and Regulation Act aims to learn lessons from the financial crisis, firstly about the way banks are organised and the risks they are authorised to take, and secondly about the powers available to public authorities, including the *Autorité de contrôle prudentiel et de résolution* (ACPR), for crisis prevention and management. This proposed legislation is aligned with previous changes in regulation and supervisory practices aimed at more rigorously controlling banking risks so as to protect deposits and maintain financial stability. Anticipating changes due to take place at the European level, it equips the ACPR with the most advanced instruments for managing banking risk and banking crises.

The separation component of the bill stipulates that credit institutions' trading activities that are proprietary or do not serve the interests of the economy must be ringfenced in a dedicated subsidiary that cannot receive customer deposits. Institutions will be subject to this ringfencing requirement when they exceed thresholds to be set by a decree issued following consultation with the *Conseil d'État*.

The ACPR will monitor compliance with ringfencing rules, ensuring that credit institutions adopt appropriate mechanisms to properly describe their trading activities in light of criteria laid down in the future legislation and its implementing regulations. The dedicated subsidiary, which will have to be authorised by

the ACPR, will be bound by prudential rules limiting its financial links with the rest of the group, and thereby limiting the risk of contagion to the retail banking business in the event of crisis. Moreover, stricter internal control rules will allow for closer monitoring of market risks.

The draft legislation also strengthens domestic crisis prevention and management capabilities by entrusting the ACPR with new responsibilities, in addition to its supervisory duties, for preventing and managing banking crises. The financial crisis demonstrated the importance of having access to legal instruments that facilitate swift intervention to prevent failures and, when failures occur, to prevent them from spreading through the financial system.

These duties will be performed by a special ACPR college, to be known as the Resolution College. This college will play a preventive role by asking banks to prepare resolution plans ahead of time showing how, in the event of difficulties, they could quickly restructure so as to protect activities that are critical to the financing of french economy. To help it manage any banking crises that might occur, the Resolution College will have new powers, such as ordering that business lines be transferred or sold or that capital or subordinated debt be cancelled in order to absorb losses. It will also be able to ask the Deposit Insurance Fund, renamed the Deposit Insurance and Resolution Fund, to intervene in support of struggling banks so as to limit the impact of any difficulties on the public finances.

Furthermore, to align France with the highest international standards, the proposed legislation gives the ACPR the power to verify that members of credit institutions' and investment firms' boards of directors are fit and proper persons with appropriate skills and experience.

Finally, the proposed legislation includes provisions designed to bolster the prevention of systemic risks. The *Conseil de la régulation financière et du risque systémique*, the french macroprudential supervisor created in 2010, becomes the *Haut conseil de stabilité financière* (HSCF). The HSCF will be responsible of the macroprudential policy. It would have binding powers (as envisaged in Basel III agreements) to impose stricter obligations on French banks in relation to capital adequacy and lending conditions. It will be responsible for carrying out monitoring at this overall level in cooperation with financial regulators such as the ACPR, where necessary, at the proposal of the Governor of the *Banque de France* by using the powers provided by the law. The ACP will be represented, as other authorities in charge of regulation and financial supervision, in the HSCF by the Governor of the *Banque de France*, Chairman of the Authority assisted by the Vice-Chairman.

5.2 THE EUROPEAN BANKING UNION

The decision to create a banking union – one of the political responses to the financial crisis in Europe and, more specifically, the euro area – was reached at the European Council and euro area summit on 28 and 29 June 2012. The union's objectives include severing the link between sovereign risk and banking risk, improving monetary policy transmission channels and preparing the way, along with other changes, for struggling banks to be directly recapitalised through the European Stability Mechanism.

The banking union is based on three pillars: creation of a single supervisory mechanism (SSM), under the auspices of the European Central Bank (ECB), harmonisation of deposit insurance

schemes, and a unified European framework for restructuring banks and resolving bank failures. While these components form an indivisible whole, each is subject to its own legislative timetable. The Commission was asked to draw up legislative proposals on the SSM soon after the European Council meeting, with proposals on the other two components to follow at a later stage.

On 12 September 2012, the Commission published two draft European regulations. The first of these, the cornerstone of the new framework, aims to grant significant supervisory prerogatives to the ECB under the terms of Article 127-6 of the Treaty on the Functioning of the European Union. The purpose of the second is to amend an earlier regulation that established the European Banking Authority (EBA) in early 2011 by adjusting the EBA's governance to reflect the new balance of powers created by the SSM. The subsequent negotiation phase ended with the Council confirming agreement in principle in mid-December. The ensuing three-way discussions between the Council, the Parliament and the Commission have made decisive progress in the first few months of 2013, preparing the way for rapid adoption so that the SSM will be fully operational in 2014.

While the ECB, whose extensive jurisdiction will mainly be underpinned by instruments transposing Basel III into European law (the directive and the regulation making up the 'CRD 4 Package'), will be tasked with supervising all euro area banks (as well as banks in European Union countries wishing to join the mechanism), it will directly monitor the most significant banks. The system will be organised around a supervisory committee (separate from but reporting to the ECB's Governing Council) whose members will include competent domestic authorities, including France's ACP. In practice, these authorities will continue to perform many prudential supervision duties.

The ACP has contributed to ECB-led preparatory work and will continue to do so throughout 2013. The Authority intends to play a leading role once the SSM is in place, taking full advantage of its backing from the *Banque de France*.

FOCUS

on the ACP's main communication activities in 2012

January

01

the Authority launches a revamped website: www.acp.banque-france.fr
The new site is more practical and intuitive, with targeted areas for different audiences: banks, insurance institutions, intermediaries, mutual insurers, provident institutions, the press, academics, consumers, etc.

May

11

The ACP and the AMF hold an academic conference on the consequences of the financial crisis for household savings and the marketing of financial products.

14

the ACP publishes its 2011 annual report. ACP Chairman Christian Noyer presents the document at a press conference.

25

ACP Secretary General Danièle Nouy and AMF Secretary General Thierry Francq present the annual report of the "Assurance Banque Épargne Info Service" joint unit to the press.

June

27

- The ACP organises a conference on two topics: Basel III and CRD 4 and supervision of business practices in banking and insurance. ACP Chairman Christian Noyer and Vice-Chairman Jean-Philippe Thierry take part.
- The Authority publishes the results of its annual enquiry into revaluation rates for mathematical reserve on capitalisation contracts and individual life insurance contracts (covering 2011).

July

11

As part of the European Banking Authority's exercise to estimate European banks' potential capital requirements, the ACP releases its initial results for French banks. The final results were released on 3 October 2012.

October

19

The Authority holds another market conference on the upcoming stages of Solvency II and the supervision of anti-money laundering and counter-terrorist financing in the banking and insurance sectors. The event was attended by Christian Noyer, Jean-Philippe Thierry and Francis Assié, a member of the ACP College.

November

27

The ACP holds a conference on the supervision of information systems in the banking and insurance sectors, attended by Deputy Secretaries General Fabrice Pesin and Frédéric Visnovsky.

December

18

The ACP, the *Banque de France* and the AMF present the new version of the "Assurance Banque Épargne Info Service" website to the press. The new site (www.abe-infoservice.fr) provides the public with information and guidance on rights and procedures in relation to banking, insurance and financial investment.





Contributing to the stability of the financial system

2

The main duty of the ACP is to maintain the stability of the financial system. It is responsible for licensing entities operating in the banking and insurance sectors in France. It also conducts ongoing supervision of reporting entities. For this the ACP relies on several directorates tasked with licensing and supervising banks and insurers; it also draws on research to analyse risks that may affect the financial sector as a whole.

44

Licensing and authorisation

57

Key risks facing the financial system in 2012

65

Prudential supervision

1

Licensing and authorisation

A substantial proportion of the decisions made by the ACP College, both in restricted sessions and through the Banking and Insurance Sub-Colleges, deals with applications for licensing and authorisation. In addition, the College Chairman makes other decisions using his delegated powers.

The ACP's Licensing, Authorisation and Regulation Directorate examined a total of 860 applications from the banking and insurance sectors, consisting of 490 licensing and authorisation applications and 370 senior management appointments.

Applications for licensing, license renewals, changes of ownership, asset transfers and restructuring require close scrutiny in cooperation with the ACP's supervision departments. Such applications were the subject of 266 meetings with institutions during the year.

As well as dealing with these applications, the ACP gives its opinion on proposed appointments of statutory auditors by institutions supervised by the ACP (except for certain types of organisations listed in the Monetary and Financial Code). A total of 1,128 opinions were issued in 2012 (705 in the banking sector and 423 in the insurance sector).

1.1 BANKING SECTOR

In 2012, the ACP made 318 licensing and authorisation decisions relating to the banking sector. Of these decisions, 83 related to credit institutions (including two with their registered offices in Monaco), 37 related to investment firms, 132 dealt with payment institutions (including 127 agent registrations). 15 decisions related to companies applying for exemption from

490

licensing and authorisation decisions in 2012

° of which **318** concerned the banking sector

° and **172** concerned the insurance sector

licensing requirements (or a change in licensing conditions), 2 dealt with authorisation renewal applications from microfinance institutions and 49 related to money changers.

New licences were granted to 13 institutions, 3 of which were payment institutions. Furthermore, 30 licences were withdrawn, including 20 credit institution licences, and decisions were made concerning 13 changes of control.

A | The financial sector saw an increase in the number of payment services institutions

The rationalisation process continued in the banking sector in 2012, partly as a result of the expected impact of the application of the new CRD 4 regulation on financial holding companies. Besides, there were few changes of control.

A number of **market infrastructures** also merged in 2012, while concentration in the **investment firms** segment increased.

Given the variety of legal statuses providing an appropriate framework for companies' business plans, the number of institutions specialising in **payment services** continued to increase.

B | The banking sector continued to restructure, driven in particular by the economic climate

In the first half of the year, the publicly-owned bank Oséo was given greater firepower with the formation of Oséo Industrie, a subsidiary specialising in industry. In the second half, the process of establishing the *Banque publique d'investissement* (BPI) began. The statute establishing the BPI was published in the *Official Journal of the French Republic* on 1 January 2013. The BPI will consist of a financing division arising from Oséo and an equity investment division formed mainly from the Fonds stratégique d'investissement (Strategic Investment Fund) and CDC Entreprise.

Furthermore, pursuant to the Dexia group's orderly resolution plan, the Belgian and French governments recapitalised Dexia SA, the group's Belgian financial holding company, at the end of 2012. The operation gave indirect control of Dexia Crédit Local bank and all its French subsidiaries to the Belgian government, via Société fédérale de participation et d'investissement. In early 2013, the ACP then issued a licence for a new credit institution, Société de financement local, owned 75% by the French government, 20% by *Caisse des dépôts et consignations* and 5% by la Banque Postale, and authorised the sale of Dexia Municipal Agency, the Dexia group's mortgage credit company, to the new institution. Société de financement local and its subsidiary Dexia Municipal Agency, renamed Caisse française de financement local, will provide funding for French local authorities and public healthcare institutions. Lending activity will be undertaken by la Banque Postale, whose licence was amended by the ACP in May 2012 to enable it to operate in this area, in partnership with *Caisse des dépôts et consignations*.

Reorganisations among financial groups continued.

) A number of banks that had been dormant for several years asked for their licences to be withdrawn.

- In the BPCE group, Société centrale de crédit maritime mutuel, which repositioned itself in

2005 to focus on simply representing Crédit maritime's regional banks, given that they are attached to Banques populaires, had its licence withdrawn with immediate effect.

- Crédit mutuel agricole et rural Océan ("C.M.A.R. Océan"), a mutual or cooperative bank affiliated to the Confédération nationale du Crédit Mutuel, had its licence withdrawn with immediate effect.
- The French branch of Swiss banking group Union de banques suisses (UBS) – which still has establishments in France – and a subsidiary of Italian insurance group Generali, BSI-Ifabanque, which had ceased trading in France, asked for their licences to be withdrawn.

) Some reorganisations were a result of companies changing their strategic direction.

- Within the BPCE group, the bank Natixis Transport Finance was absorbed by its parent Natixis, while the finance company Natixis Lease bought 100% of finance company Sud-ouest Bail, formerly owned by Expanso, a subsidiary of Caisse d'épargne et de prévoyance Aquitaine Poitou-Charentes.
- Lebanese-owned Banque de l'Europe Méridionale – BEMO decided to transfer its registered office to Luxembourg in order to become governed by Luxembourg law, under the name BEMO Europe Banque Privée SA. Consequently, it asked for its licence to be withdrawn. This will happen once the institution has physically transferred its registered office, after which it will open a French branch in Paris.
- The ACP authorised a change of indirect control of Rothschild et Compagnie Banque in favour of the controlling extended family-owned group Paris-Orléans, a holding company that was added to the register of financial holding companies then.
- A structural reorganisation of the line of control over Monegasque bank Banque J. Safra (Monaco) SA resulted in indirect control of the bank moving to an investment vehicle wholly owned by Joseph Y. Safra.

2 CONTRIBUTING TO THE STABILITY OF THE FINANCIAL SYSTEM

↳ 1) Licensing and authorisation

↳ 1.1 Banking sector

- The Monaco branch of Caisse méditerranéenne de financement du Crédit Mutuel (Camefi) was transferred to the Crédit Mutuel CM-CIC group to form a new Monegasque banking subsidiary authorised to provide custodian banking services. The new entity, known as Banque européenne du Crédit Mutuel Monaco (BECM Monaco), is a direct subsidiary of Banque européenne du Crédit Mutuel.

Moreover, in connection with Précision Capital SA's takeover of KBL European Private Bankers SA in the Netherlands in order to combine the interests of a Qatari investor, the ACP authorised Précision Capital SA to indirectly acquire interests of more than 50% in KBL Richelieu Banque Privée and the Monaco-registered company KBL Monaco Private Bankers SA.

The number of finance companies once again declined in 2012. While 4 new finance companies were licensed in 2011, no new licences were issued in this category in 2012⁵, while 12 such licenses were withdrawn.

A number of foreign groups, mainly involved in industry, asked for information about obtaining licences as finance companies but did not follow through on their plans. This wait-and-see attitude may have been partly due to changes expected to take effect in 2013 in the legal framework applicable to finance companies once CRD 4 enters into force.

Furthermore, the decline in the number of finance companies could also be explained by banking groups with specialist financing subsidiaries waiting to understand the future impact of CRD 4. These groups are waiting to assess the practical consequences of the new prudential regime before they decide whether to keep these specialist financing subsidiaries within the consolidation area.

The majority of licence withdrawals concerned finance companies (including two "Sofergie") no longer engaging in regulated activities or only managing legacy run-off business and

not engaging in any new banking activity. Four more licence withdrawals were a result of various banking groups rationalising their financing divisions.

- The General Electric (GE) group merged its factoring operations into GE FactoFrance, resulting in the withdrawal of licences for GE Factor and Factobail.
- The BNP Paribas group brought together its factoring operations within BNP Paribas Factor, leading to the withdrawal of the licence for Fortis Commercial Finance. Orange-BNP Paribas Services, a commercial joint venture formed in 2007 by France Telecom and BNP Paribas to offer prepaid cards, had its licence withdrawn. BNP Paribas acquired 100% of Orange-BNP Paribas Services before asking for the company's licence to be withdrawn.
- GCE Bail, which offered the same equipment leasing services as its parent Natixis Lease, was absorbed by the latter.

There were 572 licensed credit institutions in France at the end of 2012, compared with 590 a year earlier.

C | Greater concentration among market infrastructures

↳ LCH.Clearnet SA

The ACP College authorised London Stock Exchange Group (LSEG) to take indirect control of LCH.Clearnet SA, a clearing house (corporate name: Banque centrale de compensation). The aim was to enable LSEG to forge ahead with efforts to reposition as an intermediation services group on the financial markets and increase its presence across the financial instrument transaction processing chain, particularly the post-trade segment. This acquisition of indirect control formed part of LSEG's plans to acquire up to 60% of the LCH.Clearnet group.

5. Excluding the newly formed S-Money (see below) – electronic money institutions are a sub-category of finance companies.

D | The number of investment firms was affected by the market impact of the financial crisis

For the first time since 2009, there was a decline in the number of investment firms other than portfolio management companies. Within this category (investment services providers), five new licences were issued in the year, while nine were withdrawn.

The five new licences were granted to the following institutions:

- Palico, which runs a computerised trading information and networking platform for the private equity community. Palico provides services for the reception and transmission of orders for third parties and non-guaranteed investments in all types of financial instruments.
- Robeco France: Dutch group Robeco converted its asset management subsidiary Robeco Gestion into an investment firm that will provide investment advice on the group's products. Robeco France will be the entity dedicated to promoting and providing advice on the Robeco group's products in the French market.
- Prorealtime, whose parent runs a computerised platform specialised in simulating stock market transactions, including the ability to place virtual orders, wanted to offer retail customers the option of placing real orders. This small investment firm was awarded a licence for the reception and transmission of orders for third parties in all types of financial instruments (excluding units and shares in collective investment schemes).
- Alpha Commodities, controlled by the Agro Market Ressources (AMR) group, which specialises in agricultural commodities advice and brokerage, wanted to expand its

investment services business by setting up an investment subsidiary dedicated to the reception and transmission of orders for third parties. Its intermediation activities are mainly focused on financial contracts on agricultural commodities and are aimed at professionals within the agricultural and agri-food sectors.

- Nexo Capital was awarded a licence to provide services covering investment advice and the reception and transmission of orders for third parties in all types of financial instruments. This small investment firm focuses on providing advice on the creation of tailored structured products from various asset classes as well as advice on selecting collective investment schemes. It also offers its customers, most of whom are professionals, order reception and transmission services.

Five of the nine licence withdrawals in 2012 concerned small investment firms mainly providing order reception, transmission and execution services, as well as investment advice. These licences were withdrawn as a result of firms either ceasing their regulated activities in order to focus solely on investment advice or being wound up. This trend is largely explained by the effects of the financial crisis and the decline in intermediation income over the past few years. The remaining licence withdrawals followed small-scale internal restructuring within the asset management divisions of a number of banking and financial groups.

It should also be noted that the BGC group bought independent investment firm Ginalfi Finance.

At the end of 2012, 93 investment firms other than portfolio management companies were operating in France, compared with 97 a year earlier.

E | The number of payment and electronic money institutions increased significantly, as did the number of agents

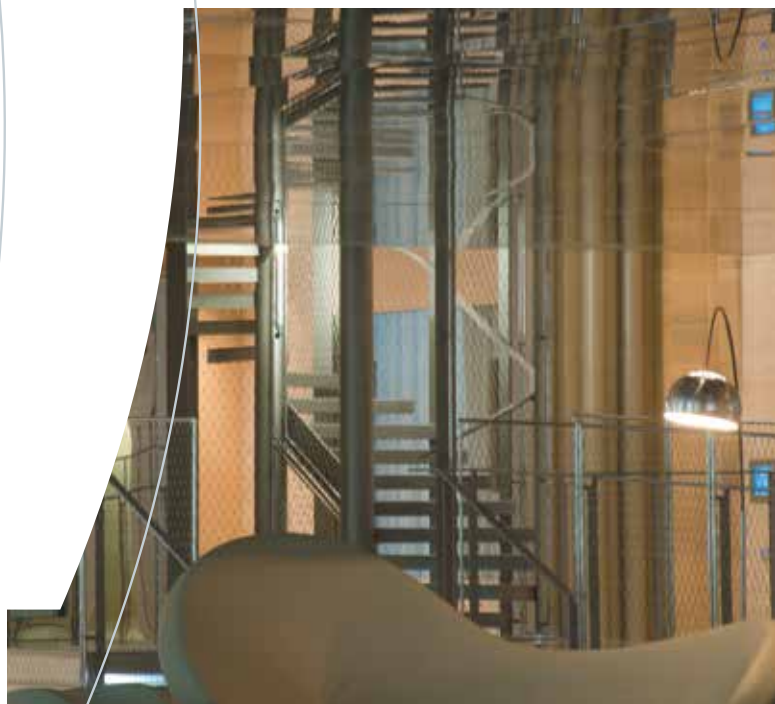
Three new payment institution licences were issued in 2012, including those granted to OPS and Lemon Way, which became permanent during the year. S-Money, a subsidiary of the BPCE group, was awarded a licence as a financial holding company/electronic money institution.

The number of registered agents of payment services providers (credit institutions or payment institutions) increased sharply, reaching 164 at end 2012 (including 121 new registrations and 5 de-registrations at the request of payment services providers). Most of these registrations were made by institutions specialising in funds transfers.

Furthermore, given the conditions under which they carry on their business and the exemption conditions laid down in the Monetary and Financial Code, Auchan, GIE Grand Stade and Greenpark Solution were exempted from the requirement to be licensed as electronic money institutions, while Bouygues Telecom, Orange France, SFR, SFR Collectivités, Q-Park Invest, Omniparc, Gassot & Co and Hors Limite 64 were exempted from the requirement to be licensed as payment institutions.

Three years after the Payment Services Directive was transposed into French law, 18 payment institutions have been licensed, 11 companies are allowed to operate with licence-exempt status and the number of agents has risen substantially. Specialist electronic money services are mainly still provided by companies exempt from the requirement to be licensed as providers of bank payment services (seven at end 2012), ahead of the transposition into French law of the second Electronic Money Directive and, in particular, pending the specific status of electronic money issuer, which will replace the existing regime for financial holding companies/electronic money institutions.

Of the 17 payment institutions in operation, 4 specialise solely in cash funds transfers and the rest offer a more or less extensive range of services to a variety of customers (retail, corporate and professional customers), mainly via fixed or mobile internet connections.



PAYMENT SERVICES AND PAYMENT SERVICES PROVIDERS

Point II of Article L. 314-1 of the Monetary and Financial Code defines seven categories of payment services.

- 1) Services enabling cash transfers to be made to a payment account and administration of a payment account;
- 2) Services enabling withdrawals of cash from a payment account and administration of a payment account;
- 3) Execution of the following payment transactions associated with a payment account:
 - a) Direct debits, including one-off direct debits,
 - b) Payment transactions carried out with a payment card or by a similar means,
 - c) Transfers, including standing orders;
- 4) Execution of the following payment transactions associated with a line of credit:
 - a) Direct debits, including one-off direct debits,
 - b) Payment transactions carried out using a payment card or a similar means,
 - c) Transfers, including standing orders;
- 5) The issuance of payment instruments and/or the acquisition of payment orders;
- 6) Cash transmission services;
- 7) The execution of payment transactions where the payer's consent is given by means of any telecommunications, digital or IT device and the payment is sent to the operator of the system or the telecommunications or IT network acting solely as an intermediary between the user of payment services and the supplier of goods or services.

In accordance with Article L. 521-2 of the Monetary and Financial Code, payment services can only be provided as a regular occupation by payment services providers, i.e. either credit institutions or payment institutions.

However, a firm may offer payment services if these remain within the limits set out in Article L. 521-3, point I of the Monetary and Financial Code, in which case the firm is eligible for exemption from the requirement to hold a licence. The payment methods used to purchase goods or services must only be accepted on the firm's premises or, where there is a commercial agreement with the firm,

within a limited network of persons or entities accepting those payment methods or for a limited range of goods or services. In such cases, the firm must submit a declaration of exemption for consideration by the ACP.

Eleven firms were granted exemption from the requirement to hold a licence – ten because there was a limited range of goods or services and one because there was a limited network within which payment methods were accepted.

Payment institutions may have agents whose status is described in Articles L. 523-1 et seq. of the Monetary and Financial Code. An agent acts in accordance with a mandate given by its principal, a payment services provider. Under this type of agency relationship, the agent must work on behalf of the payment services provider and within the terms of the latter's licence. A given agent may, however, work for more than one payment services provider.

Agents are used in particular by payment institutions offering funds transfer services, which often build up commercial networks of agents.

Furthermore, any institution complying with the formalities required for the European passport, as laid down in point 2 of Article L. 522-13 of the code, is authorised to provide payment services in France.

A total of 159 firms, most from the United Kingdom (77% of all declarations), have declared they offer these services under the freedom to provide services⁶. Declarations under the freedom of establishment (whereby a firm establishes a branch) are much less common: four such declarations have been made, all originating from the United Kingdom.

Foreign payment institutions have declared large numbers of agents – a total of 5,310 – operating in France. These declarations originate from two European countries: Ireland, which accounts for 55% of the total, and the United Kingdom, the remaining 45%.

Meanwhile, French payment institutions have declared a total of 55 agents, mainly in Germany. Six French payment institutions have submitted declarations under the freedom to provide services, with varying scopes: some to operate in a single European country, others to operate in some or all of the countries in the European Economic Area.

6. This data covers all recorded applications, not just applications received in 2012.

F | The number of money changers has increased slightly

A total of 24 new professionals were authorised to operate as money changers, while 14 money changers had their authorisation withdrawn (including one case in which authorisation was withdrawn by the ACP without consultation). This left a total of 173 money changers authorised by the ACP at 31 December 2012, compared with 163 at end 2011.

Money changers have to be licensed if their transaction volumes exceed the exemption threshold. (The authorisation rules put in place by Executive Order 2009-104 of 30 January 2009 set regulatory thresholds below which money changers are allowed to operate without specific authorisation.) As a result of these exemption thresholds and the ACP's tighter requirements under the new authorisation regime, the number of money changers has dropped from 500 in 2009 to 173 at end 2012. The authorisation regime applicable to money changers since 2009 has been gradually extended; since 29 November 2012, it has applied to all overseas territories, including in particular New Caledonia, French Polynesia and Wallis and Futuna. One new money changer was authorised in New Caledonia in 2012; the rest were exempt.

G | Use of the European passport continued to grow at a sustained pace in 2012

The ACP received passport notifications from institutions in other countries within the European Economic Area and passport applications from French institutions wishing to operate in other countries.

a. European Economic Area (EEA) institutions operating in France

) Under the freedom of establishment

The ACP received 39 declarations, including 5 notifications of the establishment of French branches. At 31 December 2012, 115 institutions

from other EEA countries had branches in France (62 credit institutions, 49 investment firms and 4 payment institutions).

The ACP also continues to receive a high volume of notifications of payment institutions in other EEA countries using agents in France (see inset on payment services and payment services providers).

Following transposition by other EEA countries of Directive 2009/110/EC on electronic money, 2012 was the first year that the ACP received notifications from two electronic money institutions that they were relying on distributors.

) Under the freedom to provide services

The ACP received 629 declarations. At 31 December 2012, 3,227 institutions from other EEA countries were operating in France under the freedom to provide services (including 2,500 investment firms and, for the first time, 22 electronic money institutions).

b. French institutions operating in other EEA countries

) En libre établissement

The ACP sent six notifications of new branches (three branches of credit institutions and three of investment firms), as well as 12 notifications of changes pertaining to established branches. Before passing on such notifications to the countries concerned, the ACP checks that each institution's administrative structures and financial position are commensurate with its proposed plans. At 31 December 2012, French credit institutions had 137 branches in other EEA countries, while French investment firms had 22 such branches.

Furthermore, in 2012, the ACP registered 52 agents and passed on to the relevant authorities notifications received from French payment institutions proposing payment services in other EEA countries via those agents. At 31 December 2012, French payment institutions were using 55 agents in other EEA countries.

) Under the freedom to provide services

In 2012, the ACP received 125 notifications from 23 institutions.

At 31 December 2012, 213 French institutions were operating in other EEA countries under the freedom to provide services (156 credit institutions, 51 investment firms and 6 payment institutions).

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

	31/12/2011	31/12/2012	Change (number)
■ LICENSED CREDIT INSTITUTIONS IN FRANCE			
• Institutions licensed for all banking activities	310	303	- 7
1.1 Banks of which branches of institutions having their registered offices in third countries	197 (22)	193 (21)	- 4 (- 1)
1.2 Mutual and cooperative banks	95	92	- 3
1.3 Municipal credit banks	18	18	-
• Finance companies	277	266	- 11
• Specialist financial institutions	3	3	-
SUBTOTAL	590	572	- 18
Branches of EEA credit institutions operating under the freedom of establishment	66	62	- 4
TOTAL FRANCE	656	634	- 22
Licensed credit institutions in Monaco	24	25	+ 1
TOTAL FRANCE AND MONACO	680	659	- 21
■ INVESTMENT FIRMS			
• Investment firms licensed by the ACP	97	93	- 4
Branches of investment firms operating under the freedom of establishment	52	49	- 3
TOTAL	149	142	- 7
■ PAYMENT INSTITUTIONS			
• Payment institutions licensed by the ACP	12	17	+ 5
Branches of payment institutions operating under the freedom of establishment	4	4	-
TOTAL	16	21	+ 5

2 CONTRIBUTING TO THE STABILITY OF THE FINANCIAL SYSTEM

↳ 1) Licensing and authorisation

↳ 1.2 Insurance sector

1.2 INSURANCE SECTOR

The ACP made 172 licensing and authorisation decisions in the insurance sector in 2012.

As was the case in 2011, the majority of decisions (99) related to organisations governed by the Mutual Insurance Code and dealt with mergers or transfers of portfolios (28) and risk

transfer agreements or amendments to such agreements (45). Decisions on undertakings governed by the Insurance Code (69) mainly concerned mergers or transfers of portfolios (28), changes in ownership (15) and licence applications and renewals (11). Four decisions related to organisations governed by the Social Security Code.

	INSURANCE CODE	SOCIAL SECURITY CODE	MUTUAL INSURANCE CODE	TOTAL
■ NATURE OF DECISION				
Licence application/renewal	11	1	3	15
Transfer	19	-	-	19
Transfer/merger	9	2	28	39
Change in ownership	15	-	-	15
Affiliation with a SGAM ⁷ or a UMG ⁸	1	-	2	3
Licence lapsed/withdrawn	6	1	14	21
Risk transfer agreement	-	-	45	45
Other	8	0	7	15
TOTAL	69	4	99	172

A | Insurance firms governed by the Insurance Code continued to restructure

The ACP College had to adopt a large number of decisions in 2012 relating to the restructuring of Groupama. As part of measures taken by Groupama to restore its financial position, Gan Eurocourtage transferred most of its operating activities to Allianz IARD and Helvetia SA:

- The portfolio of policies built up through the group's brokerage network and covering personal, professional and corporate customers was transferred to Allianz IARD;
- "Transport" cover was transferred to Helvetia SA;
- Following these transfers, Gan Eurocourtage's remaining activities were transferred to Groupama SA.

7. *Société de groupe d'assurance mutuelle*: group mutual insurance company.

8. *Union mutualiste de groupe*: mutual insurance group holding company.

Also, mutual insurer Macif had previously established Macifilia, a wholly-owned subsidiary, to act as a vehicle for its diversification policy based on selecting niches such as providing cover for public carriers of passengers and freight, vehicle fleet insurance, mechanical breakdown cover and corporate cover. Macif took on almost all of Macifilia's commitments under the transfer procedure laid down in Article L. 324-1 of the Insurance Code.

After buying Coparc, a life insurance company specialising in life insurance linked to asset management, from the Allianz France group in 2011, supplementary insurance group Apicil merged Coparc with its subsidiary Apicil Assurances. The latter also operates a savings business focusing on personal customers and independent professionals, who are targeted through brokers.

A number of groups reorganised their European activities, with consequences for companies licensed in France.

- US group Chartis reorganised its European businesses, bringing them under its UK subsidiary, Chartis Europe Limited. In France, this led to the existing subsidiary, Chartis Europe SA, being replaced by a branch established by Chartis Europe Limited, to which the French company transferred all of its business.
- While acting as parent company of the Europ Assistance group, Europ Assistance Holding (to which Europ Assistance and Icare Assurance are attached) retained its status as an insurance company in order to operate in Greece via a branch and, in particular, to operate under the freedom to provide services in various EEA countries through its Irish branch. With the aim of clarifying its financial structure, the Europ Assistance group endeavoured to more clearly separate its activities as a holding company from its assistance activities. To this end, it transferred the portfolio of policies underwritten by Europ Assistance Holding, via its Irish branch, to Europ Assistance, a subsidiary of the Irish branch.

- To prepare the way for a new financial architecture for its European activities in connection with the implementation of Solvency II, US group MetLife placed its French subsidiary, MetLife SA, under the financial control of MetLife EU Holding Company Limited, a holding company governed by Irish law. MetLife SA's sales strategy is focused on death/disability insurance.

- Groupe des Assurances Mutuelles de l'Est (GAMEST) is a union of mutual insurers governed by the Insurance Code mainly operating in eastern France. One of the entities affiliated to Gamest, Mutuelle d'Alsace et de Lorraine (MAL), absorbed mutual insurer Jurassurance, which was not a member of the union.

Some insurance groups simplified their structure.

- As part of efforts to simplify the structure of the Monceau group, France Réunion Assurance Mutuelle (FRAM), a mutual insurer belonging to the UMAM union, ceased trading and transferred its entire portfolio of policies to the group's property damage subsidiary, Monceau Générale Assurances. Following this transfer, FRAM was absorbed by one of the mutual insurers belonging to the UMAM union, Mutuelle Centrale d'Assurances (which is exempt from the requirement to hold a licence).
- The Covéa group continued to simplify its operational structure as follows:
 - All operating subsidiaries were transferred to the holding company MMA Coopérations, ownership of which will be shared equally between the head mutual companies of the three divisions into which Covéa is structured (GMF, MMF and Maaf). These mutual companies are still affiliated to the Covéa SGAM (group mutual insurance company), which remains the group's central decision-making authority. The restructuring included interests acquired by various components of the Covéa group in five companies (Assurances Banque Populaire IARD, Carma, Carma Vie,

2 CONTRIBUTING TO THE STABILITY OF THE FINANCIAL SYSTEM

↳ 1) Licensing and authorisation

↳ 1.2 Insurance sector

La Défense orléanaise and Protec BTP formed under cooperation agreements entered into with outside partners (Natixis, Carrefour and supplementary social protection group Pro BPT).

– La Cité européenne, which sold collective life insurance policies and PERP pension savings plans, transferred its entire portfolio of policies to GMF Vie.

- EDF took advantage of provisions governing supplementary professional retirement institutions to transfer its commitments concerning the payment of retirement indemnities. The purpose was to bring the corresponding group life insurance policies, taken out for the benefit of its employees with insurance companies Cardif Vie and Prédica, under the rules applicable to supplementary professional retirement institutions.

Within the AXA group, Mutuelle générale d'assurance de risques divers developed partnerships with the aim, in particular, of enabling brokers and mutual organisations to offer services supplied by AXA under a neutral brand in the personal insurance segment. To prepare for the entry into force of future prudential standards under Solvency II, the AXA group replaced the existing mutual insurer with a société anonyme (public limited company) named MGARD, which took over the mutual's entire portfolio of policies. MGARD is owned by AXA Assurances IARD Mutuelle.

Non-life mutual insurer Thélem Assurances mainly operates in the Centre region, serving a target market made up of personal customers, retailers, tradesmen, self-employed professionals and small and mid-sized firms. To better meet members' needs, it set up Thélem Prévoyance, a subsidiary specialising in death/disability insurance, whose offering consists of temporary death, whole life and funeral cover, in partnership with Humanis, a supplementary death/disability insurance group that has taken over policy administration and claims handling.

At 31 December 2012, 318 licensed insurance undertakings were in operation.

In 2008, la Réassurance intercontinentale and AME Réassurance, subsidiaries of the MMA and GMF groups respectively, were granted licences to carry on reinsurance activities. Both companies, whose activities were limited to managing legacy portfolios, committed not to write any new business and confirmed that their licences had lapsed in order to accelerate the completion of voluntary winding-up proceedings.

At 31 December 2012, 17 licensed reinsurance undertakings remained in operation.

Other changes:

- Sociétés d'assurances mutuelles maritimes du Morbihan et de Loire Atlantique (SAMMAR), la Prévoyante and la Prévoyante maritime de Saint-Gilles-Croix-de-Vie, specialising in marine hull insurance for fishing boats, merged their businesses with mutual insurer Société d'assurances mutuelles Bretagne Océan (SAMBO). At the same time, SAMMAR finished winding up the operations of Société d'assurance mutuelle maritime du Centre-Ouest (SAMMARCO) and Société d'assurance mutuelle maritime de Noirmoutier (SAMMARNO) by taking over their residual commitments. Each of these mergers was driven by a desire to strengthen the absorbing company's financial position and improve geographical coverage for fishing boat insurance in an economic sector in crisis.
- To step up their presence in the assistance market, Swiss Life and CNP entered into an alliance under which they formed a joint holding company with full control over each of their assistance subsidiaries, Garantie Assistance and Filassistance. This holding company is owned 66% by the CNP group and 34% by the Swiss Life group.

B | The provident institutions sector saw further merger activity in 2012

As part of their merger that began at the end of 2010, in 2012 welfare protection groups Humanis and Novalis Taitbout formed a provident institution named Humanis Prévoyance by merging two provident institutions belonging to the Humanis group (Aprionis prévoyance and Vauban Humanis prévoyance) and one provident institution belonging to the Novalis Taitbout group (Novalis Prévoyance). The stated objectives of this merger include responding to increased concentration among social protection groups and generating economies of scale in relation to management.

The merger of these two welfare protection groups will give birth to France's largest supplementary pension group and its third-largest welfare protection group in the personal insurance segment by annual contributions (after Malakoff Médéric and AG2R La Mondiale). More than 3.5 million people will be protected by health cover provided by the group's provident institutions and mutual insurers, while its third party investment management activities will concern more than a million insured individuals.

At 31 December 2012, 49 licensed provident institutions were in operation.

C | Concentration continued among mutual insurance companies covered by Book II of the Mutual Insurance Code

Mergers between mutual insurers, which have been an observed trend for many years, continued in 2012, though to a lesser degree. Certain organisations still find it difficult to meet the full range of economic and regulatory requirements, and some choose to merge.

Following 29 such mergers in 2012, there were 630 mutual insurance companies in operation at 31 December 2012, 202 of which had larger partners assuming their risks.

a. Restructuring

Two large mutuals covering several million people experienced major changes in 2012.

UMG Istya, formed in 2011 as a union of mutualist groups (UMG) by the mutual insurers serving the three levels of civil service (central government, hospitals, regional authorities) and generating total revenues of 6 billion euros, became part of Mutuelle civile de la défense (MCDéf) on 1 January 2012 and MGEFI on 1 January 2013. Two other mutuals, MNH and MNH Prévoyance, asked to leave the UMG at the end of 2012.

A substantial player, Harmonie Mutuelles, was formed in 2012 by merging existing mutual insurers. Harmonie Mutuelles, newly formed as part of efforts to simplify the legal structure of the Harmonie group, absorbed six mutual insurers, one of which had a larger partner assuming its risks. In so doing, it also submitted one licence application in order to ensure that it had all the required licences for the mutual insurers it absorbed. As part of this restructuring, two unions of mutual insurers – which had consisted of companies absorbed by the new entity – were dissolved. Harmonie Mutuelles also took over all the mutual insurers whose risks were assumed by the mutual insurers it absorbed. This merger represented a significant change of scale: premiums collected will total some 2.1 billion euros, nearly all in supplementary health insurance classes 1 and 2, making the new company the largest mutual insurer governed by the Mutual Insurance Code.

Three mergers involving a total of seven mutual insurers took place as part of the restructuring of “Radiance Groupe Humanis” group, the purpose of which was to pool management resources while maintaining a local regional presence.

Other mergers involved companies absorbing mutual insurers whose risks they assumed.

These mergers formed part of the longstanding trend towards consolidation in the mutual insurance sector.

2 CONTRIBUTING TO THE STABILITY OF THE FINANCIAL SYSTEM

↳ 1) Licensing and authorisation

↳ 1.2 Insurance sector

b. Licences withdrawn at the ACP's initiative

The ACP also initiated five preliminary proceedings with the aim of either withdrawing licences (in three cases) or winding up mutual insurers (in two cases) on the grounds of a lack of insurance activity and members or a failure to hold annual general meetings for more than two years.

D | Use of the European passport

a. EEA companies operating in France

) Under the freedom of establishment

The ACP received five declarations in 2012.

At 31 December 2012, 82 undertakings from other EEA countries had an establishment in France (62 non-life, 14 life and 6 combined insurance companies).

) Under the freedom to provide services

The ACP received 63 notifications in 2012.

At 31 December 2012, 1,091 undertakings from other EEA countries were authorised to operate in France under the freedom to provide services,

either from their registered offices or through French branches (164).

b. French undertakings operating in other EEA countries

) Under the freedom of establishment

In 2012, the ACP received 30 declarations covering 11 undertakings (AGA International, Groupama SA, Coface, ACMN Vie, CNP Assurances, Europ Assistance, Euromaf, Cardif Assurances Risques Divers, Afi Esca, Axa Corporate Solutions and Afi Esca IARD).

At 31 December 2012, 116 French companies had a branch in at least one other EEA country.

) Under the freedom to provide services

The ACP received 516 notifications in 2012, mainly covering Covéa Risks, MMA Vie and MMA Vie Assurances Mutuelles, Coface, Macif, Groupama, Europ Assistance, Helvetia Assurances and Axeria Prévoyance.

At 31 December 2012, French undertakings had a total of 1,680 authorisations to operate in other EEA countries under the freedom to provide services, either from their registered offices or through foreign branches (37).

Changes in the number of insurance institutions

	31/12/2011	31/12/2012	Change (number)
• Life and combined insurance companies <i>of which combined insurance companies</i>	103 40	102 40	- 1 0
• Non-life insurance companies	224	216	- 8
TOTAL INSURANCE UNDERTAKINGS	327	318	- 9
• Reinsurance companies	19	16	- 3
• Branches from non-EU countries	5	5	0
Governed by Insurance Code	351	339	- 12
Provident institutions	51	49	- 2
Governed by Social Security Code	51	49	- 2
• Governed by Book II of the Mutual Insurance Code <i>of which companies backed by larger partners</i>	672 219	630 202	- 42 - 17
Governed by the Mutual Insurance Code	672	630	- 42
TOTAL LICENSED UNDERTAKINGS AND UNDERTAKINGS NOT REQUIRING A LICENCE	1,074	1,018	- 56

Key risks facing the financial system in 2012

12 studies published, including **1** in *Revue d'économie financière*, **1** in the *Journal of International Financial Markets, Institutions and Money* and **1** in the *Journal of Financial Stability*.

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

1 stress test for banks and **1** for insurers as part of the International Monetary Fund's Financial Sector Assessment Program (FSAP).

Analytical work on **5** key risks:

- ° sovereign risk,
- ° pressure on bank refinancing,
- ° risks associated with persistently low interest rates,
- ° the risk of a correction on the property market,
- ° risks relating to bank savings flows and life insurance flows.

The ACP's activities in 2012 took place against a backdrop of an economic climate that remained challenging for financial institutions, which continued to suffer the consequences of the crisis and increasing risk aversion among most economic agents. In response to the cyclical slowdown, the ACP continued and extended its monitoring of credit risk on companies and consumers and checked that appropriate protection was in place.

Beyond that, the ACP based its ongoing and on-site supervisory activities on analysis designed to identify the principal risks to which the financial system is exposed.



Specific risks to which the ACP paid particular attention in 2012

■ TYPE OF RISK	■ FOCAL POINTS IN 2012
Sovereign risk	<ul style="list-style-type: none"> • Uncertainties over the euro area, which undermined confidence in leading financial institutions • The proportion of banks' and insurers' portfolios made up of sovereign debt
Pressure on bank refinancing	<ul style="list-style-type: none"> • Shortfall in bank deposits/lending • Bank refinancing structures • Adjustment strategies following pressure on dollar refinancing in summer 2011 • Impact on future profitability of adjustments already initiated • Refinancing costs
Risks associated with persistently low interest rates	<ul style="list-style-type: none"> • Potential strategies for seeking returns from alternative sources, which could give rise to risks that are not sufficiently well controlled • Impact of a rapid rise in interest rates on surrenders of life insurance policies
Risk of a correction on the property market	<ul style="list-style-type: none"> • Impact of a market reversal • Continued caution in lending criteria • Margins on lending
Risk of increased precautionary saving by households and businesses (see point 3.3)	<ul style="list-style-type: none"> • Impact on inflows into life insurance of changes in the taxation regime applicable to savings, market conditions and interest rates on various savings products • Impact of changes in bank deposit-taking on bank balance sheets structures and on financing of the economy
Risks linked to the transition to new regulations (see points 3.1 and 3.2)	<ul style="list-style-type: none"> • Impact of the implementation of Basel III (for banks) and Solvency II (for insurers) on balance sheet structures and asset-liability management • Impact on financing of economic activity

2.1 SOVEREIGN RISK

The crisis in the euro area, which broke out in spring 2010, has starkly highlighted the relationships that can exist between sovereign risk and bank risk. The rapid deterioration in some countries' public finances, in many cases damaged by the consequences of the financial crisis, created a climate of suspicion towards banks in the euro area. As a result, banks lost the trust of foreign – and particularly North American – investors, and some had to cope with severe restrictions on their access to market refinancing.

In order to resolve the difficulties faced by financial institutions in the euro area, it was therefore essential to dissociate sovereign risk from bank risk. To this end, European authorities intervened in various directions.

- As regards supervisory authorities, firstly, the EBA was keen to increase transparency in relation to institutions in the euro area by publishing, as part of the stress tests carried out in 2010 and 2011, detailed exposure to sovereign debt within each country in the region.

Since these two exercises failed to restore investor confidence, in autumn 2011 the EBA undertook a capital exercise designed to strengthen the capital structures of euro area banks while taking into account losses that could arise on their sovereign debt portfolios (see point 3).

In total, the leading European banks covered by the exercise increased their capital by more than 200 billion euros between December 2011 and June 2012, and virtually all of them met the EBA's requirement of a core solvency ratio of more than 9%.

At the same time as increasing their capital as part of this exercise, French banks gradually reduced their exposure to "risky" euro area

countries by selling some of their sovereign debt. This trend, which was particularly marked in 2011 (when outstanding exposure to sovereign debt fell by 50%), continued apace in 2012, with French banks reducing their exposure from 16% to Ireland up to 99% to Greece⁹; in 2012 only Italy saw renewed interest among French banks, which increased their exposure to Italian sovereign debt by 6%. The Crédit Agricole (GCA) and Société Générale (SG) groups also sold their subsidiaries Emporiki (GCA) and Geniki (SG) in autumn 2012.

- As regards monetary authorities, the European Central Bank (ECB) conducted two massive injections of liquidity into the banking system (through its very long term refinancing operations, or VLTROs, on 22 December 2011 and 1 March 2012) with the aim of freeing up funding channels within the euro area and ensuring that monetary policy was more consistently transmitted to all countries. These actions triggered a relative easing in long yields on debt issued by struggling sovereigns.

Subsequently, on 6 September 2012, the ECB spelled out the technical details of its outright monetary transactions (OMTs), under which it can, under certain conditions, buy sovereign bonds with short maturities (between one and three years) on the secondary market so as to directly influence yields.

While these various measures, taken together, have helped reduce risk aversion from mid-2012 onwards, the situation nevertheless remains fragile. It is therefore critical that the structural reforms initiated in October 2012 with the creation of the European Stability Mechanism continue. This is the very reason for which European leaders decided to create a unified banking supervision system at the end of 2012.

9. This reduction was mainly driven by French banks' participation in the Greek debt swap in March 2012.

2 KEY RISKS FACING THE FINANCIAL SYSTEM IN 2012

↳ 2) Sovereign risk

↳ 2.2 Pressure on bank refinancing

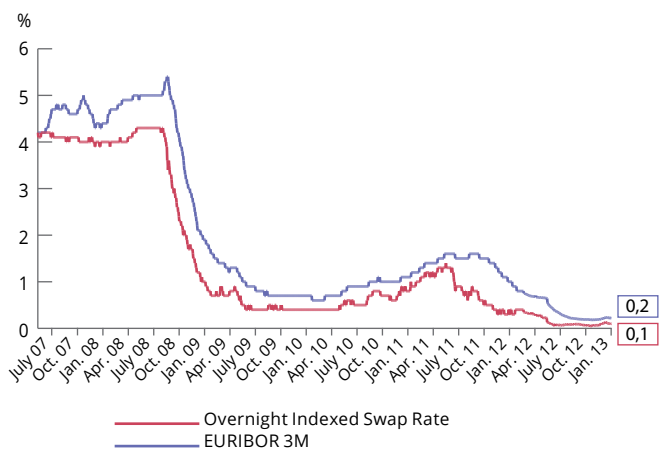
2.2 PRESSURE ON BANK REFINANCING

Compared with 2011, refinancing conditions for French banks improved markedly in 2012. Like other euro area banks, France's banks benefited from the positive impact of the special measures adopted by the ECB starting at the end of 2011 and continuing throughout 2012: the commencement of VLTROs, the widening of the range of collateral eligible for ECB funding (22 June 2012), a 25 basis point cut in key policy rates (11 July 2012), the extension of euro/dollar swap agreements with the US Federal Reserve and the announcement of OMTs. These measures played a significant role in easing tensions on the interbank market: at the end of 2012, interest rates on the European interbank market were at all-time lows (see Chart 1).

The adoption by the group of central bank governors and heads of banking supervision of the revised version of the liquidity standard applicable to banks (LCR – liquidity capital ratio) on 6 January 2013 should also help ease certain tensions affecting funding for credit institutions, which could be caused by uncertainties over the calibration of future LCRs

Chart 1

Spread between three-month and overnight interest rates on the European interbank market

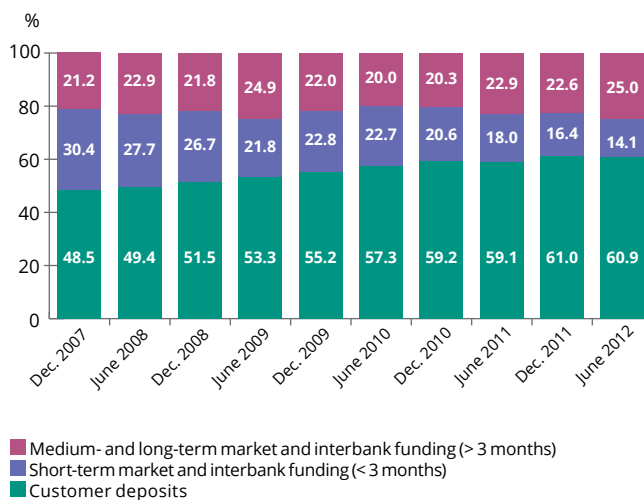


Source: Bloomberg.

At the same time, French banks continued with their balance sheet adjustment strategies aimed at easing their liquidity constraints. The implementation of deleveraging plans led to a gradual reduction in funding requirements in 2012 (particularly for dollar-denominated activities), while the refocusing of funding on the most stable sources helped limit the proportion of short-term liabilities (see Chart 2). The loan-to-deposit ratio for French banks also continued to fall to a more balanced level. This occurred mainly because of an increase in deposit taking (6% between December 2011 and December 2012), which enabled banks to continue lending to the French economy amid falling demand caused by the weak economic outlook (in December 2012, the year-on-year increase in outstanding loans to the private sector was 1.7%). The loan-to-deposit ratio is now at its lowest level for more than ten years (see Chart 3).

Chart 2

Bank funding structures

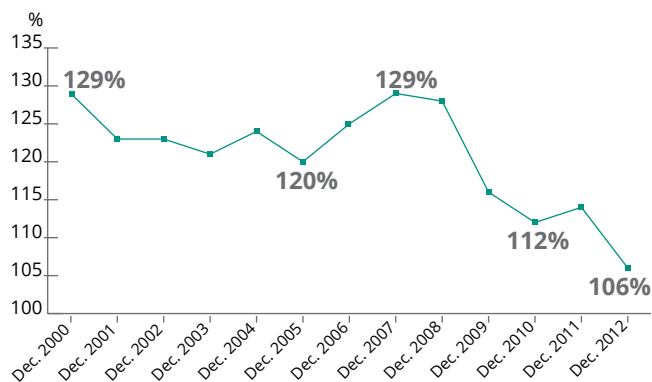


Source: ACP, 5 major groups.

However, access to market liquidity remains fragile, and this is likely to continue as long as persistent vulnerabilities associated with the sovereign debt crisis are not completely overcome (see above). In response to this situation, French banks have continued to increase their liquidity reserves at central banks.

Chart 3

Loan-to-deposit ratio



Source: ACP.

2.3 RISKS ASSOCIATED WITH PERSISTENTLY LOW INTEREST RATES

With interest rates on French sovereign bonds falling to all-time lows in winter 2012-2013, some economists are predicting that interest rates could remain low for a long period.

A persistently low interest rate environment is a constraint for the insurance sector, and particularly for life insurance, where a substantial proportion of assets are invested in public debt instruments. In this type of environment, insurers are forced to adjust their investment policies to maintain sufficient returns to cover their commitments, at the same time as taking into account regulatory constraints and maintaining their cautious investment objectives. In an uncertain economic environment, insurers' asset allocation strategies necessarily become more complex: more profitable investments are sought in new market segments, the average duration of securities held is increased, and financial hedging mechanisms are used. Some insurers have also entered into partnerships with banks to invest in lending (see point 3.3 of

this chapter), though still only for very limited amounts in 2012.

An enduringly low interest rate environment is also likely to affect the range of products offered by insurers. For example, they may seek to sell unit-linked products rather than non-unit linked ones. Falling investment returns lead to a reduction in rates paid out to policyholders, in an environment where competition between market participants and savings and investment products is high. Conversely, a rapid rise in interest rates could lead to an increase in the number of policyholders wishing to surrender their policies to take advantage of other investments more in step with a changing environment on the bond market.

In this context, the ACP pays very close attention to strategic shifts at play within insurance institutions, whether in relation to asset allocation choices or changes in product offerings. While such changes primarily relate to the life insurance sector, they can also be observed, to a lesser extent, among non-life insurers, who may seek to generate higher returns on their assets to make up for low technical profits on some classes of activity. Consequently, the ACP will endeavour to closely monitor the impact of such changes on insurance institutions' risks and profitability, both individually and at sector level.

Institutions themselves are also expected to exercise particular vigilance: they must have in place appropriate tools to accurately measure the impact of changes in their asset-liability management strategies on their risks bearing in mind that the future Solvency II regulations will introduce new capital adequacy requirements in relation to interest rate risk and on their profitability.

For the banking sector, a long-term low interest rate environment combined with the need for banks to move towards more stable and therefore more expensive sources of funding would not be without consequence for the profitability of credit institutions.

2.4 RISK OF A PROPERTY MARKET CORRECTION

The nearly non-stop rise in residential property prices in France over the past 15 years raises the possibility of a market reversal. Given the significant proportion of home loans on the balance sheets of French banks¹⁰, such a reversal could, at first sight, be harmful to banks.

Several indicators could suggest a reversal in this long-term trend on the French residential property market.

- Prices began to decline in the French regions from the end of 2011 (falling by 0.9% in the first nine months of 2012¹¹), though they remained stable in Paris over the same period.
- Although the volume of property sales remained much higher than at the height of the crisis in 2009, it dipped noticeably, both for existing properties (down 11.8% between September 2011 and September 2012¹²) and for new properties (down 9%¹³); the marked contraction in the number of housing starts (down 14.5% between November 2011 and November 2012) does not suggest a rapid recovery in the new housing segment.
- Net new home loans¹⁴ contracted sharply, falling by 50% between November 2011 and November 2012 and returning to end-2009 levels.
- The fall in home loan interest rates, which are approaching end-2010 levels, does not appear sufficient to offset the fall in the volume of new home loans or to revive activity on the physical property market.

However, the quality of French banks' exposure to the sector appears relatively insensitive to market changes. Despite a drop in prices of around 8% between mid-2008 and mid-2009, and in a particularly unfavourable macroeconomic context, French banks saw no significant deterioration in the quality of their exposure, as shown by the ACP's annual survey of housing finance¹⁵. Similarly, the International Monetary Fund's 2012 assessment of the French financial system established that a 25%¹⁶ fall in residential property prices would have little impact on French banks' solvency ratios.

In particular, this state of affairs reflects French banks' cautious lending policy, mainly based on analysing borrowers' ability to repay (rather than the value of the property being purchased), as well as the prevalence of fixed-rate borrowing (or capped variable-rate borrowing), which makes borrowers insensitive to rising interest rates.

But the fact remains that continuing unfavourable macroeconomic conditions could adversely affect some borrowers' solvency and trigger an increase in defaults on home loans which, for the time being, are modest relative both to other categories of customer loans and to other countries. However, a long-term analysis of French banks' home loan portfolios reveals a change in their characteristics, with exposure with an apparently higher risk profile (e.g. buy-to-let loans and loans to borrowers whose debt repayments account for more than 35% of net income) representing an increasing proportion of liabilities.

10. In 2011, home loans accounted for almost 61% of lending to non-financial customers and almost one third of all lending to customers in mainland France.

11. Source: National Institute of Statistics and Economic Studies (INSEE).

12. Source: *Conseil général de l'environnement et du développement durable* (General Council for the Environment and Sustainable Development/CGEDD), according to the Directorate-General of Public Finance (DGFIP) (MEDOC) and notarial databases.

13. Source: Ministry for the Ecology and Sustainable Development.

14. Loans granted by banks net of redemptions by borrowers; source: the *Banque de France*.

15. See *Analyses et Synthèses*, issue 8, July 2012.

16. See *France: Financial System Stability Assessment* (December 2012), p. 18.

In this environment in which property prices have reached all-time highs, it is especially important that French credit institutions maintain sufficiently prudent lending criteria,

particularly as regards loan-to-value and household debt ratios. The ACP has initiated in-depth discussions with banks in this area, and will remain particularly vigilant on these issues.

ACTIVITIES OF THE ACP'S SCIENTIFIC CONSULTATIVE COMMITTEE IN 2012

Formed in September 2010, the ACP's Scientific Consultative Committee¹⁷ has a dual role:

- foster synergies between research in the financial area and prudential supervision by undertaking analysis to bolster the development of risk measurements tools used by ACP staff;
- monitor scientific developments in regard to finance, with the aim of identifying ahead of time those developments likely to impact the activities of banks and insurers.

The committee met three times in 2012, focusing mainly on the following topics:

- developing stress tests in the areas of banking and insurance, including the introduction of long-term stress tests in insurance following interviews with institutions;
- measuring systemic risk and the risk of contagion associated with interbank networks following a review of research into these issues;
- identifying sources of vulnerability in the financial system in the banking and insurance sectors;
- understanding the impact of future liquidity regulations both on French banks and on the bancassurance and life insurance sectors;
- discussing and reviewing the concept of bank profitability, return on equity, the profitability-risk relationship, etc.

The ACP's Scientific Consultative Committee also focused on developing leading indicators of vulnerability intended to compare the profits generated by banking portfolios and the corresponding capital requirements.

17. For a detailed overview of the committee, see the inset on p. 115 of the ACP's 2011 annual report.

2 KEY RISKS FACING THE FINANCIAL SYSTEM IN 2012

↳ 2) Sovereign risk

↳ 2.4 Risk of a property market correction

STRESS TESTING UNDER THE IMF'S FINANCIAL SECTOR ASSESSMENT PROGRAM

In the first half of 2012¹⁸, the ACP reviewed the stability of the French financial system as part of the IMF's Financial Sector Assessment Program (FSAP).

This assessment, which began in March 2012 on the basis of banks' financial statements to end 2011, drew on the findings of various stress tests conducted using both banks' and insurers' own internal models (bottom-up testing) and stress models developed by the ACP for banks (top-down testing). The aim was to assess banks' and insurers' resilience to a number of hypothetical macroeconomic, financial and insurance shocks. These stress tests were conducted in particularly unfavourable macroeconomic and financial conditions, amid the European sovereign debt crisis.

The methodology and main findings of the stress tests were published in the January 2013 issue of *Analyses et Synthèses*¹⁹, available on the ACP's website.

In the banking sector, eight groups representing more than 97% of French banks' total combined asset base took part in the bottom-up stress test (BNP Paribas, Société Générale, Groupe Crédit Agricole, Groupe BPCE, Groupe Crédit mutuel, la Banque Postale, HSBC France and *Caisse des dépôts et consignations*)²⁰. In terms of methodology, the exercise was based on two macroeconomic scenarios – core and adverse – and a sensitivity analysis. It looked at three types of indicators, measuring solvency taking into account sovereign stress, liquidity and contagion. In regulatory terms, this exercise, which reflected prudential regulations in force over the simulation period (2012-2016), took place in a rapidly changing environment as a result of the gradual introduction of CRD 4.

The results of solvency stress tests showed that French banks would prove resilient in the face of a significant deterioration in the economic environment while being able to comply with new requirements under CRD 4. All banks posted solvency ratios in excess of 9% over the entire period under review for the core scenario, and 8%

for the adverse scenario. Furthermore, by simulating a partial breakdown in wholesale funding, liquidity stress tests were able to measure the vulnerability caused to the banking sector by using this source of market funding. These liquidity stress tests also established the existence of substantial collateral reserves eligible for ECB funding, which would allow banks to cope with a crisis episode for more than a year by using ECB funding. In addition, stress tests on interbank exposure showed that the French banking system was highly resilient to contagion risk.

In the insurance sector, the 25 institutions in the sample accounted for 70% of the life insurance market and 50% of the non-life insurance market, with 12 and 13 insurers from each respective market. Using their own internal models, insurers assessed the impact of the core and adverse scenarios over a one-year period under the current Solvency I regulations. This required them to estimate how their solvency ratios would be impacted by a scenario combining an increase in payouts (including when policyholders surrender their life insurance policies), a sharp deterioration in market conditions and an extreme loss event. The simulations took into account existing loss absorption mechanisms, i.e. deferred taxes and policyholder surpluses.

The results showed that the adverse scenario had only a modest impact on life insurers because they are able to absorb substantial losses through the policyholder surplus mechanism. The impact of the adverse scenario on non-life insurers, who have no such mechanism, was more significant, but their generally high initial ratios meant that their solvency was not in danger. In addition, both life and non-life insurers significantly increased their holdings of cash and cash equivalents in 2011, respectively representing 4.0% and 3.6% of their investments at the year-end. This cautious behaviour was mainly driven by two factors: net outflows from life insurance products and an increase in perceived risk across all types of investment.

18. The IMF report can be found: www.imf.org/external/country/FRA "France: Financial System Stability Assessment" – Country Report 12/341.

19. *Analyses et Synthèses*, issue 11, January 2013: www.acp.banque-france.fr/uploads/media/201301-stress-tests-systeme-bancaire-et-organismes-assurance-en-france.pdf

20. The published results exclude *Caisse des dépôts et consignations*.

Prudential supervision

1,428

reporting institutions had their risk profiles assessed in 2012

- ° of which **716** were in the banking sector
- ° and **712** in the insurance sector

29

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

- ° of which **14** were in the banking sector
- ° and **15** in the insurance sector

237

on-site inspections either in progress or completed as part of the 2012 inspection programme

- ° of which **140** concerned the banking sector
- ° and **97** concerned the insurance sector
- ° giving an implementation rate of 98.5% for the 2012 inspection programme

118

action letters sent out in the year on the basis of reports

- ° of which **83** were sent to banks
- ° and **35** to insurance institutions

The ACP supervises compliance with legislation and regulations by reporting institutions. The ACP's approach combines ongoing and on-site supervision with the aim of conducting detailed, in-depth analysis of the activities of supervised institutions.

- While ongoing supervision is mainly based on the analysis of prudential disclosures and financial statements that institutions are required to submit to the ACP, it also relies on ongoing contact throughout the year, both in writing and face-to-face, in accordance with established priorities and requests from institutions.
- Meanwhile, **on-site inspections** provide an in-depth understanding of an institution's prudential situation, either via an investigation on a given topic or through general checks into its financial position, key prudential indicators and internal control mechanisms.

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SUPERVISION OF PAYMENT INSTITUTIONS

The ACP has been responsible for supervising payment institutions since European Directive 2007/64/EC of 13 November 2007 was transposed into French law, with an effective date of 1 November 2009.

In practice, licensed institutions in France are divided into those that specialise in funds transfers and those that mainly handle payment instructions received from e-commerce websites and businesses.

The ACP monitors compliance with regulatory requirements applicable to payment institutions and

sanctions any violations. Such institutions are subject to specific prudential rules that take into account the characteristics of their activities, particularly as regards capital requirements. As is the case for credit institutions, the ACP's supervisory activities are based on the analysis of periodic regulatory and prudential disclosures and financial statements, as well as annual internal control reports.

In supervising these institutions, the ACP attaches particular importance to capital adequacy, especially during an institution's start-up phase, which often requires substantial investment in technology.

3.1 BANKING SECTOR

The ACP supervises 659 credit institutions²¹ and 142 investment firms through two divisions responsible for ongoing supervision, which are split into eight departments, and an on-site inspection unit.

The ACP assesses institutions' risk profiles using a proprietary methodology called ORAP 2. This analyses all the risks to which institutions are exposed, in accordance with the nature, scale and complexity of the activities undertaken, as well as the quality of internal control mechanisms. More than 700 ORAP analyses were completed in 2012.

Each institution's intrinsic situation is analysed in light of various assessment criteria on the basis of quantitative data used to assess the institution's risk profile and qualitative data used to assess the quality of risk management, monitoring and control mechanisms and the

overall organisation of the internal control system (on the basis of reports submitted annually by institutions on their risks, internal control systems and anti-money laundering and counter-terrorist financing mechanisms). Potential imperfections in the models used to calculate capital requirements for operational risk, credit risk and market risk are also taken into account. The ACP factors into its analysis the results of stress tests based on simulations of various types of crisis, particularly credit risk, market risk and liquidity risk. It also draws on the findings of on-site inspections, which form an essential component of its prudential supervision arrangements.

The on-site inspection programme consists of two types of inspections. The first type is general inspections, which cover all of the inspected institution's activities. These inspections focus on small and medium-sized institutions that had been flagged up by the ongoing supervision unit. The second type is thematic inspections,

21. This includes 62 branches of institutions from other countries within the European Economic Area. For these branches, the ACP's prudential supervision is limited to monitoring their liquidity position and preventing money laundering, as well as ensuring that they comply with customer protection rules.

which primarily concern large groups and focus on certain activities or business lines. They are often carried out across several banking groups (in which case they are known as cross-functional inspections) and focus on regulatory arrangements and issues related to the effects of the crisis on the banking sector.

Depending on the results of its analysis, the ACP may require individual institutions to comply with additional capital requirements that exceed minimum regulatory standards (Pillar 2 measures). This is the case, in particular, for all major French banking groups and their main subsidiaries.

ACP staff continued to closely monitor institutions in 2012 through very frequent contact with key members of management (senior executives, finance directors, business line heads, heads of risk management and audit, heads of permanent control, etc.). Almost 1,100 supervision interviews were conducted.

At the same time, in order to better understand the specific risks associated with certain activities, thematic studies were carried out on institutions operating in certain segments, such as consumer credit, home loans, factoring, commercial property lending and vehicle loans. Some of the results were published in the ACP's review, *Analyses et Synthèses*²².

The ACP uses a specific approach for large banking groups based on a structured programme of "enhanced supervision" meetings. This approach is organised by business line (domestic retail banking, international retail banking, investment banking, etc.), geographical region and, where appropriate, legal entity (where individual legal entities warrant enhanced supervision). These meetings inform an in-depth diagnosis of the risks to

which each institution is exposed (credit risk, market risk, liquidity risk, etc.) as well as their systems for managing and monitoring those contingencies. As in previous years, the ACP's overall assessment of each group's position was shared with that group's senior executives, decision-making bodies and 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 group assessments as part of joint risk assessments in accordance with the approach set out by European supervisors and the European Banking Authority) and in-depth analysis of the overall position of the groups in question. Such colleges of supervisors, which have been mandatory in Europe for several years, are now being developed in other parts of the world at the initiative of the G20 and the Financial Stability Board (see point E of this chapter).

22. Details of the studies in question can be found in the "Études" section of the ACP website at www.acp.banque-france.fr

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ANALYSING CONTAGION RISK

In line with its objective of ensuring the stability of the financial system, the ACP has initiated work to analyse systemic risk. It has developed a model to measure contagion between financial institutions. Under this approach, the banking sector is modelled as a network of banking groups, and relationships between institutions measured by regulatory disclosures on the management of large exposures are explicitly represented. This work helps measure the risk of contagion, an example being the propagation of losses between institutions through bilateral exposure.

By using information gleaned from regulatory disclosures, this analysis offers a compelling alternative to systemic risk measurements based on ex-post market data. The latter information takes no account of causative factors and therefore cannot be used to make prudential recommendations targeting the causes of risk-taking, rather than just its symptoms.

Academic work carried out under this research theme in cooperation with researchers from CREST²³ has also been published and presented at international and institutional conferences. Through this process, outside experts have validated the ACP's working assumptions concerning linkages between the various concepts involved, such as defining a common shock and identifying risk factors.

This conceptual work on understanding and analysing contagion channels has also been put to use within operational stress testing tools. A simplified version of the model was used during the IMF's 2012 Financial Sector Assessment Program (see inset under point 1 of this Chapter) to assess the risk of contagion within the French banking system. This initial experiment is currently being continued by a working group formed by the European Systemic Risk Board²⁴.



23. *Centre de recherche en économie et statistique* (Centre for Economic and Statistical Research) – www.crest.fr

24. For further details, see *Analyses et Synthèses*, issue 11, January 2013 in the "Études" section of the ACP website.

A | Market preparations for new regulations

In 2012, the French banking sector continued to prepare for new regulations concerning the Basel III agreement published on 16 December 2010²⁵, the provisions of which will be made applicable by a new version of the CRD 4 banking directive. The main consequence of these provisions will be a more restrictive definition of capital, higher capital requirements

as measured by the solvency ratio, and the introduction of two new liquidity ratios, one measuring liquidity over 30 days (the Liquidity Coverage Ratio or LCR) and the other measuring structural assets over a one-year period (Net Stable Funding Ratio or NSFR). As global systemically important banks (G-SIBs) included on the list drawn up by the Financial Stability Board (see inset), the leading French banking groups will also be subject to specific additional solvency requirements with effect from 2016.

GLOBAL SYSTEMICALLY IMPORTANT BANKS

In line with its commitment given in 2011, on 1 November 2012 the Financial Stability Board published an updated list of 28 banks considered “systemically important” – known as G-SIBs, or global systemically important banks – based on the methodology adopted by the Basel Committee and published on 4 November 2011²⁶.

These institutions were identified and classified in accordance with their systemic importance, as measured by five indicators: cross-jurisdictional activity, size, interconnectedness, non substitutability and complexity.

Once ranked by their score against each of these indicators, banks were then allocated to one of five buckets, each giving rise to an additional core equity requirement of between 1% and 3.5% of risk-weighted assets.

Four French banking groups are considered systemic: BNP Paribas (with an additional capital requirement of 2%) and the BPCE, Crédit Agricole and Société Générale groups (with an additional capital requirement of 1% each).

In this environment, in 2012 the ACP continued to regularly review individual French banks’ trajectories in relation to solvency and liquidity. Monitoring in this area also took place through the Basel III quantitative impact study (QIS), which involved more than 200 banks (including ten from France) from 26 Basel Committee member countries.

At 31 March 2012, the steps taken by French banks to increase their capital, mainly by retaining earnings, and adjust their balance sheets in a targeted and orderly fashion enabled them to meet the target Core Tier 1 ratio of 9% set by the EBA on 30 June 2012 (see inset p. 70).

25. Details of the new measures laid down in this agreement can be found on p. 84 of the ACP’s 2011 annual report.

26. See p. 176 of the ACP’s 2011 annual report.

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EBA EXERCISE TO STRENGTHEN BANKS' CAPITAL BASE

In 2012, the European Banking Authority (EBA) conducted an exercise intended to highlight European banks' potential capital requirements in response to concerns over their exposure to sovereign debt. The European Council approved the terms of this exercise on 26 October 2011. The purpose of the exercise was to ensure that the top 71 European institutions had temporary safety cushions demonstrating their ability to withstand a shock while maintaining adequate capital. After taking into account any haircuts on European sovereign debt, assessed at market value, banks needed to have enough capital to meet a Core Tier 1 ratio of 9% by no later than end June 2012.

The results released by the EBA on 3 October 2012 show that French banks comfortably met this target. For the four groups involved in the exercise – BNP Paribas, BPCE group,

Groupe Crédit Agricole and Société Générale – which represent more than 80% of the French banking sector, the combined total capital requirement was initially estimated at 7.3 billion euros. At 30 June 2012, the 4 banks reported a total surplus of 23.3 billion euros over and above the target Core Tier 1 ratio of 9%.

At the European level, the various banks in the selected sample increased their combined capital base by a total of more than 200 billion euros. Given the continuing uncertain economic environment, and in order to prepare European banks as effectively as possible for the transition to CRD 4, the EBA will issue a further recommendation aimed at ensuring that banks maintain or increase their capital relative to 30 June 2012 levels. This recommendation will be issued once the directive has received final approval.

At the same time, French banks' funding structure has evolved in response to liquidity coverage requirements, which are due to enter into force in 2015 following an observation period. **The Liquidity Coverage Ratio is designed to ensure that banks have sufficient unencumbered high-quality assets to cover their cash requirements over a 30-day period in the event of severe funding difficulties.** Accordingly, all institutions have to build up a portfolio of liquid assets, mainly defined as sovereign bonds, central bank reserves, covered bonds and high-quality corporate bonds. As well as funding this portfolio, banks must fund the liquidity gap that results from transactions with customers, which assumes that the deposits they collect are transformed into loans. Banks have to rely on market funding to meet these funding requirements.

Consequently, French banks have begun to implement strategies to adjust their balance sheet structures. Through these strategies, they were able to reduce their funding requirements in 2012; at the same time, loan-

to-deposit ratios have reduced in recent years.

The ACP will continue to pay close attention to these developments and monitor banks' plans to meet the future regulatory ratio. At the European level, information on the components that feed into the LCR and the NSFR is collected from institutions. On this basis, the EBA is tasked with identifying potential negative effects of these new liquidity standards on the financing of European economic activity. **Furthermore, French banks will still be required to meet the current one-month regulatory liquidity ratio until the LCR comes into force.**

Once the finalised CRD 4 has been approved, the EBA will have to adopt the various technical standards needed for implementation. In particular, these will include harmonised regulatory reporting requirements, which will become mandatory for all European credit institutions. Discussions underway for a long time with the industry have facilitated the necessary adjustments to information systems ahead of these future changes.

The entry into force of CRD 4 will also have an impact on the very definition of the French banking sector. **The concept of a credit institution currently covers a very wide range of situations in France: any entity wishing to grant loans to customers must be licensed.** Conversely, the future European directive defines a credit institution as an undertaking whose business is to receive deposits or other repayable funds from the public and to grant loans. **The Monetary and Financial Code will therefore be amended to create a new, purely domestic status for financial holding companies falling outside this new definition.** In line with work carried out with the Directorate General Treasury and the industry throughout 2012, it is proposed that existing French institutions falling outside the European definition will have the option of transferring to this new status, which will exist alongside the status of credit institution. An appropriate prudential regime will be defined that takes into account the characteristics of these institutions. **The ACP expects that this regime will borrow heavily from the new European requirements and will be at least as stringent as current French regulations.**

B | Adjustments in trading activities

Banks' trading activities in 2012 were once again affected by an increase in market funding costs, as well as by preparations for and the subsequent entry into force of regulatory changes resulting in increased capital requirements. **Consequently, banks continued their efforts (begun in previous years) to adjust their balance sheets amid an unfavourable market environment that also helped reduce risk appetite among institutions.**

Pursuing the policies set in 2010, major French banks continued to make changes to their corporate and investment banking (CIB) businesses in 2012. **This was reflected in efforts to scale back the most capital- or liquidity-hungry activities and a search for alternative strategies, with preference given to syndication and brokerage at the expense of investment and proprietary trading.** The "originate to distribute" approach, whereby lenders make loans with the intention of selling them to other investors, made a post-crisis comeback, though in a somewhat simpler and clearer form.

These changes took place in a context of increasingly strict regulations, affecting the way in which they organise their activities (the Volcker rule and the Dodd-Franck Act in the United States, the Vickers report in the United Kingdom and the Liikanen report in the European Union – see inset below), the way in which they manage them (the EMIR²⁷ directive and the Dodd-Franck Act) and the capital and liquidity requirements to which they are subject, with the transposition of the Basel 2.5 and Basel III standards into EU law.

27. EMIR: European Market Infrastructure Regulation.

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CONCLUSION OF THE LIIKANEN REPORT

In October 2012, a high-level expert group chaired by Bank of Finland Governor Erkki Liikanen submitted its report on structural reform of the European Union's banking sector²⁸. European Commissioner Michel Barnier had asked Mr. Liikanen to ascertain whether there was a need for additional measures concerning the structure of European banks – over and above the reforms already in progress – to reduce the risk of bank defaults, strengthen financial stability, preserve economically critical activities, protect retail customers and reduce the need for public sector assistance. The *Banque de France* and the ACP gave their comments in response to the subsequent consultation organised by the European Commission.

After reviewing the causes of the financial crisis and its links to banking models, the report notes that no banking business model emerged unscathed from the financial crisis. It emphasises that the solutions proposed for the European banking sector in no way undermine the universal banking model, long-established in Europe. These proposals were drawn up following a review of recommendations put forward by the commission chaired by Sir John Vickers in the United Kingdom²⁹ and provisions under section 619 of the Dodd-Frank Act in the United States (the “Volcker rule”).

The Liikanen report's central proposal³⁰ is that banking groups should be required to ringfence proprietary trading and positions in assets or derivatives arising from market-making – excluding certain exempt activities – within a legal entity (known as the trading entity) that is separate from the retail banking business. Similarly, unsecured loans, lending commitments and credit exposure to hedge funds, structured investment vehicles and other comparable entities, as well as private equity investments, should all be assigned to this trading entity.

The Liikanen report does not include an impact study. Given its structure, the French banking sector would be particularly impacted, although the proposed application thresholds do not necessarily appear relevant.

The proposed approach, which recommends ringfencing activities without considering how they contribute to financing the real economy, differs from that espoused for French banking reforms. The Liikanen report recommends that a broad range of activities, not just proprietary trading activities, should be ringfenced. However, it appears both possible and necessary to undertake a finer analysis of trading activities. The inclusion of market-making within the scope of those activities that should, according to the Liikanen report, be ringfenced raises numerous strategic and organisational questions for universal banks. For example, there are strong links between stimulating activity on the secondary market and placing issues on the primary market.

More generally, ringfencing market-making could have a negative impact on the financing of economic activity, just at a time when, by forcing banks to deleverage and limit the excessive maturity transformation that had helped cause the crisis, the regulatory reforms now underway could require markets to play a more active role in financing economic activity. Further discussions on this issue, including in particular work on the criteria used to identify market-making, would have been desirable.

Furthermore, the profitability and economic equilibrium of trading entities would be relatively uncertain if the scope of activities included within them were overly large: these entities would be faced with more expensive financing conditions and increased operating costs as a result of the loss of intra-group synergies.

28. http://ec.europa.eu/internal_market/bank/docs/high-level_expert_group/report_fr.pdf.

29. <http://www.hm-treasury.gov.uk/d/CB-Final-Report.pdf>.

30. The report's other proposals mainly relate to I) the possibility of ringfencing other activities, conditional upon the recovery and resolution plan, II) the use of bail-in instruments as a crisis resolution tool and the toughening of capital requirements on trading assets and property-related loans, and III) strengthening banks' governance and control arrangements.

Consequently, the ACP has continued to encourage banks to fine-tune their management of increasingly scarce capital and liquid assets. It has been closely monitoring the cohesion and progress of the strategic changes underway, as well as shifts in the trajectory of banks' solvency and liquidity ratios. The Authority has also been paying particular attention to the way that banks manage risks arising from these changes. For example, it has endeavoured to verify that moves to strengthen banks' solvency have actually resulted in an improvement in the quality of trading assets held in long-term portfolios and sound management of legacy run-off business.

In 2012, the two directorates responsible for banking sector supervision and the on-site inspection unit were once again kept busy ensuring that banks, and particularly large groups, were properly managing their market risk. In light of this concern, the Authority continued to step up its dialogue with operational managers and with those responsible for controlling market risk and their staff. **The ACP also carried out on-site inspections, focusing particularly on the management of market risk by operational and compliance functions and systems for monitoring legacy assets.**

In particular, this enhanced monitoring involved analysing internal information and data submitted in addition to prudential disclosures to help assess the financial risks incurred by banks. In this regard, the ACP's supervisory staff drew on a wide range of data used by banks in their day-to-day management and risk management, including indicators of performance, capital and liquidity consumption, and risk. As regards risk,

priority was placed on monitoring changes in Value at Risk (VaR), both in aggregate and by type of activity, the extent to which limits were utilised, and refinancing requirements arising from and profits generated by trading activities, as well as analysing the response of trading portfolios to stress scenarios. The Authority also stepped up its cross-functional analysis of trading activities across the top five French banking groups by putting in place a quarterly performance dashboard.

Finally, the ACP conducted a series of workstreams to analyse the conditions under which banks' capital would cover market risk on their trading portfolios. The Authority also carried out inspections in response to applications for authorisation to use internal models, particularly in relation to new regulatory requirements on stressed Value at Risk, additional default and migration risk and the comprehensive measurement of risk arising from leading banks' correlation trading portfolios (see point D). Inspections were also carried out to assess internal models developed by banks to better understand default and counterparty risk arising from their trading activities (expected effective positive exposure models and credit valuation adjustments).

C | Monitoring bank refinancing structures

The tension affecting European sovereign debt since 2010 continued through the first half of 2012, disrupting the interbank market yet again. In response, the European Central Bank (ECB) adopted exceptional measures including launching VLTROs, broadening the range of eligible collateral and cutting its key policy rate by 25 basis points (see point 2 of this chapter). These actions gradually restored market confidence, though tension persisted throughout the year. Banks nevertheless took advantage of these measures to bolster their short-term liquidity reserves and top up their medium- and long-term funding.

Consequently, the ACP continued to closely monitor the funding profiles and refinancing conditions of French banking groups, and particularly the largest such groups. **In line with its actions undertaken since 2007, the Authority held numerous meetings with bank treasurers and heads of asset-liability management. As in 2011, the ACP paid particular attention to monitoring the maturity transformation of assets and liabilities.** Following the approach adopted in 2008 and 2009, which was reintroduced during the second half of 2011, the two divisions responsible for banking sector supervision also arranged daily or weekly conference calls with large banking groups' treasurers, depending on the level of tension observed on money markets. This approach was rounded out by on-site inspections to verify that liquidity risk was being properly managed and that banks' regulatory disclosures were reliable.

The ACP also continued to receive regular management information to supplement regulatory disclosures. This information helped the Authority refine its analysis of leading French banking groups' funding structures and conditions, as well as improving the quality of dialogue with bank staff. The main indicators monitored included those used

to track changes in the amount and cost of short-term refinancing, banks' ability to reach their medium- and long-term funding targets, changes in their liquidity ratios and liquidity gaps, and the size of their liquid asset reserves. Euro area banking groups, whose access to dollar investors has been severely restricted since mid-2011, had to either cut back their US dollar activities (e.g. project finance and international trade) or find other ways to fund them. Consequently, the amounts of their dollar liquidity shortfalls and outstanding euro-dollar swaps were subject to continuous monitoring. Studies were also carried out to assess the effects of a weakening of their short- and long-term credit ratings.

Cross-functional analysis was undertaken into the liquidity positions and funding structures of the main banking groups and regularly presented to the ACP College. In 2013, this analysis will be supplemented by specific monitoring of plans to align groups (and their main components) with future regulatory requirements concerning Liquidity Coverage Ratios.

Alongside this liquidity risk monitoring, the ACP worked with the IMF to develop crisis scenarios as part of the FSAP (see inset on the IMF's FSAP under point 2). Liquidity monitoring was also bolstered by close contact with supervisors in the main countries in which French groups operate, enabling the ACP to closely monitor changes in refinancing conditions both at a consolidated level and in each of the main financial markets.

Throughout the year, the ACP encouraged groups to proactively strengthen their refinancing structures, both to protect themselves against the persistent weakness of the interbank market and to prepare for a return to normal central bank refinancing conditions and the imminent entry into force of regulatory requirements which place much tighter restrictions on liquidity.

D | Analysing internal approaches to calculating capital requirements

a. Regulatory framework

The Order of 20 February 2007 on capital requirements for credit institutions and investment firms stipulates that these companies require ACP authorisation to use internal approaches to calculate their capital requirements for credit risk, market risk and operational risk.

This order was supplemented by the Order of 23 November 2011 transposing into French law the provisions of Directive 2010/76/EU, known as “CRD 3”, under which credit institutions authorised to use an internal model to calculate their capital requirements for market risk must, with effect from 31 December 2011, calculate additional capital requirements based on three additional risk indicators:

- I the incremental risk charge, which measures default and rating migration risk on positions in a bank’s trading portfolio (excluding its correlation trading portfolio), over and above the default risk already taken into account in Value at Risk (VaR) calculations;
- II the comprehensive risk measure, which measures default and rating migration risk as well as market risk on correlation trading portfolios;
- III stressed VaR, which calculates the potential loss over a ten-day period with a 99% confidence level, based on historical data over a continuous one-year period representing a period of acute crisis for the institution in question.

These internal models are usually implemented on a phased basis, with the priority placed on covering a group’s main portfolios and entities before ultimately rolling them out across the whole consolidated group. Where subsidiaries are licensed in other countries, the ACP conducts its analysis in close cooperation with



the competent local authority, particularly in the European Union, where Directive 2006/48/EC establishes a joint decision process.

Moreover, banks are constantly developing these internal approaches, making changes not only to the way in which they model risks but also to their operational implementation or the scope across which they are applied. Instruction 2011-I-10 of 15 June 2011 on monitoring internal models used to calculate capital requirements stipulated that institutions authorised to use internal models to calculate their capital requirements should submit an annual report

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to the ACP detailing any extensions or changes made to those models. An extension is defined as the application of a model authorised by the supervisor to an entity, activity or portfolio that falls outside the scope of the initial authorisation. Changes in a model are defined as any change affecting the conditions under which internal models used to calculate capital requirements are recognised for prudential purposes.



b. Supervisory activities

In practice, internal approaches are analysed as part of the ACP's ongoing activity. For major banking groups, this analysis represents a substantial proportion of the work of the Authority's supervisory staff.

The ACP's ongoing supervision staff make an initial analysis of any plans to roll out, change or improve internal models, on the basis of documentation submitted by institutions and meetings with their staff. Ongoing supervision staff also conduct on-site visits to deepen their knowledge of the organisational structures and working methods of teams responsible for developing and governing internal approaches.

At the same time, additional on-site inspections are carried out at banks to assess the suitability and performance of their models. As in previous years, a significant proportion of these inspections in 2012 were aimed at assessing authorisation applications submitted to the ACP College and calibrating requests for corrective action and safety margins (particularly as regards additional capital requirements) upon which such authorisation may be contingent. Other ex-post inspections were carried out to check that requested corrective action had been properly implemented.

On the basis of decisions by the ACP College, supervisory staff monitor the implementation by banks of requested corrective action.

Finally, the ACP's ongoing and on-site supervision staff are in close contact with their counterparts within competent foreign authorities in relation to models used in groups operating across national borders. Discussions in 2012 covered the modelling assumptions used by groups, the local operational use of models developed by parent companies and the consistency of those models with locally developed models.

THE ACP'S WORK ON WEIGHTINGS ATTACHED TO HOME LOANS

The financial crisis initially raised questions over the quality and amount of banks' capital (which is the numerator in the solvency ratio). With banks substantially strengthening their capital structures since 2008, the debate then gradually shifted onto the calculation of risk-weighted assets (RWAs – the denominator in the solvency ratio). International benchmarking exercises highlighted significant inconsistencies in capital requirements between banks that deserved analysis and explanation.

In response, a number of international initiatives were launched in 2012. The Basel Committee formed two working groups to examine risk weightings in banking and trading books.

Similarly, the EBA set up a working group to examine both credit and trading activities.

In particular, the work of these groups is focused on analysing RWAs calculated by a sample of banks based on hypothetical portfolios (of sovereigns, banks and large corporates) so as to ensure that results can easily be compared.

To support and add to these various initiatives, the ACP – which is actively involved in the EBA and Basel Committee working groups – conducted a detailed review of the position of the leading French banks. This work primarily focused on home loans – the area in which international discussions are making the least headway, mainly because of the difficulty of carrying out comparative analyses based on hypothetical portfolios.

On the basis of a detailed review of information submitted by banks³¹, an examination of the specific characteristics of banks' internal RWA calculation models and the conclusions of a summer 2012 exercise to assign credit ratings to hypothetical profiles of home loan customers, the ACP entered into dialogue with the banks in question with a view to undertaking comparative analysis, taking into account the fundamentals of housing finance markets, to determine whether there was any need to adjust risk management systems, and if so, to what extent.

31. Accounting and prudential filings, internal reports, data collected via the annual survey of housing finance conducted by the ACP's General Secretariat, etc.

E | Tightening up working methods within colleges of supervisors and crisis management groups

The ACP heads 14 colleges of supervisors for banking groups where it is the consolidated supervisor in Europe. Colleges of supervisors are meant to promote greater cooperation between authorities supervising entities belonging to the groups in question. The actions taken within these colleges are particularly significant for those French banking groups that have developed substantial international businesses: BNP Paribas, Société Générale and Crédit Agricole.

In an international context characterised by plans to adjust banking activities in line with the economic environment (particularly in Europe) and the new Basel III regulations, working methods within these colleges have been tightened up, where appropriate, within individual colleges.

- In a European financial environment that remains challenging, efforts have been made to share information more effectively, not only at face-to-face meetings attended by senior executives and representatives from the groups in question, but also via numerous ad hoc conference calls and updates on dedicated extranet sites administered by the ACP covering changes in institutions' financial positions or risk profiles. The most discussed topics include the strategic direction set out in banks' adjustment plans, solvency trajectories ahead of Basel III and changes in the refinancing structures of French banking groups.
- For European colleges of supervisors, which were made compulsory by CRD 2 from the end of 2010 for groups with a subsidiary in another EU country, the ACP led discussions on the implementation

and results of the EBA's test to highlight potential capital shortfalls among European banks. For the four French banks required to take part in this exercise (BNP Paribas, Société Générale, Crédit Agricole and BPCE), these discussions provided them with an opportunity to respond to concerns over their sovereign debt exposure and to discuss their leeway relative to the EBA's 30 June 2012 Core Tier 1 target of 9% (see inset p. 70).

- At the European level, in accordance with European legislation, the ACP also coordinated updates to annual joint decisions concerning, on the one hand, the financial positions and risk profiles of banking groups and their European subsidiaries and, on the other hand, the required amount of capital in light of the application of potential "Pillar 2" capital requirements both to individual entities within banking groups and at consolidated level.
- The ACP continued its efforts to coordinate activity programmes and supervisory activities within "core colleges", involving foreign supervisors of subsidiaries or branches in non-EU countries, both of which are significant for the banking groups in question. As well as plenary sessions of colleges, workshops were held on topics of common interest, including the evaluation of internal credit risk and operational risk models.

The ACP also continued to participate in around 20 colleges of supervisors in its capacity as the supervisor of a subsidiary of a European banking group.

At the same time, in cooperation with the *Banque de France*, the ACP stepped up its work within Crisis Management Groups (or CMGs, as defined by the Financial Stability

Board), which were formed in summer 2011. The purpose of these groups is to examine and discuss Recovery and Resolution Plans (RRPs) drawn up in advance by large cross-border banking groups (BNP Paribas, Société Générale, Crédit Agricole, Crédit Mutuel and BPCE) to cope with crisis situations. In 2012, the ACP organised a number of full meetings of CMGs, as well as technical meetings with other relevant supervisory authorities and central banks, to discuss how RRP could be improved.

In most cases, the recovery plans drawn up by French groups were well advanced by early 2012; for most of the year, the focus was therefore on expanding and updating them (including by analysing stress scenarios and early warning indicators, broadening and diversifying available recovery options, etc.).

The “resolution” component of RRP is more complex: its purpose is to provide the relevant competent authorities with information needed for the orderly resolution of banking groups in the event of a crisis. Thanks to a prolonged and iterative discussion process between institutions and authorities, in 2012 French institutions made significant progress in analysing functions considered critical to the operation of markets and economies, understanding financial and operational interdependencies (intra-group transactions, information systems, market infrastructures, essential services, etc.) and identifying obstacles to orderly resolution.

Work began in the second half of 2012 on the type of resolution strategy to be put in place within certain large banks. At this stage, however, work on these strategies is still at a relatively early stage. Work on these issues, as well as on operational resolution plans associated with these resolution strategies, will be progressed further in the first half of 2013 for the four groups in question. Defining these resolution strategies raises various

challenges in terms of coordination between the authorities concerned, against the backdrop of a European regulatory framework that is still under discussion.

Consequently, 2013 will be a pivotal year for drawing up and evaluating resolution plans. The ACP will continue to pursue deeper dialogue within the CMGs. This work will take into account the guidelines established by the FSB and the EBA, the European Commission’s proposed legislation on crisis management published in June 2012 and proposed banking and financial reforms in France and Europe.



3.2 INSURANCE SECTOR

Supervision of insurance institutions involves three divisions that undertake ongoing supervision and on-site inspections. A total of 97 on-site inspections were carried out in 2012.

Two directorates are responsible for the prudential supervision of France's 1,020 insurance institutions. Their workforce is divided up into eight inspection teams, each of which is responsible for a portfolio of institutions, broken down into groups or individual entities as the case may be. In 2012, these teams carried out 76 on-site inspections. Some of these began during the year and were still ongoing at the year-end. These on-site inspections looked at compliance with currently applicable legislation and regulations (46 inspections) as well as internal models developed by institutions in light of the adoption of the new legislative framework under Solvency II (30 inspections).

The inspection teams are also involved in sustained discussions with institutions throughout the year, as well as analysing certain specific situations. They hold meetings with institutions either at their own initiative or at the request of the companies concerned. All institutions have their economic and prudential situations assessed every year on the basis of prudential filings and other information available to supervisory staff. Prudential filings primarily consist of an annual return, which includes general information, detailed financial statements, monitoring reports and reports on solvency, reinsurance and internal control. Institutions also provide quarterly information (and, in some cases, even weekly information). The ACP's annual assessment of each institution includes a review of new business, claims, coverage of regulated commitments, adequacy of regulatory reserves, investments made and, finally, solvency position and outlook. In addition, for French groups with establishments outside of France and foreign groups with subsidiaries or branches in France, the Authority has ongoing two-way dialogue with foreign supervisors and organises or

attends meetings of colleges of supervisors as laid down in European agreements.

The third directorate is responsible for undertaking specialised cross-functional inspections that span all institutions. For example, it carries out ongoing supervision of anti-money laundering and counter-terrorism financing. It also conducts specialised on-site inspections (of which there were 21 in 2012) of internal models developed by insurers in light of the adoption of the European Solvency II regulations as well as inspections of information systems. This enables it to provide the inspection teams with an industry-wide view and to develop the ACP's supervisory policy in these areas. A new unit was set up within this division in 2012: the insurance sector continuous inspection group. This group is tasked with continuously carrying out thematic on-site inspections in the insurance sector in line with the priorities established by the ACP College and after consulting the inspection teams. The inspection teams follow up on observations arising from these inspections as part of their ongoing supervision activities.

To help them organise their inspections and ensure they have access to segment information, solvency comparisons and projections and the results of stress tests, the divisions responsible for oversight also have access to analysis undertaken by the Research division.

A | Market preparations for Solvency II

a. The ACP continues its work on Solvency II despite the delayed implementation timetable

In 2012, ACP staff continued to work on Solvency II. They were involved both in European negotiations and work to transpose the directive and in helping the French market prepare for its implementation.

A “project” structure was put in place as early as 2010 to manage the QIS 5 quantitative impact study in France. Following initial changes in 2011, this structure was again adjusted in spring 2012 to better equip it to respond to the operational challenges of implementing the new prudential regime. The internal roadmap includes the creation of a monitoring guide specific to Solvency II, the formalisation of the internal model approval process, a review of potential changes to the framework applicable to entities not subject to Solvency II (conducted jointly with the Directorate General Treasury, the social security directorate and industry bodies) and the creation of computerised tools for data submission and analysis and specific domestic data submission reports. Various thematic working groups are tasked with passing on knowledge internally. The ACP strategically oversees the project via a steering committee which meets monthly and includes the Secretary General, the deputy Secretaries General, the project manager and representatives from those divisions involved in the project.

The decision by those involved in the three-way negotiations (the European Parliament, the Council and the European Commission) to launch an impact study on measures specific to products backed by long-term guarantees inevitably further delayed the entry into force of the directive. ACP staff was substantially involved in preparing for this exercise in the final quarter of 2012. In order to maintain momentum in institutions’ preparatory efforts and to capitalise on work already undertaken,



the Authority also decided to define milestones in the preparations for Solvency II. These milestones were presented to the market at the ACP’s conference on 19 October 2012.

This initiative has since been adopted at the European level: the European Insurance and Occupational Pensions Authority (EIOPA) is planning to implement interim measures concerning certain aspects of the directive with effect from 2014.

As well as continuing workstreams that were already underway, the focus in 2012 was also on achieving readiness for future deadlines. These preparations will require substantial work by both the ACP and institutions in connection with the impact study on measures specific to products backed by long-term guarantees and work to prepare institutions to meet information submission requirements (see inset below).

PILLAR 3 OF SOLVENCY II: PROGRESS IN 2012

Pillar 3 of Solvency II covers the submission of information to the regulator and the disclosure of information to the public. On 10 July 2012, EIOPA published a stable version of the information requirements under Solvency II. This followed various informal consultations held since 2009, and subsequently a public consultation held in late 2011, in which the French industry played an active role.

The stable documents published by EIOPA also include additional information requirements in relation to financial stability, which will mainly apply to groups with Solvency II balance sheet assets in excess of 12 billion euros.

To help market participants prepare for Pillar 3, the ACP gave detailed presentations of Solvency II reporting requirements to all industry groups in December 2011 and January 2012. These presentations also provided an opportunity to illustrate the principle of proportionality within Pillar 3, using practical examples to demonstrate how the amount of information required depends on the scale, nature and complexity of institutions' activities.

To facilitate market preparations and in response to requests from institutions, the ACP also provided industry bodies with an informal French translation of certain Solvency II reports.

Additional requirements in the process of being finalised

Under Solvency II, reporting requirements are to be harmonised as closely as possible throughout Europe. However, additional specific domestic reports may be required in some cases, though these must be limited to needs not covered by Solvency II and must correspond to specific features of domestic regulation or the domestic market. The ACP has therefore defined specific domestic reports corresponding to prudential requirements (concerning policyholder surpluses, rates paid out to policyholders, builders' insurance, medical liability insurance, etc.) and statistics, as well as reports forming

part of the notes to statutory financial statements currently being defined by the French national accounting standards board (the *Autorité des normes comptables/ANC*). These reports have been discussed with industry bodies and public statistical agencies (INSEE, DREES (the Department for Research into Statistical Surveys and Evaluation) and the *Banque de France*), and are in the process of being finalised.

It should be noted that the ECB is planning to collect statistical data on insurance institutions, relying as far as possible on information submitted under Solvency II. However, additional requirements cannot be ruled out, and are currently being analysed by the ECB.

Phased implementation

While the content of Pillar 3 of Solvency II is mostly stable, continued discussions on the "Omnibus II" directive (the purpose of which is to bring Solvency II into line with Europe's new system of financial supervision at the same time as introducing transitional measures) have delayed the entry into force of the Solvency II prudential regime. At the European level, in late 2012 EIOPA announced its intention to implement interim measures on pillars 2 and 3 with effect from 2014. The ACP's work is in line with this initiative; as regards Pillar 3, from 2013 onwards the ACP will collect a Solvency II balance sheet and certain core reports in Excel format.

The Authority plans to continue these preparatory data collection activities in 2014 and 2015 in XBRL format, in coordination with the European measures planned by EIOPA. These data collection activities will facilitate preparations for Pillar 3 by providing an opportunity to test information systems, improve the reliability of Solvency II data and foster dialogue on this data between institutions and the ACP's divisions responsible for oversight (see chapter 6 for more information on the Omnibus II directive).

b. A project open to all stakeholders in Solvency II

At the European level, the ACP is very involved in EIOPA working groups tasked with clarifying the requirements of the EU directive; details of work in this area can be found in Chapter 6 of this report. At the domestic level, the ACP is involved in working groups formed by the Directorate General Treasury to transpose the directive into French law. At the request of the Treasury, the ACP is managing transposition work on information requirements and the future prudential regime for entities not subject to Solvency II.

The Paris financial community is very much involved in the Solvency II project. Industry bodies are kept abreast of European negotiations and regularly consulted at bi-monthly market meetings chaired by the ACP Secretary General. They are also involved in technical working groups, particularly in relation to the future impact study on the long-term guarantees package.

French market preparations are a priority for the ACP. As in 2011, a preparedness survey has been undertaken, inviting institutions to self-assess their level of preparedness. The findings of this survey were presented at the ACP's conference on 19 October 2012 (see inset below).

FINDINGS OF THE SECOND SOLVENCY II PREPAREDNESS SURVEY

The initial findings of the Solvency II market preparedness survey were presented at the ACP conference held on Friday 19 October 2012. The survey was conducted between July and September 2012, and followed an initial survey in 2011. It covered a broad audience, with almost 500 institutions responding (364 solo entities and 46 groups), representing more than 90% of life insurance technical reserves and 80% of non-life premiums.

The main learning from the survey was that market preparedness for all aspects of the directive had increased. In 2011, 15%³² of survey respondents had yet to begin work on the quantitative aspects of calculating the solvency capital requirement (under Pillar 1 of the directive), rising to 17% for the qualitative aspects, particularly as regards governance and risk management (Pillar 2), and 46% for requirements on submissions to the regulatory and market disclosures (Pillar 3). In 2012, a mere 1% of respondents had yet to begin preparations for Pillar 1, while the equivalent figure for Pillar 2 was 2%. Only preparations for Pillar 3 were genuinely still behind schedule, with one quarter of respondents yet to begin work to prepare themselves.

As in 2011, the mutual insurance sector appeared to be less well prepared overall than the rest of the market, though this gap is closing. For example, in 2011, only 21% of participating mutual insurers reported that they had yet to begin work on Pillar 1; in 2012, only 2% of mutual insurers had yet to begin this work.

The survey also shows that, while significant efforts have been made, in some cases there is still room to improve systems based on internal models. The main areas of focus concern the quality of documentation essential to a proper understanding of internal models, which often have disparate components, the need for an internal process to validate and support the assumptions underlying such models, a lack of consistency between internal models and prudential balance sheets and the fundamental role of governance arrangements for the internal model system.

Finally, institutions appear to have stepped up their training efforts relative to 2011, with 77% of respondents reporting that they had put in place training plans for their boards of directors and 74% for their employees, compared with 67% and 60% respectively in 2011.

32. These findings are presented as percentages of the gross number of respondents, with no adjustments for balance sheet size or business volumes.

These conferences, along with regular articles published in the *Revue de l'ACP*, enable insurance institutions to monitor the latest developments in connection with Solvency II and keep abreast of decisions made by the ACP College, for example on governance matters.

Provisions concerning governance arrangements for insurance institutions form Pillar 2 of the future Solvency II prudential regime. They complement the quantitative requirements of Pillar 1 and the information requirements of Pillar 3. Although the three codes governing institutions supervised by the ACP already include various measures relating to governance, these mainly concern the composition and operation of decision-making bodies. The planned changes under Solvency II aim to improve institutions' efficiency and learn from the financial crisis, in a similar way to the changes to international standards laid down by the International Association of Insurance Supervisors (IAIS) and the Organisation for Economic Co-operation and Development (OECD).

The main components of the governance system under Solvency II are as follows:

- an administrative, management or supervisory body that is fully responsible for the application of regulations within the institution, consisting of either the board of directors and chief executive officer or, where there is a dual structure, the supervisory board and the management board;
- the “four eyes” principle under which at least two individuals must be responsible for effectively running the institution;
- four independent key functions (risk management, audit, compliance and actuarial) with managers who can, where exceptional circumstances require, ask to be heard by the governing bodies without any members of management being in attendance;
- stricter requirements on expertise and good standing affecting the administrative, management or supervisory body, those effectively running the institution and individuals working in key functions, with the provision that those effectively

running the institution and managers of key functions will be notified;

- an Own Risk and Solvency Assessment (ORSA) process.

It is now critical that all institutions actively prepare for the new measures under Pillar 2. With this in mind, the ACP undertook various actions in 2012:

- in the transposition workstream, the main proposed governance options were presented to the ACP's Insurance Sub-College on 19 April;
- an article on governance (“Necessary preparations in relation to governance”) was published in issue 9 of the *Revue de l'ACP*;
- the findings of the 2012 market preparedness survey, including in particular findings relating to Pillar 2 governance issues and the ORSA, were presented at the ACP's conference on 19 October.

c. An active review of risk modelling

One of the key changes in the prudential framework laid down in the Solvency II directive is the option for insurance and reinsurance institutions to use internal models to calculate their capital requirements instead of using the standard formula. This option is subject to prior authorisation by the supervisory authority and will only become effective when the Solvency II directive enters into force.

However, in order to prepare for this change efficiently and in harmony with EIOPA, the ACP put in place a pre-application process in November 2010. Significant participants in the insurance market stated that they were interested in using internal models and entered into the pre-application process by submitting executive summaries describing their models and documenting their various components.

The ACP made available substantial resources to facilitate market preparations for the use of internal models. The work of the Authority's

inspection teams was bolstered by a dedicated cell whose activities increased significantly in 2012. This cell, which acts as a reference point both for policy and international negotiations on internal models and for work within the various institutions applying to use such models, also provides the ACP with an industry-wide view of market practices.

The concentration of regulatory and technical

expertise on internal models has reinforced the ACP's actions, particularly in areas requiring a specific approach (life, non-life, market, etc.) and has led to the phased implementation of a Solvency II supervision guide.

EUROPEAN COORDINATION IN MONITORING INTERNAL MODEL PRE-APPLICATIONS FROM INTERNATIONAL GROUPS

For international groups, the ACP carries out its checks in consultation with and with the participation of other European supervisors affected by internal models. All checks are monitored by a restricted sub-group of the European college of supervisors, in which EIOPA participates. There are a number of options: the ACP may be the supervisor of an entire group where the latter is French, in which case it is responsible for coordinating all checks. The Authority may equally be the local supervisor of a foreign group with a branch in France, in which case it carries out its checks within the framework laid down by the group's supervisor. Finally, the ACP may also be the consolidated supervisor of a French group with an international presence.

In conducting this work, the ACP cooperates closely with EIOPA and other European supervisors, in particular

through the Internal Models Committee. This group reviews procedures for managing and monitoring pre-applications throughout the interim period up to the entry into force of Solvency II.

In total, as a consolidated supervisor the ACP chairs two steering committees to approve internal models involving European subsidiaries of two French groups. ACP staff has also worked with their foreign counterparts to conduct eight joint investigations into aspects of models that have an impact on an entire group (both parent and subsidiaries). Conversely, the ACP sits on steering committees for three European groups with subsidiaries in France, which held 11 full meetings in 2012; it took part in around ten visits or joint investigations with the group's controlling authority at the parent company's registered office.

With uncertainty surrounding the date of entry into force of Solvency II, delays were observed in some pre-application processes. However, there continues to be genuine market interest in these models, with nine pre-applications in progress for key players in the

French insurance and reinsurance sectors and around 20 institutions planning to eventually use internal models, according to the latest market preparedness survey. Pre-applications already in progress continue to be reviewed in 2013.

B | Tighter supervision related to the consequences of the crisis

In late 2011 and early 2012, the ACP paid particular attention to institutions that held Greek government bonds and were concerned by the restructuring of the country's public debt. It also closely monitored the way in which institutions recognised the decline in the market value of equities in their 2011 financial statements or otherwise. (Institutions must set aside provisions for any other-than-temporary impairment provisions, together with provisions for liquidity risk, if necessary).

Life insurers' weekly premium and benefits flows were examined carefully throughout 2012. This information was presented and discussed at each meeting of the Insurance Sub-College. The ACP has also introduced a detailed monthly survey of investments and carried out market surveys concerning life insurance revaluation rates (see inset).

A special project was undertaken in 2012 to analyse the largest insurers' 2011 results. These institutions were asked to present and explain their financial statements to the ACP. For the first time, the ACP also examined the half-year results to 30 June 2012 of the very largest insurers, notably those that were publicly listed or subsidiaries of banks.

Similarly, the ACP relied on on-site inspections, analyses and interviews in order to closely monitor **the consequences for the personal risk sector** of legislative changes on the retirement age that increase the period in which disability/incapacity benefits are paid and of **stiffer competition, which is leading to consolidation**.

Particular attention was paid to **institutions reporting rapid growth as a result of heavy reliance on brokerage**, which in some cases was not kept under control. The ACP noted that several insurers had unclearly worded policies sold through brokers and had not taken enough care over pricing and losses. It reminded insurers that delegation of loss management does not absolve them from their responsibilities to policyholders.

The ACP also took a close interest in institutions operating Branch 26 point-based pension systems, which were hard hit by the downtrend in asset returns in 2011. It will continue to do so in 2013, as returns are still historically low. This factor seriously complicates management at these institutions and compromises their medium- and long-term profitability.



ANALYSIS OF LIFE INSURANCE REVALUATION RATES

Among its supervisory activities specific to the insurance sector, the ACP repeated and broadened its examination of revaluation rates for non-unit linked life policies in 2012. It carried out two surveys, whose results have since been published. The first, carried out for the past four years, concerns endowment policies and individual life insurance policies³³; the second, launched in 2012, concerns group life policies and PERP pensions savings plans³⁴.

Against a backdrop of falling yields on investments and major changes in households' savings choices, the supervisor needs to be particularly vigilant as regards the revaluation rates offered to policyholders, with regard to its prudential control objectives (checking the adequacy of insurers' management) and to its role in monitoring business practices for life insurance.

Concerning individual policies, the negative trend in the values of certain financial assets held by insurers weighed on revaluations offered to policyholders. The average revaluation rate for individual policies (weighted by the corresponding mathematical reserves), net of management fees, declined further, from 3.4% in 2010 to

3.0% in 2011. The fall was greater than that observed in previous years (4.1% in 2007, 3.9% in 2008, 3.65% in 2009). Threshold analysis shows that only 13% of mathematical reserves were revalued by at least 3.5% in 2011. Furthermore, just over half of mathematical reserves (56%) had a revaluation rate higher than 3.0%.

The average revaluation rate for group policies declined in identical fashion, net of management fees, from 3.4% in 2010 to 3.0% in 2011. A high proportion of group policies, corresponding to 65% of mathematical provisions (compared with 91% for individual policies), was revalued at a lower rate in 2011 than in 2010. In contrast, 24% of mathematical provisions (2% for individual policies) posted a higher net revaluation rate over the period, while 11% of mathematical provisions were revalued at the same rate in 2011 as they were in 2010.

The ACP will repeat both surveys in 2013 to ensure that institutions continue to exercise caution when setting revaluation rates.

33. *Analyses et Synthèses*, issue 6, June 2012.

34. *Analyses et Synthèses*, issue 7, June 2012.

2 KEY RISKS FACING THE FINANCIAL SYSTEM IN 2012

↳ 3) Prudential supervision

↳ 3.2 Insurance sector

STRONGER INSISTENCE ON TIMELY DELIVERY OF ANNUAL DOCUMENTS

In 2012, the ACP stepped up efforts to obtain all mandatory annual documents within the specified regulatory timeframe. The College went as far as initiating injunction procedures with coercive fines.

The first wave of reminders concerning 2011 annual documents was issued in the late summer of 2012 and concerned institutions that had not submitted anything or only part of the documentation due. Some 12 mutual insurance companies that had been reminded twice in respect of their 2010 accounts were written to individually by the First Deputy Secretary General; more than 300 others received an initial letter from the Supervision director. Among the latter, 228 had already been reminded over 2010 accounts. At 17 October 2012, almost 80 mutual insurance companies and mutual unions still had not rectified their situation. Their chairs and directors therefore received a second reminder at the end of October 2012, signed by the First Deputy Secretary General.

More than 60 mutual insurance companies and unions replied that they would be holding their general meetings

in the fourth quarter of 2012. Unlike insurance companies, institutions falling within the scope of the Mutual Insurance Code do not have to hold an AGM to approve their accounts within the six months following the end of their financial year. These mutuals and mutual unions are monitored separately and are reminded, if necessary, once a 30-day period after their AGM has elapsed. A change in the regulations on this point is under discussion.

In 2012, and for the first time, the ACP's Insurance Sub-College initiated injunction orders with coercive fines against three mutual insurers: two in respect of 2010 accounts (now ended), and one in respect of 2011 accounts (still underway).

The ACP's understanding of these institutions' position improved in 2012 and targeted supervisory measures have been introduced. A number of on-site inspections helped to resolve short-term problems. In the context of permanent control, a process designed to achieve compliance was repeated in 2012 for institutions that were not respecting certain provisions in the Code and for which on-site inspections were not justified.

C | Specific supervision related to insurance

In 2012, the ACP stepped up its theme-based inspections and cross-sector studies as a complement to the individual prudential supervision carried out by ACP inspectors. ACP researchers have carried out cross-sector analyses of insurers' premiums and investments that shed light on the main trends, based on survey or regulatory data. This work can cover the entire sector (the detailed annual report on the structure of investments) or life insurance alone (the quarterly assessment of premiums and investments).

a. The annual report on insurance institutions' investments

Every year since 2009, the ACP's Research Directorate and the *Banque de France's* Directorate General Statistics have analysed the structure of life- and non-life insurers' investments in some detail. The results have been published. In 2012, the scope of this study – based on data for the end of 2011 – was extended to mutual insurance companies and provident institutions. The resulting sample contained over 600 organisations, up from 314 in 2011.

35. Insurance institutions' investments at end-2011, *Banque de France* Quarterly Selection of Articles 27, Autumn 2012.

The composition of insurers' investment portfolios varied little overall in 2011; based on investment funds' final holdings, they were still concentrated in debt securities (73%), followed by equities (13%, of which 9.5% listed shares). But there was a significant increase in the proportion of the most liquid instruments (money market investment funds and debt securities with an initial maturity shorter than one year).

An examination of the investment profile by instrument type revealed differences in asset allocation choices according to the category of institution. The predominance of debt securities was more marked among life and mixed insurers (75.3%) than among non-life insurers (54.3%); the latter owned a significantly larger proportion of unlisted shares (15.7%, compared with 2.2% for life and mixed insurers), reflecting their intra-group shareholdings.

Mutual insurers and provident institutions (PIs) have investment profiles fairly similar to those for life insurers. That said, PI investments contain a higher proportion of property assets than equities (10% and 5%, respectively), in contrast with mutual insurers (5% and 10%, respectively) and life insurers.

The renewed focus on the domestic economy that started in 2010 was reiterated in 2011, with the proportion of securities issued by residents (excluding unlisted shares and property) climbing from 41% in 2010 to over 44% at end 2011, based on investment funds' final holdings. The main beneficiaries in France of insurers' investments in 2011 were the banking sector (19.4%, compared with 17.4% in 2010), general government (16.3%, compared with 14.4% in 2010) and non-financial companies (6.6%, compared with 7% in 2010).

b. Quarterly analysis of life insurance premium income and investments

Amid net outflows from the life insurance sector, the tools used to closely monitor flows, originally introduced for prudential reasons, are now also used for quarterly cross-cutting analysis. When compared with data on life insurers' investments, information on flows can provide a full and regular picture of the main developments during the period.

These analyses show that net outflows continued in 2012, although on a smaller scale than in late 2011. Cumulative net flows were negative over the first nine months of the year but positive in the final quarter. Surrenders have stabilised at lower levels than those noted in 2011.

In terms of instrument type, the structure of investments changed little in 2012. Some insurers slightly increased their investment allocation in non-bank corporate bonds, while others reduced exposure to equities. The key development in 2012 was a continuous decline in life insurers' exposures to government bonds from peripheral euro area countries.

Unrealised capital gains in insurers' investment portfolios reflect trends on financial markets. They rose sharply in line with falling bond yields from the third quarter onwards, to reach levels even higher than in the pre-crisis period.

c. Information systems supervision

The supervision of insurers' information systems continued in 2012, with a particular focus on reviews of internal models together with an examination of the quality of IT projects. The ACP's approach was explained to the financial industry during a conference on the supervision of IT systems (see inset).

A CONFERENCE ON THE SUPERVISION OF BANKS' AND INSURERS' IT SYSTEMS

Organised by the ACP, the 27 November conference on the supervision of banks' and insurers' IT systems highlighted the supervisor's common concerns for both sectors. These are IT system governance, the proper operation of IT systems, IT security and continuity and data quality.

The ACP also unveiled the main conclusions of its inspections: IT systems are becoming so complex that controlling them requires rationalisation; IT system governance is not integrated enough in organisations' overall governance; these two factors undermine the quality of data. Lastly, and given the sophistication of intrusive attacks, levels of internal and external security appear uneven.

The near future is likely to echo these preoccupations. In insurance, the future Solvency II regime will increase formal requirements on risk mapping, governance, internal quality and data quality. In credit institutions, the constraints involved in controlling complexity are growing as a result of pressure from financial innovation and industry consolidation.

Discussions between the ACP and the profession on cloud computing started in 2012 and are wholly consistent with this approach. They are aimed at identifying the challenges, possibilities and dangers stemming from the complete relocation of IT resources and data.

d. Monitoring coverage for long-term care

A new body, the Cross-functional On-site Inspections Division, was formed in 2012 as part of the Cross-Functional and Specialised Supervision Directorate. The Division started work on long-term care insurance cover in the second half of the year, concerning both the protection offered to policyholders from products already on the market and the financial balance on these commitments from the insurers' point of view.

D | Developing working practices in the colleges of supervisors

The international profile of many insurance groups makes cooperation between supervisors necessary, so that they can assess the solvency of such groups as a whole. Colleges of supervisors bring together representatives from the authorities responsible for supervising the various entities composing an insurance group, and in principle they are chaired by the authority responsible for the group's parent company. The colleges are there to share information and assess the financial position of the group and each of its main entities in order to coordinate supervisory activities. Colleges of supervisors are considered to be one of the means of averting or dealing with difficulties at international financial groups.

In the present regulatory framework, the cooperation between supervisors and the organisation of colleges are defined in protocols signed by the authorities in EU member states and in EIOPA guidelines, complemented with the principles agreed with the European Banking Authority (EBA) and adopted in January 2009. This inter-sector cooperation is made necessary by the existence of financial conglomerates with subsidiaries in both banking and insurance. In France, several major banking groups own significant insurance entities.

Although EU regulations incorporate this type of organisation to some extent in existing directives, the protocols adopted by the Conference of European Supervisory Authorities – EIOPA’s forerunner – are of wider scope. The Solvency II directive continues the extension of colleges of supervisors chaired by the group’s supervisor. It has rules on college membership and on identifying the group’s lead supervisor. The latter has specific powers on monitoring group solvency, subject to the particular college chaired and its component entities; these powers include the validation of internal models. The directive also lays down principles on cooperation, information sharing and consultation among college members.

In 2012, the ACP’s insurance supervision directorates organised meetings of the supervisors of groups headed by French companies and with subsidiaries in and outside the EU. The ACP supervises 15 such groups. Insurance supervision directorates also took part in meetings of colleges chaired by other authorities where there was a French subsidiary:

the ACP is a member of eight colleges by virtue of its position as supervisor of an entity belonging to a non-French group. In the context of examining the internal models of groups in the pre-application process, supervision directorates also organised ad hoc meetings of the European supervisors concerned to consider requests for improving the models developed for groups taken as a whole (parent companies and subsidiaries). Six meetings concerning two French groups with an international profile were held in 2012. The ACP also attended six meetings for the same purpose organised by its foreign counterparts, concerning the French subsidiaries of three European groups.

On several occasions the Financial Stability Board and the G20 have reiterated the need to improve cooperation between supervisors of international groups, and make it even more effective. Tighter cooperation is made even more necessary by plans to publish a list in 2013 of the international insurance groups deemed systemically important (G-SIIs).

IDENTIFYING GLOBAL SYSTEMICALLY IMPORTANT INSURERS (G-SIIs)

Work on systemically important financial institutions sponsored by the Financial Stability Board (FSB) concerns both the banking sector (see inset above) and insurance institutions.

Following the example of the Basel Committee for banks, the IAIS published a methodology for identifying systemically important insurers in 2012. Although consistent with the methodology used for the banking sector, the IAIS system is tailored to the specific features of insurance. Basing its comments on analysis that found that “traditional” insurance business creates limited risk for the financial system, the IAIS emphasises the importance of “non-traditional” business in the criteria for measuring an insurer’s systemic character. The latter

activities include financial guarantees (the activities of monoline insurers, for example) and financial business other than insurance. As in the banking sector, the other indicators used are size, the international character of business, the importance of relationships with other financial institutions (interconnections) and the degree of substitutability.

In 2012, the ACP played an active part in efforts to identify systemically important insurance entities on the basis of data for the 2011 financial year. It also contributed to drafting an IAIS consultation paper on the measures that the countries concerned should implement for supervising systemically important insurance entities.

3.3 THE FINANCIAL LINKS BETWEEN BANKS AND INSURERS

A | Analysing the financing provided to bank parent companies

As an integrated authority supervising both credit institutions and insurance entities, the ACP pays particular attention to cross-exposures between the two sectors and, more generally, to the possible links between them. These links are particularly important in France because most of the major banking groups have set up insurance companies, both life and non-life, that offer insurance products to the parent company's customers through bank branch networks. These subsidiaries have become major players in the French insurance sector, particularly the life segment.

Even if they do not have dedicated subsidiaries, credit institutions have forged strong partnerships with insurance companies to offer a wider range of products to their respective customers. Conversely, a few insurance groups have established banking subsidiaries that offer selected products to their customers, often loans or savings products (passbook savings accounts, for example). But these banking subsidiaries remain very small, particularly compared with the market as a whole.

European regulations impose specific supervision measures on financial conglomerates aimed at monitoring the financial links between the two sectors and, among other things, avoiding any shocks spreading from one to the other. The supervision directorates for credit institutions and insurers have therefore paid particular attention to these aspects, notably cross-shareholdings and insurers' financing of credit institutions.

A survey of intra-group lending concerning insurers owned by French banking groups has

been carried out via on-site inspections and interviews conducted by insurance supervision teams. This exercise highlighted a variety of situations.

The main French banking groups' insurance subsidiaries own all capital instruments in their parent companies (subordinated debt included either in core capital – Tier 1 – or in supplementary capital – Tier 2). Although the regulations do not prohibit this situation, it is cause for concern for the supervisor as it creates a circular movement of capital that could weaken conglomerates, even though the banking parent companies subtract treasury stock when calculating the group's banking solvency ratio for supplementary supervision purposes.

In light of these observations, the ACP College meeting in restricted session has recommended that a more stringent solvency calculation method be applied to banking groups' insurance subsidiaries, to take account of the prudential implications of cross-shareholdings.

The ACP has then devised a solvency requirement coverage calculation that adjusts the total amount of the components of the solvency margin by the amount of capital instruments held in the original banking group. After adjustment, each institution's solvency requirement cover must be higher than 100%, implying that groups will have to take corrective measures if they fall short of that level.

Securities issued by the banking sector (senior bonds or covered debt such as mortgage bonds) are traditional components of insurers' investment portfolios. The banking sector is of course one of the biggest issuers on the capital markets, which it uses to fund its lending. Among bank-insurance institutions, insurance subsidiaries concentrate their business within their group, but not exclusively. The ACP closely monitors insurance subsidiaries' exposure to their parent group. Exposure to banking sectors in countries benefiting from international assistance or to fragile institutions has also been monitored.

B | Life insurers' exposure to the banking sector

In the first three quarters of 2012, the proportion of life insurers' investments in securities issued by the banking sector (equities and debt securities) was a fairly stable 23% or so of their total investments. But insurers have increased the proportion of their investments in conventional and covered bonds, to the detriment of equities and subordinated bank debt. Life insurer funding of the French banking sector is still mainly in the form of debt securities, and most of that in short maturities.



HOUSEHOLD SAVINGS FLOWS AND THE IMPACT ON BANK-INSURANCE INSTITUTIONS

Liaising with the *Banque de France's* Directorate General Statistics, the ACP continued in 2012 with research on trends in household financial investment flows and their impact on bancassurance groups. This research started in 2011 and is supplemented with interviews with sales managers and executives responsible for directing retail business. It looks at the strategies implemented in groups marketing the whole range of financial products in order to assess how far they could have influenced the trends observed.

This work has been published in the *Bulletin de la Banque de France* and in *Analyses et Synthèses* (no. 10, December 2012).

The ACP is particularly attentive to changes in household financial investment. Inflows faltered in 2012 and their composition has altered dramatically since 2011 to the detriment of life insurance. The consequences of these

changes for bancassurance groups' prudential and financial positions have been monitored specifically to appreciate the impact on the cost of funding and on plans to meet future liquidity requirements.

The net inflow of households' main financial investments continued to decrease in the first half of 2012.

In year-on-year terms, the flow of savings represented 85.2 billion euros at end-June 2012, having decreased steadily from a record 120.7 billion euros in September 2011. As in 2011, and given the uncertain economic environment, households favoured the most liquid bank products (also considered the safest), to the detriment of products such as investment funds and life insurance policies. The reallocation trend that started in 2011 continued, though to a lesser degree.

End on the next page

2 KEY RISKS FACING THE FINANCIAL SYSTEM IN 2012

↳ 3) Prudential supervision

↳ 3.3 The financial links between banks and insurers

HOUSEHOLD SAVINGS FLOWS AND THE IMPACT ON BANK-INSURANCE INSTITUTIONS (end)

) French households' main financial investments (flows calculated over four quarters, in billions of euros)

	March 2010	June 2010	Sept. 2010	Dec. 2010	March 2011	June 2011	Sept. 2011	Dec. 2011	March 2012	June 2012
• Bank investments	20.7	23.5	24.8	35.2	41.2	52.8	64.1	59.8	71.4	71.0
• Non-bank investments	88.0	79.4	73.6	73.3	67.4	58.2	56.6	40.9	24.6	14.3
of which life insurance policies*	86.2	88.7	91.5	86.5	74.4	63.9	53.0	34.0	18.5	8.5
of which investment funds	-19.4	-27.2	-29.9	-28.5	-24.4	-19.3	-16.3	-11.0	-12.1	-9.3
of which debt securities and equities	21.1	17.9	12.1	15.4	17.4	13.6	20.0	17.9	18.3	15.0
TOTAL FINANCIAL INVESTMENTS	108.7	102.9	98.4	108.5	108.6	111.0	120.7	100.7	96.0	85.3

Source: financial accounts, Banque de France.

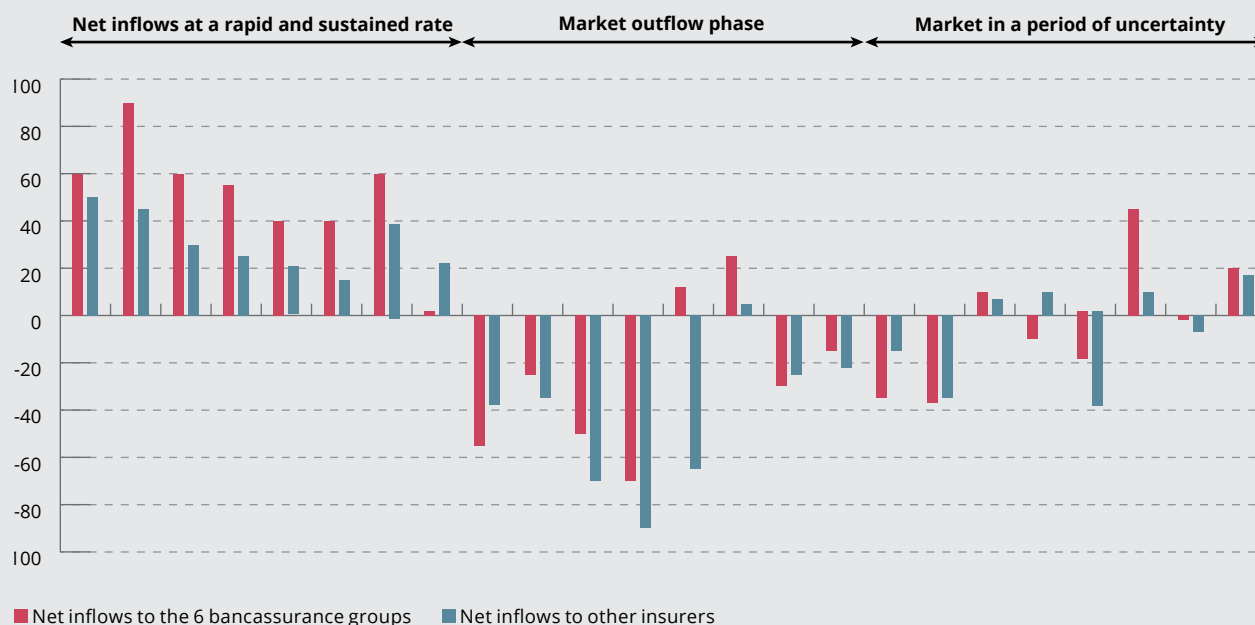
* Life insurance flows measured by flows of technical provisions across all contracts (group and individual).

Following a difficult end to 2011 and an uncertain first half of 2012, life insurers reported slightly positive net inflows in the last quarter of 2012.

In the fourth quarter of 2012, the life insurance sector again reported a net inflow even though large inflows were recorded into Livret A and LDD savings accounts over the

same period (+ 31.8 billion euros, according to *Caisse des dépôts* figures), in the wake of the first increase in deposit ceilings on 1 October. The additional inflows to regulated savings accounts stemmed largely from other passbook accounts and bank sight deposits.

) Net inflows to life insurance (individual policies, billions of euros)



Source: companies' figures – December data are provisional.

) Impact of these developments on bancassurance groups

In 2011, inflows to bancassurance groups were hampered by several short-term factors, including a jittery period in the summer of 2011. This pattern did not recur in 2012. Against a backdrop of net outflows from life insurers in general, bancassurance groups performed better than the

market as a whole, and flows into their banking products remained robust. Interviews with sales managers revealed that these trends reflected a wait-and-see attitude on the part of households faced with considerable uncertainty about both the economy and taxation.

The end of 2012 saw a rebound in net inflows to life insurance and a sharp increase in Livret A and LDD savings accounts after their ceilings were raised, though household savings flows are liable to alter significantly in 2013. The ACP will therefore remain vigilant. It will examine the revaluation rates used by life insurers and assess how lowering the interest rate on Livret A accounts to 1.75% would affect credit institutions' strategies for attracting retail funding, to ensure they remain prudent on this matter.

C | Insurance entities' direct financing for economic agents

Several insurers decided to diversify their investments in 2012 by extending finance in the form of loans or bonds to various economic agents (local authorities and companies). These initiatives were occasionally made public and materialised in an environment where insurers and bankers have a common interest in such transactions. The decline in bond yields is leading insurers to seek assets with higher returns than bonds issued by governments or major corporate groups; at the same time, tougher solvency and liquidity requirements are encouraging credit institutions to try and lighten their balance sheets.

The amounts reported by insurers are modest at the moment, both in absolute terms and relative to the size of their investment portfolios. This situation should not change significantly in 2013, with these institutions seeking to refine and test their lending models.

The investment diversification rules followed by insurers reflect existing regulations (the Monetary and Financial Code and the Insurance Code) as well as the caution that ought to surround such diversification. In most cases, insurers want banks to continue participating in the financings they extend, partly to ensure operational management of these loans – banks

act as distribution agents – and also to ensure an alignment of interests and avoid a biased selection.

Loans to local authorities have been part of investment diversification in 2013, although with mixed results. Insurers are seeking to make long-term fixed-rate amortising loans.

Insurers are also interested in a more traditional sector closer to their existing investments: financing commercial property assets with mortgages, attached to financing with initiatives structured in various ways (notably in the form of loans to property companies, buybacks of debt on the secondary market and subscribing to bond issues). The amounts involved have been significant, and the underlying assets are office premises. Insurers already have the expertise for this type of financing, enabling them to assess the asset's quality independently of the originator, estimate the asset's average return (rent, occupancy ratio, minor renovation work) and determine borrowers' ability to taken on the debt.

Insurers have set up collaborative arrangements with credit institutions to extend loans to mid-tier enterprises or participate in private bond placements. Insurers are already heavily involved in financing major groups, as they subscribe to the bonds that these groups issue. They are now attempting to participate in financing mid-tier enterprises. For this, they have to collaborate with credit institutions and acquire the skills needed to analyse corporate credit risk. In 2013 the ACP will be checking that the financing selection and credit risk analysis process is properly structured and protects insurance policyholders' interests. It will also be checking that the credit risk attached to these financing operations is accurately reflected in the insurers' accounts, including through depreciation where this is required to capture a possible loss of value.



Customer protection in banking and insurance

The ACP makes sure that the entities under its supervision comply in full with customer protection rules and requirements. It also ensures they use appropriate procedures and resources to meet that objective. ACP supervision covers every phase of marketing a product or service, including advertising, pre-contractual information, due advice and the full execution of contracts until commitments are fulfilled.

The Business Practices Supervision Directorate is responsible for this task in the banking and insurance sectors.

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Supervising compliance with customer protection rules

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1.1 ON-SITE INSPECTIONS IN 2012 AND LESSONS LEARNED

In 2012, ACP staff continued to inspect credit institutions, insurance companies and their intermediaries. The approach was targeted on topics such as access to banking services, compliance of documents provided to borrowers, complaints handling and the marketing of unit-linked life insurance policies comprising complex financial instruments.

In addition to individual inspections by the ACP of credit institutions and insurance companies, synergies with other institutions were stepped up.

The ACP delegated some inspections of insurance intermediaries to the *Banque de France's* branches in Lille, Lyon and Toulouse. Working within the Joint Unit, it conducted combined inspections with the *Autorité des marchés financiers* (AMF).

A | Banking

Inspections of credit institutions focused particularly on issues relating to access to banking services, compliance of commercial and advertising documentation, complaints handling, remote selling of banking services and account operating procedures.

As regards access to banking services, ACP inspections concentrated on the statutory provisions that entitle everyone to a bank account, no matter what their situation. In some cases, notifications of a refusal to open an account failed to provide customers with details on the procedure to follow with the *Banque de France*. Also, in several instances, the *Banque de France* had to issue a repeat injunction to a credit institution to open an account.

Access to basic banking services, defined in Article D. 312-5 of the Monetary and Financial Code, must be guaranteed, and these services are required by law to be free of charge. Some institutions place a time limit on these services, terminating them when the customer applies for additional services. Furthermore, persons processed under the right to a bank account procedure are not always provided with zero floor limit cards.

Some shortcomings were discovered in terms of formal internal procedures covering the

access to banking services, including failure to recognise the free nature of banking services and efforts to sell additional services. Employee training in this area needs to be stepped up, and risk maps should more effectively integrate non-compliance with the access to banking services procedure.

The ACP also looked at the compliance of documentation issued to borrowers. Some advertising communications relegate key information to the fine print even though the law stipulates a minimum font size. In some leases with purchase options, there was an obvious mismatch – which might have misled customers – between the pictured vehicle and the advertised lease payments. The optional nature of payment protection insurance is not always mentioned. In credit offers, the information in the agreement would be clearer if the font size were large enough to be easily read.

The ACP paid special attention to complaints handling following publication of Recommendation 2011-R-05, which recommends taking account of problems identified in complaints in an effort to continually improve the quality of customer service. Inspections revealed that at some institutions a premium phone number had to be called to reach the complaints department.

Remote selling of banking services is subject to specific rules. Customers get a 14-day cooling-off period and must not be forced to waive this in writing if an account agreement comes into force immediately. Notification of any changes to the terms and conditions must be given two months before the modification takes effect. This notification was not always provided.

The ACP examined account operating procedures at several institutions. It found that

in some cases bank statements did not always give the interest rate applicable to authorised and unauthorised overdrafts, or the procedures for contacting the ombudsman. Treatment of payment instrument fraud is also required to comply with the law, which clearly states that the entry of the PIN by the cardholder is not sufficient on its own to prove that he or she authorised a transaction. This provision protects customers and preserves trust in electronic payment instruments. Inspections also looked repeated improper billing for cancelling an authorised direct debit within the authorised deadline.

B | Insurance

Inspections carried out at insurance companies in 2012 focused particularly on complaints handling arrangements, compliance with regulatory and contractual time requirements, and marketing of unit-linked life insurance policies based on complex products.

The ACP conducted checks to see how its recommendations on life insurance were being applied. The results were mixed as regards the marketing of unit-linked life insurance policies based on complex products. Generally speaking, companies created specific communications for plan members and policyholders about the risks associated with choosing complex underlyings, conducted customer targeting and provided training documents to advisors. But there is room to improve the quality of information provided to customers, as well as the framework governing the marketing process for complex instruments. Some inspected companies use underlyings that may not be easily identifiable or individually observable on the markets. It is not always clear

3 CUSTOMER PROTECTION IN BANKING AND INSURANCE

↳ 1) Supervising compliance with customer protection rules

↳ 1.1 On-site inspections in 2012 and lessons learned

whether there is a capital guarantee, which may cause confusion about the coverage of the guarantee and the invested capital. Insufficient or even no information was provided on the consequences of a surrender request or what happens if the investor dies before the underlying matures.

Concerning the framework for the marketing process, inspections revealed some deficiencies, including incomplete formal documents setting out the duty to provide advice, as well as failures to provide statutory customer warnings and update personal information. More involvement by internal control is a pre-requisite for better supervision of marketing.

The ACP also paid attention to insurers' compliance with the statutory provisions governing searches for unclaimed life insurance policies.

Since 2011, the ACP has stepped up its work on the settlement of life insurance policies that expire or become payable by reason of death. The ACP conducted seven on-site inspections of insurers that represent over 40% of the life insurance market, looking at the topic of unclaimed policies. The ACP also used information submitted on this topic by insurers in their 2011 and 2012 internal control reports. These inspections revealed some unsatisfactory situations.

) Identifying deceased policyholders

Article L. 132-9-3 of the Insurance Code provides that insurers must find out if policyholders have died by checking INSEE's national register of natural persons, the RNIPP. In accordance with law, some insurers have already submitted their portfolios of life insurance policies to the RNIPP. But others exclude some portfolios, particularly those relating to group policies. Moreover, the introduction of criteria for consulting the RNIPP based on policyholder age and/or the size of mathematical reserves means that insurers are not in compliance with the law if they systematically exclude certain policies. In particular, insurers are not exempt from their obligation as regards small policies or policies that, by definition, have no mathematical reserves (such as term life policies). In addition, specific follow-up on letters marked "Unknown at this address" may help to identify deceased policyholders.

Note that any delay in identifying deceased policyholders has negative consequences for beneficiaries:

- most life insurance policies taken out before 18 December 2008 provide that the lump sum (non-unit linked funds) is calculated at the time of death. Beneficiaries then lose the benefit of revaluation;
- a delay in identifying beneficiaries could mean that the limitation period for death benefit expires and the funds are paid over to the government without any attempt to find those beneficiaries (for example: a policyholder dies at 59 but the insurer applies an age criterion of 90 to consult the RNIPP);



- most beneficiary clauses provide for a first-ranked beneficiary and subsequent beneficiaries. Thus, if the first-ranked beneficiary dies before being contacted by the insurer, then payment goes not to that person's heirs, but to the lower-ranked beneficiaries;
- identifying beneficiaries is more complicated if the policyholder's death is discovered after some time.

› Searching for beneficiaries

Under Article L. 132-8 of the Insurance Code, the insurer is required to look for the beneficiaries of life insurance policies as soon as it is informed of the policyholder's death. During on-site inspections, reviews of files relating to contracts made payable by reason of death and not settled more than one year from notification of death revealed some instances where investigations and/or follow-up were limited, inadequate or non-existent.

It was also noted that investigation methodologies varied considerably from one insurer to another, particularly in areas such as persons contacted, number and frequency of reminders, and requirements for involving an outside search specialist, etc. Inspections once again revealed the importance of drafting and monitoring beneficiary clauses during the term of the policy to make it easier to identify beneficiaries. The search for beneficiaries of policies that become payable because they have expired must not be overlooked either, especially since the funds in the policy will not be revalued after the maturity date and statements are not usually sent out after maturity.

› Post mortem revaluation

Article L. 132-5 of the Insurance Code provides that life insurance policies containing surrender values should specify the terms under which, in the case of death, the guaranteed lump sum is revalued starting no later than the first anniversary of the policyholder's death and until receipt of the documents required for payment (provision applicable to policies taken out on or after 18 December 2008).

Widely varying practices are observed among policies taken out before 18 December 2008, with the lump sum (for non-unit linked funds) being variously determined retroactively at the date of death, or at the date of notification of death or when all the necessary documentation is received.

The reason why lawmakers required new policies to be revalued after the policyholder's death was to give insurers an incentive to look for beneficiaries and pay the death benefit within one year of death. In a review of *post mortem* revaluation clauses in 60 policies, it was found that approximately 25% of these policies revalue the death benefit, applying the same terms as during the term of the policy.

However, some problems were identified during this review, including explicit notification of non-revaluation or situations where revaluation terms were omitted or highly complex.

› Treatment of unclaimed benefits

Since 2007, under the Social Security Financing Act, amounts held in life insurance policies and remaining unsettled more than 30 years following the expiry of the policy or the death of the policyholder are paid into the pension reserve fund (old age solidarity fund since 2011). To be able to satisfy this obligation, insurers have to identify policies made payable by reason of death or expiry and carefully trace the age of unclaimed policies. In this regard, the ACP reiterates that the treatment of unclaimed benefits (unpaid funds that reach the 30-year limitation period) must give rise to an accounting procedure. In addition, a claims settlement statement is required under the Insurance Code to check the accuracy and completeness of the amounts paid to government since 2007. In this respect, it was noted that there was room to improve the procedures for determining and monitoring reserves for outstanding claims.

Approaches to revaluing the amounts owing to government are not uniform across inspected companies; several insurers pay only the amount determined at the date of death.

3 CUSTOMER PROTECTION IN BANKING AND INSURANCE

↳ 1) Supervising compliance with customer protection rules

↳ 1.1 On-site inspections in 2012 and lessons learned

In 2013, the ACP will continue to pay close attention to compliance with legal provisions whose implementation enables benefits to be paid out at death or when life insurance policies mature.

Complaints handling arrangements are incomplete in some cases and could be improved by central, shared processing covering all the entities of a group. The channels of redress should be clearly and precisely described. It is important that the procedures and organisations put in place make it possible to achieve the objectives proposed by Recommendation 2011-R-05 on complaints handling, which has been in force since 1 September 2012.

Inspections covered compliance with statutory and contractual time requirements, particularly in auto insurance, which should be subject to specific monitoring. In particular, the customer relations management system must make it possible to reliably track all the actions of customer representatives, and detailed information on compensation options must be made available to customers. Inspections also focused on the time requirements for terminations, which must be strictly observed.

ACP SURVEY ON MOBILE PHONE INSURANCE POLICIES

The ACP received complaints and calls highlighting problems involving the legal framework for mobile phone insurance policies, coverage terms and the various firms involved in the policy. As a result, it carried out a survey of insurance companies and intermediaries that are most representative of this market.

An examination of the completed questionnaires that were returned to the ACP along with requested contractual documents revealed:

- complex contractual arrangements involving multiple participants;
- a lack of information for policyholders on the characteristics of the policy and the person to contact to request information, report a claim, request termination or file a complaint;

- in many cases coverage information that set out restrictive terms for making claims and excessive exclusions that were not compliant with statutory provisions;
- policy modification, renewal and termination clauses that were inconsistent with the provisions of the Insurance Code.

The ACP will draw the necessary conclusions from this survey, taking action on the entities concerned and market practices generally.

C | Intermediaries

Intermediaries are not subject to ongoing supervision by the ACP and therefore have to be brought under the ACP's jurisdiction before they can be inspected on-site. This is materialised by sending the entity a decision notice signed by the ACP's Secretary General.

In the insurance sector, the ACP carries out inspections of all types of intermediaries, from insurance brokers to general agents, wholesale brokers, internet aggregators and credit institutions acting as insurance intermediaries.

To be registered with the insurance intermediary registrar, ORIAS, and so do business, an insurance intermediary must by law meet several requirements:

- the intermediary, whether an individual or legal entity, must have professional liability insurance and financial guarantees that reflect the scale of the business;
- an individual person who is an intermediary, the senior managers of a legal entity and the employees of a firm acting as an insurance intermediary must provide evidence of professional competence and comply with fitness and propriety requirements.

Inspections revealed that some intermediaries could not always provide evidence of the professional competence of all their employees before engaging in intermediation activities for the first time, whether that entailed making presentations or proposals, providing assistance in concluding an insurance policy or other work leading up to the conclusion of a policy.

In the documentation provided to customers before signing their first insurance policy, some intermediaries did not indicate their ORIAS registration number or, more specifically, how customers could check their registration. In addition, dispute handling procedures should be covered in a disclosure to the customer, which was not always the case. Contact details for the ACP should not be left out of documents provided to customers.



In addition, all correspondence and advertising issued by an intermediary should indicate its name or company name, business address and registration number. However, inspections found that documents did not always contain all of this information.

The customer must be informed about the degree of independence of the person with whom he or she is in dealing with respect to its suppliers, so that the customer has full transparency on the links and interests between the intermediary and insurance companies. In some cases, the ACP noted that the intermediary had not provided sufficient disclosures to customers on links to suppliers and exclusivity obligations, if any.

Since 1 January 2010, it has been mandatory for these relations to be formally set out in an agreement between the producer and distributor of life insurance policies comprising surrender values. The agreement should cover the requirements for submitting the intermediary's advertising materials to the insurance company prior to distribution, and the provision by the insurance company to the intermediary of information required to assess all the characteristics of the policy. In several cases, the ACP noted that the intermediary had not established or updated these agreements with all its business partners and that, accordingly, the intermediary might not have all the information required to clearly present the policy's characteristics and provide appropriate advice.

Before concluding a policy, the intermediary must specify the customer's requirements and needs along with the reasons underlying the advice given on a particular insurance product. This information should be clearly and accurately noted by the intermediary on a hardcopy or other durable medium. It should be based in particular on the information provided by the customer, some of which is expressly required by law for life insurance policies.

During inspections, the ACP found deficiencies in information-gathering and traceability procedures as well as in the quality of the information gathered and its use in marketing. Particularly in the case of life insurance policies, the information gathered was sometimes incomplete. Customer requirements and needs were not always formally set out on a durable medium. And in some cases, the explanation for the advice provided was not adequate to prove that intermediaries had supplied appropriate advice to the customer. Recommendation 2013-R-01 on gathering know-your-customer (KYC) information within the framework of the duty to provide advice in life insurance is expected to promote the spread of best practices in this area.

Inspections also highlighted the fact that some intermediaries do not comply with the provisions on providing warnings as required by law for life insurance policies. If customers do not provide information on certain areas, including their financial situation, investment objectives, knowledge and experience in financial matters, the intermediary must provide a warning before the policy is signed. Furthermore, even if the intermediary does not have all this information, issuing a warning does not exempt it from giving formal, reasoned advice based on the information that it has gathered and its knowledge of the customer.

In 2013, the ACP will step up on-site inspections of intermediaries in banking transactions and payment services in connection with the entry into force in early 2013 of the new rules applicable to these firms. In 2012, while supervising firms by monitoring advertising and analysing complaints, the ACP also held regular talks with professional associations and affected firms on the new rules. In 2013, it will conduct targeted inspections covering compliance with conditions governing the right to engage in and carry on the business of intermediation in banking transactions and payment services as well as compliance with the rules on product marketing.

1.2 ANNEXES TO INTERNAL CONTROL REPORTS

For the second year in a row, credit institutions and insurance companies were invited to submit an annex on customer protection with their internal control report. An electronic questionnaire was sent out in 2012 and was used to process responses automatically whilst also analysing the individual feedback. The questionnaire covered the integration of

customer protection rules in internal control systems, complaints handling as well as a number of subjects relating to sales and marketing practices.

Virtually all credit institutions said that they take customer protection into account in their internal control system, particularly in legal monitoring and new product approval, as shown by the following table.

Integration of customer protection rules in banks' internal control systems

	ALL BANKS	LARGE GROUPS
■ PROCESS COVERED BY INTERNAL CONTROL SYSTEM		
• Bringing new products to market	89%	91%
• Commercial and advertising documentation: fair information, formal compliance and adherence to internal approval procedures	88%	89%
• Sales procedures (quality of information, advice and warning, absence of misleading and aggressive practices, requirements covering employee training and authorisation, compliance with additional customer protection measures for cold calling)	83%	81%
• Compliance of contractual documents	89%	89%
• Pricing (compliance of rates with regard to different types of credit and usury ceilings, provisions relating to billing for payment incidents, annual statement of banking fees)	83%	81%
• Compliance of consultations and adjustments of entries in the central cheque database (FCC) and the national register of household credit repayment incidents (FICP)	86%	83%
• Compliance with bank accessibility charter	79%	77%
• Closure of policies, notice, banking mobility	75%	73%

Only one-half of insurance companies that returned the questionnaire said that they had identified the regulatory requirements on customer protection in all their business, and two-thirds said that they had set up compliance checks for new policies. However,

all of them had taken into account the four recommendations issued by the ACP in 2010 and 2011. Moreover, internal audits of the topics mentioned in these recommendations were carried out following their publication.

3 CUSTOMER PROTECTION IN BANKING AND INSURANCE

↳ 1) Supervising compliance with customer protection rules

↳ 1.3 Monitoring and supervising advertising

Integration of customer protection rules in insurers' internal control systems

	INSURANCE COMPANIES	MUTUAL INSURERS AND PROVIDENT INSTITUTIONS
■ PROCESS COVERED BY INTERNAL CONTROL SYSTEM		
• Bringing new products to market and compliance of contractual documentation	80%	64%
• Checks on commercial and advertising documentation	73%	57%
• Compliance with disclosure obligations	77%	77%
• Claims handling	76%	76%
• Consistency of sales support tools with duty to provide advice	56%	41%
• Relation with insurance intermediaries	58%	24%

In the area of complaints, only 55% of credit institutions had set a target for processing times and only 58% said that they had dealt with over 90% of complaints received. In the insurance sector, the situation was not much better, leaving much work still to be done to develop complaints handling systems. Around one-half of mutual insurers and provident institutions said that they did not supply customers with information on the complaints procedure.

Note that respondents did not provide specific information on initial training for customer advisors. Most credit institutions and insurance companies rely on ongoing training.

Use of target-based variable remuneration combined with sales goals is still widespread.

Acting on the advice of the *Prudential Affairs and Business Practices Consultative Committees*, the ACP College adopted an instruction on 13 December 2012 establishing a mandatory questionnaire on customer protection whose format is similar to that of the 2012 questionnaire.

1.3 MONITORING AND SUPERVISING ADVERTISING

At end-December 2012, the financial sector accounted for 1.8 billion euros in gross investments across all types of media, making it the sixth-largest advertiser in France³⁶. Advertising, which constitutes the first stage in establishing a relationship with future customers, is a major source of potential problems. As part of its task of supervising customer protection rules, the ACP has been given the express job of monitoring advertising.

Backed by appropriate technological resources and a dedicated team, the ACP supervises the compliance of advertising and promotional offers relating to banking products and services and insurance policies, irrespective of the distribution media.

In 2012, the ACP checked 3,976 advertisements, a year-on-year increase of 56%.

The ACP pursued its efforts in the areas of consumer credit and life insurance.

36. Source: Kantar Média.

In consumer credit, the ACP checked compliance with “the Lagarde Act” of 1 July 2010, particularly by verifying that advertising messages were not conveyed at the expense of essential legal information on the financing. In life insurance, checks made sure that special-rate offers subject to various cumulative conditions were presented in clear, accurate and non-misleading terms.

The ACP also paid special attention to whether firms were following its recommendations on complex products, debt securities used as underlying assets for life insurance policies and life insurance policies linked to funeral payment plans.

Monitoring was also extended to new communication media sometimes perceived as intrusive by the public. This includes publicity emails accessible to market participants that may be more or less sensitive to the statutory provisions on advertising.

By performing this task, the ACP is constantly updating its knowledge of business practices and products, enabling it to respond more effectively through its individual actions.

In 2012, these monitoring activities led to 54 actions against companies, a 125% increase compared with 2011.

One warning was issued to an insurance intermediary disseminating advertising that

failed to comply with the objectives of providing accurate, clear and non-misleading information set out in the recommendation on marketing complex products.

In addition, 5 inspections were performed following a preliminary analysis of advertising communications. These inspections also covered the deployment within companies of adequate resources and procedures to ensure regulatory compliance when preparing and distributing communications.

The ACP also plays its role in supervising advertising practices by disseminating messages to the financial community. During its conference on business practices held on 27 June 2012, the ACP provided practical responses to questions put to it by representative bodies, a consumer association and the advertising regulator concerning its tasks, powers, actions and recommendations in this area.

By drawing on real-life examples, the ACP was thus able to draw the attention of professionals to the need to adapt advertising media and language to suit the complexity of the products and packages being marketed. It also reminded companies of their obligation, within the framework of internal control, to ensure compliance by intermediaries of the statutory provisions on advertising.

FINANCIAL INNOVATION AND THE ACP

Within the framework of its monitoring activities, the ACP organised an internal discussion group on financial innovation comprising the directorates in charge of off-site and on-site inspections (banks, insurance, business practices and cross-cutting supervision).

The group uses a broad definition of financial innovation, spanning all types of products, contracts, processes and distribution methods in banking or insurance that are somehow innovative or that raise particular, chiefly technical or legal, issues, such as new types of underlyings for life insurance policies, changes to payment instruments and specific contractual structuring arrangements.

The group is responsible for organising the reporting and consolidation of information identified by ACP departments during the course of their activities. It promotes exchanges of views, taking an approach that cuts across the banking and insurance sectors, aiming to anticipate risks and pinpoint problems that deserve special attention. The group also provides input to the working groups of the European supervisory authorities on topics relating to financial innovation and consumer protection (see Chapter 6).

2

Processing customer requests

2.1 ROLE OF THE ACP

A | Direct customers

Customers of banks and insurance companies may send the ACP requests for information or written complaints about business practices.

The first task of the ACP departments that handle these requests is to send the customer clear information about the options for out-of-court redress, including contact information for internal complaints handling departments and for competent ombudsman(men). Depending on the data that it has on the file, the ACP also makes sure to specify the applicable rules so that the complainant can assess the grounds for the request.

ACP teams are in regular contact with ombudsmen to ensure that they have up-to-date information, particularly about their area of jurisdiction. Meetings involving banking and insurance ombudsmen are organised on the subjects of shared interest, such as the process for handling complaints about an insurance policy marketed by a bank.

In the case of a flagrant breach of a statutory or regulatory provision or a contractual clause, the ACP takes action directly with the institution or company at fault, targeting the dispute brought to its attention and the entity's internal procedures more generally.

B | Using collected information for inspection purposes

Requests received by the ACP are a valuable source of information on business practices that might be detrimental to the interests of customers and/or the entity itself. The ACP uses this information to:

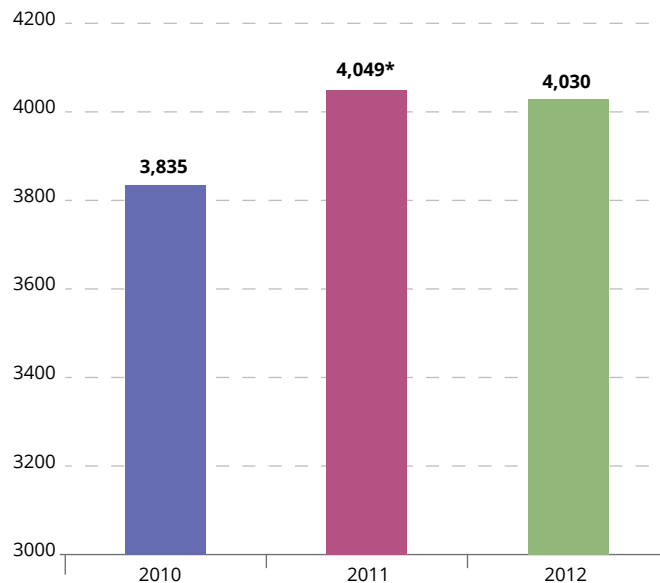
- determine areas for inspection, which may be thematic or specific to certain reporting entities;
- adopt recommendations for the market;
- propose legislative or regulatory amendments.

2.2 LESSONS LEARNED FROM PROCESSING CUSTOMER REQUESTS

A | Customer queries received by the ACP

In 2012, the ACP received 4,030 written requests and complaints, a 16% annual increase, not including the 577 files received in H2 2011 concerning an issue involving the same insurer. In all, the ACP sent 6,000 letters in response to or as part of processing these files.

Number of written requests received by the ACP, 2010 to 2012



* Including 577 files involving the same insurer.

The ACP also received 11,434 requests over the phone. This was 21% lower than in 2011. The decline was mainly seen in life insurance, where policy surrenders raised fewer concerns than in 2011.

B | Customers are still unfamiliar with internal means of redress

Of all the letters or emails received, over 13% were mistakenly sent to the ACP and should in fact have gone to credit institutions (5% of cases), insurance companies or intermediaries (over 14% of cases) and dealt with under the terms of the contractual relationship with the customer (reporting a claim, terminating contractual relations, etc.). These statistics illustrate the need for firms in these sectors to do a better job of informing customers about who the contact persons are within the contractual relationship. In a similar vein,

customers sometimes struggle to identify the right contact person when an intermediary is involved in the contractual relationship.

In all, 12% of measures taken by the ACP with respect to institutions, firms or intermediaries are directly linked to the internal complaints handling system (some systems take too long to respond; some give no answer at all) or problems in reaching the ombudsman, where there is one.

C | Breakdown of requests by category and subject

There was an increase compared with 2011 in written requests and phone calls about health/provident insurance.

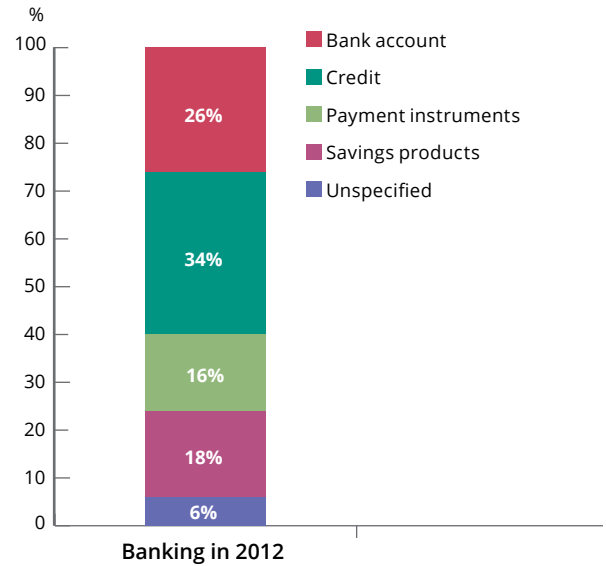
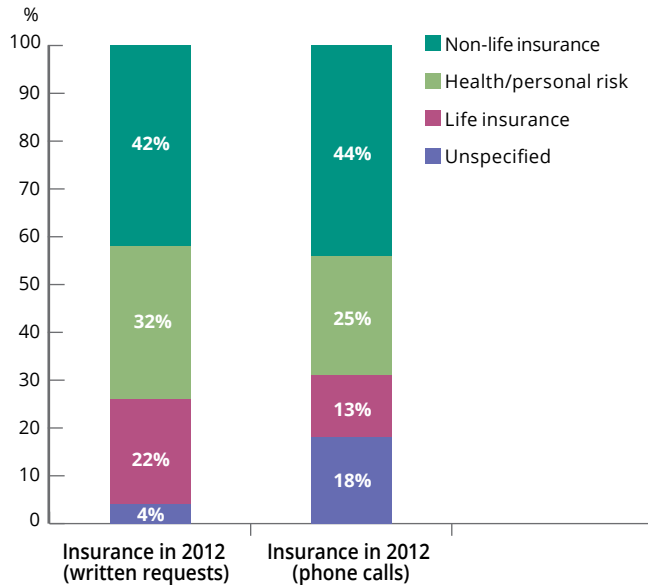
The breakdown of written requests in the banking sector was steady.

3 CUSTOMER PROTECTION IN BANKING AND INSURANCE

↳ 2) Processing customer requests

↳ 2.2 Lessons learned from processing customer requests

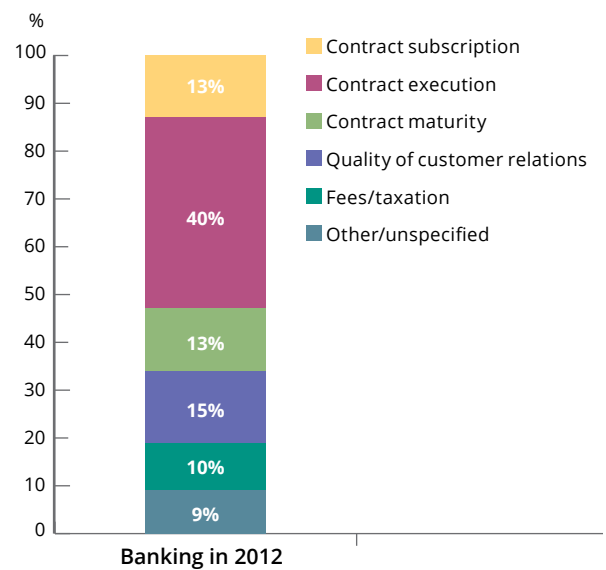
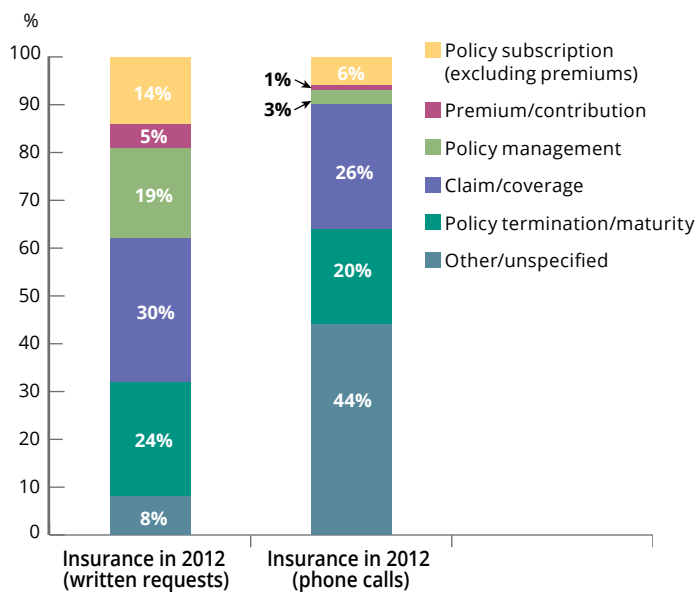
Breakdown of requests in 2012 by category



Written requests and phone call alike relating to **insurance** questions mainly concerned claims management or coverage under non-life insurance, followed by policy termination or maturity.

In **banking**, contract execution was the main topic of requests.

Breakdown of requests in 2012 by subject



The ACP took action in more than one case out of ten for non-compliance by a company or institution with statutory, regulatory or contractual provisions, particularly in the following areas.

In non-life insurance, optional group policies have seen considerable growth in recent years, but are not covered by a specific regulatory framework. In this regard, travel cancellation insurance was the subject of complaints about the length of time taken to process claims or a failure to respond to claims, with some firms taking up to six months to act. The ACP noted that some managers used methods that were designed to put claimants off, such as asking them to provide supporting documentation that they had already sent. Furthermore, in some cases the terms for activating coverage were so restrictive that they rendered the policy meaningless.

Optional group health insurance policies were also the subject of queries, including about the binding nature of premium increases decided by the insurer and the policyholder. The ACP noted that plan members, to whom the protective provisions of the Chatel Act do not apply, were often informed late about premium increases. Accordingly, it is necessary to examine in each case, and in the light of the ruling made on this point in September 2012, whether a price change constitutes a modification to the rights and obligations of the plan member that entitle him or her to cancel the policy.

In life insurance, the ACP continued to receive complaints about non-compliance with statutory deadlines. It noted delays mainly in processing requests to surrender, transfer and pay out funds at maturity or death. It noted that the required documentation was sometimes requested from the policyholder followed by the plan member without good reason, which was likely to hold up execution of the transaction. It also found that penalty interest for delays was rarely paid to claimants without prompting, even though the legislation states that such payments are automatically due.

In banking, deposit and savings account closures gave rise to some complaints. Banks sometimes take too long to process customers' requests to close accounts or may even ignore them altogether. Meanwhile, when banks decide to close accounts, they do not always observe the statutory time requirements, with claimants losing access to certain services (such as payment instruments or home banking) before the deadline. Problems were also noted in the case of closures of joint accounts where one of the joint holders decided to close the account. Problems included situations where the joint holder who did not submit the request challenged the application, or where the bank refused to close the account if a joint request was not made by all joint holders.

3

Recommendations of best practices

The ACP published three recommendations in 2012.

- **Recommendation on marketing loans comprising exchange rate risk to retail customers**

The ACP adopted a recommendation aimed at improving information and transparency in the marketing of loans comprising exchange rate risk to retail customers. Some credit institutions and intermediaries in banking transactions make loans to individuals in currencies comprising

exchange rate risk, highlighting lower interest rates than those applied to loans in euros and small exchange rate fluctuations. An analysis of marketing practices for this type of loan showed that borrowers might not properly understand the exchange rate risk. This recommendation came into force on 1 October 2012.

- **Recommendation on marketing time deposits**

While monitoring advertising and new products, the ACP noted an increase in new offers from banks of time deposits targeting individuals. These accounts offer a wide range of features that are not always clearly explained to customers. Some advertising and commercial documents may lead to confusion between time deposits and savings passbooks or even life insurance products in some instances. Depending on the procedures, it may be hard for customers to understand the way that the deposits function, penalties for early withdrawal and the effective return. This recommendation applies from 1 June 2013.

- **Recommendation on gathering KYC information as part of the duty to provide advice in life insurance**

Within the framework of their Joint Unit, the ACP and AMF conducted a joint initiative on the collection of know-your-customer (KYC) information during the marketing of life insurance policies and financial instruments.



The ACP and AMF specified their requirements in terms of the procedures for gathering information, content quality, data use and the resources and procedures to ensure compliance with customer protection rules and internal

control, to guide companies that are required to have such a system.

These recommendations will come into force on 1 October 2013.

WORK BY THE CONSULTATIVE COMMITTEE ON BUSINESS PRACTICES IN 2012

During quarterly meetings held in 2012, the Consultative Committee on *Business Practices* discussed many topical issues relating to customer protection in banking and insurance.

The committee issued opinions on:

- three draft ACP recommendations (marketing loans comprising exchange rate risk to retail customers, marketing time deposits, gathering KYC information as part of the duty to provide advice in life insurance);
- the draft instruction establishing specific reporting requirements on the application of rules to ensure customer protection from 2012.

Reports on work done on customer protection and ongoing projects were presented to the committee and led to wide-ranging discussions on:

- presentation of the results of Recommendation 2010-R-01 on marketing unit-linked life insurance policies comprising complex financial instruments, one year on from its publication;
- presentation of the approach to monitoring advertising and the results of measures taken in 2011;
- presentation of the 2011 annual reports of the ACP and the ACP/AMF Joint Unit;
- presentation of the computerised system used to process the annex of the internal control report covering customer protection rules for 2011;
- presentation of the ongoing project on mobile phone insurance;
- training: an update was provided on discussions with vocational training and Masters programmes aimed at incorporating customer protection issues.

European and international developments in customer protection were also tackled, including:

- presentation of proposed European legislation: Insurance Mediation Directive (IMD 2) and Packaged Retail Investment Products (PRIIPs) Regulation;
- the ACP's membership of the International Financial Consumer Protection Network (FinCoNet), which is designed to promote international collaboration in protecting bank customers.

4

The activities of the ACP/AMF Joint Unit

4.1 TASKS

Three years after it was created, the ACP/AMF Joint Unit has carved out an important place for itself in the French regulatory landscape. It has expanded the scope of its activities within the framework of the tasks appointed to it by the Executive Order of 21 January 2010 (Article L. 612-47 of the Monetary and Financial Code).

These include:

- coordinating 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.

4.2 ACTIVITY IN 2012

On 18 December 2012, the ACP, the AMF and the *Banque de France* announced the **launch of a new version of the Assurance Banque Épargne Info Service** (www.abe-infoservice.fr) **public information website**.

The main goals of the site are to:

- inform and guide the public by providing practical information on contractual relations in insurance, banking and savings and explaining what to do in certain situations;

- supply practical advice and information about authorised products and services;
- alert and warn the public about the practices of some institutions and companies;
- guide requests from members of the public;
- gather information and complaints that customers want to bring to the attention of the ACP or AMF.

The website is organised around different sections to make browsing easy. A single point of entry for each sector – insurance, banking or financial investments – enables users to get directly to the information they are looking for. The site also provides sections devoted to specific themes, including products, marketing, warnings, news and briefings.

In 2012, ACP and AMF teams carried out **ten joint on-site inspections** of firms that have insurance intermediary status while also being authorised as investment management companies or investment services providers. Some of these inspections led to disciplinary measures.

Following an analysis of documents and practices observed on the market and in response to information and complaints received about information-gathering activities, the ACP and AMF clarified their expectations in terms of **gathering KYC information**. These expectations were set out in an ACP recommendation for insurance companies and intermediaries (Recommendation 2013-R-01) and an AMF position for investment services providers and financial investment advisers.

This approach by the two authorities was conducted in close collaboration with CNIL, the French data protection agency, to ensure compliance with the Act of 6 January 1978 (amended).

At a time when savings, which are essential to a properly functioning economy, are a central concern for all financial market participants, the ACP and the AMF decided to devote their academic conference of 11 May 2012 to the effects of the financial crisis on household savings and financial product marketing. Sessions covered the impact of the crisis on households' portfolio allocations and the challenges involved in marketing financial products.





61

ACP AUTORITÉ
DE CONTRÔLE
PRUDENTIEL
BANQUE DE FRANCE

Anti-money laundering and counter-terrorist financing (AML/CTF)

The ACP makes sure that reporting entities fulfil their obligations regarding anti-money laundering and counter-terrorist financing (AML/CTF).

For this it relies on ongoing supervision – for example, examining responses to questionnaires – and it carries out on-site inspections to analyse the conformity of reporting entities’ AML/CTF systems and to ascertain whether due diligence measures are in place.

118

ACP supervision in 2012

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Findings

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General AML/CTF decisions

1

ACP supervision in 2012

1.1 ONGOING SUPERVISION

Ongoing supervision is based particularly on a review of the responses provided in AML questionnaires. In 2012, the ACP analysed the responses from the banking sector submitted by:

- 646 credit institutions and 82 investment firms (Instruction 2000-09 amended³⁷);
- 10 payment institutions (Instruction 2010-08);
- 152 money changers (Instruction 2011-I-04).

The ACP also conducted a full review of observed deficiencies and progress in corrective measures implemented by the 272 life insurance companies that submitted the last round of insurance-specific AML questionnaires³⁸ (91 insurance companies, 132 mutual insurers and 49 provident institutions).

Once the questionnaires are reviewed, action letters are issued, detailing any deficiencies noted and instructing institutions to implement the necessary corrective measures.

ADOPTION OF INSTRUCTION 2012-I-04: definition of new AML/CTF questionnaires

On 28 June 2012, the ACP College adopted a new joint questionnaire **for banking sector institutions** (except money changers) and **life insurers**. The new questionnaire was the subject of **consultations with affected institutions** during the five meetings of the AML Consultative Committee.

The questionnaire contains **124 questions for all respondent institutions**. It covers the main AML/CTF obligations: identity of the person in charge of AML/CTF arrangements, reporting staff members and Tracfin correspondents, organisation of AML/CTF arrangements, internal control, customer due diligence obligations, reporting requirements and arrangements for freezing assets.

The questionnaire also includes specific sections on the **group approach** (Table B7) for affected entities, which

reflect work by the Basel Committee and the new Recommendation 18 of the Financial Action Task Force (FATF).

The joint questionnaire is supplemented by **two sector-specific questionnaires** covering payment services in the banking sector and third-party reliance and relations with general agents, insurance agents and brokers for the insurance sector.

At the request of financial institutions, a **methodological guide** giving guidance on the questions was appended to the instruction.

Particular attention will be paid during on-site inspections to the accuracy of the responses provided to the ACP, especially those relating to regulatory requirements.

37. Instruction 2000-09 was amended by Instruction 2009-07 of 30 November 2009 to reflect transposition into French law of Directive 2005/60/EC of 26 October 2005.

38. ACP Instructions 2010-I-04, 2010-I-05 and 2010-I-06 of 29 September 2010 on information concerning AML/CTF arrangements.

The ACP supplements the data gathered from the questionnaires by interviewing institutions and reviewing internal control reports. These reports, which are filed annually by companies in both sectors (except for money changers), have to include an AML/CTF section.

All the information submitted to the ACP is analysed and the conclusions taken into account when the ACP draws up its annual inspection programme.

ACP SUPERVISION OF THE IMPLEMENTATION OF AML/CTF OBLIGATIONS by institutions based in the overseas departments and territories

The ACP is striving to build up its activity in France's overseas departments and territories. To this end, it has signed an agreement with the French overseas departments note-issuing bank (IEDOM) and the French overseas note-issuing bank (IEOM) that provides for the creation of an ACP adviser to these institutions. One of the adviser's main tasks is to identify specific AML/CTF risks for the overseas territories.

In 2012, the ACP adviser conducted 22 in-depth interviews with banking institutions established overseas. These interviews were the opportunity to review individual application of AML/CTF obligations and necessary improvements.

In addition, the ACP adviser held nine meetings to raise awareness among institutions subject to ACP supervision.

The Secretary General may also ask the ACP adviser to carry out on-site inspections at overseas institutions that are subject to supervision, without prejudice to the tasks carried out directly by the ACP. The adviser therefore conducted a first on-site inspection of a money changer in 2012.

Three areas of improvement have been identified for overseas institutions: enhance information-sharing within the group in the case of institutions with a parent company in Metropolitan France, strengthen employee training and adapt monitoring and analytical tools to meet the specific needs of the overseas departments and territories.

1.2 ON-SITE INSPECTIONS

In 2012, 52 on-site inspections comprising an AML/CTF component were conducted at institutions belonging to the banking and insurance sectors. Depending on the seriousness of the breaches discovered, on-site inspections may give rise to disciplinary proceedings, administrative enforcement measures or an action letter.

In 2012, the Sanctions Committee issued three sanctions comprising AML/CTF charges. Five disciplinary proceedings were underway at end-2012.

The ACP Chairman issued four AML/CTF-related cease-and-desist orders in 2012 (one was dropped because authorisation was revoked).

Inspection reports that did not give rise to disciplinary proceedings or administrative enforcement measures were the subject of action letters signed by the ACP Secretary General and detailing the ACP's findings and recommendations. The ACP staff monitors action on requested corrective measures.

The ACP also monitors execution of the measures set out in cease-and-desist orders and of corrective measures mentioned in action letters, without prejudice to the performance of an on-site inspection, where applicable.

2

Findings

On 19 October 2012, the ACP organised a conference at which the results of AML/CTF inspections were presented to around 500 representatives of institutions from the banking and insurance sectors.

In 2012, the ACP noted in particular that institutions could usefully supplement their internal procedures to cover all their AML/CTF obligations and that the analyses used to prepare risk classifications were not always formally set out.

Furthermore, the ACP found shortcomings in follow-up on AML/CTF training programmes (failure to assess employee knowledge and establish indicators to measure the number of people trained).

It also found that customer files did not always contain the information needed to effectively implement AML/CTF arrangements. Institutions need to establish programmes for updating data, controls to check that these procedures and programmes are carried out, along with procedures for formally recording and storing the information gathered. Updating customer data is an opportunity to review the assessment of the risk level presented by customers.

The ACP also expects institutions to analyse problems revealed by the systems that monitor business relations. These analyses should be formally recorded as quickly as possible so that a report may be sent promptly to Tracfin if suspicions raised by an unusual transaction cannot be cleared up immediately.

In this respect, the ACP noted that some institutions took a long time to send their reports to Tracfin. The joint ACP/Tracfin guidelines on reporting suspicious transactions state that *“within the framework of verifying the appropriateness of AML/CTF arrangements, financial institutions shall monitor the length of time taken to file suspicious transaction reports (STRs). To do this, they will consider the period between the discovery of the first suspicious transaction and the filing of a report with Tracfin. Where applicable, institutions should also monitor the time between when the operating units alert the Tracfin correspondent and when the STR is filed”*.

The ACP issued observations to institutions on internal control (2.1.), implementation of group approaches (2.2.) and restrictive measures (2.3.).



2.1 INTERNAL CONTROL

Adequate resources should be provided to ensure the effectiveness of the internal control system in terms of AML/CTF.

The ACP found that some institutions did not have enough supervisors or adequate skills to effectively supervise AML/CTF arrangements. Deficiencies were noted in the volume of samples examined and in the length and frequency of inspections.

Institutions must ensure that adequate resources are implemented to cover all activities including, where applicable, outsourced activities, third-party reliance and use of intermediaries in distributing insurance products.

Procedures should specify the nature of checks performed.

It was found that some institutions did not have written internal rules specifying the types of AML/CTF inspections to be performed.

Institutions must also make sure that they have procedures covering check points and the criteria for selecting files for review.

Findings should be subject to follow-up.

The results of inspections are not always formally recorded, which precludes follow-up.

Periodic theme-based inspections may be performed on the most sensitive aspects of the AML/CTF arrangements requiring the most urgent corrective measures.

Internal control reports provided to the ACP are expected to describe the anomalies detected and measures taken in response.

2.2 GROUP APPROACH

Executive and/or decision-making bodies should have the information on internal control and AML/CTF arrangements that they need to perform their tasks.

The report on on-site inspections on compliance with AML/CTF obligations in the area of wealth management in the banking and insurance sectors (see inset p. 123) highlighted material deficiencies in procedures for governance by group parent companies of the internal control and AML/CTF arrangements introduced by institutions belonging to these groups.

The report reiterated the ACP's expectations that:

- governing bodies should assess and periodically inspect the effectiveness of internal control and AML/CTF policies, arrangements and procedures set up to ensure compliance with obligations and take appropriate measures to address any deficiencies;
- to this end, governing bodies should be provided in a timely fashion with the quantity and quality of information needed to perform their tasks.

Information-sharing within a group should cover anomalies involving a customer shared by several group entities.

The ACP noted instances where there was no information-sharing within the same group about anomalies involving customers shared by several entities of the group.

The guidelines on sharing information within and outside groups state that *“where an entity of a group detects an anomalie relating to a customer that is also a customer of another entity of the same group, the group is responsible for ensuring that the other entity is informed of this risk factor, if the group believes that this is necessary to ensure AML/CTF due diligence. Financial institutions should implement the necessary due diligence checks”*.

↳ 2) Findings

↳ 2.3 Restrictive measures (asset freeze)

Groups should assess the measures implemented with regard to applicable law by subsidiaries and branches based outside France.

The ACP found that in several groups the head office failed to conduct a comparative analysis of regulations to which international entities are subject. Similarly, there was no analysis of local procedures, particularly to assess compatibility with group procedures.

Procedures must be established to enable AML/CTF oversight within the group. To achieve this, groups may, for example, assess the arrangements put in place by international entities by having them fill out the AML reporting forms provided by the ACP.

2.3 RESTRICTIVE MEASURES (ASSET FREEZE)

Financial institutions must make sure that they apply all measures taken at European and French level.

Several cases were found where asset freeze arrangements did not take account of all measures in force at national and European level.

Financial institutions are expected to keep an audit trail of changes to their arrangements for identifying people subject to asset freezes (inclusions, changes, removals from the list) so that they can check that asset freeze measures are actually being enforced. Checks should be

carried out to make sure that the inclusion of new people on the list generates alerts in the system.

When the list of people named in asset freeze measures is updated, it is vital to promptly conduct a review of customer databases.

Financial institutions should ensure that they fully control their automatic detection system.

Several financial institutions that had acquired an automatic detection system from an external provider had inadequate knowledge of the system's settings, particularly in terms of its filters. As a result, they could not say whether the asset freeze arrangements covered all their customers as well as customers' agents and beneficiaries.

Some institutions set overly restrictive spelling criteria for their automatic detection systems. For example, some systems could not detect a person subject to a restrictive measure unless that person's name perfectly matched the name given in the European regulation or Order of the Minister of the Economy that introduced the measure, and failed to take account of possible spelling variations.

Institutions must be able to prove to the ACP that they have an effective detection system. This presupposes that they understand how the system works.

The process for dealing with alerts must be formally set out.

The ACP noted that when an alert was issued by the asset freeze system, institutions did not always keep the analysis performed to determine whether the person in question was indeed subject to restrictive measures.

Procedures should set out the checks to be conducted in the event of an alert, along

with arrangements for formally recording and archiving checks.

If it turns out that a customer shares the same name as a person subject to restrictive measures, the institution in question should also keep the analysis that informed the decision not to act on the alert.

REPORT ON ON-SITE INSPECTIONS OF COMPLIANCE WITH AML/CTF OBLIGATIONS IN WEALTH MANAGEMENT

On 14 February 2012, the ACP College adopted the report on on-site inspections conducted in 2010 and in 2011 on the wealth management business of 21 credit institutions, investment firms and life insurance companies. This report was made public in March 2012.

Overall, inspected institutions have made a real effort to bring their AML/CTF arrangements into compliance with the legislative and regulatory obligations arising from Executive Order 2009-104 of 30 January 2009.

However some serious shortcomings were discovered, particularly in implementing group approaches (see point 2.2). In addition, gaps were found in the arrangements for permanent and periodic control.

The ACP wants to see improvements in the following areas:

- bolster governance arrangements and particularly group-wide consistency of internal control and AML/CTF arrangements;

- detect high-risk customers and establish appropriate due diligence measures;
- improve KYC and know your business (KYB) information, both at the outset and during the course of the relationship;
- improve automated arrangements for supervising business relationships;
- comply with Tracfin reporting obligations and reduce the time taken to file reports;
- enhance detection systems in relation to asset freeze lists;
- step up human and technical resources allocated to units in charge of compliance supervision arrangements.

3

General AML/CTF decisions

3.1 GUIDELINES ON BUSINESS RELATIONSHIPS AND OCCASIONAL CUSTOMERS

The ACP found that some financial institutions struggle to distinguish occasional customers, as defined in Article R. 561-10 of the Monetary and Financial Code, from customers with whom they have an established business relationship, as defined in Article L. 561-2-1 of the Monetary and Financial Code.

The ACP therefore issued guidelines to address the request from professionals to specify the authority's expectations in terms of distinguishing between these two categories.

The document adopted by the ACP College reiterates that a **business relationship is deemed to be established in two situations:**

- if there is a contract between the financial institution and the customer using its services, under which several successive transactions are conducted between the parties, or which establishes ongoing obligations for the parties;
- if the customer regularly benefits from the services of a financial institution to carry out several transactions or one transaction of an ongoing nature. In other words, **the fact that there is no contract is not sufficient to identify a customer as an occasional customer.**

Duration is a key factor in determining whether a business relationship exists.

An occasional customer is defined as one that enters into a one-off transaction with a financial institution, which the institution performs either through a single transaction or several transactions that appear to be related.

In practice, occasional customers tend to be “passing through” and conduct one or more transactions over a short period, for example during a holiday.

During the consultation on the draft guidelines, professionals stressed that the distinction was hard to make in some situations, citing foreign exchange transactions and fund remittance services in particular.

The ACP expects money changers and payment services providers (PSPs) providing fund remittance services to define criteria that are tailored to the nature of their customers and transactions to allow them to distinguish occasional customers from those with whom a business relationship has been established. These criteria could cover the number of transactions conducted by the customer, the time that elapses between two transactions or the size of transactions.

Defining such criteria and establishing appropriate due diligence measures should be given special attention in the internal control system.

Several real-life examples found during on-site inspections or submitted by professionals are provided to illustrate what is meant by occasional customer and business relationship.

The guidelines specify the due diligence measures to implement. In particular, **the ACP reiterates that KYC and ongoing due diligence obligations apply only to customers in a business relationship, in accordance with Articles L. 561-6 and R. 561-12 of the Monetary and Financial Code.**

WORK BY THE AML CONSULTATIVE COMMITTEE IN 2012

The AML Consultative Committee is tasked with giving an opinion on all AML/CTF-related mandatory documents (instructions) and explanatory documents (guidelines, sector enforcement principles and positions) adopted and published by the ACP College. The committee met six times in 2012.

It was consulted on **Instruction 2012-I-04**, which established the new AML/CTF questionnaires for the banking (excluding money changers) and life insurance sectors (see point 1), **guidelines on business relationships and occasional customers, and the position on the implementation by payment services providers (PSPs) of AML/CTF due diligence measures for fund remittance services.**

Work was also done on sector enforcement principles regarding the beneficial owners of

collective investment schemes and correspondent banking.

In 2013, the committee also worked on the update of sector enforcement principles on **fund transfers**, to reflect the new FATF Recommendation 16 and its interpretive note, the June 2010 sector enforcement principles on **AML/CTF for the insurance sector**, to take account of regulatory developments and guidelines and sector enforcement principles adopted in the intervening period, as well as the guidelines on **wealth management**, following the above report adopted by the College.

The ACP is additionally planning to review **the questionnaire provided by money changers** after the March 2013 round of questionnaires, and to prepare a **specific AML/CTF questionnaire for non-life insurance companies.**

3.2 POSITION ON IMPLEMENTATION BY PSPs OF AML/CTF DUE DILIGENCE MEASURES FOR FUND REMITTANCE SERVICES

The ACP found that, when implementing their AML/CTF due diligence obligations, PSPs that provide fund remittance services request additional information from customers when remittances exceed certain predetermined thresholds.

These thresholds should take account of risks identified by the risk classification.

The ACP expects PSP procedures to specify the predetermined thresholds, the procedures for authorising transactions exceeding these amounts, the nature of the additional information requested and the conditions under which these data are analysed.

The position specifies that the additional information requested may be the source of funds, the customer's business activity and the purpose of the transaction.

The abovementioned thresholds should be regularly updated and take account of any event affecting the PSP's business or customers as well as information disseminated by institutions and authorities with responsibility for AML/CTF, including the FATF, the Ministry for the Economy and Tracfin.

The ACP will pay special attention to the appropriateness of these thresholds and of due diligence measures implemented, both when reviewing authorisation requests and during on-site inspections and documentary audits.



Punishing violations: activity of the Sanctions Committee

5

The Sanctions Committee is responsible for punishing violations of the laws and regulations applicable to reporting institutions. The Committee 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 ACP's jurisdiction.

128

Activity of the Sanctions Committee

137

Other 2012 highlights

1

Activity of the Sanctions Committee

5

rulings handed down in 2012

Average time taken to reach a decision:

10.1 months

1.1 CASES REFERRED TO THE COMMITTEE IN 2012

Nine disciplinary cases were brought before the Sanctions Committee in 2012, after five in 2010 and three in 2011.

These numbers must be compared with the use of its different powers by the ACP College in case of failings. In particular, the College would send action or take enforcement measures for breaches with a lower level of seriousness (see Chapter 1).

The following observations may be made:

- the number of cases referred to the committee increased substantially;
- as in previous years, the cases mainly involved institutions from the banking sector as the respondents included five credit institutions, one financial holding company, one money changer and two insurance brokers;
- respondents in cases relating to banking included institutions of various size;

- the two insurance-related cases involved brokers; one involved a broker that was operating on a very small scale and also included action against the two co-managers under their personal liability;
- a first case was referred following an inspection of business practices;
- no cases were brought before the committee as a result of non-compliance with administrative enforcement measures.

1.2 DECISIONS HANDED DOWN IN 2012

A | Number and nature of sanctions

In 2012 (as in 2011), the Sanctions Committee returned five rulings³⁹. It issued three reprimands⁴⁰, one warning⁴¹ and three bans

39. All of the committee's rulings may be consulted in the compendium of previous decisions posted on the ACP website. A sixth hearing, which was partly open to the public, was held in 2012 (disciplinary Procedure 2012-04 concerning Banque Populaire Côte d'Azur, hearing of 18 December 2012) but the decision was not returned until 10 January 2013.

40. Procedures 2011-01, 2011-03 and 2012-01.

41. Procedure 2011-02.

42. Procedure 2012-02.

on carrying on the business of insurance intermediation⁴². It imposed total fines of 1,225,000 euros, with individual penalties ranging from 10,000 euros to 500,000 euros. Because of the nature of the offences punished, the Committee has not yet truly had the opportunity to set a fine based on the profits generated by the offence (or the costs or losses that the offence helped to avoid). This criterion is typically used in other areas such as antitrust law, abuse of dominant positions or prevention of market abuse. While the lack of investment reflected in gaps in internal control or AML may be estimated, the costs saved in this regard are in no way proportionate to the very high maximum fines that may be imposed (100 million euros for most categories of institution). In these areas, the size of the fine more typically reflects the risks to which the offence exposes the institution itself or the financial system with regard to stability and compliance requirements. Based on these criteria, the cases submitted in 2012 did not lead the committee to impose very large fines. But it may be that the committee applies the profit criterion in the future to other types of offences, such as those relating to business practices.

Obviously, the committee also takes account of the scale of fines applicable at the time when the facts occurred (this scale has considerably increased in the recent period), as it may already have been applied to similar cases either by the committee or by the bodies that preceded it. It thus also takes into account other standard enforcement criteria, such as and where applicable, repeat fines following previous inspections, including when these were not followed by disciplinary measures, or the measures and the commitments undertaken to address the offences.

B | Time taken to review cases

The time taken to review cases is one of the criteria used to measure the effectiveness of enforcement activities.

The average time taken to reach a decision was ten months for the five cases closed in 2012. This includes the post-hearing time taken for deliberation, which is approximately three weeks. At 31 December 2012, the committee had seven outstanding cases, the oldest dating back to a referral on 24 May 2012.

The average time taken to review cases in 2011 was less than seven months. As expected, the introduction of the *rapporteur*, pursuant to the Banking and Financial Regulations Act of 22 October 2010, resulted in longer review times. These reflect the time needed to prepare the report, sometimes following hearings or additional review measures ordered by the *rapporteur* and the gathering of observations that may be required once the report is communicated. Review times are also subject to case-specific factors (number and complexity of complaints, volume) and the behaviour of the parties involved, in particular their propensity to request extensions for the deadlines given to them.



↳ 1) Activity of the Sanctions Committee

↳ 1.2 Decisions handed down in 2012

C | Types of complaint

I 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 firms and those based on laws and regulations governing anti-money laundering and counter-terrorist financing (AML/CTF). Other types of complaints did however give rise to disciplinary proceedings, including delays in filing prudential disclosures with the supervisor, non-compliance with the solvency ratio and (in a first referral on the grounds of business practices), insufficient knowledge about the provisions relating to the right to a bank account.

I Insurance

The first of the two cases opened against insurers concerned a failure to meet the requirements for operating as an insurance intermediary (obligation to be registered with the insurance intermediary registrar – ORIAS – and take out professional insurance) along with breaches of the rules on customer disclosures and the duty to provide advice. The second case involved failures to meet the obligation to provide information and the duty to provide advice.

D | Previous decisions of the Sanctions Committee and results of appeals against its decisions or those of the former *Commission bancaire*

1°) Previous decisions of the Sanctions Committee

a. General questions and procedure

1. *Legal nature of the Sanctions Committee*

By virtue of the combination of Articles L. 612-1, L. 612-4 and L. 612-26 of the Monetary and Financial Code, which provide that the ACP is an independent administrative authority with a College and a Sanctions Committee whose decisions may be appealed before the *Conseil d'État*, and Article L. 311-4 of the Administrative Justice Code, which states that the *Conseil d'État* is the court of sole instance for these appeals, although the Sanctions Committee is organised and operates like a court, lawmakers have not given it this quality. Accordingly, it may not hear constitutional questions (Decision of 10 January 2013, Banque Populaire Côte d'Azur, Procedures 2012-04 and 2012-04 Bis).

2. *Extension of ACP on-site inspections to branches or subsidiaries of banks based outside the European Economic Area – consequences of improper extension of an inspection*

The provisions of the Monetary and Financial Code (Articles L. 612-26, L. 632-13 D. 632-1 and L. 612-24) establish a precise framework and conditions under which ACP inspections of banks may be extended to include branches or subsidiaries based outside the country. Thus, published international or bilateral agreements, to which the code (L. 612-26 and L. 632-13) makes an international extension of on-site inspections subject, cannot be reduced to a mere exchange

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-2012

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, *Conseiller*, committee member, and Yves Breillat, *Conseiller*, 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.

5 PUNISHING VIOLATIONS: ACTIVITY OF THE SANCTIONS COMMITTEE

↳ 1) Activity of the Sanctions Committee

↳ 1.2 Decisions handed down in 2012

of correspondence between the ACP General Secretariat and the staff of the supervisor in question, without rendering the inspection unlawful. In addition, Article L. 632-15, which sets out the conditions under which the ACP may send information to the authorities of states that do not belong to the European Community or to the European Economic Area Agreement, may not be used as the basis for the international extension of an on-site inspection carried out for the ACP (Decision of 24 October 2012, Procedure 2011-02).

Thus, when considering the complaints notified to an institution, if it is possible to distinguish those that are based partially or totally on findings that were unlawfully obtained (and

should therefore be discarded) from those that are entirely based on the findings of the French portion of the inspection, then the non-compliance will not alter the validity of the inspection carried out in France. Furthermore, if the Committee sees that some of the complaints upheld by the College when the proceedings were opened have to be dropped, it is not required to consider to what extent this might have prompted the College, which is solely responsible for determining the merits of taking action, to decide not to open proceedings on the basis of the remaining complaints alone. The Committee is required only, at this stage and in view of the complaints that it deems to be established, to determine the sanction that it believes to be appropriate (same decision).

This decision led to an amendment to the Monetary and Financial Code introduced as part of the review of the Bill on Separating and Regulating Banking Activities: in Article 14 of the draft legislation, which was adopted at the first reading, on 19 February 2013, the National Assembly amended the final sub-paragraph of Article L. 612-26 of the code, wording it as follows: *“on-site inspections may also be extended to branches or subsidiaries based outside the country of enterprises subject to the authority’s supervision, either, in the case of inspections in a State party to the European Economic Area Agreement, pursuant to Article L. 632-12, or, in the case of other States, within the framework of the bilateral agreements provided for in Article L. 632-13 or through a special agreement on such extension from the competent authority with a remit similar to that of the Autorité de contrôle prudentiel et de résolution in France, provided that this authority is subject to professional secrecy requirements. For countries with which France has not signed the bilateral agreements provided for in the same Article L. 632-13, the Secretary General is tasked with obtaining the agreement of the relevant competent authority and for specifying with it, where necessary, the terms for extending the on-site inspection of a reporting institution to its subsidiaries or branches. These terms are brought to the attention of the reporting institution and these entities”*.



3. Interpretation of Article 19 of Executive Order 2009-104 on preventing the financial system from being used for money laundering and terrorist financing

Article 19 of this Executive Order, which transposed the Third AML Directive, instructs institutions to comply with their new due diligence obligations “*in a timely fashion, as assessed on the basis of the risks and no later than one year from the publication of the last of the implementing decrees*” (which happened on 4 September 2009). Failing more specific regulatory provisions, the Committee deemed that while inadequate due diligence with respect to these provisions would entitle the ACP General Secretariat to issue comments on preventive grounds, disciplinary measures could not be taken unless the offence continued after the deadline (Decision of 24 October 2012, Procedure 2011-02).

4. Conditions for opening disciplinary proceedings in the case of a failure by an institution to meet AML/CTF obligations

Article L. 562-7 of the Monetary and Financial Code does not place a formal obligation on the College to record the existence of the special conditions provided for by this article when opening AML/CTF-related disciplinary proceedings: for the legality of the decision to open proceedings not to be affected, it is sufficient that the underlying complaints, which must be established, name at least one of the two categories mentioned in this article, namely “a serious failing of due diligence”, or “deficiencies in the organisation of internal control procedures”. (Decision of 29 June 2012, Banque Populaire des Alpes, Procedure 2011-01).

5. Conditions for rendering decisions with the names removed to preserve anonymity

The Committee specified the circumstances in which it may agree to issue decisions with the names removed to preserve anonymity. It thus agreed to publish its decision of 24 October in a form that did not identify the institution concerned on the following grounds: “[...] *first, a significant portion of the notified complaints were dropped, narrowed in scope, or scaled down; second there were very few individual files in which breaches of disclosure or due diligence obligations were noted, relative to the size of the private banking business within the group of Institution A, which at end-2009 comprised total assets under management of approximately... billion euros, of which... billion euros – and over ... thousand customers – for the French private banking entity*” (Procedure 2011-02).

The Committee also ruled, in its decision of 10 January 2013 on Banque Populaire Côte d’Azur (BPCA) (see below), which had already been disciplined by the *Commission bancaire* for the same offence, that even if the previous decision, which was overturned by the *Conseil d’État* (see below) had been published in a non-anonymous format, the institution could, without breaching double jeopardy rules, have action taken against it and be punished again for the same offences as those that led to the initial sanction, in a decision published if necessary in a non-anonymous format (Decision of 10 January 2013, Banque Populaire Côte d’Azur, Procedures 2012-04 and 2012-04 Bis).

b. On the merits

1. Compliance and AML/CTF oversight obligations at a large bank

In its Decision of 24 October 2012 (Procedure 2011-02), the Sanctions Committee ruled:

- that in a bank with an “executive committee” chaired by the corporate officer or officers, the expression “member of senior management”, referred to by 1° of Article R. 561-38 of the code to identify the person in charge of the

↳ 1) Activity of the Sanctions Committee

↳ 1.2 Decisions handed down in 2012

arrangements for assessing and managing AML/CTF risks, should be considered to imply membership of this committee;

- that the code does not require the member of the management committee who is in charge of the AML/CTF arrangements to have operational responsibilities in this regard, such as that of the Tracfin correspondent, nor does it require the person to exclusively perform this task;
- that in the event of a disagreement between operational and compliance managers within an entity of the group, only a procedure for reporting information on individual files, within the applicable limits of local legislation, can make it possible to establish an oversight system comprising measurement, supervision and control of non-compliance risk at consolidated level, without obliging the central entity to decide on the establishment of business relationships in these individual cases.

2. Obligations in relation to asset freezes

In its decision of 12 December 2012 (Procedure 2011-03, Bank Tejarat Paris - M. Mahdian - M. Fazeli), the Sanctions Committee ruled that:

- credit institutions are required to inform the Treasury of any attempt to circumvent freeze measures, even if the initially intended transaction was not completed, either because the institution refused to carry it out, or because the customer did not go ahead with it, or because the procedures were modified (listed persons removed from SWIFT messages);
- even if the advising bank for a documentary credit is required to pay funds or economic resources only to an exporter, and as such is not in a position to freeze the funds or resources intended for the shipper and, where applicable, the insurer, the documentary credit that the bank helped to establish still ends up making resources available indirectly to these entities. Accordingly, the bank is committing an offence if it takes part

in a documentary credit without checking to see whether the shipper and/or insurer are on the list of persons whose assets have been frozen.

3. Clarification on the personal liability of senior managers

In its decision of 12 December 2012 (Procedure 2011-03, Bank Tejarat Paris - M. Mahdian - M. Fazeli), the Sanctions Committee ruled that Article L. 612-39 of the Monetary and Financial Code, which does not grant it general powers to prohibit the exercise of management functions, did not allow it to impose one of the sanctions provided for in the article (suspension or resignation) on a senior manager who was no longer in office at the time when the Committee ruled on the case. In addition, finding that under the combined provisions of the final subparagraph of Article L. 511-10 and the third subparagraph of Article L. 511-13 of the Monetary and Financial Code, effective determination of the general direction of the business of the French branches of foreign credit institutions must be decided by at least two individuals who are authorised as such by the supervisor, the Committee ruled that the fact that one of these two persons was in fact prevented from fully exercising these functions by the other senior manager, who sought to retain control, did not relieve the first person of liability to disciplinary action, since, in such a situation, the person was required to take such as steps as were necessary to effectively exercise his or her responsibilities for as long as the title of senior manager was held; that seeking to individualise the responsibilities effectively exercised by each of the two co-managers was contrary to the terms of the law, which seeks precisely to ensure that the two individuals jointly determine all areas of the institution's activities under a mutual oversight approach.



2°) Results of appeals against rulings by the former *Commission bancaire* or the Sanctions Committee

a. *Conseil d'État* BPCA ruling, 11 April 2012 (Req. 336839)

In a decision dated 18 December 2009, the *Commission bancaire* issued a reprimand and imposed a 600,000 euros fine on BPCA for a variety of AML/CTF offences.

As part of BPCA's appeal against this decision, the *Conseil d'État* referred a constitutional question to France's constitutional court, which, in Decision 2011-200 QPC of 2 December 2011, declared that the provisions allowing the former *Commission bancaire* (CB) to wield inspection, prosecutorial and enforcement powers were unconstitutional. Accordingly, in its Decision of 11 April 2012 (Req. 336839), the *Conseil d'État* overturned the CB's sanction decision, but specified that since the unconstitutionality referred to in Decision

2011-200 QPC should be assessed solely with respect to the reasoning that founded the ruling, which was derived from the fact that prosecutorial and enforcement functions were not separated within the *Commission bancaire*, the decision did not call into question the *Commission bancaire*'s supervisory measures and findings, or the possibility for the Sanctions Committee of the ACP, which has a segregated organisation, to punish actions that took place under the old laws and rules, on the basis of these inspections.

As a result of these decisions, the complaints notified to an institution by the ACP College may therefore, if established, be punished by the Sanctions Committee, even if these offences predated the establishment of the ACP (Decision of 24 October 2012, Procedure 2011-02) or if the *Commission bancaire* ordered the inspection whose report led to the opening of proceedings (Decision of 29 June 2012, Banque Populaire des Alpes, Procedure 2011-01).

5 PUNISHING VIOLATIONS: ACTIVITY OF THE SANCTIONS COMMITTEE

↳ 1) Activity of the Sanctions Committee

↳ 1.3 Technical resources

Accordingly, the College decided to open new disciplinary proceedings against BPCA, which resulted in this institution being disciplined for the facts noted in the April 2008 report (Decision of 10 January 2013, Banque Populaire Côte d'Azur, Procedures 2012-04 and 2012-04 Bis concerning new disciplinary proceedings by the ACP after the abovementioned *Conseil d'État* ruling of 11 April 2012).

The *Conseil d'État* upheld this interpretation of the effects of Decision 2011-200 QPC on the disciplinary activities of the ACP during the review of the sanction imposed by the Sanctions Committee on Caisse de Crédit Municipal de Toulon (CCMT).

b. *Conseil d'État* CCMT ruling, 30 January 2013 (347357)

In this ruling, the *Conseil d'État* upheld in full the first sanction decision imposed by the committee on 10 January 2011 on Caisse de Crédit municipal de Toulon (CCMT). It affirmed at the same time that the Committee does not have court status, since Article L. 311-4 of the Administrative Justice Code states that the *Conseil d'État* is the court of first and last resort for appeals against its decisions. It also confirmed, this time on *res judicata* grounds (required to support the operative part of a judgement) the interpretation that it had previously given by way of an *obiter dictum* in the abovementioned Ruling 336839 on the scope of constitutional court decision 2011-200 QPC.

1.3 TECHNICAL RESOURCES

The committee's partners (prosecuting authority and defence lawyers) are now familiar with the Committee's paperless working methods, as described in the ACP's first annual reports (see p. 25 of the 2010 Annual Report and p. 161 of the 2011 Annual Report).



Other 2012 highlights

2.1 FIRST MEETING OF ENFORCEMENT REPRESENTATIVES OF THE ACP'S FELLOW EUROPEAN SUPERVISORS

On 14 December 2012, the Committee Chairman hosted a meeting of some 20 representatives of the enforcement functions of the ACP's fellow European supervisors for a working seminar at which EBA and EIOPA were also represented.

Starting from in-depth written contributions prepared using a common framework and covering the organisation and operation of their own enforcement activities, participants were able to share experiences on subjects such as opening and reviewing disciplinary proceedings, hearings and techniques for explaining decisions and previous decisions by appeal courts on these decisions. Time was naturally given over to presenting the Sanctions Committee's paperless working methods. In addition to promoting technical exchanges, the meeting also met the objective of starting up an information discussion network for an area experiencing fast-paced changes.

2.2 CHANGE TO DISCIPLINARY PROCEEDINGS: RAPPORTEURS ARE NO LONGER REQUIRED TO SUGGEST APPROPRIATE SANCTIONS IN THEIR REPORTS

In June 2012, the Sanctions Committee decided that the *rapporteur* should no longer be required to recommend a type and level of sanction in the written report. This change to Article 3 of the Rules of Procedure leaves the prosecuting authority with responsibility for proposing an appropriate sanction. However, although not required to do so, the *rapporteur* can still propose a sanction and may also, where applicable, give an opinion on the proposal made by the College's representative to the hearing. This amendment standardises the enforcement procedures followed by the AMF and the ACP.

6

Playing an influential role in developing the international, European and French regulatory framework

The ACP represents the French supervisory system at international level. It plays an active part in the meetings of European and international bodies in the insurance and banking sectors for prudential, accounting and customer protection issues. In this way it contributes to the objectives of financial stability in Europe.

The International Affairs Directorate is in charge of cross-cutting issues affecting the banking and insurance sectors in the areas of prudential and accounting regulations.

140

ACP involvement in European and international bodies

162

Developments in French laws and regulations

1

ACP involvement in European and international bodies

ACP representatives participated in

213

working groups or sub-groups

ACP representatives chaired

15 groups

EUROPE'S SUPERVISORY ARCHITECTURE

A European Systemic Risk Board (ESRB) has been set up and new authorities (EBA, EIOPA and ESMA) with more powers have been established in the wake of crisis.

■ MACROPRUDENTIAL SUPERVISION

EUROPEAN SYSTEMIC RISK BOARD (ESRB)

General board (Takes decisions)	Steering Committee (Prepares decisions)	Advisory Scientific Committee	Advisory Technical Committee
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Early warning system
Information on systemic risks



Information on microprudential
developments

■ MICROPRUDENTIAL SUPERVISION

European Banking Authority (EBA)	European Insurance and Occupational Pensions Authority (EIOPA)	European Securities and Markets Authority (ESMA)
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NATIONAL SUPERVISORS, INCLUDING THE ACP AND THE AMF

1.1 IN THE INSURANCE SECTOR

A | Europe

The ACP participated actively in the work of the European Insurance and Occupational Pensions Authority (EIOPA), which covered the technical measures required to implement the Solvency II framework, as well as issues of consumer protection, financial stability, crisis management and pension funds.

The ACP was extremely active in all the following EIOPA working groups:

- the Financial Stability Committee (FSC), which monitors and analyses market trends and questions of financial stability;
- the Internal Monitoring Group (IMG), whose objective is to establish measures to prevent, manage and resolve crises based on work conducted within the framework of other committees;
- the Task Force on Crisis Management (TFCM), which seeks to establish crisis management structures within EIOPA;
- the Information Technology and Data Committee (ITDC), which covers all questions relating to IT and data transfer, storage and processing within EIOPA;
- the Review Panel, which is in charge of organising and monitoring peer reviews by EIOPA members;
- the Occupational Pensions Committee (OPC), which is devoted to issues relating to pension funds.

The ACP chairs the Committee on Consumer Protection and Financial Innovation (CCPFI).

The ACP is also present in several working groups that are building the prudential framework for Solvency II:

- the Financial Requirements Expert Group (Finreq), which deals with aspects relating to Pillar 1 (quantitative requirements);
- the Internal Models Committee (IMC);
- the Internal Governance, Supervisory Review and Reporting Expert Group (IGSRR), which covers Pillars 2 and 3;
- the Insurance Groups Supervision Committee (IGSC);
- the Equivalence Committee (EC), which deals with questions equivalence under Solvency II.

All these groups and committees report to EIOPA's Board of Supervisors (BoS), where France is represented by Danièle Nouy, Secretary General of the ACP, and Cyril Roux, First Deputy Secretary General. Danièle Nouy has also been appointed to the EIOPA Management Board, in a sign of France's increased presence in the European authority's governing bodies.

In 2012, ACP representatives participated in over 200 meetings organised by working groups and sub-groups. Although these meetings are mainly held at EIOPA's Frankfurt offices, domestic supervisory authorities may also organise them, and the ACP hosted 23 such meetings at its offices in 2012.

In addition to voicing positions during meetings of the BoS, the ACP was asked to comment on or endorse EIOPA proposals through a written procedure at BoS level on 162 occasions over the course of the year.

↳ 1) ACP involvement in European and international bodies

↳ 1.1 In the insurance sector

a. Preparation of measures to implement Solvency II

Building on work done in 2011 on Solvency II, EIOPA working groups drafted 58 binding standards (Level 3 measures) and 36 guidelines and recommendations (non-binding Level 3 measures) spanning the entire scope of Solvency II. Some gave rise to consultations with industry and, as part of this, to the publication of provisional versions (on ORSA⁴³, reporting). The ACP monitored all of these technical documents, taking responsibility for drafting some of them and contributing to most of them. In addition, a special EIOPA team to which two ACP staffmembers were seconded during summer 2012 examined the consistency of provisions and the wording of standards and guidelines.

b. Omnibus II negotiations

A highlight of 2012 was the complex negotiations on the Omnibus II Directive introduced to amend Solvency II (see inset below). Following the decision by the trilogue parties to conduct an impact study on long-term guarantees, the ACP was actively involved in preparations for the assessment. It is participating in the task force specially created by EIOPA and will be in the front line to deal with industry during the exercise, which is scheduled for 2013. Within the ACP, a six-member team has been specially set up to monitor negotiations on the subject and steer the exercise nationally (see point 3.2 of Chapter 2).

Because of delays in the negotiations and to encourage the profession and supervisory authorities to get ready for Solvency II, EIOPA published a decision on its website on 20 December 2012 to promote early partial application of Pillars 2 and 3. The ACP was one of the first national authorities to sign up and participated actively in defining the optional measures that countries may apply from 2014.



43. Own Risk and Solvency Assessment.

OMNIBUS II UPDATE

In January 2011, the European Commission proposed an Omnibus II Directive (OMD II) to amend Solvency II, which was adopted by the European Parliament in 2009. The initial objectives were to bring the Solvency II framework into compliance with the Lisbon Treaty and the new European system of financial supervision (particularly the creation of EIOPA) and to introduce transitional measures to implement the new prudential regime.

Following the proposal by the Commission, two versions of OMD II were prepared: one by the European Council's Permanent Representatives Committee in September 2011, and the other by the European Parliament's Economic and Monetary Affairs Committee in March 2012.

Trilogues (informal meetings between the European Council, Parliament and Commission to talk about draft Community legislation), which began in April 2012, were intended to produce a version of the directive that could be adopted on the first reading. However, the negotiations were not completed in 2012 and several points are still outstanding (see below), with the result that discussions are set to continue in 2013.

As a direct consequence of the delays in the OMD II negotiations, a "quick fix" directive had to be quickly adopted to push back Solvency II's entry into force from the initial date of 31 October 2012 to 1 January 2014, and the transposition obligation to 30 June 2013.

Points still under discussion include:

-) the relationship between delegated acts and regulatory technical standards (all are non-legislative directly applicable documents adopted by the European Commission and supplementing aspects of the directive; EIOPA is tasked, as technical expert to the Commission, with preparing draft regulatory technical standards). Discussions covered the list and nature of the documents to be drafted;
-) the possibility of exempting institutions from filing certain quarterly statements and a detailed investment statement: the debate centred on the criteria used by national authorities to allow exemptions (life and non-life);
-) the scope of recourse to binding EIOPA mediation;
-) transitional measures:
 - third-country equivalence: discussions covered the duration of transitional equivalence,

- activities under Article 4 of the Institutions for Occupational Retirement Provision (IORP) Directive. Discussions looked at the period for which ring-fenced supplementary occupational retirement funds will remain subject to Solvency I before being subject to Solvency II or, where applicable, to the future IORP II,

- grandfathering of Solvency I capital. The debate concerned the start date for the ten-year transitional period in the switch from Solvency I to Solvency II criteria,

- equities: discussions covered the relationship between the equity dampener (an adjustment mechanism designed to lessen the procyclical effects of market movements on insurers' equity holdings) and changes in the Solvency Capital Requirement (SCR) equity charge (phased in over seven years from 22% to 39 or 49% depending on the nature of the securities).

-) measures to curb volatility: the LTG package, which comprises three main measures: the countercyclical premium added to the risk-free rate in the event of market stress, the matching adjustment, or permanent premium added to the risk-free interest rate to discount certain liabilities meeting several criteria, and a transitional measure consisting of phased-in convergence from Solvency I to Solvency II discount rates for life insurance mathematical reserves.

This last aspect raised the greatest difficulties during the trilogue negotiations. After talks failed under the Danish presidency, the European Council and Parliament asked the European Commission to prepare a long-term guarantee assessment (LTGA) to test the proposed measures on a sample of institutions selected by national supervisory authorities (see point 3.2 of Chapter 3).

An agreement on the assessment's terms of reference was reached on 14 December 2012 and the timetable was approved, including a launch date of 28 January 2013. The conclusions, which will provide the basis for drafting OMD II, are expected in July.

EIOPA and the national supervisory authorities set up the working groups required to carry out the exercise, both at European and domestic level. In particular, EIOPA created a specific task force – in which the ACP participated actively – to draft the technical specifications for the assessment based on the abovementioned terms of reference.

↳ 1) ACP involvement in European and international bodies

↳ 1.1 In the insurance sector

c. Work on equivalence and assessment of supervisory practices

The Solvency II Directive contains specific provisions for insurance and reinsurance companies whose head offices are in countries recognised as equivalent. Following finalisation and publication of the reports on Solvency II equivalence of the frameworks in place in Japan, Bermuda and Switzerland (countries that may be declared to be equivalent as soon as Solvency II comes into force), work began in 2012 on analysing the transitional equivalence of 8 countries (South Africa, Chile, China, Hong Kong, Israel, Singapore, Australia, Mexico), whereby equivalence is recognised temporarily on the basis of streamlined criteria (gap analysis). Assessment of US equivalence is following a different process, with a special committee set up to conduct a bilateral analysis of the two supervisory systems.

Several ACP staffmembers were involved at different periods of the year in this work.

The ACP was also the subject of three peer reviews conducted under EIOPA's supervision. These assessments of the ACP's working methods by European peers covered Solvency II internal models, branches and pension funds.

d. Consumer protection

In a crisis setting, where consumers' trust in the financial sector has been shaken, consumer protection is a very topical subject within Europe, from both regulatory and supervisory standpoints. Europe is currently discussing two pieces of legislation aimed at strengthening customer disclosures and harmonising distribution practices. EIOPA is very active on the question of customer protection, acting through its Committee on Consumer Protection and Financial Innovation (CCPFI). EIOPA published several documents in 2012, including a first set of guidelines (on complaints handling by insurance companies) for which national authorities were required to apply the comply or explain procedure.

) European legislative developments on consumer protection

On 3 July 2012, the European Commission published three pieces of legislation as part of its consumer package. These included the proposed UCITS V Directive (governing UCITS distribution) and two proposals with special interest for the banking and insurance sectors: the proposal for a cross-sector Regulation on Packaged Retail Investment Products (PRIPs) and the proposal to revise the Insurance Mediation Directive (IMD 2).

These proposals are covered by the new European legislative process (following the Lisbon Treaty), which provides that non-legislative general acts that supplement or modify non-essential elements may be delegated to the European Commission. The directive or regulation sets the main guidelines and the Commission, drawing on the expertise of the European supervisory authorities, which submit proposals, is responsible for clarifying certain points of application or for establishing the framework for harmonised implementation by Member States. As a member of EIOPA and EBA, the ACP participated actively in this work.

The proposal for a regulation on key information documents for PRIPs has the dual goal of making it mandatory to supply a summary document containing key information for potential customers, and of promoting the comparability of information provided to customers when purchasing an investment product, irrespective of its nature (financial instrument, insurance policy or bank savings product whose return is determined using a formula or by reference to an index). It would encompass all life insurance policies with a surrender value and exclude insurance policies without a surrender value or whose surrender value is not subject to market fluctuations, occupational pension schemes, equities, bonds and deposits whose rate of return is determined on the basis of an interest rate.

In general, the principles applicable to financial instruments are to be extended to the banking and insurance sectors. The proposal for a regulation sets out detailed principles for customer disclosures; the European supervisory authorities will be required to provide specifications for each section, taking account of the peculiarities of each sector. The summary document would contain key policy information in the shape of FAQs, notably on coverage, fees and costs. Negotiations on this proposal began in September 2012 within the European Council, and the *rapporteur* for the European Parliament published a draft report on 20 December 2012.

The second document of particular interest is the IMD 2 revision. The scope of the directive, which was limited in the 2005 version to insurance intermediaries, is to be extended to all distributors of insurance, including insurers that distribute directly.

Work by the European Commission has drawn on the revision of the Markets in Financial Instruments Directive (MiFID 2), which was proposed on 20 October 2011 and is currently under discussion by the Parliament and the Council. The aim is not only to establish similar requirements no matter what channel is used to distribute insurance policies, but also to have greater consistency in requirements across different sectors.

As the document currently stands, the draft IMD 2 would introduce the ability to sell life and non-life insurance policies without advice, which is a questionable development. The other novel feature is that the proposal would introduce differentiation between professional and non-professional customers using existing MiFID criteria.

IMD 2 should also strengthen the obligations to publish general good rules, harmonise disciplinary measures between Member States, and centralise information on registration of intermediaries with EIOPA. It should similarly strengthen and harmonise expectations in

terms of professional skills. Rules on conflicts of interest and remuneration disclosures are also the subject of much debate.

One section of the draft directive aims to strengthen the requirements for distributing products that are covered by the scope of the future PRIPs regulation. These provisions concern in particular customer suitability and appropriateness tests and the ban on paying commissions to intermediaries that claim to provide independent advice.

EIOPA will have to propose regulatory technical standards to the Commission on professional skills and reporting on breaches and draft guidelines on supervision of tying practices and sanctions.

These two drafts are related and negotiations on one will influence those on the other.

Work by EIOPA on consumer protection and financial innovation

Work in this area is entrusted to the Committee on Consumer Protection and Financial Innovation (CCPFI), which the ACP chairs.

One important discussion covered complaints handling by insurance companies, which gave rise to the publication of guidelines on 14 June 2012. These initial guidelines published by the European authorities led to an in-depth discussion on the comply or explain mechanism, whereby national authorities inform the European authorities whether they are already in compliance or intend to come into compliance, or explain the reasons why they are not following the guidelines.

The ACP anticipated these guidelines by publishing a recommendation on complaints handling on 15 December 2011. Applicable since 1 September 2012, Recommendation 2011-R-05 meets the objectives set by EIOPA, which consist in clarifying the definition of a complaint, enhancing the information provided on procedures for dealing with complaints, organising processing and ensuring follow-

↳ 1) ACP involvement in European and international bodies

↳ 1.1 In the insurance sector

up, in particular in terms of internal control. The discussions on this subject will continue in 2013 with a view to extending the scope of the guidelines to other sectors and distribution channels.

In 2012, the CCPFI conducted work on mapping the powers of competent authorities. A report describing the powers of national authorities in terms of consumer protection was published on EIOPA's website on 14 June 2012. Another report, published in September 2012, took stock of the powers of national authorities in terms of training for insurance intermediaries.

The committee also conducted a review of consumer trends at European level, highlighting marketing issues in payment protection insurance in some countries, the growing presence of unit-linked life insurance policies as well as mounting use of internet aggregators. In accordance with its Regulation and with a view to collecting annual data on these trends, in November 2012 EIOPA published its methodology for collecting data on consumption trends.

In financial innovation, in April 2012 the CCPFI issued a set of best practices for marketing variable annuities. The document notes sub-standard practices observed in Europe, reviews the applicable European rules and provides illustrations to show how supervisors expect them to be applied.

Against the backdrop of the financial crisis, EIOPA looked at cooperation mechanisms for insurance guarantee funds in Europe. The report on this topic reveals a lack of cooperation and standardisation of European mechanisms. Guarantee funds are relatively rare and where they do exist, they do not generally cover all markets. **Based on its national experience, the**

ACP is calling for broader coverage of insurance markets by domestic guarantee funds as well as enhanced cooperation by these mechanisms across Member States.

e. Financial stability

In 2012, the Financial Stability Committee (FSC) published two reports on financial stability and established a quarterly dashboard for risk in the insurance sector based on quantitative data gathered from institutions and discussions by the group's members. The FSC provided contributions in this regard to the analyses by the Joint Committee with EBA and ESMA as well as input to the work by the European Systemic Risk Board. It also participated in the work of other EIOPA groups. For example, it was entrusted with identifying the data required for financial stability work in the future Solvency II reporting framework. The ACP participated in all of these projects.

f. IORP Directive

The European Commission is planning to review the Institutions for Occupational Retirement Provision (IORP) Directive in summer 2013. As part of this, it sent EIOPA a request for a technical opinion in March 2011. Building on the response that it provided earlier in the year, EIOPA conducted a quantitative impact assessment between mid-October and mid-December 2012. The ACP actively participated in drafting the technical specifications for the impact assessment and suggested to France's professional federations that their members could carry out the exercise on a voluntary basis. The ACP will also be involved in analysing the results and drafting the report to be submitted to the European Commission.

B | International Association of Insurance Supervisors (IAIS)

IAIS⁴⁴ 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 contributes to the technical work conducted by the specialised committees of the IAIS, including:

- the Financial Stability Committee (FSC), whose role is to coordinate the activities of the IAIS with those of the Financial Stability Board (FSB) and the G-20 and to develop, with the Technical Committee, macroprudential tools to better capture and prevent risks to financial stability;
- the Technical Committee, which is responsible for preparing international standards for effective and transparent supervision to limit the scope for regulatory arbitrage by insurers. It is working to prepare a common framework for the supervision of internationally active insurance groups (IAIGs);
- the Implementation Committee, whose goals include implementation of standards, assessment of their impact and cooperation between supervisors.

In 2012, the ACP participated in 14 meetings of these committees or their sub-committees. It was invited to speak in October at the annual conference in Washington D.C. as part of a panel on consumer protection.



Following on from work conducted in 2011, the ACP was involved in efforts to set up a common prudential framework for internationally active groups (ComFrame). This work was the subject of a new public consultation in summer 2012. With the project now well underway, the plan is to test quantitative and qualitative measures in the coming years.

In addition, a draft methodology for identifying global systemically important insurers (G-SIIs) was prepared and put out to a consultation by stakeholders. Within this framework, several data gathering exercises were conducted to refine the identification of insurers that might qualify as systemically important. Proposed measures to be implemented by G-SIIs were also the subject of a public consultation. ACP staff were involved in these efforts (see point 3.2 of Chapter 2).

44. The International Association of Insurance Supervisors (IAIS) was established in 1994. A Swiss non-profit organisation, 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) ACP involvement in European and international bodies

↳ 1.1 In the insurance sector

The ACP was the subject of two IAIS peer reviews on the application of insurance core principles, whose results were submitted to the FSB. The ACP also answered several questionnaires covering,

among other things, the provisions applicable to branches and financial conglomerates, and completed the Key Insurance Risks and Trends Survey.

WORK BY THE ACP TO STRENGTHEN AML/CTF AT INTERNATIONAL LEVEL

The Financial Action Task Force (FATF) adopted new recommendations in February 2012. With a view to starting a new cycle of mutual evaluations at end-2013, work in 2012 concentrated on drafting a new evaluation methodology, which was adopted in February 2013. The ACP was closely involved in questions covering the evaluation of financial institution supervision.

To take account of the revision to the FATF recommendations, the Basel Committee's AML/CTF group, which is chaired by the ACP, and the IAIS financial crime working group began updating their AML/CTF guidelines⁴⁵.

Within the Anti-Money Laundering Committee (previously known as AMLTF), which reports to the Joint Committee of the three European authorities (EBA, EIOPA and ESMA), the ACP participated actively in discussions on the supervision of e-money issuers and distributors, which led to the publication of a report on the topic in December 2012⁴⁶. The ACP also helped draft a Supervisory Cooperation Protocol between home and host supervisors of agents and branches of payment institutions in host member states, which was published in July 2012⁴⁷.

45. « *Customer due diligence for banks* » (2001) and « *Consolidated KYC Risk Management* » (2004) for the Basel Committee, « *Guidance paper on AML and CFT* » (2004) for the IAIS.

46. <http://www.eba.europa.eu/cebs/media/joint-committee/JC-2012-086--E-Money-Report---December-2012.pdf>

47. https://eiopa.europa.eu/joint-committee/index.html?no_cache=1&cid=4301&did=25098&sechash=0667c8be

1.2 IN THE BANKING SECTOR

The ACP was particularly active in international and European bodies in 2012. As part of its work on developing prudential regulations, it participated in 52 international groups and sub-groups of the Basel Committee, the EBA, the Joint Forum, the Joint Committee on Financial Conglomerates and the FSB. ACP representatives attended 199 international meetings and 106 national meetings. ACP representatives also responded to 200 written procedures in 2012.

The ACP's international and European activities in the banking sector also included its work on accounting issues (see 1.3 below), consumer protection, supervision and cooperation.

A | In Europe

The ACP's action in Europe is primarily related to the proposed CRD 4, which will transpose the reform of Basel III adopted by the Basel Committee at the end of 2010 into European law. CRD 4 actually consists of a Capital Requirements Directive (CRD 4), which will have to be transposed into national law, and a Capital Requirements Regulation (CRR), which is directly applicable. A phase of trilogue involving the European Parliament, the Council and the Commission has been underway since May 2012 to reach an agreement on the content of the reform and to adopt it using the codecision procedure. The ACP continued to provide technical support to the General Directorate Treasury in CRD 4 negotiations by attending all meetings of the Council's working groups that were open to experts up until May 2012 and then by contributing to preparations for policy meetings and responding to the large number of written procedures from the Council.

The ACP's action was more direct in the case of the EBA. Its representatives on the Board of Supervisors are Danièle Nouy, Secretary General of the ACP, and Frédéric Visnovsky, Deputy Secretary General. The EBA's regulatory work in 2012 was primarily aimed at preparing for and anticipating implementation of CRD 4. This work includes drafting technical standards and guidelines.

a. Technical standards

Under CRD 4, the EBA is responsible for drafting technical standards to clarify some of the provisions in the Regulation or the Directive and to ensure that the reform is implemented in a harmonised manner. Since 2011, the ACP has contributed to drafting the 84 technical standards that the EBA has to produce. These standards will then be adopted by the European Commission. They will be directly applicable under national law and will replace ACP's instructions and the decrees issued by the finance ministry in France.

The EBA conducted public consultations on 11 technical standards in 2012. These consultations were backed up by national awareness-raising and information campaigns. Industry professionals were familiarised with the upcoming changes at several meetings hosted by the ACP. Finalisation of the standards hinges on the adoption of CRD 4, but the progress already achieved should mean that the reform will be implemented shortly after it has been adopted. In addition, publication of these standards will facilitate stakeholders' preparations.

The main standards drafted in 2012 concerned prudential reporting and capital.

↳ 1) ACP involvement in European and international bodies

↳ 1.2 In the banking sector

b. Prudential reporting

CRD 4 harmonises prudential reporting in Europe. EBA is finalising implementation of technical reporting standards that contain the templates and instructions for financial reporting (FINREP) and common reporting (COREP). COREP will now cover the ratios for solvency, large exposures, liquidity and leverage. Separate consultations on these different components were held in 2012. Reporting templates for asset encumbrance, non-performing loans and restructured loans are now being developed.

In the specific case of FINREP and the section of COREP dealing with solvency and large exposure ratios, several changes were made following the consultation held at the end of 2011. These changes were made in response to:

- remarks made during the consultation. The EBA held two meetings with industry representatives and the ACP held six briefings for French institutions;
- the needs expressed by the European Systemic Risk Board for macroprudential supervision;
- the search for synergy with the reporting plans developed by the FSB.

The ACP has been very active in the EBA working groups, particularly the plenary group responsible for accounting, reporting and audit, chaired by Frédéric Visnovsky, the ACP's Deputy Secretary General, and in the coordination bodies linking the various authorities. The ACP continued work to maintain a balance between providing supervisors with the information they need to do their job and preventing an excessive reporting burden for institutions.

In France, the accuracy of SURFI⁴⁸ forms has been enhanced by introducing crosschecks between reporting templates. A form was developed to improve information on remuneration. For this

purpose, the ACP worked closely with industry professionals at development and explanation meetings before the rules were presented to the Consultative Committee on *Prudential Affairs* (see box on the Committee's activity in 2012).

The ACP conducted a survey for the purpose of recasting the e-Surfi website to enhance the information provided to industry professionals. The website provides authorised institutions with all the information they need to fulfil their reporting obligations.

c. Own funds

Under CRD 4, some major aspects of the procedures for calculating own funds are to be handled using technical standards. The ACP was closely involved in developing these standards, which are of key importance for French institutions. Three draft standards relating to various aspects of own funds were published in 2012:

- a first technical standard was submitted for consultation between 4 April and 4 July 2012. It deals with definitions needed to calculate own funds, such as foreseeable expenses, certain features of instruments issued by mutual and cooperative banking groups, the definition of distributable income and the thresholds at which prior authorisation is required to redeem capital instruments;
- a second technical standard dealing with the definition of consolidation and aggregation methods for own funds, used to calculate the capital adequacy of financial conglomerates subject to supplementary supervision, was submitted for consultation between 31 August and 5 October 2012;
- a third technical standard dealing with the identification of mutual or cooperative institutions, within the meaning of CRD 4, was submitted for consultation between 9 November and 21 December 2012.

48. Unified financial reporting system.

Furthermore, the EBA published a consultation draft of a technical standard on disclosure requirements for own funds. The standard covers, among other things, the composition of own funds, details of capital instruments, and reconciliation of financial statement items with components of own funds. It is based on the relevant recommendations adopted by the Basel Committee at the end of 2011.

Other technical standards dealing with major aspects of own funds, such as deductions or allowances for minority interests, are being developed and are part of EBA's work programme for 2013.

d. Other areas

CRD 4 calls for technical measures relating to many other aspects of the reform. More specifically, technical standards regarding liquidity are called for in the case of certain parameters used to calculate the short-term Liquidity Coverage Ratio (LCR). Furthermore, since the new liquidity ratios under CRD 4 will not enter into force until the end of an observation period, the EBA has been engaging in major efforts to analyse and track liquidity with a view to drafting several reports for the European authorities, including one on the impact that the introduction of the LCR will have in Europe, a report on the definition of liquid assets and another on the impact of the introduction of the Net Stable Funding Ratio. The ACP has contributed actively to this work and the findings will be of key importance for the quality of European liquidity standards.

Other regulatory work at the EBA concerns market risk. The ACP, which chairs the market risk technical group, has provided significant resources to carry out this work. The group deals with such topics as the procedures for prudent valuation of positions. For the purposes of CRD 4, all positions that are measured at fair value in the trading book or the banking book are subject to prudent valuation. This means

that the dynamic nature of positions in the trading book needs to be taken into account. The prudent valuation rules set out in the Banking Directive (CRD) back in 2006 have resulted in only limited value adjustments by banks in most cases. Consequently, the new regulatory framework will require additional adjustments. They should be made to Common Equity Tier 1 own funds (CET 1). In November 2012, the EBA published a Discussion Paper on Draft Regulatory Standards on Prudent Valuation for a consultation period of two months. The main proposals in the paper concern additional valuation adjustments (AVAs), which are made to the fair value reported in the balance sheet. The enforcement and validation tools for these valuation adjustments will adhere to the principle of proportionality.

↳ 1) ACP involvement in European and international bodies

↳ 1.2 In the banking sector



e. Customer protection and financial innovation

The ACP's activity at the European level also included developing the regulatory framework for protecting the customers of banks and financial firms.

It worked closely with the *Banque de France* and the General Directorate Treasury on the revision of Directive 2007/64/EC on payment services in the internal market. The ACP has supported the *Banque de France's* efforts in this area, rich in technical innovation, by backing practical proposals made to the European Commission to ensure customers' maintain full trust in payment instruments.

In addition, when the EBA was established in January 2011, the ACP joined the working groups relating to customer protection and financial innovation within the Sub-Committee on Consumer Protection and Financial Innovation (SCConFin). In 2012, this working group produced a joint warning with the ESMA about contracts for difference, which are financial instruments based on the variations in the price of a financial product without actually having to hold the instrument concerned, and drafted the delegated acts related to the future Mortgage Credit Directive.

f. Guidelines

In accordance with Article 16 of the European Regulation establishing the EBA, guidelines are issued for the purpose of “*establishing consistent, efficient and effective supervisory practices*” and “*ensuring the common, uniform and consistent application of Union law*”. The guidelines may be addressed to authorised institutions or the competent authorities.

Unlike technical standards, EBA guidelines are not legally binding but a comply-or-explain procedure is planned to encourage national supervisors to implement them. National supervisors are therefore required to tell the EBA whether they intend to apply the guidelines published or explain why they will not implement some or all of the guidelines. This information is disclosed on the EBA website. To date, the ACP has implemented all EBA guidelines fully. In most cases, this has required national measures, such as ACP instructions or clarifications in the notice on the procedure for calculating the solvency ratio. Implementing EBA guidelines has been handled in particular by the ACP's Consultative Committee on *Prudential Affairs* (see box below).

ACTIVITY OF THE CONSULTATIVE COMMITTEE ON PRUDENTIAL AFFAIRS

The Consultative Committee on *Prudential Affairs* was established by the ACP College's Decision 2010-C-20 of 21 June 2010. The Committee is responsible for giving an opinion on proposed instructions, notices, guidelines and explanatory guides published by the ACP, prior to their adoption. The Committee examines all the proposed texts submitted to the College, except for those dealing with money laundering and money changers.

The Committee met four times in 2012 and examined 10 draft texts dealing with:

- establishing and amending reporting templates, such as the one for coverage ratio of mortgage credit institutions and home loan companies;
- the application for the ACP's opinion on the nomination of statutory auditors and special auditors;
- the contents of an application for an amendment to a substitution agreement;
- implementing the EBA guidelines on stressed Value at Risk (VaR) and the Incremental Risk Charge (IRCs);
- the notice on procedures for calculating solvency ratio;
- amending authorisation application forms for credit institutions, investment services providers and investment firms;
- establishing questionnaires on the enforcement of the rules to ensure protection for the customers of banks and insurance companies.

The guidelines adopted by the EBA in 2012 dealt with:

- stressed Value at Risk and incremental default and migration risk charges (IRCs). The guidelines dealing with stressed value at risk (VaR) and IRC concern institutions that use internal models to calculate capital requirements for market risk. The guideline on stressed VaR defines best practices for identification and annual review of the stressed period, the calculation methodology and the use test for the stressed VaR. The IRC guideline specifies the scope of the charge, meaning the instruments subject to the IRC, the requirements relating to probabilities of default and the transition matrices used, simulation of rating migrations and defaults over a one-year capital horizon,

best practices for profit and loss (P&L) valuation in the event of a rating migration or default (impact on market prices and on the computation of P&L), the computation of liquidity horizons, validation of IRC models and use tests. This guideline was implemented in France by means of an update to the notice on procedures for calculating the solvency ratio;

- changes relating to the advanced measurement approach to operational risk. These guidelines specify the situations where institutions authorised to use the advanced measurement approach must inform supervisors of changes in their models and apply for approval. This guideline has been implemented in France through ACP Instruction 2011-I-10;

↳ 1) ACP involvement in European and international bodies

↳ 1.2 In the banking sector

■ harmonisation of data collection relating to remuneration practices⁴⁹. These guidelines gave rise to the adoption of ACP Instruction 2012-I-05, which includes three templates that authorised institutions are required to complete and file with the ACP.

On 22 November 2012 the EBA also published guidelines on the fitness and properness of members of the management body and key function holders. Implementation of these guidelines will require an adaptation of the French legal framework. This adaptation is part of the bill on separation and regulation of banking activities.

B | International activity

The activity of the Basel Committee remained intense in 2012. The Committee sought to enhance and supplement Basel III through work on several major prudential issues, such as liquidity, counterparty risk, securitisation and market risks. At the same time, the Committee set up a system for monitoring and assessing implementation of Basel III by its members to ensure the effectiveness of the reform. **The ACP was closely involved in all this work through its participation in more than 20 working groups devoted to these issues.**

a. Regulatory work

The ACP's contribution to the Basel Committee's discussions and work on changes to the international regulatory framework produced several analyses and surveys and, in many cases, dialogue with the industry to achieve a better understanding of the stakes and impacts of the planned changes. As in previous years, the ACP continued to participate in the half-yearly quantitative impact surveys on Basel III that are coordinated by the Committee. The ACP collected and validated the data from the

participating French banks and was directly involved in the Committee's analytical work. **For example, the ACP sent experts to work with the international teams analysing the data. The impact studies cover all the Basel III components: solvency, liquidity and leverage.**

) Liquidity

One priority for the ACP in 2012 was the establishment of international liquidity rules that are sufficiently prudent and free of adverse effects on the interbank market and the financing of the economy. **For this purpose, the ACP made a very active contribution to the Working Group on Liquidity (WGL) for the definition of the Liquidity Coverage Ratio (LCR) aimed at ensuring that an institution is able to cope with a sudden liquidity shock by relying on assets that the regulator deems liquid.** The negotiations lasted for several months and resulted in a revision of the ratio. The Group of Governors and Heads of Supervision (GHOS) approved the revision of the LCR by the Basel Committee at the beginning of the year. The Basel Committee published the final version of the ratio on 6 January 2013. The LCR will be progressively implemented from 2015. In the meantime, the ACP will continue to take part in the WGL. The Group's 2013 work programme deals with important aspects of liquidity risk, including the consequences of the ratio for monetary policy transactions, the definition of market liquidity indicators for securities included in the numerator of the ratio and disclosure procedures for the LCR.

) Counterparty risk

The treatment of counterparty risk was a major topic for the Basel Committee with regard to solvency in order to clarify and supplement certain aspects of Basel III. The ACP contributed to the work of the Committee's Risk Measurement Group, which is responsible for monitoring risk management and modelling

49. Guidelines on the remuneration benchmarking exercise and Guidelines on the data collection exercise regarding high earners.

techniques. This work clarified certain aspects of the Credit Valuation Adjustment (CVA), using the Committee's FAQ⁵⁰ procedure⁵¹. Furthermore, interim rules for capitalisation of banks' exposures to central counterparties were adopted⁵². **The ACP is part of the working group responsible for developing a longer-term regulatory arrangement for this purpose.**

) **Securitisation**

The ACP continued its participation in the Basel Committee's work on a new prudential framework for securitisation positions in the banking book. The Committee wishes to draw on the lessons learned from the subprime crisis and make regulatory capital requirements for securitisation positions more prudent, less procyclical and less reliant on external ratings.

It published a consultative document in December 2012 presenting improvements to the current formulae and introducing new methods for calculating capital requirements that are less sophisticated but more conservative. The hierarchy of the approaches to be applied will also be reviewed.

The ACP worked with the other members of the Basel Committee on calibrating the various approaches in order to make them sufficiently prudent with regard to the potential losses simulated by models on the portfolios underlying securitisation instruments and their impact on the different tranches. The ACP also played driving role in developing new hierarchies seeking to promote the use of internal risk analysis models and to ensure fair competition between the different countries belonging to the Committee. This work will continue in 2013.

) **Fundamental review of trading book capital requirements**

The Basel Committee's reforms of the market risk supervision framework are aimed at correcting

the shortcomings revealed by the financial crisis. These reforms should lead to a fundamental review of the regulatory treatment of trading, in addition to the enhanced requirements already included in Basel III. The fundamental review by the Committee's Trading Book Group led to a public consultation in the third quarter of 2012 on the main principles of the future framework. The specific purpose of the future framework is to reduce the scope for regulatory arbitrage between the banking book and the trading book, by tightening up the eligibility requirements for including positions in the trading book and by ensuring stricter supervision of banks' compliance with these requirements. The review will also cover risk measurement procedures for the internal-models-based approach, as well as for the standardised approach, in order to give a better account of the actual liquidity of positions in the trading book.

More generally, the ACP has been following the discussions of the Basel Committee very closely to ensure that the future rules are more risk-sensitive and to improve the tools available to supervisors to verify and, when necessary, challenge the risk-measurement methodologies that institutions use and the resulting determinations of capital requirements.

) **Systemically important financial institutions**

The Basel Committee continued to work with the Financial Stability Board on the regulatory treatment of systemically important institutions. After publishing an updated list of the largest global systemically important banks at the end of 2012, the Basel Committee also worked on rules for domestic systemically important banks (see section 3.1 of Chapter 2).

The ACP helped to draft principles applying to systemically important banks in order to ensure they have risk data collection and measurement systems that are appropriate

50. Frequently Asked Questions.

51. Cf. <http://www.bis.org/publ/bcbs237.htm>

52. Cf. <http://www.bis.org/publ/bcbs227.htm>

↳ 1) ACP involvement in European and international bodies

↳ 1.2 In the banking sector

for their size and complexity by 2016. The “Principles for effective risk data aggregation and risk reporting” were published on 9 January 2013.

) Core principles for effective banking supervision

In 2012, the Basel Committee published a revised version of its “Core principles for effective banking regulation” that specifically incorporates the lessons learned from the financial crisis and the resulting regulatory developments. These principles define the minimum standards for banking supervision and regulation. They are used to assess banking supervision systems for the purposes of international institutions’ financial sector assessments, such as the one conducted in France in the second half of 2012.

b. Work to enhance the application of Basel III

In addition to its work on strengthening international banking regulation, the Basel Committee established an implementation review process in 2012 to assess the implementation of Basel III by the member countries. **The ACP supports this process, which is intended to ensure consistent and full implementation of reform at the international level. The ACP was directly involved in the work and provided the Committee with resources for its review team (see box below).** This work will continue in 2013 and in the following years.

BASEL III IMPLEMENTATION REVIEW

In 2012, the ACP played a large part in the Basel Committee’s Basel III implementation review process. The process consists of three levels.

Level 1 ensures that each country adopts Basel III in accordance with the agreed international timetable.

Level 2 ensures that each country’s regulations are consistent with the minimum Basel III requirements. This review is conducted by teams of experts and includes a detailed examination of regulations and on-site reviews. The ACP took part in two of the first four reviews conducted by the Committee. These reviews dealt with proposed regulations in the United States and regulations in Singapore. The *Banque de France* led the review of Japan’s regulations. The ACP will take part in more reviews in 2013. All the member countries of the Basel Committee should eventually be reviewed.

Level 3 ensures the consistency of risk-weighted assets (RWAs) across banks and between countries, as measured under the regulations. The review looks at banking books and trading books.

The ACP took part in two of the Committee’s working groups that were established for this purpose and it acted as co-chair of the Standards Implementation Group on the Trading Book.

The first review of the trading book was published on 31 January 2013. The analysis of publically available information and an RWA comparison exercise based on hypothetical trading books showed major discrepancies between banks that are only partially explained by differences in business models and/or portfolio allocations. The comparison of RWAs based on hypothetical portfolios covered 15 banks, most of which received an on-site visit from the review team. It shows that, regardless of the portfolio allocation, more than 75% of the differences in RWAs calculated by banks can be explained by their choice of different risk models and nearly 25% of the difference could be explained by the decisions made by the national supervisory authorities regarding increases to the capital requirements calculated based on the models.

c. Work on regulating business practices at the international level

In the insurance and financial market sectors, the International Association of Insurance Supervisors (IAIS) and the International Organization of Securities Commissions (IOSCO) are forums for international collaboration between supervisors and regulators on prudential matters and consumer protection. In contrast, the banking sector has no such international organisation. The Basel Committee deals solely with the prudential aspects of regulation. The OECD and the Financial Stability Board have also stressed the lack of an international organisation responsible for the protection of banks' customers.

The International Financial Consumer Protection Network (FinCoNet) is an informal network of supervisors that is due to become an international organisation in 2013. Its articles of association are very broad, encompassing consumer protection in the banking, securities and insurance sectors. But its 2012-2014 work programme is clearly focused on protecting bank customers with regard to deposits and loans and it follows the recommendations of the Financial Stability Board.

The ACP also contributes to the work of the OECD/G20 taskforce on financial consumer protection, that follows the high-level financial consumer protection principles approved by the G20 at the end of 2011.

d. Cross-cutting issues

) Shadow banking

At the instigation of the G20, acting through the Financial Stability Board, international supervisors focused on the issue of shadow banking in 2011 and 2012. Shadow banking is defined as *"a credit intermediation system made up of entities and activities operating outside the regulated banking system"*.

The ACP is part of several Basel Committee working groups that have examined the risks that banks might incur through links to shadow banking. The Committee has considered indirect regulatory measures that could be implemented to mitigate the risks related to this sector and to regulate it. More specifically, the Committee looked into the timeliness of changes to prudential regulations dealing with the scope of prudential consolidation (see box p. 158), the calculation of large exposures and the risk-sensitivity of the weightings used to calculate the solvency ratio.

At the European level, the ACP upheld France's positions in the green paper on shadow banking that the European Commission published in March 2012. In its joint response made with the other relevant French authorities (*Banque de France*, General Directorate Treasury and the *Autorité des marchés financiers*), the ACP supported the Commission's approach, consisting in developing a proportionate regulatory response to shadow banking, while insisting on the effectiveness of a broad-based definition of credit institutions subject to prudential banking regulations – as is the case under existing French regulations – in order to limit the unregulated sphere to the greatest possible extent.

↳ 1) ACP involvement in European and international bodies

↳ 1.2 In the banking sector

CONSOLIDATION OF STRUCTURED ENTITIES: APPLICATION TO SHADOW BANKING ENTITIES

As part of the work on shadow banking that the Financial Stability Board assigned to the Basel Committee, the ACP has chaired the working group that will assess whether application of consolidation rules, in particular accounting consolidation rules, make it possible to transfer the risk exposure of shadow banking entities in banking groups' consolidated balance sheets.

Control is a key component of the analysis to determine whether shadow banking entities should be included in consolidated balance sheets. At present, the definition of control in the International Financial Reporting Standards (IFRS), used by the leading European banking groups, is different from the definition in the United States Generally Accepted Accounting Principles (US GAAP). When voting rights constitute the main decision-making power, both IFRS and US GAAP deem that holding the majority of voting rights constitutes control (with rare exceptions that must be explained). In addition, IFRS recognise "*de facto control*", meaning control exerted even without holding a majority of the voting rights. In this case, the consolidation decision relies on a case-by-case analysis and the exercise of judgment.

Analysis of control is much more complex when voting rights are not a key aspect of governance. This is the case in particular for shadow banking securitisation and arbitrage vehicles, which are self-steering to some extent. The greatest difference between the IFRS and US GAAP approaches at present concerns such special purpose vehicles set up for specific and narrowly defined purposes. IFRS define control on the basis of exposure to the majority of the «risks and benefits», whereas US GAAP define control as the cumulative fulfilment of the following criteria: (i) power to direct the most significant activities, (ii) exposure to the variable returns of the entity and (iii) the ability to affect those returns through its power over the entity. Implementation of these principles relies on an analysis of a whole set of facts and circumstances and a large degree of judgment.

The International Accounting Standard Board's (IASB) publication of new standards for consolidation of controlled entities (IFRS 10 and IFRS 12) and the information to be disclosed in the notes to the consolidated financial statements will partially reduce the differences with American accounting standards. These new standards should be applied in the European Union by 1 January 2014 at the latest.

) Financial conglomerates

The Joint Forum made up of the Basel Committee, IAIS and IOSCO published an updated version of its principles for the supervision of financial conglomerates in 2012. The ACP was the co-chair for this initiative and played a driving role. These principles define an international benchmark prudential framework for supervision of financial conglomerates, particularly with regard to governance, as well as management and monitoring of solvency risk and liquidity risk.

1.3 WORK RELATING TO ACCOUNTING AND AUDITING

The ACP's action in these areas takes many forms. It works within the framework of convergence efforts between the IASB and the Financial Accounting Standards Board (FASB), as well as on many European and French projects relating to accounting standards, financial reporting and auditing. The ACP took an active part in many working groups set up by French bodies (the French accounting standards authority, ANC), European bodies (EBA, EIOPA) and international bodies (Basel Committee and IAIS). The ACP took part in 29 working groups and sub-groups, including 17 international groups, which broke down into 11 Basel Committee groups and 6 EBA groups, taking part in a total of 105 meetings and conference calls (including 61 international meetings and calls). In this work, the ACP made sure that the lessons learned from the financial crisis are fully drawn on to ensure accurate representation of economic models and proper reporting of risk exposure in financial institutions in their financial statements.

A | Action relating to accounting

a. Accounting projects

) Proposed revision of the standard on financial instruments

The ACP played a very active role in the various discussions organised by the Basel Committee and EBA, as well as by the French accounting standards authority, as part of the work on recasting IAS 39 on financial instruments.

The Basel Committee published the supervisors' minimum expectations with regard to impairment of financial instruments based on the G20 recommendation. In addition to the need for the IASB and the FASB to adopt convergent approaches, the Basel Committee stressed the core principles that it will rely on

to assess the proposed models. These principles insist on the need to:

- establish a set of provisioning methods for early identification and accounting recognition of expected losses;
- consider the experience acquired over a complete business cycle to estimate expected losses;
- promote accounting principles that match credit institutions' credit risk management practices, which means that the provisioning method will have to be applicable to individual loans as well as to both open and closed loan books.

During work on hedge accounting, the ACP ensured that its views were heard, particularly in the case of projects conducted by the French accounting standards authority. The work was divided into two parts: general hedging rules and "dynamic" portfolio hedging (i.e. hedging portfolios that change over time as a result of new transactions and the maturing of existing transactions). More specifically, the ACP is promoting more accurate accounting of the real nature of management of hedged risks and greater rigour in the designation and cessation of hedging transactions in financial statements. Nonetheless, there are still areas of uncertainty concerning dynamic portfolio hedging or "macro-hedging", which are quite widely used by French credit institutions.

In 2012, the IASB undertook a sweeping review of macro-hedging rules, which will not be completed until 2014 at the earliest. The ACP will continue to monitor these issues very closely to ensure that the risk hedging practices deemed to be appropriate can be accurately reported in financial statements.

When the time comes, the question of when to implement these new provisions will arise, and more specifically, the question of how to coordinate rapid implementation of these improvements with the implementation of new provisions relating to insurance contracts, at least in the case of the companies concerned.

↳ 1) ACP involvement in European and international bodies

↳ 1.3 Work relating to accounting and auditing

) Proposed standard for insurance contracts

IFRS 4 phase 1 is a transitional standard for now, since the IASB did not manage to complete its work on insurance contracts in time for the European transition to IFRS in 2005. This standard allows groups to continue applying the specific accounting standards of each country, meaning that insurance groups' IFRS-compliant financial statements are harder to compare.

The IASB is aware of the shortcomings of the current standard and has continued its work. The IASB published a preliminary exposure draft in July 2010. This draft was criticised because of the impact of the principles it set out on income formation and volatility, which are not necessarily representative of insurance companies' long-term management model.

In view of the responses it received, the IASB decided to submit a new version of the standard for comment in 2013. The ACP has monitored the work of the IASB since the new discussions started and has taken part in the work of the EIOPA and the IAIS on the project.

) The ACP's active role in the work of the French accounting standards authority

The ACP has played a very active role in a working group established to make a straight transfer of the accounting rules contained in the legal codes governing insurance into a regulation issued by the French accounting standards authority (*Autorité des normes comptables* – ANC) in conjunction with the transposition of Solvency II and thus ensure compliance with the provisions of Order 2009-79 of 29 January 2009, which established the ANC.

The ACP has also taken part in other work done by the ANC on accounting standards for parent company financial statements of insurance entities, mutual insurance companies and unions and provident institutions, especially the work carried out when mutual insurance companies and unions became liable for tax.

b. Analysis of Pillar 3 disclosures

In 2012, the EBA continued its analysis of information published by a sample of 19 European banks under the Pillar 3 disclosure requirements. This analysis was conducted for the fourth year in a row and focused on the disclosures relating to the 2011 financial year in areas where shortcomings had been found in previous years, as well as on the new requirements linked to the implementation of CRD 3, which take account of the amendments made under Basel 2.5. This work highlighted the efforts that European banks have made to improve their disclosures, and, more specifically, disclosures about capital and remuneration, as well as their efforts to comply with the new requirements under CRD 3. Nonetheless, EBA found that there are still areas for improvement, particularly regarding disclosure of credit risk (IRB approach and securitisation) and market risks. Some of these shortcomings stem from the first implementation of the new requirements under CRD 3 (securitisation, market risks), but others had already been identified in previous assessments and their persistence calls for further action.

At the same time, a survey was made of European banks' disclosures relating to the 2011 financial year focusing on the measures implemented or planned to prepare for the transition to the new capital requirements defined under the Basel III Accord and on the EBA's tests relating to European banks' capital requirements. This survey showed that the quality of these disclosures varies greatly.

Overall, the EBA was able to identify some best practices in all areas and has encouraged banks to adopt them.

In addition, in light of its findings, the EBA decided that it would be helpful in 2013 to provide further explanations on a number of matters relating to the purpose and expected content of the Pillar 3 disclosures. In 2013, the EBA is continuing its action to improve the quality and comparability of disclosures, in coordination with banks and users, where appropriate.

In France, the ACP analysed the 2011 annual reports from a sample of 14 European banks and found a number of points requiring attention, which it mentioned on the different account closing dates organised by auditing firms.

B | Audit work

Accounting data constitute by far the main base for calculating prudential ratios. Accordingly, the ACP attaches great importance to the quality of auditing in banking and insurance entities. This explains why the ACP plays an active part in the work done at the European level (EBA, EIOPA, European Commission) and internationally (Basel Committee and IAIS). The objective is to promote the emergence of best practices for auditing, in the context of increasingly complex disclosure requirements and high expectations for auditors.

In 2012, the ACP's work focused primarily on answering the call for comment by the European Commission regarding the proposed Regulation and Directive for auditing, on the answers given to the International Auditing and Assurance Standards Board regarding its proposed revision of the standard dealing with the international audit report format (IAIS, Basel Committee, EBA) and on planned revisions of the implementation guidelines stipulating best practices for relations between auditors and supervisors (joint work by IAIS and the Basel Committee at the request of the FSB).

The publication of the proposed audit Regulation and Directive was an opportunity for the ACP to take part in a French working group set up by the Statutory Auditing High Council and to advocate such principles as:

- no limits on fees for tasks carried out at the request of supervisors and precise definition of the banned tasks,
- the need for audit firms to engage in a variety of work in order to maintain a high level of skills for staff involved in statutory audits.

At the same time, the IAASB's call for comment on its plan to amend the statutory audit report template gave supervisors an opportunity to confirm their interest in any proposal aimed at improving the quality of statutory audits and reducing the expectation gap between financial statement users with regard to statutory audits and the reality of the statutory auditors' tasks (summarised in the audit report). The objective of this project was to include additional sections in the standard report template, such as a reminder of the liability of the entity's governance bodies in the financial reporting process, which is separate from that of the group being audited and that of the statutory auditors, an explanation of the auditor's opinion, which is already the established practice in France, an assessment of compliance with the going-concern principle and finally, a section reporting on the absence of any major failings identified in the internal control system.

Furthermore, the ACP worked within the Basel Committee and IAIS throughout 2012 on tasks relating to the publication of guidelines for relations between supervisors and auditors. A preliminary version of these guidelines will be submitted for comment in 2013. The new guidelines will deal with supervisors' expectations with regard to auditors and the specific features of the banking and insurance sectors, as well as the expectations regarding audit committees in their dealings with statutory auditors.

2

Developments in French laws and regulations

The *Autorité de contrôle prudentiel* contributes to the drafting national regulations. Several provisions introduced in 2012 had a direct impact on its statutory objectives.

2.1 SPECIFIC RULES FOR THE BANKING SECTOR

A | *Banque publique d'investissement*

Act 2012-1559 of 31 December 2012 established the *Banque publique d'investissement*, a public group to support business financing and development. This new public bank has been given the task of promoting the development and financing of small and medium-sized enterprises. It has also be given the tasks of supporting implementation of ecological and energy transition and taking part in the development of industries of the future, digital conversion and the social economy.

Act 2012-1559 also gives the government the power for six months to issue the Executive Orders necessary to reform the rules governing credit institutions in light of European Union banking legislation (Regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms - CRR -) and the definition of new rules for entities that engage in lending without taking deposits from the public. This power also covers the subsequent adaptation measures, including adaptations of authorisation requirements.

B | Financial intermediaries

a. Intermediaries in banking transactions and payment services

Decree 2012-101 of 26 January 2012 on intermediaries in banking transactions and payment services tightens up the obligations of financial services professionals with regard to their customers. It defines the status of intermediaries in banking transactions and payment services and sets requirements regarding professional abilities, professional liability insurance and financial guarantees for entities seeking to enter the business. It also establishes rules of conduct.

The Executive Order of 1 March 2012 sets the thresholds mentioned in Article R. 519-2 of the Monetary and Financial Code regarding intermediaries in banking transactions and payment services. These thresholds are expressed in number of transactions and amounts. When the thresholds are reached, the entity offering consumer loans or business loans, in addition to products and services provided as part of its main business, is classified as an intermediary in banking transactions and payment services. As a result, the entity is required to comply with all applicable provisions.

b. A single registry of intermediaries

Decree 2012-100 of 26 January 2012 on the registration of intermediaries in banking transactions and payment services, financial investment advisers and tied agents defines the roles and powers of the insurance intermediary registrar (ORIAS). This organisation is responsible for maintaining the single registry of intermediaries and for enforcing the requirements for engaging in the intermediation business, including the “fit and proper” requirements. ORIAS also has the power to strike intermediaries from the registry, acting on a decision by the ACP or the *Autorité des marchés financiers* (AMF).

Decree 2012-297 of 1 March 2012 clarifies the procedure for listing financial investment advisers in the single registry maintained by ORIAS. The Decree requires intermediaries to take out liability insurance and it also sets the minimum coverage amounts for professional liability policies.

The Executive Order of 1 March 2012 relating to the single registry stipulated in Article L. 512-1 of the Insurance Code and Article L. 546-1 of the Monetary and Financial Code establishes the list of information to be provided when applying for registration or when renewing registration. It also stipulates the information in the registry that is to be made available to the public.

Three Executive Orders published on 20 December 2012 complete the framework:

- the single registry of intermediaries mentioned in Article L. 546-1 of the Monetary and Financial Code is established as of 15 January 2013;
- the articles of association of the body responsible for maintaining the single registry of intermediaries in insurance, banking and finance (ORIAS) are approved; ORIAS is incorporated as a non-profit organisation governed by the Act of 1 July 1901;
- the annual membership dues for ORIAS are set at 30 euros.

C | Greenhouse gas emission allowances

Executive Order 2012-827 of 28 June 2012 on the greenhouse gas emission allowance trading system (2013-2020) was issued on the basis of Article 2 of Act 2011-12 of 5 January 2011 on various provisions to adapt legislation to European Union law. This Article gives the government the power to transpose Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 by means of Executive Order.

The purpose of the order is to improve and expand the European greenhouse gas emission allowance trading system. It amends Chapter II of Title II of Book II of the legislative section of the Environment Code with regard to Section 2, entitled “Greenhouse gas emission allowances” and Section 3, entitled “Units defined by the Kyoto Protocol of 11 December 1997 and the United Nations Framework Convention on Climate Change of 9 May 1992”. Article L. 229-18 of the Environment Code has been amended to impose a penalty for exceeding emission caps.

Executive Order 2012-827 is also aimed at bringing the legislative provisions of the Monetary and Financial Code into line with Paragraphs 2 and 3 of Article 18 of Commission Regulation (EU) 1031/2010 as amended of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances.

Under the order, the AMF is tasked with issuing the authorisation mentioned in Article 18 (2) to allow entities established in France and exempted from Directive 2004/39/EC on markets in financial instruments to take part in auctions of greenhouse gas emission allowances. The Executive Order also gives the AMF the supervisory, investigative and sanctioning powers necessary to perform this task.

The Executive Order gives the ACP, subject to the opinion of the AMF, the task of issuing the authorisation mentioned in Article 18 (3) to allow credit institutions and investment firms established in France to bid directly in auctions of greenhouse gas emission allowances on behalf of their customers.

↳ 2) Developments in French laws and regulations

↳ 2.1 Specific rules for the banking sector

D | Microcredit

The Executive Order of 18 July 2012 on non-profit organisations and foundations authorised to make certain loans for the purposes of Articles R. 518-59 and R. 518-62 of the Monetary and Financial Code was issued after consultation with the Advisory Committee on Financial Legislation and Regulations (*Comité consultatif de la législation et de la réglementation financières*) on 20 June 2012. It provides more details about certain provisions of Articles R. 518-59 and R. 518-62 of the Monetary and Financial Code.

The number of loan applications that non-profit organisations and foundations applying for authorisation to grant microcredit have to process (Article R. 518-59 (2) of the Monetary and Financial Code) is set at 50. Furthermore, Article 2 of the Executive Order sets the various rates mentioned in Article R. 518-62 of the Monetary and Financial Code, along with

the composition of own funds and similar resources that such non-profit organisations and foundations have to hold.

The Executive Order of 3 July 2002 issued for the purposes of Decree 2002-652 of 30 April 2002, has been abrogated by Article 6 of the Executive Order of 18 July 2012.

E | Livret A and Sustainable Development passbook accounts

Decree 2012-1128 of 4 October 2012 implementing Article L. 221-38 of the Monetary and Financial Code clarifies the procedures for verifications to be made before opening a Livret A savings account. The credit institution must inform customers seeking to open a Livret A that they cannot hold more than one such account. The credit institution must also ask the tax administration about any previously opened Livret A accounts. The tax administration has 48 hours to answer and the opening of a new Livret A is subject to the closing of any previous account.

Decree 2012-1056 of 18 September 2012 increases the cap on Livret A account balances, which had been set at 19,125 euros on 1 October 2012. The new cap is 22,950 euros as of 1 January 2013, under the terms of Decree 2012-1445 of 24 December 2012.

Decree 2012-1057 of 18 September 2012 doubles the cap on Sustainable Development passbook account balances set out in Article L. 221-27 of the Monetary and Financial Code. As of 1 October 2012, the new cap is 12,000 euros instead of 6,000 euros.

These changes are part of the reform of the Livret A and Sustainable Development accounts. Decree 2012-914 of 25 July 2012 allowed credit institutions to step up the frequency of centralisation of deposits starting in August 2012, if they so desire. They can now report the amount of new Livret A and Sustainable Development deposits to *Caisse des dépôts et consignations* four times a month.



F | Compensation committee

Decree 2012-67 of 20 January 2012 sets the net assets threshold that requires credit institutions, investment firms and venture capital firms to establish a compensation committee at 10 billion euros for the purposes of the obligation stipulated in Article L. 511-41-1-A of the Monetary and Financial Code.

G | Advisory Committee on Financial Legislation and Regulations (CCLRF)

Decree 2012-1382 of 10 December 2012 on the membership of the CCLRF increased the number of members from 14 to 17 to ensure that mutual insurance companies and unions and provident institutions are represented, for the purposes of Directive 2009/138/EC (Solvency II). This means that the Advisory Committee on Financial Legislation and Regulations will now be consulted on prudential laws and regulations affecting mutual insurance companies and unions and provident institutions.

2.2 ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING PROVISIONS (AML/CTF)

Article 72 of Act 2012-387 of 22 March 2012 has amended Article L. 561-9 of the Monetary and Financial Code. It now stipulates that organisations engaging in the non-life insurance transactions involving branches 1 to 18 of Article R. 321-1 of the Insurance Code are not subject to the customer due diligence requirements under Article L. 561-5 of the Monetary and Financial Code or the on-going diligence obligations under Article L. 561-6 of the Monetary and Financial Code, as long as there is no suspicion of money laundering or terrorist financing.

Decree 2012-1125 of 3 October 2012 amended several provisions relating to AML/CTF diligence:

- article R. 561-10 II (3) of the Monetary and Financial Code has been supplemented to stipulate that identification and verification of the identity of occasional customers carrying out money changing transactions must now be performed for transactions of any amount, instead of for transactions worth more than 8,000 euros, if the customer or the customer's legal representative is not physically present for identification purposes;
- the exemption from implementation of the due diligence requirements regarding electronic money, mentioned in Article R. 561-16 (5) of the Monetary and Financial Code, has been limited to electronic money that is used exclusively to acquire goods and services;
- article R. 561-20 of the Monetary and Financial Code stipulates the additional due diligence requirements for each of the cases mentioned in Article L. 561-10. Specific requirements have been defined for transactions by persons domiciled, registered or established in a State or territory where shortcomings in legislation or practices are obstacles for AMF/CTF measures.



Budget and performance monitoring

7

The ACP has specific budgetary resources derived from contributions for supervisory costs, which are collected by the *Banque de France* from reporting entities and handed over in full to the ACP. These contributions may be supplemented by additional allocations from the *Banque de France*.

In 2011, the ACP introduced a set of performance indicators to measure its effectiveness in carrying out its duties.

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1

Budget

1.1 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 ACP budget records the related depreciation and amortisation.

All the ACP's receipts and expenditures in 2012 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 2012 was submitted to the Audit Committee, which approved it at its meeting on 20 March 2013. It was then validated by the plenary meeting of the College on 27 March 2013.

1.2 SUMMARY OF THE ACP 2012 BUDGET OUTTURN

The budget outturn report approved by a plenary meeting of the ACP College⁵³ on 27 March 2013 shows a negative balance of 5.8 million euros for 2012.

This figure reflects a sharp 17.2 million euros rise in net receipts in 2012 to 180.9 million euros, driven by changes in the contribution rates applicable to both banking and insurance sector companies during the year (see inset p. 169). Expenditure was 186.7 million euros in 2012, up 8.7%. These changes in receipts and expenditure result from further growth in the ACP's workload.

The negative budget balance is significantly smaller than the projected deficit in the provisional budget approved by a plenary meeting of the College, mainly because personnel costs were lower than expected, but also because of lower-than-expected IT and other overhead expenses.

53. The budget outturn was presented to the ACP College in thousands of euros. Some differences in the tables between details and totals are caused by the conversion of the amounts from thousands to million euros.

Expenditure and receipts (million euros)	2011 EXPENDITURE AND RECEIPTS ⁵⁴	UPDATED 2012 BUDGET	2012 EXPENDITURE AND RECEIPTS	VARIANCE FROM UPDATED BUDGET		CHANGE IN EXPENDITURE 2011 / 2012	
				AMOUNT	%	AMOUNT	%
• Personnel expenditure	94.9	105.8	102.0	- 3.8	- 3.6%	7.1	7.4%
• IT expenditure	22.4	27.9	24.5	- 3.4	- 12.1%	2.2	9.7%
• Expenditure on buildings	23.3	28.2	28.7	0.6	2.0%	5.5	23.5%
• Other expenditure	31.2	36.7	31.4	- 5.3	- 14.4%	0.3	0.8%
TOTAL EXPENDITURE (A)	171.7	198.6	186.7	- 11.9	- 6.0%	15.0	8.7%
• Contributions from reporting entities	161.0	178.3	178.3	0.0	0.0%	17.3	10.8%
• Other receipts	2.7	2.5	2.6	0.1	2.4%	- 0.1	- 3.7%
TOTAL RECEIPTS (B)	163.7	180.8	180.9	0.1	0.1%	17.2	10.5%
SURPLUS OR DEFICIT (B) - (A)	- 8.0		- 5.8				

A | Receipts of the ACP

Receipts from contributions for the cost of supervision came to 178.3 million euros.

The receipts from contributions for the cost of supervision totalled 179.2 million euros in 2012, excluding cancellations in respect of previous years and amounts set aside to provisions for the risk of non-collection. This 16.7 million euros increase in receipts compared with 2011 stems from the rise in contribution rates for both banking and insurance companies and the contribution for the cost of supervision received for the first time from *Caisse des dépôts et consignations* due to legislative changes. However, receipts from contributions for the cost of supervision paid by credit institutions

(excluding *Caisse des dépôts et consignations*) were less than estimated based on the revised contribution rates. This was mainly due to:

- a rise in capital requirements that was smaller than initially anticipated by credit institutions as a result of the application of Basel 2.5;
- a drop in insurance premiums in 2011, which is why contributions from the insurance sector grew only 16% even though contribution rates increased by 25%;
- the reduction in the number of intermediaries in banking transactions and payment services reported by institutions acting as principals.

54. The final assessment of the *Banque de France's* costs made in the second quarter of each year in accordance with the financial agreement shows that the amount for services provided to the ACP by the *Banque de France*, and the amount for services provided to the *Banque de France* by the ACP, were adjusted, bringing the budget balance for 2011 to a negative 8.0 million euros (compared with a negative 8.3 million euros in the semi-final version). The 2011 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 2011 ACP Annual Report.

7 BUDGET AND PERFORMANCE MONITORING

↳ 1) Budget

↳ 1.2 Summary of the ACP 2012 budget outturn

Contributions (million euros)	2011	2012	VARIATION 2011/2012	
			Amount	%
• Credit institutions and investment firms (including <i>Caisse des dépôts et consignations</i>)	125.2	138.0	12.8	10.2%
• Money changers	0.2	0.2	0.0	- 5.2%
• Insurers, mutual insurance companies and provident institutions	30.1	34.9	4.8	16.0%
• Intermediaries in banking transactions and payment services	4.3	3.3	- 1.0	- 24.2%
• Brokers/microcredit associations	2.8	2.9	0.1	3.5%
TOTAL CONTRIBUTIONS	162.6	179.2	16.7	10.3%
• Charges to provisions net of reversals and cancelled contributions	- 1.6	- 0.9	0.6	41.3%
CONTRIBUTIONS NET OF CANCELLATIONS AND PROVISIONS	161.0	178.3	17.3	10.8%



Credit institutions, investment firms, insurers, mutual insurance companies, provident institutions and *Caisse des dépôts et consignations* account for 96% of receipts from contributions for the cost of supervision in 2012. Intermediaries in banking transactions and payment services, insurance and reinsurance brokers, money changers and microcredit associations account for the remaining 6.3 million euros.

CHANGES IN CONTRIBUTIONS FOR THE COST OF SUPERVISION

There were several changes in the rules regarding contributions for the cost of supervision payable by entities subject to ACP supervision in 2012. More changes are expected in 2013.

) Changes in 2012:

The contribution rates applicable to companies in the banking and insurance sectors were revised in 2012:

- the Decree of 9 April 2010 setting the contribution rate for the cost of supervision applicable to the banking sector was amended on 26 March 2012. The rate applied to banks' capital adequacy requirements or minimum capital requirements was increased to 0.63 per thousand from 0.6 thousand previously;
- the Decree of 26 April 2010 setting the contribution rate for the cost of supervision applicable to the insurance sector was amended on 26 March 2012. The rate applied to premiums and contributions issued was increased to 0.15 per thousand from 0.12 per thousand previously.

The lump-sum contribution applicable to other categories of supervised entities and the minimum contribution remained the same.

) Changes in 2013:

The insurance, banking and finance intermediary register provided for in Article L. 512-1 of the French Insurance Code entered into force on 15 January 2013 and is

managed by the insurance intermediary registrar ORIAS. As a result, the rules on contributions for the cost of supervision, along with the terms and conditions of calling contributions, are set to change as from 2013 for both insurance and reinsurance brokers and for intermediaries in banking transactions and payment services:

- pursuant to Article L. 612-20-V-1° of the Monetary and Financial Code, these two categories are now liable for contributions for the cost of supervision in respect of their activity as of 1 April each year (and no longer as of 1 January as was previously the case);
- reflecting the practice already existing for insurance or reinsurance brokers, calls for contributions for the cost of supervision from intermediaries in banking transactions and payment services will now be made by the *Banque de France* based on information submitted to the ACP by ORIAS;
- for these two categories of intermediaries, calls for contributions will be made each year on 15 June at the latest, with 30 August as the deadline for payment. However, as a transitional measure, in 2013 calls for contributions from intermediaries in banking transactions and payment services will be made on 15 October at the latest, with 31 December 2013 as the deadline for payment.

It should be recalled that procedures aimed at revising the contribution rates applicable to firms in the banking and insurance sectors as from 2013 are in progress.

As in previous years, the receipts from contributions for the cost of supervision in 2012 were slightly impacted by contributions called in respect of 2010 and 2011 that were cancelled during the year as part of dispute handling procedures. These cancellations, which impact the budget of the ACP only to the extent of the contributions not provisioned at end-2011, primarily concern entities wrongly declared as an intermediary in banking transactions and payment services, or sums due that were written off, particularly as part of insolvency proceedings.

In mid-February 2013, the ACP had collected 99.5% of contributions for the cost of supervision in 2012, leaving 0.9 million euros to be collected, of which 0.8 million euros relates to intermediaries in banking transactions and payment services and to insurance and reinsurance brokers. At end-March 2012, the collection rate for intermediaries in banking transactions and payment services (80.6%) was significantly higher than for 2011 (71.3%).

In 2012, this improvement led to a significant decrease in provisions set aside for default in respect of 2011.

7 BUDGET AND PERFORMANCE MONITORING

↳ 1) Budget

↳ 1.2 Summary of the ACP 2012 budget outturn

Data from mid-February 2013	2012 CONTRIBUTIONS		2011 CONTRIBUTIONS		2010 CONTRIBUTIONS	
	Receivables (€ thousands)	Collection rate	Receivables (€ thousands)	Collection rate	Receivables (€ thousands)	Collection rate
• Credit institutions and investment firms	62	100.0%	2	100.0%	1	100.0%
• Insurers, mutual insurance companies and provident institutions	11	100.0%	0	100.0%	0	100.0%
• Money changers	15	90.9%	3	98.1%	2	98.6%
• Intermediaries in banking transactions and payment services	631	80.6%	994	76.1%	1 284	70.6%
• Brokers/microcredit associations	185	93.6%	207	92.5%	160	93.7%
TOTAL	904	99.5%	1 206	99.3%	1 447	99.1%

It should be noted that legislative and regulatory provisions were adopted designating the Directorate General of Public Finance's special receivables division as the competent public accountant for collecting contributions for the cost of supervision. Accordingly, the outstanding contributions due for 2011 and 2012 will be sent to the public accountant so that legal proceedings can be initiated to collect the amounts due.

The other receipts of the ACP

In addition to the contributions for the cost of supervision, 2.6 million euros in income from transactions was recorded in the other income item.

This amount, which remained stable in 2012 compared with 2011, stems mainly 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 outstanding contributions carried forward.

B | 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, and 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* under the terms and conditions stipulated in an agreement.

The expenditure of the ACP for 2012 stood at 186.7 million euros, a 8.7% increase that is primarily a result of the rise in headcount and expenditure on buildings (this latter item rose in line with initial forecasts – see below).

<i>Expenditure (million euros)</i>	2011 EXPENDITURE	%	2012 EXPENDITURE	%
• Personnel expenditure	94.9	55%	102.0	55%
• IT expenditure	22.4	13%	24.5	13%
• Expenditure on buildings	23.3	14%	28.7	15%
• Other expenditure	28.5	17%	28.8	15%
• Depreciation and amortisation	2.7	2%	2.6	1%
TOTAL EXPENDITURE	171.7	100%	186.6	100%

a. Personnel expenditure (102.0 million euros)

The 7.4% rise in personnel expenditure compared with 2011 results almost entirely from the increase in headcount assigned to the ACP General Secretariat (1,015.2 average annual full-time equivalent employees, up 7.2%). The profile and breakdown of ACP General Secretariat staff by activity is set out in Chapter 1 of this report.

Personnel expenditure was 3.8 million euros less than initially projected for the year, mostly because the pace of hiring was slower than projected in the budget (1,015.2 average annual full-time equivalent employees instead of the expected 1098.4).

<i>Personnel expenditure categories (million euros)</i>	2011	2012	DIFFERENCE BETWEEN 2011/2012 ACTUAL EXPENDITURE	
			Amount	%
• Base pay, special allowances, bonuses	43.2	45.7	2.5	5.7%
• Other pay components for all employees	19.5	20.6	1.1	5.6%
• Tax and social charges	32.2	35.8	3.5	10.9%
TOTAL	94.9	102.0	7.1	7.4%

**b. IT expenditure
(24.5 million euros)**

The ACP incurred IT expenses of 24.5 million euros in 2012, up by 2.2 million euros compared with 2011. As expected, this was primarily due to the ongoing modernisation of the ACP General Secretariat's information system and to the launch of the SOLVA 2 project, resulting in a new data collection system for future reporting on the solvency ratio applicable to insurance firms. The cost of services subcontracted to outside providers for IT projects carried out by the ACP for the performance of its supervisory duties and maintenance of existing applications came to 8.1 million euros.

As in previous years, IT expenditure includes the cost of services provided by the *Banque de France*, which were valued in accordance with the financial agreement signed by the *Banque de France* and the ACP in 2010. In 2012 these services amounted to 16.5 million euros, almost unchanged on the 2011 figure of 16.1 million euros.

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).

**c. Expenditure on buildings
(28.7 million euros)**

There were no changes in the ACP's buildings in 2012, since the existing infrastructure had originally been designed to accommodate the target headcount. However, expenditure on buildings rose by 5.5 million euros between 2011 and 2012. This is because the ACP had occupied its Rue de Châteaudun site eight months' rent-free in 2011, whereas it incurred the full rent over an entire year for the first time in 2012.

In addition to the rent and charges relating to the two buildings occupied by departments of the ACP's General Secretariat, expenditure on buildings includes the cost of services provided by the *Banque de France*, assessed in accordance with the billing agreement. These costs correspond chiefly to upkeep and electricity expenses and the depreciation of building improvements and fittings.

In light of the rise in headcount, the surface area allocated to each occupied workstation was 10.4 square metres. This should decrease to around 10 square metres under the impetus of ongoing hiring efforts.

d. Other expenditure (28.8 million euros)

Other expenditure in million euros	2011 EXPENDITURE	2012 EXPENDITURE	CHANGE 2012/2011	
			Amount	En %
• Non-IT sub-contracting	14.6	13.3	- 1.3	- 8.7 %
• Travelling expenses	4.2	4.6	+ 0.4	+ 10.1 %
• Other overheads	9.7	10.9	+ 1.2	+ 12.4 %
TOTAL OTHER EXPENDITURE	28.5	28.8	+ 0.4	+ 1.3 %

Other expenditure totalling 28.8 million euros remained largely unchanged from 2011.

Non-IT sub-contracting expenditure covers all other services, other than buildings, provided by the *Banque de France* to the ACP for its operations, were down by almost 1.3 million euros on 2011. A decrease of around 1.5 million euros in expenses was recognised following the optimisation of (i) use of resources supplied by the branch network and corporate services division of the *Banque de France*, and (ii) the process for collecting contributions for the cost of supervision. However, the cost of services provided in the area of human resources management (payroll, hiring, pension scheme, occupational healthcare, social services etc.), financial management and accounts, internal auditing, as well as logistical services provided by the *Banque de France* (security advice, purchasing, vehicle fleet, archives, etc.) was up slightly in line with the larger headcount.

Travelling expenses were up 10.1% in 2012 to 4.6 million euros, reflecting both the wider participation of the ACP General Secretariat in various European and international bodies in a context of sustained regulatory and institutional change (Solvency II, CRD 4 and preparations to set up the European Banking Union), and the rise in the number of on-site supervisory assignments.

The other overheads item also includes the 1.6 million euros in membership fees that the

ACP pays to take part in various bodies. These expenses increased by more than 50% between 2010 and 2011, and continued to rise in 2012, essentially because of the greater workload of the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), which were formed in 2010.

e. Amortisation and depreciation (2.6 million euros)

The actual amortisation and depreciation expense remained stable compared with 2011, at 2.6 million euros. The expense consisted primarily of amortisation of IT applications developed in-house and depreciation of IT hardware. To a lesser extent, it also consisted of amortisation of software and depreciation of furniture.

CONCLUSION

The balance for 2012 is negative at 5.8 million euros. This deficit will be charged in full against contributions carried forward from previous years, which stood at 22.8 million euros at 31 December 2012.

In light of institutional changes at both in France (the Banking Bill) and at European level (Banking Union), the structure and scope of the ACP budget are likely to change over the next few months and especially as from 2014.

2

Performance monitoring

The assessment of the ACP's performance in 2012 marks a further step in the project launched in 2011, which, for the first time, led to the publication of **indicators designed to measure the effectiveness of the ACP's action with regard to its objectives.**

The 2012 performance indicators are similar to those set out in the 2011 annual report and are based on **three strategy areas:**

- maintaining the stability of the financial system;
- contributing to setting international standards and implementing international and European measures in a convergent manner;
- ensuring that supervised entities' customers are protected.

To measure performance, these **three strategy areas were divided into 10 operational objectives**, and assigned a variety of indicators to measure achievements.

To assess the ACP's efficiency in **maintaining the stability of the financial system**, the operational objectives are to:

- process licensing and authorisation applications in due time, thereby contributing at an early stage to the health of the financial system;
- assess the individual situations of supervised entities;
- measure the capacity of the ACP to maintain or intensify ongoing supervision of individual entities;
- implement the on-site inspection programme of individual entities;

- expand and intensify ongoing supervision, which, in an environment dominated by cross-border groups, entails active cooperation with foreign supervisors for the purpose of overseeing these groups;

- conduct stress tests on a regular basis.

The following objectives were set in order to measure the ACP's effectiveness in helping define and **implement domestic and European standards in a convergent manner:**

- increase France's influence in the international regulatory system in order to get involved in the standard-setting process from the outset;
- apply regulation at operational level and provide supervised entities with more information.

In order to measure progress in **protecting supervised entities' customers**, the objectives reflect the initial stages involved:

- improve consumer information about the ACP's role in this area;
- develop supervision of business practices.

In view of the institutional changes in progress as regards supervision at both national and European levels, some of these strategy areas and operational objectives will be adapted as from 2013.

A | Strategy area: Maintain 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. This indicator covers applications submitted to the College as well as those submitted to the Chairman within the scope of his powers.

Target: 100%

RESULT

98,4% of the **490** licensing and authorisation applications in the banking and insurance sectors were processed on time.

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.

In 2012, a total of 318 applications for the banking sector and 172 for the insurance sector were submitted to the College or its Chairman within the scope of his powers. On a total of 490 decisions made, only 8 were not given within the allotted timeframe mainly due to the additional procedures that were required in order to successfully process the applications. However, in each case, the deadlines were only slightly overrun.

■■ OPERATIONAL OBJECTIVE 2:

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

Indicator:

Number of individual decisions taken during one year, presented by the type of College decision as well as the cease-and-desist orders decided by the Chairman acting under a delegation from the College. Unlike the indicator described above, this indicator does not take into account the licensing and authorisation decisions taken by the College Chairman acting under a delegation.

RESULT

452 decisions on individual situations out of **498** decisions taken by the ACP College in 2012.

Analysis of the result:

The purpose of this indicator is to provide information on the volume of the ACP's activity in its main decision-making areas, and on the effective use of the various instruments given to the College by law.

In 2012, the College issued 254 decisions on licensing and authorisation (excluding decisions taken by the Chairman acting under a delegation). A total of 63 individual decisions were handed down in connection with supervision of institutions on several counts, e.g. enforcing regulations on the measurement of own funds, authorising the use by credit institutions and investment firms of internal models to measure capital adequacy or manage liquidity risk, or to cover regulated liabilities in the insurance sector.

The ACP issued 51 administrative enforcement or similar enforcement measures, or 63 measures taking into account the 12 decisions to renew interim administrators or liquidators. This corresponds to 7 cease-and-desist orders issued by the Chairman under a delegation from the College, 6 recovery programmes, 4 injunctions with a coercive fine, 2 applications for turnaround or redundancy plans, 1 warning, 6 placements under special supervision or provisional administration, 2 business restrictions, and 23 injunctions relating to Pillar 2 or to joint decision-making by colleges of supervisors aimed at raising the capital of credit institutions or investment firms above regulatory requirements.

The ACP also decided to launch 9 disciplinary procedures in 2012.

■■ 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-I of the Monetary and Financial Code, whose risk profile has been fully assessed through ongoing supervision during the year under review.

Target: 100%

RESULT

99,7% of institutions covered by the indicator had their risk profiles fully assessed in 2012.

Analysis of the result:

This indicator is used to verify that ongoing supervision included a full annual risk profile assessment of all institutions covered by the indicator, in addition to the ACP General Secretariat's analysis of their accounting and prudential reports.

The overall rate observed in 2012 was up sharply on the previous year's 84%. The five institutions (out of a total of over 1,400) that were not assessed in 2012 are all subsidiaries of a credit institution supervised by the ACP on a consolidated basis. The analysis of their risk profile was postponed to early 2013 in line with usual procedures, which consist in adjusting the allocation of resources to the type of risk and bringing forward or postponing certain annual assessments.



The assessment rates for the largest institutions and for mid-sized firms was maintained at 100%. The improvement in this indicator in 2012 is the result of the continued efforts made since 2011 in terms of systematically processing all institutions under the ACP's supervision.

Along the lines of the approach adopted in 2011, this performance indicator measuring the intensity of ongoing supervision is used in conjunction with an activity indicator identifying 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 ACP General Secretariat following a College decision.

RESULT

Situation at 31 December 2012:

17 institutions in the banking or insurance sector are subject to specific ongoing supervision following a College decision, compared with 14 at end-2011:

12 are under special supervision

5 are under provisional administration

Analysis of the result:

The purpose of this indicator is to identify the institutions subject to specific ongoing supervision further to a decision by the College in order to prevent specific risks that may in certain cases lead to default. 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 pursuant to Article L. 612-34 of this Code.

Twelve of these 17 institutions were already under specific ongoing supervision at 31 December 2011.

In 2012:

- 3 banking institutions belonging to the same group and 1 insurance institution were placed under special supervision. This measure is the first time that administrative enforcement powers have been used for the banking sector (they had previously only been used for the insurance sector);
- 2 new institutions were placed under provisional administration, although this procedure was no longer applicable to one of the institutions at the end of 2012. Two similar measures announced prior to 2012 in the insurance sector were also cancelled during the year.

■■ OPERATIONAL OBJECTIVE 4:

Make sure 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

98,5% of on-site inspections launched at end-December 2012 as part of the 2012 programme.

Analysis of the result:

The implementation rate for the 2012 inspection programme was close to the target of 100% at end-2012. In all, 237 on-site inspections were underway or completed: 140 in the banking sector and 97 in the insurance sector. Any inspections that had not begun at end-2012 were launched in mid-February 2013, bringing the implementation rate to 100% at this date.

Besides covering the main risk areas for both the banking and the insurance sectors, the ACP also carried out some 30 assessments of internal models designed by insurance firms to be used in connection with the future Solvency II regulatory framework.

By definition, this indicator does not identify the on-site visits made 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 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's efforts in this area.

Measure cooperation on banking group supervision:**Indicator 1:**

Percentage of joint decisions obtained through colleges of supervisors, without requiring EBA arbitration, 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 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:

Along the lines of the work carried out in 2011, all joint assessment processes for European groups supervised by the ACP on a consolidated basis led to a joint decision with the supervisors concerned on capital adequacy for 2012. Where the ACP is the supervisor of French subsidiaries of European groups, the ACP's contribution to the joint decision-making process was made within the timeframe specified in Directive 2009/111/EC of the European Parliament.

In addition to this cooperation aimed at allowing joint decisions on capital adequacy, specific meetings were set up between European supervisors in order to examine and discuss recovery and resolution plans prepared by major French groups with European operations in order to address crisis situations.

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.

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**

100% of college meetings concerning the 6 main European insurance groups with a French parent and appearing on the EIOPA list were held in 2012.

Analysis of the result:

Annual college of supervisor meetings for European insurance groups are not yet mandatory. However, cooperation between supervisors is governed by the agreements signed by the supervisory authorities of EU member states and by EIOPA guidelines. European supervisors cooperated closely during the year, notably on supervision of the largest groups identified by EIOPA. As consolidated supervisor, the ACP held at least one college meeting in 2012 for each of the 6 European groups identified by EIOPA that has a French parent.

These six meetings do not include the other college meetings organised for other insurance groups with operations in other European Union countries that the ACP supervises on a consolidated basis. The ACP organised or took part in specific meetings involving the different supervisors of cross-border groups in order to examine the internal models set out in their pre-application files for prudential use within the scope of the future Solvency II regulatory framework. The ACP was also actively involved in college meetings organised by European supervisors responsible for consolidated supervision of groups with insurance subsidiaries based in France.

■■ OPERATIONAL OBJECTIVE 6:

Conduct European and international stress tests within the allotted time

Indicator:

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

Target:

Performance of stress tests as part of the IMF's Financial Sector Assessment Program (FSAP).

RESULT

- 1** stress test carried out in the banking sector and
- 1** carried out in the insurance sector in 2012 as part of the IMF's FSAP.

Analysis of the result:

In 2012, the ACP's devoted considerable efforts over a fairly long period in conducting stress test exercises as part of the IMF's FSAP, in collaboration with the industry. For this comprehensive project covering both banking and insurance sectors, the ACP's research units and supervisory departments spent time preparing the exercises (identifying the exposures to test, formulating scenarios and assumptions, etc.) and ensuring that the results announced by the industry were reliable. As part of their analysis, these results were also compared with those obtained from the ACP's own financial models.

As a result of these efforts, the ACP was able to send the IMF the data it needed to assess the quality of French supervision and the strength of the financial sector. (The main lessons drawn from this exercise are outlined in section 2 of Chapter 2.)

However, since no stress tests were carried out in 2012 by either the EBA⁵⁵ or EIOPA in collaboration with the industry, the tests will be performed in 2013.



55. However, in 2012 the EBA carried out an exercise designed to measure banks' needs to strengthen capital adequacy.

B | Strategy area: Contribute to setting international standards and implement European and international 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

15 staff members seconded to the above international bodies at 31 December 2012, compared with 10 at end-2011.

Analysis of the result:

There was a significant increase in the number of staff members seconded to institutions considered to be essential to prudential supervision in 2012, with 5 additional members of staff seconded in the year. In light of the work underway at the EBA to prepare and plan for the implementation of CRD 4 by defining technical standards and guidelines, concerted efforts were devoted to seconding staff members to the EBA. At the end of 2012, six members had been seconded to the institution, one as a director. The other members of staff on secondment are:

2 at EIOPA, 1 at the Basel Committee secretariat, 1 at the Directorate General for financial stability at the European Central Bank, 3 at the European Commission (1 at the Directorate General in charge of accounting and financial reporting and 2 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.

Indicators 2 and 3:

Participation in international committees, working groups and sub-groups on banking and insurance issues.

Chairmanships or co-chairmanships of the international working groups and sub-groups in which the ACP participates.

RESULT

213 working groups or sub-groups in which representatives of the ACP General Secretariat participate.

15 chairmanships held by representatives of the ACP General Secretariat.

Analysis of the result:

In 2012, the ACP consolidated its role in developing the regulatory framework, increasing its participation in working groups and sub-groups of the main international and European bodies. At the end of the year, representatives of the General Secretariat were members of 213 working groups or sub-groups active in the banking and insurance sectors. The work of these groups covered the definition and conditions for implementing Solvency II and the CRD 4 Directive, customer protection, financial stability - which included work on systemically important financial institutions and crisis management. The ACP also continued to actively participate in working groups and sub-groups dealing with accounting standards, financial

reporting and auditing. The working groups in which the ACP participates are generally run by the following institutions: EBA, EIOPA, ESRB, IAIS,⁵⁶ Basel Committee, Bank for International Settlements, European Commission, Council of the European Union, IASB, FSB,⁵⁷ FATF,⁵⁸ GIABA,⁵⁹ OECD,⁶⁰ XBRL,⁶¹ JCFC,⁶² and CIMA.⁶³

The representatives of the ACP chair 15 working groups. Besides working group chairmanships, the ACP's active participation in preparing and enforcing standards applicable to each of the two sectors is reinforced by the presence of Danièle Nouy, ACP General Secretary, on the Management Board of both EIOPA and the EBA.

■■ 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 in its official register or communication media (website, *La Revue de l'ACP*) for the purpose of implementing regulations.

RESULT

16 measures on general issues published by the ACP in 2012.

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 the 2011 official register and in *La Revue de l'ACP*. In 2012, the College decided on 16 measures concerning general issues which were published.

The purpose of these measures is to enable or facilitate implementation of regulations and to spell out the ACP's expectations. They consist of:

- 9 instructions on matters of licensing, prudential supervision, anti-money laundering, collection of data on compensation and the enforcement of rules designed to protect customers;

56. International Association of Insurance Supervisors.

57. Financial Stability Board.

58. Financial Action Task Force.

59. Inter-governmental Action Group against Money Laundering in West Africa.

60. Organisation for Economic Co-operation and Development.

61. eXtensible Business Reporting Language.

62. Joint Committee on Financial Conglomerates.

63. Inter-African conference on insurance markets.

- 2 positions: 1 position on the implementation of measures to fight money laundering and terrorist financing by payment service providers for fund remittance services and 1 joint position with the AMF on investment services and the marketing and sale of financial instruments;
- 3 recommendations on marketing practices regarding the sale of loans with a foreign exchange risk to retail investors, the sale of term deposits, and the collection of know-your-customer information in compliance with the duty to advise in the field of life insurance;
- 1 guideline on anti-money laundering practices and the financing of terrorism relating to business relationships and occasional customers;
- 1 update to the notice on calculating the solvency ratio to reflect the EBA's guidelines on Value at Risk in crisis situations and capital requirements for additional default and migration risks.

Besides these measures designed to facilitate implementation of regulations at the operational level, in 2012 the ACP continued its communications efforts by organising three conferences on specific issues and publishing its twice-monthly *La Revue de l'ACP* newsletter.

C | Strategy area: Ensure that supervised entities' customers are protected

■■ OPERATIONAL OBJECTIVE 1:

Improve consumer information about the ACP's role

Indicator:

Contact made by the public with the ACP on matters of customer protection. This indicator identifies the number of phone calls received by the *Assurance Banque Épargne Info Service* platform (ABE Info Service).

RESULT

38,467 phone calls concerned the ACP directly.

Analysis of the result:

A total of 38,467 out of the 320,000 phone calls received⁶⁴ by the ABE Info Service platform in 2012 concerned the ACP directly. This indicator helps measure the public's knowledge of what the ACP does in the area of customer protection, by measuring the number of calls to the platform.

64. The large majority of calls concerned debt accumulation and payment incidents. These fall under the responsibility of the *Banque de France*.

■■ OPERATIONAL OBJECTIVE 2:

Develop supervision
of business practices

Indicator:

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

RESULT

79 on-site inspections of business practices were carried out in 2012, compared with 67 in 2011.

Analysis of the result:

The rise in the number of inspections completed or in progress in 2012 reflects the growing role of the ACP in supervising business practices. As in 2011, certain inspections were conducted with the *Banque de France* branches.

The ACP's inspection programme focuses on specific issues, some of which have been the subject of ACP recommendations. In parallel to its on-site inspections, the ACP continued to look at the ways in which customer protection was built into insurance firms and credit institutions' internal control, and to analyse advertising monitoring and oversight.





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. 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.

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.

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.

DGT (Direction générale du Trésor)

General Directorate of the Treasury.

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 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 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.

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.

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.

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 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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