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France: Financial Sector Assessment Program—Detailed Assessments of Observance of Standards and Codes including Banking Supervision, Insurance Regulation, Securities Legislation, Monetary and Financial Policy Transparency, Payments Systems, Securities Settlement, and Anti-Money Laundering and Combating the Financing of Terrorism

These Detailed Assessments of Observance of Standards and Codes on **France** were prepared by a staff team of the International Monetary Fund as background documentation for the Financial Sector Assessment Program with the member country. It is based on the information available at the time it was completed in **April 2005**. The views expressed in this document are those of the staff team and do not necessarily reflect the views of the government of **France** or the Executive Board of the IMF.

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FRANCE

DETAILED ASSESSMENT OF OBSERVANCE OF STANDARDS AND CODES

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GLOSSARY

AFECEI	Association Française des Établissements de Crédit et des Entreprises d'Investissement
AFG-ASFFI	Association Française de la Gestion Financière
AMF	Autorité des Marchés Financiers
AG CRI	Assemblée Générale de la Centrale des Règlements Interbancaires
AML	Anti-Money Laundering
APE	Agence des Participations de l'État
Art.	Article
ATM	Automated Teller Machines
ATS	Automated Trading Systems
BAFI	Base des Agents Financiers
BALO	Bulletin des annonces légales obligatoires
BCP	Basel Committee's Core Principles for Effective Banking Supervision
BdF	Banque de France
BIC	Bank Identification Code
BIS	Bank for International Settlements
BTANs	Bons à faux fixe et à intérêt annuel
BTFs	Bons du Trésor à faux fixe et à intérêts prècomptés
CACESF	College des Autorités de Contrôle des Entreprises du Secteur Financier
CAC	Commissaire Aux Comptes (French external auditor)
CAR	Capital Adequacy Ratio
CB	Commission Bancaire
CBFA	Commission Bancaire et Financière
CCA	Commission de Contrôle des Assurances
CCAMIP	Commission de Contrôle des Assurances, Mutuelles et Institutions de Prévoyance
CCP	Central Counter Parties
CCR	Compte Courant de Règlement
CCLRF	Comité Consultatif pour la Législation et la Réglementation Financieres
CCMIP	Commission de Contrôle des Mutuelles et des Institutions de Prévoyance
CCSF	Comité Consultatif du Secteur Financier
CDC	Caisse des Dépôts et Consignations
CDD	Customer Due Diligence
CDGF	Conseil de Discipline de la Gestion Financière
CDI	Comité de Déontologie de l'Indépendance des commissaires aux comptes des sociétés faisant appel public a l'épargne
CEA	Comité des Entreprises d'Assurance
CECEI	Comité des Établissements de Crédit et des Entreprises d'Investissement
CEIOPS	Committee of European Insurance and Occupational Pension Fund Supervisors
CEL	Compte d'Épargne-Logement
CESR	Committee of European Securities Regulators
CFONB	Comité Français d'Organisation et de Normalisation Bancaires
CFT	Combating the Financing of Terrorism
CIRCE	Charte Interbancaire Régissant les Conditions d'Échange
CIS	Collective Investment Schemes
CLAMEF	Comité de Liaison des Autorités Monétaires et Financières
CLS	Continuous Linked Settlement
CMF	Code Monétaire et Financier
CMT	Conseil des Marchés à Terme

CNC	Conseil National de la Comptabilité
CNCC	Compagnie Nationale des Commissaires aux Comtes
CNCT	Conseil National du Crédit et du Titre
COB	Commission des Opérations de Bourse
CODIRSEC	Comité Directeur de la Sécurité
COMOFI	Code Monétaire et Financier
CPSS	Committee on Payment and Settlement Systems
CPSIPS	CPSS's Core Principles for Systemically Important Payment Systems
CRB	Comité de la Réglementation Bancaire
CRBF	Comité de la Réglementation Bancaire et Financière
CRC	Comité de la Réglementation Comptable
CRI	Centrale des Réglements Interbancaires
CSD	Central Securities Depository
DC	Direction du Contrôle
DCP	Délégation au Contrôle sur Place
DGL/GR	Direction de la Gestion des risques, de l'Audit et de la sécurité
DGDDI	Direction générale des douanes et des droits indirects
DIF	Décisions et Informations Financières
DOM-TOM	Départements et Territoires d'Outre-Mer (Overseas departments and territories)
DVP	Delivery versus Payment
DNRED	Direction Nationale du Renseignement et des Enquêtes Douanières
DSJ	Direction des Services Juridiques
EAF 2	Electronic Access Frankfurt 2
EBF	European Banking Federation
ECB	European Central Bank
EEA	European Economic Area
EMU	European Monetary Union
ESCB	European System of Central Banks
EU	European Union
FAMA	Financial Activity Modernization Act
FATF	Financial Action Task Force
FBF	Fédération Bancaire Française
FCC	French Commercial Code
FCP	Fonds communs de placement
FFSA	Fédération francaise des sociétés d'assurance
FGD	Fond de Garantie des Dépôts
FIBEN	Fichier Bancaire des Entreprises
FIFO	First in, First out
FIU	Financial Intelligence Unit
FOP	Free of Payment
FSAP	Financial Sector Assessment Program
FSR	Financial Stability Review
FSSA	Financial System Stability Assessment
FT	Financing of Terrorism
GECO	Gestion Collective
GEMA	Groupement des Entreprises Mutuelles d'Assurances
GIE	Groupement d'Intérêt Economique (Economic Interest Group)
GSIT	Groupement pour un Système Interbancaire de Télécompensation

HCCC	Haut Conseil du Commissariat aux Comptes
IAIS	International Association of Insurance Supervisors
IAS	International Accounting Standards
IASB	International Accounting Standards Board
ICOTT	Interface Connection TBF-TARGET
ICP	Insurance Core Principles
IEDOM	Institut d'Émission des Départements d'Outre-Mer
IFRS	International Financial Reporting Standards
IGF	Inspection Générale des Finances
IL	Inflation linked
IOSCO	International Organization of Securities Commissions
IRB	Internal ratings based
ISIN	International Securities Identification Number
ISP	Investment Service Provider
JORF	Journal offficiel de la République Française
LEP	Livret d'Épargne Populaire
LIFFE	London International Financial Futures Exchange
LVPS	Large Value Payment System
LSF	Loi No. 2003-706, de Sécurité financière
MAC	Market Advisory Committee
MATIF	Marché à Terme International de France (French Financial Future Market)
MFP	Monetary and Financial Policies
MINEFI	Ministry of Economy, Finance, and Industry
ML	Money laundering
MoE	Minister in charge of the Economy
MONEP	Marché des Options Négociables de Paris (Paris Traded Options Market)
MoU	Memorandum of Understanding
NAV	Net Asset Value
NCB	National Central Bank
NCCT	Non-cooperating countries or territories
NPL	Nonperforming loans
OATs	Obligations Assimilables du Trésor
OCRGDF	Office Central pour la Répression de la Grande Délinquance Financière
OECD	Organization for Economic Cooperation and Development
OF	Obligations Foncières
OPSR	Objectives and Principles of Securities Regulation
ORAP	Organisation et Renforcement de l'Action Préventive
OTC	Over-the-Counter
PEA	Plan d'Épargne en Actions
PEL	Plan d'Épargne Logement
PERP	Plan d'Épargne Retraite Populaire (Retirement plan)
PNS	Paris Net Settlement system
POS	Point of Sale
PSSC	Payment and Settlement Systems Committee (of the ECB)
PSPWG	Payment Systems Policy Working Group
QLB	A Commission Bancaire reporting form on AML/CFT measures
RGV	Relit Grande Vitesse
RGV2-TFT	Relit Grande Vitesse 2

ROA	Return on assets
ROE	Return on Equity
ROSC	Report on Observance of Standards and Codes
RSSS	CPSS/IOSCO Recommendation for Securities Settlement Systems
RTGS	Real-Time Gross Settlement systems
SA	Sociétés Anonymes
SAABA	Système d'Aide à l'Analyse Bancaire
SCP	IOSCO's Core Principles of Securities Regulation
SCPA	Société en Commandité Par Actions
SCR	Service Central des Risques
SCSS	Securities Clearing and Settlement Systems
SEPA	Single European Payments Area
SEPI	Service de Surveillance des Systèmes de Paiements et de Titres
SERI	Service des Réglements Interbancaires
SEMOP	Service Études, Maîtrise d'Ouvrage et Organisation des Systèmes de Paiements
SFD	Settlement Finality Directive
SFSA	Savings and Financial Securities Act
SIGAL	Système d'Information de l'Inspection Générale
SIPS	Systemically Important Payment Systems
SIT	Système Interbancaire de Télécompensation (French automated clearing house for retail payments)
SLA	Service Level Agreement
SRDs	Service de Réglement Différé (Deferred settlement positions)
SSS	Securities Settlement System
STR	Suspicious Transaction Report
SWIFT	Society for World-wide Interbank Financial Telecommunication
TARGET	Trans-European Automated Real-time Gross settlement Express Transfer system
TBF	Transferts BdF
TFT	Trade For Trade gross settlement system for securities
TIP	Titre Interbancaire de Paiement
TMWG	TARGET management working group
TRACFIN	Traitement du Renseignement et Action contre les Circuits Financiers Clandestins (Treatment of Information and Action Against Clandestine Financial Circuits), the French FIU
UCITS	Undertakings for the Collective Investment of Transferable Securities
UN	United Nations
UNSCR	United Nations Security Council Special Resolution

I. Compliance with the Basel Core Principles for Effective Banking Supervision

General

1. This update of the 2001 MAE[1] assessment of compliance by France with the Basel Core Principles for Effective Banking Supervision was performed during the 2004 assessment of France in the context of the FSAP. The assessment was conducted from January 28–February 10, 2004. The assessment covered the activities of the key banking regulatory and supervisory bodies in France, in particular the *Banque de France* (BdF), the *Commission Bancaire* (CB), the *Comité des Établissements de Crédit et des Entreprises d'Investissement* (CECEI), and the *Comité de la Réglementation Bancaire et Financière* (CRBF). The updated assessment was prepared by Jan Willem van der Vossen, Monetary and Financial Systems Department (MFD).

Information and methodology used for assessment

2. The 2001 BCP assessment performed by MAE, showed a very high level of compliance with the BCP, with "compliant" gradings for 21 out of 25 BCPs. The four BCPs which had not been graded "compliant" had been graded "largely compliant" or "largely compliant—improvement underway." The 2004 assessment was prepared on the basis of the Basel Core Principles Methodology, the April 2000 self-assessment by the French authorities, the August 2001 MAE assessment, information provided by the French authorities how the recommendations of the 2001 assessment had been addressed, and the response to the pre-FSAP questionnaire. Furthermore, the mission studied laws and regulations relative to banking regulation and supervision. Discussions were held with representatives of the regulatory and supervisory agencies, and with representatives of the major banks, rating agencies and of the accounting and auditing profession.

3. The mission also consulted the Annual Reports and Official Bulletins of the BdF, the CB, the CECEI, and the Conseil National du Crédit et du Titre (CNCT), websites of the major banking groups, a *Cour des Comptes* report on the government's intervention in the financial sector crisis, *L'Intervention de l'État dans la Crise du Secteur Financier*, a KPMG publication on comparative bank performance data in the EU, rating agency reports, and other sources. In addition, the authorities provided information notes on specific topics, for instance compliance of the French accounting system with IAS, and the institutional structure of the system for financial sector regulation and supervision.

4. The authorities were very open and cooperative, made excellent preparations for the meetings of the mission, and provided helpful post-mission information.

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[1] The Monetary and Exchange Affairs department (MAE) was changed to the Monetary and Financial Systems department (MFD) on September 2, 2003.

Market structure overview[2]

5. The French banking system, which has been modernized and restructured over the past two decades, is large, sophisticated, and of international importance. The system is dominated by six vertically integrated universal banks and their subsidiaries. Four of the six are organized on a mutual basis. Further consolidation of the sector could pose a range of challenges, including stability concerns that many banks are "too big to fail." Two large financial institutions, *La Poste* and the *Caisse des Dépôts et Consignations* (CDC), remains in government ownership.

Preconditions for effective banking supervision

Macroeconomic soundness and stability

6. After a slowdown in economic activity during 2002–03, a cyclical recovery has been gathering pace. Inflation has only moderately picked up and ex-post real interest rates have sunk to unusually low levels. Despite slow growth up to mid-2003, the financial situation of the corporate sector has deteriorated only slightly since 2000 and, except for a few large companies, corporate leverage is generally low. Likewise, households' debt levels relative to incomes and assets are comparatively low (albeit rising), and savings rates are high. However, low interest rates and rising prices may induce households to take out larger mortgage loans, which may impact on their future financial position. Equity prices remain below their 2000 highs, despite the recent recovery, but some investors enjoy offsetting gains on bonds. Commercial real estate prices have remained stable following the early-1990s boom-bust cycle.

Public infrastructure and institutional arrangements for supervision

7. The legal and regulatory framework for banking supervision in France is clear, easily accessible and updated periodically (Principle 1(1)). All banking and financial laws are codified in the *Code Monétaire et Financier* (COMOFI). The COMOFI also incorporates new legislation on the *Fonds de Garantie des Dépôts* (FGD), and on the new *Autorité des Marchés Financiers* (AMF), which regulates and supervises securities operations, including banks' asset management activities for third parties. The main banking and accounting regulations are collected in the *Recueil des Textes Réglementaires* published by the CRBF.

8. The legal framework to conduct banking business is also well developed, with clear and concise legislation. The legal profession and the judiciary are well trained and have a strong understanding of financial and banking issues. Supervisory staff are well versed in the application of financial sector legislation. Rules on contracts and contract enforcement, as well as establishment and foreclosure of security interests are well developed, although legal

[2] In FSAP/FSSA reports, this information will be contained in other parts of the FSAP report. Salient details, however, may be briefly restated for convenience.

procedures are lengthy. The accounting and auditing professions are well regulated, and subject to rigorous training and entry requirements. They are subject to regulation and codes of conduct issued by the *Haut Conseil du Commissariat aux Comptes* (HCCC) and the *Compagnie Nationale des Commissaires aux Comtes* (CNCC).

9. France has separate supervisory institutions for the main financial sectors: banking, insurance and securities. Arrangements have been put in place to ensure adequate coordination between these authorities. The CB, the CRBF, the CECEI, the *Commission de Contrôle des Assurances*, *Mutuelles et Institutions de Prévoyance* (CCAMIP) and the AMF are the supervisory and regulatory agencies for, respectively, the banking system, insurance, and securities industries, this far latter including banks' asset management for third parties. Later in 2004, the CRBF, which issued banking regulations, subject to approval by the minister in charge of the economy (MoE), will close to exist. Henceforth, the MoE will issue regulations directly under his own name, after consultation of the *Comité Consultatif pour la Législation et la Réglementation Financieres* (CCLRF).

10. Thus, financial sector oversight is fundamentally set up as a matrix, with a separate column for each of the main financial sectors of banking, securities and insurance, each with separate layers for regulatory, licensing and supervisory functions. The three columns are coordinated through joint bodies for cooperation, coordination and exchange of information and cross-membership in the oversight boards of the supervisory authorities. The legal provisions on financial sector regulation and supervision are incorporated in the COMOFI, except those for the insurance sector, which are laid down in the *Code des Assurances*.

11. This structure, while it may be seen as complex, is internally consistent and effective on a day-to-day basis. The following are examples of how coordination and cooperation are structured between the agencies:

a. Joint working groups of the CB and the *Commission des Opérations de Bourse* (COB) (precursor of the AMF) have issued common recommendations on measures to deal with transactions that have failed to clear (are in *suspens*); a common recommendation on financial information concerning credit risk, and a common recommendation on asset de-recognition and de-consolidation;

b. The CB and the COB (AMF) have jointly prepared restrictions on the use of credit derivatives by unit trusts, rules on large exposures for unit trusts, and have cooperated on many practical issues;

c. Annually, more than 50 bilateral or multilateral meetings take place between the CECEI, the CB, CCAMIP and the AMF, as well as approximately 100 exchanges of letters between the CB ad the COB (AMF);

12. Cooperation and coordination between the BdF, CB, the AMF and CCAMIP also takes place through their membership in the CACESF, chaired by the MoE.

13. Cooperation between the CCAMIP and the CB is formalized in a charter signed in October 2001. Cooperation extends to mutual training, exchange of staff, exchange of information, performance of joint studies, coordinated on-site inspections of institutions that combine banking and insurance activities. Cooperation between the CB and the CCAMIP has been strengthened through the Financial Security Act of August 2003. Joint meetings between the CCAMIP and the CB take place as needed, but at least twice a year. The CB chair is member of the CCAMIP and vice versa.

14. Coordination between the CB and the AMF is supported by BdF membership in both bodies. Off-site supervisors of both bodies meet on a monthly basis, on-site staff bi-monthly. Information is also exchanged *ad-hoc.* Participation of CB inspectors in AMF inspection teams is based on a 1999 agreement between the CB and the CMF (which was merged with the COB in the AMF). The AMF retains responsibility for the follow-up to these inspections.

15. The BdF remains the pivotal institution in the general governance and day-to-day operations of the CB and the CECEI. It provides their staff and other resources. The two institutions meet on a monthly basis to discuss individual cases. The CB, CECEI and AMF also meet with the same frequency to discuss general as well as institution-specific issues. The staffs of the three bodies are in day-to-day contact on for instance licensing issues, changes in shareholdings, and assessment of business plans. Cooperation between the insurance and banking supervisory agencies takes place through dedicated working groups, joint on-site inspections and regular meetings.

16. The authorities stress that the CB is the responsible agency in a crisis involving an individual banking institution. Nevertheless, in view of the complex institutional arrangements, it could be useful to lay down an explicit protocol for crisis-management involving more than one supervisory body, as speed of action will be essential, and established procedures may need to be cut short.

17. Independence of banking supervision, with an autonomous board, is generally adequate (Principle 1(2)), although the presence of the Director of the *Trésor* on the board of the CB could raise the issue of independence from the MINEFI. Furthermore, the presence of industry representatives on the Boards of the CECEI and the AMF raises the issue of a potential conflict of interest for these members when issues are discussed that are relevant to their business interests. The authorities stress however, that (i) the rules of procedure require that industry representatives recuse themselves when a potential conflict of interest arises; (ii) members are under strict secrecy obligations; (iii) industry representatives can provide valuable input; and (iv) this structure promotes acceptance of the supervisors' work by the industry.

18. The CB and the CECEI are clearly not independent from the BdF, which controls its resources and whose governor chairs its board. However, given (i) the independence of the BdF itself; (ii) the absence of obvious conflicts of interest with the prudential objectives of the CB and the CECEI (particularly in view of the centralization of monetary policy

decisions at the European Central Bank), the linkages between the BdF and the CB do not appear to be a matter for serious concern. The staff of the CB, particularly on-site, is still somewhat tight in view of the size of the French banking system, but it is steadily growing. The professionalism of the CB and CECEI staff is well-recognized. The legal protection of supervisors (Principle 1(5)), although not explicit in statute, is a well recognized tenet of administrative law in France—and other EU countries—and is considered satisfactory.

Market discipline and governance

19. The CRBF's and CNC's accounting rules and regulations may be considered to be generally appropriate and in line with European and international standards. Since the assessment in 2001, the authorities have taken a number of actions to enhance convergence between IAS and French accounting standards (See also description of BCP 21). Important reforms have already been enacted through the 1999 SFSA and further improvements aiming at better disclosure in several key areas have been made. A more systematic approach to and more disclosure of nonperforming loans (NPLs) have been introduced, facilitating comparisons of risk exposure and management across banks. Introduction of the Basel II framework in all EU countries will further harmonize treatment of credit risk in France with other EU countries. The credit institutions should sometimes adopt more systematically open and timely communication policies as regards significant difficulties or relevant external events that affect their risk exposure.

Problem resolution

20. The good record of the French supervisory system for early detection of troubled institutions is based, in part, on effective analytical and micro-monitoring capabilities (Principle 16). Particularly impressive are the CB's early warning system (SAABA) and the CAMELS-type bank-by-bank assessment and rating system (ORAP), which make extensive use of available databases, including the BdF's voluminous database on enterprises.

21. The CB has an adequate enforcement capacity, derived from well designed coordination arrangements between on-site and off-site supervisors and with other financial sector supervisory bodies, a flexible and comprehensive set of notification and corrective action procedures, effective follow-up, and sound legal and other enforcement powers (Principles 1(4), (16), and 22). As regards bank exit policies, substantial progress has been achieved with the reform of the deposit insurance system in defining more effective bank resolution procedures and allowing for intervention in banks by the FGD at the request of the CB.

22. Appeals against the decisions of the CB and the CECEI do not in principle suspend implementation of the decisions, unless the institution can show to the court that the decision will most probably be overturned, or if implemented, would cause irreparable harm to the institution involved, and should therefore not be implemented pending a final court decision. In theory, this can hamper efficient implementation of supervisory decisions. A system in which the implementation can go forward, but the supervisor might afterwards be held liable

for damages could address this problem. In actual practice, the possibility to obtain such a suspension of implementation has not been successfully applied.

23. Bank governance needs to be kept under close review, especially with regard to the large mutualist organizations, which are seen to be lesser or greater degree expanding their activities and changing their corporate structures in order to make better use of their accumulated cooperative capital bases. They are embarking on a path of change and will need to carefully manage that process.

Safety net

24. The FGD was established by the SFSA of June 25, 1999, which is codified in the COMOFI, under Articles L.312-4 through L.312-18. The FGD replaces the previously existing separate guarantee funds. The COMOFI sets out that the FGD guarantees deposits and other nominally repayable funds deposited in any registered credit institution in France. The FGD's legal personality, activation, scope, governance, funding, intervention powers, its right to sue managers of the institution, as well as an enabling clause for the Minister in charge of the economy to issue more detailed regulations, are also clearly set out in the COMOFI. Depositors in banks are protected to a maximum of EUR 70,000 per customer, per bank, through the FGD. Depositors wishing to achieve full coverage of their deposits, should these be larger than EUR 70,000, may spread their deposits over several banks, limiting their deposit in each bank to EUR 70,000. Regulations 99-05, 99-06 and 99-07 of the CRBF provide more detail on the functioning of the FGD.

25. Furthermore, banks have access on their own initiative to the Eurosystem marginal lending facility to obtain overnight liquidity against collateral of eligible assets.

Principle-by-principle assessment

Table 1. Detailed Assessment of Compliance of the Basel Core Principles

Principle 1.	**Objectives, autonomy, powers, and resources** An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banks. Each such agency should possess operational independence and adequate resources. A suitable legal framework for banking supervision is also necessary, including provisions relating to authorization of banking establishments and their ongoing supervision; powers to address compliance with laws as well as safety and soundness concerns; and legal protection for supervisors. Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.
Description	See descriptions of principles 1 (1) – (6)
Assessment	See assessments of principles 1 (1) – (6)
Principle 1(1).	An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banks.
Description	The main legislative basis of financial sector supervision in France is the COMOFI, which compiles the Banking Act 1984, as amended in 1996 by the Financial Activity Modernization

	Act (FAMA 1996), the 1999 Savings and Financial Security Act (SFSA 1999), and the 2003 Financial Security Act (Loi de Sécurité Financière, LSF). The COMOFI identifies and clearly regulates the three authorities separately responsible for the three main banking supervisory functions: (a) regulation: Minister in charge of the economy, (b) licensing: CECEI, and (c) supervision: CB. The BdF, the CB, and the CECEI are closely connected through joint staff and chairmanship (see also CP 1(2)). The legislative framework for financial supervision, as currently compiled in the COMOFI, has been recently revised to take account of new developments and to accommodate institutional streamlining. The CB is an "independent administrative authority" responsible for the supervision of individual credit institutions (banks and other credit institutions) and individual investment firms with regard to their financial condition, operating practices and compliance with rules and regulations. The CB has powers to issue injunctions and impose sanctions. The FSA 2003 has expanded the range of sanctions that it could impose on the retail *Bureaux de Change*, or door-to-door selling of financial services (COMOFI, Articles L.520-3 and L.341-17 respectively). Under the FSA 2003, the MoE is now directly responsible for setting regulations for credit institutions and investment firms, notably also covering internal controls, minimum capital, and management standards. Previously the authority to issue prudential standards was vested in the CRBF, with formal approval by the MoE; the CRBF has issued a broad network of regulations on all aspects of prudential supervision. In particular, all relevant regulations, for instance on licensing, capital adequacy, liquidity, internal controls, risk diversification, reporting, and other intervention mechanisms have been issued. COMOFI, Art. L.611-1 now vests this authority in the MoE. The MoE also chairs the *Comité de la Réglementation Comptable* (CRC), which sets accounting rules for, inter alia, banks, investment firms and financial holding companies. Before regulations are issued, the *Comité Consultatif de la Législation et de la Réglementation Financières* (CCRLF) and the Autorité des Marchés Financiers (AMF) with regard to investment firms should be consulted. Regulations issued by the MoE may not infringe upon the jurisdiction of the AMF (COMOFI, Art. L.614-2). The CCLRF, together with the *Comité Consultatif du Secteur Financier* (CCSF) are consultative bodies with cross sector membership and with industry membership. The CCSF may issue recommendations and provide advice on general matters relating to the financial sector, upon the initiative of its members, or of the MoE. The CCLRF advises the MoE on all draft regulations with regard to financial matters and draft EU directives, except in areas under the competence of the AMF (COMOFI L 614-3).The composition of the CCRLF is to be established by a decree of the Council of Ministers. Under the COMOFI (Articles L.612-1–L.612-5), the CECEI is responsible for granting licenses, authorizations, and exemptions for banks and investment firms (except asset management firms). When a license is withdrawn as a sanction, the CB is the competent authority. The CECEI may obtain advice from the CB on any prudential issues that come up in the licensing process. In practice, both bodies cooperate closely on a day-to-day basis. CECEI authorization must also be obtained in case of significant changes in the situation of the institution. The latter includes restructuring of the shareholder base, changes in corporate legal form, and the appointment of senior managers. The CECEI is consulted by the *Conseil de la Concurrence* with regard to any change in ownership structure in a bank or investment firm which could affect competitive conditions in the banking or investment industry. The CECEI is also responsible for the inward and outward implementation in France of the EU rules on a single EU banking passport (right of cross border establishment of branches and cross-border provision of services). Under the new legislative framework, overall surveillance of the financial markets in which banks and investment firms operate is shared between the AMF and the BdF. The AMF, an "independent public authority" with legal personality, issues authorizations to engage in the

	business of an investment firm. Supervision exercised by the AMF focuses on asset management companies, and supervision of compliance with rules of conduct by investment firms and credit institutions. It specifically, (a) verifies information published by companies; (b) issues authorizations for unit trusts and mutual funds; (c) approves the program of operations of banks and investment firms when these intend to provide asset management services; and d) monitors compliance with laws against insider trading and market manipulation. It also participates in the regulation and oversight of European and international markets of financial instruments (COMOFI L.621-1). The BdF has a residual supervisory role in the negotiable debt instrument markets and monitors the unregulated money market. Separate legislative and institutional arrangements have been made for supervision of the insurance sector. France does not have a unified system of financial sector supervision, although arrangements are in place to assure sufficient cooperation and coordination. The creation and functioning of a FGD is regulated by the COMOFI Articles L.312-4 through L.312-18. The FGD has legal personality and comprises a system for the reimbursement of deposits which have become unavailable due the illiquidity of the institution. The FGD also covers bank guarantees (*cautions,* Art. L.313-50), as well as certain forms of investments in securities (COMOFI Articles L.322-1 and L.322-2). The FGD is funded by the participating institutions through contributions and if needed borrowings or guarantees from the members. The FGD is overseen by a *Conseil de Surveillance* made up of bank members of the FGD, and managed on a day-to-day basis by a *directoire* appointed by the *Conseil de Surveillance*. The overall contribution levels are fixed by the MoE, but calculations for individual bank contributions are performed by the CB, as are the pay-out levels. The FGD has an excellent website (www.garantiedesdepots.fr) which provides very clear information how the FGD functions and can be accessed. The mutual banks are also mandatory members of the FGD, and contribute to its funds (COMOFI Art. L.312-7 III). Upon request of the CB, the FGD can intervene in a bank (COMOFI Art. L.312-5 II), when a bank is considered unable to meet its obligations when due. It may also lend to, or take an equity interest in a bank in distress, and is authorized to accept participations in a mutualist structure, in exchange for assistance. A number of elements have been put in place in the interest of adequate coordination and cooperation between the agencies responsible for aspects of banking supervision, for instance: • The *College des Autorités de Contrôle des entreprises du Secteur Financier* (CACESF), replacing the former *Comité de Liaison des Autorités Monétaires et Financières* (CLAMEF), in which the chairs of the CB, AMF and the CCAMIP exchange information on cross-sector issues, prepare regulatory proposals to improve cross-sector supervision, and facilitate exchange of staff to enhance a cross-sector approach to financial sector supervision (COMOFI Art. L.631-2). • Chairmanship of the governor of the BdF of the Boards of the CECEI and the CB (COMOFI Articles L 612-3, and L 613-3); • Representation of the governor of the BdF on the Board of the AMF (COMOFI Art. 621-2); • Membership of the Boards of the three main supervisory bodies overlaps to a considerable extent (see COMOFI, L.612-3, L.613-3, and L.621-2): all three boards comprise members of the judiciary *(Cour de Cassation)*, representatives of the MINEFI and/or the *Trésor*; the president of the AMF is member of the CECEI, the MoE appoints representatives of the state in all three Boards, and civil society is represented on all three Boards; • Staff regularly rotates between the department of the BdF which services the CB and CECEI and other departments of the BdF; • Exchange of information between the CB, CECEI, AMF, CCAMIP, the *Comité des*

	Entreprises d' Assurance (CEA), FGD, the guarantee fund for insurance companies, market enterprises and *chambres de compensation* (COMOFI, Art. L.631-1); and • Joint meetings are organized twice a year between the CB and the CCAMIP, or more frequently as needed, to discuss issues of common interest (COMOFI, Art. L.613-3 (3). In addition, the CSF 2003 has reduced the number of supervisory agencies, and has provided for better sharing of information, coordination and cooperation, for instance by appointing the chairpersons of the CB and the CCAMIP to each others' Boards. Taken together, while logical and consistent with the objectives of the authorities, i.e., a specialized system for the supervision and regulation of each of the main components of the financial markets, the institutional structure could be seen as complex. The specialized "columns" for each of the sectors (i.e., banking, insurance and securities) consists of a regulatory layer, a licensing layer and a supervisory layer. Coordination is, however, enhanced by the considerable overlap in the composition of the oversight bodies and the definition of responsibilities. Within each sector, the responsibility for supervision, including problem resolution, is clearly defined. Also, as described above, a number of coordination mechanisms have been put in place between supervisory authorities. The authorities point out that in most situations, including problem situations with regard to institutions active in more than one financial sector, it will be clear which of the bodies is to function as "lead supervisor." It is also pointed out that in practice, the officials and staff of the three supervisory authorities work closely together to resolve issues of common interest. With regard to banks, there is no doubt that the CB takes the lead in resolving any stability issues related to banks. The authorities stress that in problem situations the actual channels of action and communication become much simpler in practice, and the "unofficial" structure is fully effective. Examples of how the structure functions in concrete cases of problems with regard to financial institutions are mentioned under BCP 1 (4) below (cases of banks which faced serious problems which ended in either re-organization of the shareholdings, transfer of the bank's assets to other banks, and/or the closing of the bank). Bilateral meetings between the CB and the CECEI staff take place before every regular meeting of the board of the CECEI and multilateral meetings take place at least every month between CB, CECEI and AMF services to address individual and general issues of common interest. Art. L.613-1 of the COMOFI states that the CB is charged with monitoring compliance with the rules and regulations and is authorized to take sanctions against cases of compliance. This authority is delineated in more detail in COMOFI Art. 613-21. An institution that has infringed upon a legal or regulatory requirement, has ignored a recommendation or warning, has not complied with an order to reestablish the sound financial condition of the institution, or has not complied with conditions attached to the license or a previous decision of the authorities, can be subject to sanctions by the CB which can include issuance of a warning, a reprimand, a prohibition to engage in specific activities, to suspend one or more managers, appoint a temporary administrator, remove one or more managers with or without simultaneous appointment of a temporary administrator, and have the institution stricken from the register, with or without appointment of a liquidator. In specific cases, payment of dividends can be prohibited, and money penalties imposed. The CB can disclose to the public sanctions taken against an individual institution.
Assessment	Compliant
Comments	
Principle 1(2).	Each such agency should possess operational independence and adequate resources.
Description	Operating as an "independent administrative authority," i.e., placed outside the regular administrative structures, the CB is a *Collège* of seven members, i.e., the governor of the BdF

	(or his/her representative), "chairman ex officio," the president of the CCAMIP (or his/her representative), the Director of the *Trésor* of the MINEFI (or his/her representative), and four members appointed by the MoE, including a member of the *Conseil d'Etat*, a judge of the *Cour de Cassation*, and two members chosen for their individual expertise in banking and finance. The oversight of the CB is therefore subject to considerable checks and balances. The CB can independently issue instructions to implement regulations set by the MoE, and take a broad range of remedial actions against banks. Licensing authority is vested in the CECEI, which is also the competent authority for a number of administrative decisions with regard to banks, for instance approval of new establishments of banks, changes in management and share ownership. The CECEI is also chaired by the governor of the BdF (or his/her representative). Other members of the board of the CECEI include the Director of the *Trésor* of the MINEFI (or his/her representative), the Chairperson of the AMF (or his/her representative), the Chairperson of the Managing Board of the Deposit Guarantee Fund (FGD) (or his/her representative, member of the Managing Board), and eight members, including a member of the *Conseil d'État*, a member of the *Cour de Cassation*, a senior manager or ex-manager of a credit institution, a senior manager or ex-manager of an investment firm, two trade union officials representing the staff of credit institutions, and two individual experts. Also here, elaborate checks and balances have been put in place with regard to the governance of the agency. Although the chairmanship of the CECEI and the CB is by law performed by the governor of the BdF, who is appointed by the Council of Ministers for a term of six years, once renewable, the secretaries general of these two bodies are appointed for an open term by the MoE, on a proposal of the Governor of the BdF. It is thus assumed, although the COMOFI does not make this explicit, that the Secretaries General of the CB and the CECEI can be removed from their position at any time, for just cause and following the same process. The grounds for removal would not be disclosed. The BdF plays a pivotal role in the overall governance and the day to day operations of the CB and the CECEI. The governor also has a seat on the AMF and the CCAMIP. The CB and the CECEI are staffed and provided with logistical support by the BdF, according to an agreement between the BdF and the CB (COMOFI Art. 613-7), thus removing direct budgetary interference in the resources of the CB. The governor and two deputy governors of the BdF are appointed by the Council of Ministers for an irrevocable six year, once renewable, term. The remaining six members of the Governing Council of the BdF are also appointed by the Council of Ministers for an irrevocable renewable nine-year term. The fixed term appointments help assure the independence of the BdF, which provides the chair, primary resources and coordinates the oversight of the CB and the CECEI. Decision making within the CB is by simple majority. The Director of the *Trésor* of the MINEFI, also appointed by the Council of Ministers may, as a member of the oversight bodies of the CECEI, request that any matter for decision by the CECEI be postponed for further consideration, thus giving the MINEFI a degree of power over the agenda of the CECEI. In practice, however, there is no significant evidence of interference by the authorities in the operational independence of each agency. Both have the resources needed to carry out their mandate. The budgets of the CB and the CECEI are part of the budget of the BdF, and are thus independent from direct political interference. Currently, there are almost 1,200 institutions under supervision of the CB, and the CB and CECEI together have some 585 staff to perform this task. The staff of the CB and of the CECEI are highly respected by the industry. They are well trained and the CB has attracted staff with university degrees in the disciplines necessary for the work of the CB (economists, lawyers, accountants). Effective IT systems are in place to facilitate the work of the CB with regard to individual institutions and in aggregate. Salaries offered, career prospects and benefit levels seem to be sufficiently competitive to withstand competition from the private sector. Furthermore, the CB has allocated funds for training and inspection travel abroad, and has been able to attract for temporary as well as permanent assignments senior level staff from

	commercial banks and academic institutions to help develop its expertise on certain issues.
Assessment	Compliant
Comments	The CB and the CECEI are independent administrative authorities, and their governance is subject to checks and balances that help maintain its operational autonomy. However, they are clearly not independent from the BdF. Based on the requirements of the Maastricht Treaty, and reflected in the Charter of the BdF, "the BdF, represented by its governor, deputy governors or any other member of the Monetary Policy Council shall neither seek nor accept instructions from the government or any other body in the performance of the tasks arising from its participation in the European System of Central Banks." The dependence of the CB and the CECEI on the BdF is not a matter of concern. Also, given the statutory membership of the governing bodies of the CB and the CECEI, in particular the role of the Director of the *Trésor*, and the role of the MINEFI in setting regulations, it is difficult to assert that policies, plans and processes are set entirely independently from the government, and that the latter is not involved in operational supervisory and regulatory activities. Privatization of the government-owned banks has reduced the scope for conflict of interest, and there is no clear evidence that the participation of the Trésor in supervision and regulation has been a substantial issue in the past. Nevertheless, this involvement contrasts with the recent trend in many European countries toward greater institutional independence of the supervisory and regulatory agencies. In view of the size of the French banking system, the staff of the CB and the CECEI appears somewhat limited. Nevertheless, senior management of the CB and the CECEI are firmly of the view that budgets and staff are adequate, and that excessively rapid expansion could lead to problems of absorption.
Principle 1(3).	A suitable legal framework for banking supervision is also necessary, including provisions relating to the authorization of banking establishments and their ongoing supervision.
Description	The COMOFI (Articles L 612-1, L 511-10 and L 511-15) clearly grants the CECEI the exclusive authority to issue and withdraw banking licenses. The CECEI may attach conditions to the license, that go beyond minimum standard prudential requirements. Based on compliance with the terms and conditions of the original license, or when the institution requests, the CECEI can withdraw the license. Only the CB is authorized to withdraw the license as a sanction. The COMOFI also sets out the conditions that must be met for the issuance of a license, including the program of operations (business plan) of the bank, its proposed technical and financial resources, the suitability (fit and properness) of the managers and contributors of the bank's capital and where applicable their guarantors. Any substantive change in the way a bank meets the condition must receive prior approval of the CECEI. This can include the acquisition of capital shares that cross or fall below a threshold of 10, 20, 33, and 50 percent (the latter as a measure of full control over the bank), changes in the legal form of the institution, and redefinition of the scope of operations. The CECEI is to be notified in advance of intentions of banks outside France to open representative, liaison or information offices in France, must be informed immediately when persons are appointed to positions with powers to determine the policies of a bank, and after any changes to the capital structure of the bank. The CECEI is also the implementing agency for France of the single European banking passport, vets French banking institutions' plans to set up branches in other EU countries, and must be notified in case of cross border provision of services in other EU countries. Based on the COMOFI (Arts. L.613 vv), the CB has full supervisory powers over licensed institutions, including the powers to gather information from banks in the form of periodic

	reports, ad-hoc information requests, off-site analysis, on-site inspections, and imposition of sanctions including withdrawal of the license. Under COMOFI Art. L.611-1 vv., the key regulatory powers are granted to the MoE. The MoE may issue regulations on capital of banks, acquisition of shareholdings, setting up of networks, acquisition of equity participations, solvency, liquidity, financial condition, disclosure of information to be sent to the supervisory authorities, rules on types and conditions of credit, deposit protection, rules on accounting, internal controls, IT, and safety of information. Regulations are adopted after consultation of the CCLRF. In case the CCLRF issues a negative opinion on the proposed regulation, the MoE is obliged to seek a second opinion of the CCLRF before the regulation can be adopted.
Assessment	Compliant
Comments	New regulations are generally prepared in close cooperation with the banking industry and thus implemented smoothly.
Principle 1(4).	A suitable legal framework for banking supervision is also necessary, including … powers to address compliance with laws as well as safety and soundness concerns.
Description	The legal framework for banking supervision in France is laid down in a number of statutes and regulations, primarily the COMOFI, which authorize the CB, the CECEI and the MoE to perform regulatory, administrative and supervisory functions with regard to the banking sector in France. Art. L.612-1 charges the CECEI with the issuance of bank licenses or exemptions from the licensing requirements as provided for in the law and regulations. Art. 613-1 charges the CB with monitoring compliance with the legal and regulatory requirements for banks and to apply sanctions against compliance. The CB inspects the business operations of the bank, monitors its financial condition, and watches over the proper conduct of the banking business. Supervision is applied at three levels: (a) continuous supervision by data analysis (“off-site”); (b) supervision by inspection visits (“on-site”); and (c) general oversight of the banking system. Techniques designed and implemented through both off-site and on-site supervision pursuant to those powers enable the CB to assess institutions' compliance with the applicable statute and regulations, as well as prudential and safety and soundness concerns. The CB has unrestricted access to all aspects of an institution's operations, its subsidiaries and direct and indirect controlling shareholders (COMOFI, Articles L.613-8, L.613-10 and L.613-11) and to require corrective action when necessary (COMOFI, Articles L.613-15 and L.613-16). Failure to implement the necessary remedies exposes the bank to progressively harsher sanctions, which the CB may disclose to the public (COMOFI, Art. L.613-21). The CB can issue a recommendation or an injunction to “take all necessary measures within a given period to restore or strengthen its financial equilibrium or to rectify its management methods.” It can also appoint a provisional administrator “to whom will be transferred all the powers for administering, managing and representing” the credit institution (COMOFI, Art. L.613-18); or appoint a liquidator (COMOFI, Art. L.613-22) in case an institution's authorization is withdrawn. COMOFI Art. L.613-21 provides that where a credit institution has contravened a law or regulation relating to its business (including failing to respect commitments given at the time of the granting of an authorization by the CECEI), has not complied with an injunction or has not heeded a warning, the CB may impose sanctions, that is, a warning, reprimand, prohibition of certain operations, temporary or permanent removal of senior executives, with or without the appointment of a provisional administrator, and withdrawal of the institution's authorization—with or without the appointment of a liquidator. These disciplinary sanctions may be appealed to the *Conseil d'Etat.* The FGD also plays a role in dealing with weak banks. Thus, “the FGD shall intervene at the

	request of the CB as soon as it (the CB) finds that one of the member institutions no longer able to repay funds received…" (COMOFI Art. L.312-5). Furthermore, at the proposal of the FGD may also take preventive action against a credit institution whose situation gives rise to fears that deposits... may become unavailable at some time in the future…." (COMOFI Art. L.312-5). Moreover, the COMOFI Art L.613-34, provides that "The CB shall hear the Chairman of the managing board of the FGD for any matter concerning an institution in respect of which it envisages seeking the intervention of the FGD or proposing to the FGD that it should take preventive action. The CB shall also hear the Chairman of the managing board at his request." The immediate closure of a troubled credit institution can be achieved once a temporary administrator has been appointed by the CB, the administrator himself having the capacity (and responsibility) to declare the closure. With the 1999 Savings and Financial Securities Act (SFSA), the framework for the orderly and transparent exit of troubled banks has been strengthened. In particular, the law enhanced the CB's ability to enforce remedial actions (such as the removal of management) with minimum interference of the courts. It also authorized the FGD to provide financial support to a potentially insolvent institution. This should facilitate the rapid transfer of a troubled bank's deposits to sound banks, thus limiting risks of contagion, and promoting more transparent management of its assets. Corrective actions can be preceded by a more detailed investigation by the CB including collection of additional information, or a full on site inspection, and a meeting with the manager and internal auditor. A second layer of action includes the formulation of recommendations addressing specific fields, and asking for corrective measures. Subsequently the CB examines the situation of the bank with a view to either; (i) issuing a formal injunction; or; (ii) taking a disciplinary sanction, ranging from a warning to the compulsory resignation of a manager, appointment of a temporary administrator, or withdrawal of the license and liquidation. Over the past years, the authorities have shown their ability to take strong action against banks: in November 1997 an institution whose sole business was the provision of guarantees, *Mutua Equipement*, was delicensed and liquidated. In the early 1990s, apart from its intervention in *Crédit Lyonnais* and in other public sector institutions such as regional development corporations, which were placed under temporary administration by the CB and in most cases liquidated, the CB had to intervene in banks with heavy exposure to the real estate sector, such as *Banque Pallas Stern* (1995) or with specific problems, such as, at the end of 1994, *Banque Commerciale Privée*. The business of the latter bank was transferred to a new bank, created for this purpose with an insurance company as its main shareholder. In 1997 the *Banque Opera* and Laficau were delicensed and ultimately their activities taken over by an insurance company, GAN. Transmedia was an institution specialized in the administration of means of payment. When its capital fell below the minimum, and shareholders failed to raise new capital, the institution was delicensed in November 1998.
Assessment	Compliant
Comments	
Principle 1(5).	A suitable legal framework for banking supervision is also necessary, including... legal protection for supervisors**.**
Description	The CB and the CECEI operate under general French administrative law. As neither are legal persons, they cannot incur liability in their own right. Actions against the acts or omissions of the CB or the CECEI need to be brought against the French state. In cases where a suit is brought against an official of the CB or the CECEI, the case is redirected against the state. Furthermore, the state may incur liability by the CB's or CECEI's acts or omissions which can be qualified as serious negligence (confirmed on two occasions in the last two years).

	Senior officials and employees of the CB, CECEI, and of the BdF's Credit Institutions and Investment Firms Division are protected by general principles of administrative law applicable to the persons in charge of a public function. A Public Servant may not incur personal liability for an administrative error committed in the exercise of his/her public office. In those instances where such senior officials and employees are pursued for actions taken in the course of their duties, they are entitled to claim their costs from their employer. Only in case of an alleged personal fault (e.g., abuse of a client) or criminality, the Public Servant may be held liable. Nonetheless, should he/she be able to argue convincingly that no personal fault is involved, he/she may request the employer to cover the legal expenses.
Assessment	Compliant
Comments	The collegial nature of the CB's decision-making provides a further layer of protection against suits aimed at any one of its members. Moreover, both the CB and the staff of its *General Secretariat* are adequately protected against the legal costs of defending legitimate actions. Thus, legal protection for supervisors is satisfactory at present.
Principle 1(6).	Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.
Description	Art. 60 of the 1999 SFSA strengthened cooperation between domestic supervisory authorities, by creating a joint body, the CACESF, comprising the Chairmen of the CB, the AMF and the CCAMIP, within which these agencies can exchange information. Operationally, cooperation has been enhanced and formalized by a charter signed by the CB and the CCAMIP in October 2001. Aside from facilitating the exchange of information, this cooperation has for instance led to a joint study on the development of credit derivatives and a joint survey (with the AMF and the BdF) on credit risk transfers. It has also provided a basis for coordinated on-site inspections in banking and insurance linked businesses. Art. L.631-1 of the COMOFI permits the CECEI, the BdF, the CB, the CCAMIP, the AMF and the FGD to exchange information, subject to the professional secrecy obligations of each organization. Under this provision, in conjunction with Art. L.312-5 of the COMOFI, the CB is authorized to notify the FGD of the weak condition of a bank and request the FGD to intervene. Art. L.613-12 of the COMOFI provides for exchange of information between the CB and the banking supervision authorities of a country within the European Economic Area (EEA). In particular, when the authorities of an EEA country wish to verify information concerning a "legal person" which controls a credit institution or investment firm registered in France, the CB is required to either perform this verification itself on behalf of the requesting state, or permit the foreign supervisory authorities to do so. Equally, where a "legal person" has its registered office in an EEA State, on-site supervision may be effected by the CB by requesting the foreign authorities to verify the information on its behalf or, with the country's consent, by appointing its own representatives. In the interest of effective supervision, the CB may require branches of French banks in an EEA country to disclose all relevant information, and, after informing the country's supervisory authorities, perform an on-site inspection itself. Exchange of information with the supervisory authorities of the EEA countries is facilitated by the harmonization of the rules on professional secrecy of supervisors within the EU, notably the Second Banking Coordination Directive. Within this framework, the CB and the CECEI have built an extensive network of Memoranda of Understanding (MoU) to facilitate the exchange of information. The Secretary General of the CB is a member (deputy-chairperson) of the new Committee of European Banking Supervisors and of the European Central Bank's (ECB) Banking Supervision Committee, within which EU supervisory authorities exchange information. The General Secretariat of the CB takes part in technical working parties set up by both bodies. In the case of EEA supervisory authorities, since the adoption of the1999 SFSA, which has

	been codified in the COMOFI Art. L.613-13 , the CB has been vested with the power to conclude bilateral agreements with the authorities of a state not party to the EEA entrusted with duties similar to those entrusted in France to the CB and provided that such authorities are themselves bound by an obligation of professional secrecy. The objectives of this provision are (i) to permit the CB to conduct on-site inspections of establishments abroad of French banks or financial holding companies; (ii) to permit the CB to conduct, at the request of foreign supervisory authorities, on-site inspections of establishments in France of foreign banks (such inspections may be carried out jointly); and (iii) to define the modalities of the transmittal, receipt and exchange of supervisory information. Art. L.613-20 also authorizes the CB to share information with authorities in EEA countries, even without a bilateral agreement, provided that; (i) the foreign authority is bound by an obligation of professional secrecy subject to the same guarantees as in France; and (ii) there is reciprocity. The CB has concluded a number of bilateral agreements with EEA countries, among which the Czech National Bank (June 2002), the Office of the Superintendent of Financial Institutions (OSFI) of Canada (July 2002), the State of New York Banking Department (July 2002), the National Bank of Slovakia (November 2002), the Bank of Slovenia (October 2002*),* the *Commission Fédérale des Banques* of Switzerland (November 2002), the Financial Supervisory Commission of Korea (September 2003), the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation (May 2004). In general—and subject to the disclosure mechanisms described above—the staff of French supervisory authorities are bound by a professional secrecy obligation, except in cases specifically stipulated by the law. The COMOFI Art. L.641-2 provides that breaches of that obligation may be subject to criminal prosecution. Furthermore, the COMOFI, in Art. L.613-14, requires that the CB refuse any request for assistance from a foreign supervisory authority where the result is likely to be prejudicial to French sovereignty, security, economic interests, or public policy, or when criminal proceedings have been initiated on the matter at issue.
Assessment	Compliant
Comments	
Principle 2.	**Permissible activities** The permissible activities of institutions that are licensed and subject to supervision as banks must be clearly defined, and the use of the word "bank" in names should be controlled as far as possible.
Description	France has a broader definition of "credit institution" than other EU countries (the definition of a bank under the Second Banking Coordination Directive includes the elements deposit taking and granting of credits for the bank's own account). In Art. L.611-1 of the COMOFI, "credit institutions" are defined as "legal persons carrying out banking operations as their usual business." "Banking operations" are then defined as any of the following three main categories of activities: the "receipt of funds from the public, credit operations, and making available to customers or managing means of payment." Art. L.511-9 then further refines the definition of "credit institutions," by setting out the various types of banking operations in which each category (i.e., "banks," "mutual or co-operative banks," "savings and provident institutions," "municipal credit banks," "financial companies" or "specialized financial institutions") is permitted to engage. The definition of credit institutions thus includes institutions that provide credits, but do not collect deposits. This helps to explain the rather high number of institutions licensed by the CECEI and supervised by the CB.

	Art. L.511-5 of the COMOFI states that "it shall be prohibited for any person other than a credit institution to carry out banking operations on a regular basis." Art. L.531-10 of the COMOFI provides that "no one other than an investment service provider may provide investment services to third parties as its usual business." The COMOFI, in Arts. L.511-8 and L 531-11, prohibit – under threat of criminal liability (see COMOFI Articles L.571-3 and L.573-2) - the use of business names, advertising or any expression wrongfully implying that, or causing confusion whether an institution is an authorized credit institution. The CECEI's authority under Art. 511-10 of the COMOFI to impose terms and conditions on a banking license, and that of the CB to impose sanctions on an institution where such terms and conditions are not respected (COMOFI Art. L.613-21), allow considerable control by the authorities over the nature of a bank's business.
Assessment	Compliant
Comments	
Principle 3.	**Licensing criteria** The licensing authority must have the right to set criteria and reject applications for establishments that do not meet the standards set. The licensing process, at a minimum, should consist of an assessment of the banking organization's ownership structure, directors and senior management, its operating plan and internal controls, and its projected financial condition, including its capital base; where the proposed owner or parent organization is a foreign bank, the prior consent of its home country supervisor should be obtained.
Description	The CECEI reviews several hundred applications per year, including those for new licenses, changes of license, changes in ownership and approval of new managers. In 2002, the CECEI approved 20 new licenses, of which 14 related to new institutions and 6 related to restructuring operations or changes in category of institution, 97 withdrawals of licenses, of which 38 cases of cessation of business, and the remainder related to restructuring or change of category. In 79 cases the CECEI approved changes in shareholder structure of which 31 cases in which control over the institution changed hands, including the acquisition of *Credit Lyonnais* by *Crédit Agricole* in 2003. Almost 390 requests for approval of management appointments were received. The COMOFI (Art. L.511-10 – L.511-13) provides that before granting a license, the CECEI must: (a) ensure that the institution meets the minimum capital requirement (Art. L511-11) and CRBF Regulation 92-14 as amended); (b) ensure that there are two senior managers of integrity and experience responsible for the overall direction of the institution's conduct of business (Art. L.511-13); (the CECEI describes in more detail in its annual report what requirements must be met by the managers of a bank); (c) review the business plan (in coordination with the CB) and the available technical and financial resources (Art. L.511-10); (d) assess the suitability (fit and properness) of the investors (or their guarantors) (Art. L.511-10); and (e) "assess the applicant undertaking's capacity to achieve its development objectives in a manner compatible with the smooth working of the banking system and which offers sufficient safety for its customers" (Art. L.511-10). The COMOFI (Art. L.511-10), further provides that the CECEI "may withhold authorization when it is likely to be hindered in the exercise of its supervision of the applicant undertaking either by the existence of equity links, or links of direct or indirect control between the undertaking and other natural or legal persons, or by the existence of laws or regulations of a EEA country when one or more of the above-mentioned persons are governed by such laws or regulations." The minimum capital requirement (Art. 1 of CRBF Regulation 92-14) is EUR 5 million, EUR 2.2 million, EUR 1.1 million or EUR 1 million, depending on the type and characteristics of the credit institution. Although there is no legal requirement to do so, the CECEI consults the CB on license applications, a practice underpinned by the fact that the governor of the BdF is the Chairman of both the CECEI and the CB. Similarly, an institution's adherence in practice to a business plan

	submitted to the CECEI is determined by the CB during its ongoing supervisory activities. The information needed to take a decision on the granting of the license is largely collected through CECEI's application form ("Authorization Dossier") which requests specific information on: (a) management; (b) proposed management and control procedures; (c) strategy; and (d) the origin of the initial capital. The CECEI may insist on increased initial capital in light of the business plan. Part IV of the Authorization Dossier, entitled "Declarations to be forwarded by the Contributors of Capital" requires shareholders to confirm that they are aware of Art. L.511-42 of the COMOFI, which allows the governor of the BdF, in his capacity as chairman of the CB, to call upon shareholders to contribute further capital if needed, in light of the financial condition of a credit institution. A centralized database on "fit and proper" characteristics of banking and financial institutions managers (FIDEC) has been created and is operational.
Assessment	Compliant
Comments	Although a formal requirement to do so is not in place, the CECEI routinely requests evidence of a EEA home supervisor's prior consent to establish a subsidiary in France. The introduction of a formal regulation on this matter would be desirable.
Principle 4.	**Ownership** Banking supervisors must have the authority to review and reject any proposals to transfer significant ownership or controlling interests in existing banks to other parties.
Description	CECEI's prior authorization must be obtained whenever the result of the intended actions of a person, or a group acting in concert would be: (a) to acquire or relinquish effective control over the management of the institution or firm; or (b) to acquire or relinquish 33.3 percent, 20 percent or 10 percent of the voting rights of the bank (this requirement is omitted in the case of an internal restructuring by French or other EEA groups) (CRBF Regulation 96-16, Art. 2 (1)). Also, see description under BCP 3. CRBF Regulation 96-16 also requires that each bank files with the CB information on each holder of at least 10 percent of its outstanding capital stock and gives to the CB the right to exact all necessary information on holders of between 0.5 percent and 10 percent of such outstanding capital stock. In addition, any acquisition of 5 percent or more of the institution's (or firm's) voting rights must be immediately reported to the CECEI. The latter may also require that an institution (or firm) identify those shareholders declaring holdings of between 0.5 percent and 5 percent of an institution's voting rights (Art. 3). A transaction effected outside France which changes the allocation of an indirect equity interest in an institution or firm subject to CRBF Regulation 96-16 (Art. 2.1) must be reported immediately to the CECEI, which may decide that the effect of the transaction is sufficient to warrant the re-examination of the regulatory position of the institution (or firm) (Art. 2.2). With respect to those credit institutions which are listed on regulated markets, the COMOFI (Art. L.511-10) states that where a natural or legal person intends to initiate a take over bid – friendly or hostile– over such credit institutions, this person is compelled to inform the Governor of BdF, as Chairman of the CECEI, eight business days before the take over bid is filed with the AMF and/or made public If the CECEI does not render its decision within a period of three months, a positive decision is considered to have been taken. Where a transaction is completed without first obtaining the required authorization from the CECEI, the COMOFI (Art. L.611-2), provides that the CECEI may apply to the courts to have the voting rights applicable to the shares in the transaction suspended. CRBF Regulation 96-16 requires that the prior approval of the CECEI be obtained (or that it be notified) in the case of proposed changes that would result in a change of ownership or the

	exercise of voting rights over threshold levels or a change in controlling interest. Given the "collegiality" of the French system of banking supervision, there is close collaboration between the CECEI and the CB on any such proposed changes. The CECEI may reject any request for approval of a change in ownership changes, but must state its reasons.
Assessment	Compliant
Comments	
Principle 5.	**Investment criteria** Banking supervisors must have the authority to establish criteria for reviewing major acquisitions or investments by a bank and ensuring that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision.
Description	A participation (i.e., an equity interest over 10 percent) in another corporation (except in a financial institutions or an EEA registered insurance company), may not exceed 15 percent of the bank's own funds (CRBF Regulation 90-06, Art. 4; also see COMOFI, Art. L.511-2). The aggregate of such acquisitions may not exceed 60 percent of the bank's own funds. These limits are applied on a consolidated basis. On the basis of CRBF Regulation 90-06 (Art. 4), the CB may authorize a credit institution to exceed one of the limits set out in Art. 2, although the excess over and above these limits are deducted from the bank's regulatory capital. CRBF Regulation 90-06, Art. 3b, allows exceptions to this rule for limited periods of time, when a bank holds the stock as a result of a financial support operation, the shares are held for the account of a third party, as a result of a bought underwriting deal, or as a result of a purchase order executed on behalf of a third party. On the basis of CRBF Regulation 96-16, the CECEI must give its prior approval for any investments—also of banks—in a supervised institution when the acquisition leads to control over the institution, or shareholdings exceed or fall below 10, 20, or 33 percent of the votes. Any acquisition over 5 percent must be notified to the CECEI. It is also sufficient to inform the CECEI when the acquisition (i) takes place between subsidiaries of one and the same corporation; and (ii) is located within the EEA. Acquisition transactions between companies registered outside France, concerning companies subject to supervision in France but registered outside France, must also be notified immediately to the CECEI. There is no requirement under current French law and regulations to obtain approval from the French supervisory authorities for the acquisition of interests in banking business in EEA countries before such investments are implemented, but the CB relies on an annual survey of banking establishments outside France to identify any such transactions. The COMOFI, Art. L.511-7, limits in general terms the extent of nonbanking activities that may be carried by a credit institution. CRBF Regulation 86-21 further limits total revenues from nonbanking activities to 10 percent of net banking income. Although CRBF Regulation 90-06 sets quantitative limits on the acquisition of nonfinancial sector equity interests, it does not yet require the supervisor to review a planned acquisition below these limits beforehand. Where a transaction is viewed as unsound, the COMOFI Art. L.613-16, authorizes the CB to "issue an injunction calling upon (the credit institution) to take all necessary measures within a given period to restore or strengthen its financial equilibrium, improve its management methods or ensure the adequacy of its organization to its activities." COMOFI Art. L.511-10, authorizes the refusal of a license when it is likely that the CB would be hindered in its supervision of the applicant undertaking...by the existence of equity links or links of direct or indirect control between the undertaking and other natural or legal persons….." CRBF Regulation 96-16, specifically the latter's requirement for notification to—or prior approval by—the CECEI of acquisition of equity interests in supervised credit institutions,

	allows the CECEI to reject corporate structures that present undue risk to the credit institution or create an impediment against effective supervision by the CB. The CB is also aided by CRBF Regulation 90-06, in particular the quantitative limits set out with regard to nonfinancial sector equity interests.
Assessment	Largely compliant
Comments	With the implementation of Directive 2002/87/EC ("Financial Conglomerates Directive"), this prior consultation procedure will be extended to cover equity interests taken in insurance companies, either in France or in any other EEA country. In order to reinforce the French regulation in this respect, revision of the CRBF Regulation 96-16 is under preparation and will be adopted by the MoE once the new CCLRF is appointed, This amendment will require prior approval of the CECEI for the acquisition of nonfinancial equity holdings as well as for the opening by French banks of branches or subsidiaries outside the EEA. Improvement in compliance with this principle is therefore underway.
Principle 6.	**Capital adequacy** Banking supervisors must set minimum capital requirements for banks that reflect the risks the bank undertakes, and must define the components of capital, bearing in mind its ability to absorb losses. For internationally active banks, these requirements must not be less than those established in the Basel Capital Accord.
Description	Laws and regulations require credit institutions to maintain both an absolute level of minimum capital (CRBF Regulation 92-14, Art. 1) and a minimum ratio of own funds to risk weighted assets (CRBF Regulation 91-05 and 95-02). Art. L.511-40 of the COMOFI states that all credit institutions must be able at any time to prove that their assets exceed their liabilities by an amount at least equal to the minimum capital. Moreover, according to CRBF Regulation 91-05 and 95-02, credit institutions shall observe at any time a minimum 8 percent ratio of own funds to risk weighted assets, on a consolidated basis, also covering market risk exposure and off balance sheet exposure. The capital adequacy requirements apply to all types of credit institutions, whatever their legal form or their structure. Financial holding companies are also subject to the same capital requirements. In addition, the CB can require (an) institution(s) to meet requirements on a solo or sub-consolidated basis, when allocation of capital within the group is perceived to be unbalanced or inadequate (see Principles 18 and 20) and it may refuse to include certain resources in the calculation of own funds when certain conditions are not met. Components of capital and own funds and the method for their calculation are defined in CRBF Regulation 90-02 and further detailed in the CB Instructions 90-01 and 96-01. Tier 1 capital is restricted to core capital and general reserves. Provided they meet strict requirements with regard of stability and capacity of absorbing losses, certain subordinated debt instruments (Tier 2) are taken into account but are limited in importance. Tier 3 instruments are strictly limited to the coverage of market risks (transposition of the Basel market risk amendment of 1993). French requirements on capital adequacy are fully in line with the Basel Capital Accord and European legislation. The latter includes both balance sheet and off balance sheet commitments, weighted according to the Basel Capital Accord rules. The COMOFI (Art. L.613-16), moreover, enables the CB to take disciplinary action against institutions that fail to meet minimum requirements ; the CECEI and the CB may also require higher solvency ratios than this legal minimum whenever they deem this justified by specific risk characteristics of a credit institution. This power can be exercised in full discretion, no binding policy or line of conduct having been published by the CECEI or the CB in this respect. Moreover, whenever overall weaknesses or negative trends should appear in the financial system or with regard to significant types of activity, the governor of the BdF can issue a formal warning to the

	profession (as happened for real estate financing). Capital adequacy requirements for banks' market risk exposures are set according to the standardized approach (CRBF Regulation 95-02). While most French banks use the standardized method to determine the capital charges incumbent upon their market risk exposures, major banks use their own internal models. The adequacy and effectiveness of these models must be assessed and approved by the CB, which has a specialist team for assessing their adequacy and effectiveness (see Principle 16). At least semi-annual comprehensive reporting on solvency to the CB is mandatory. In case a credit institution fails to meet the requirements, or whenever the evolution of ratios puts it at risk of shortfalls, the CB may require the bank to take corrective action.
Assessment	Compliant
Comments	France intends to implement the new Basel Capital Accord (Basel II) in due course, and to permit banks to apply the internal ratings based (IRB) capital adequacy calculation methods and advanced operational risk capital adequacy charge calculations envisaged in the new Accord. Several working groups involving on-site and off-site supervisors have been put in place in order to prepare future implementation of the Accord. In 2003, the CB has also engaged in a series of Information Missions with major French groups in order to evaluate the state of preparation of their IRB systems. French banks have participated in the quantitative impact studies of the Basel Committee to test the effect of the new proposals on banks' capital adequacy levels.
Principle 7.	**Credit policies** An essential part of any supervisory system is the independent evaluation of a bank's policies, practices and procedures related to the granting of loans and making of investments and the ongoing management of the loan and investment portfolios.
Description	CRBF Regulation 97-02 (as amended by Regulation 2001-01 and Regulation 2004-02) sets standards for the internal control structure of credit institutions and investment firms supervised by the CB. It indicates that it is a key responsibility for the bank's management and board to provide for proper credit administration, risk measurement and monitoring, and to supervise the effectiveness of the policies and procedures established for this purpose (Art.s 18-24). Internal controls should include a control system for operations and internal procedures, the organization of accounting and information processing systems, risk and result measurement systems, risk monitoring and supervision systems, and a documentation and information system. Each credit institution must set up a consolidated system adapted to the nature and volume of its activities, its size, its establishments and the various types of risk to which it is exposed. Specifically, the regulation requires clear criteria to be set for the granting of loans according to their nature and importance, and to conduct a comprehensive forecast analysis of credit risk and verification after the fact of the profitability of credit operations. All operations must be analyzed by a unit that is independent of the operational entity, and lending or commitment decisions must be taken by two persons. For transactions of a certain nature or size, the two persons must occupy senior positions. Commitments must subsequently be subject to strict and frequent monitoring and analysis. The responsibilities of the decision-making body, executive body, and of internal and external auditors are clearly defined. Lending criteria should be set by top management and compliance controlled by the internal auditors. The regulation lays particular emphasis on the need to involve the decision-making body, with the optional assistance of an audit committee, in setting lending and loss limits, and to inform it of the extent of exposure, the main characteristics and concentration of risks, doubtful debts, and the results of the internal auditor's work. Each year, credit institutions must provide to the supervisory authorities a

	report on the conditions in which internal control is conducted and on the measurement and monitoring of their exposure. The assessment of the credit process and risk management is conducted in large part through off-site supervision (including through a study of the abovementioned annual report), through the analysis of credit portfolios using the ratings produced by rating agencies and the BdF, and through regular meetings with bank managers. It is also a main area of attention in regular on-site supervision. As described below under Principle 16, several external sources (national credit register, ratings by the BdF and by rating agencies, access to a national register of published annual accounting statements) allow CB inspectors to use information from multiple sources to help assess banks' systems and procedures, including bank' own credit risk assessment. On-site inspections also give adequate attention to the total exposure of debtors and to large exposures.
Assessment	Compliant
Comments	For large segments of the credit market, especially for credit to small and medium enterprises, the toughness of competition between banks appears to have often impaired banks' capacity to secure margins that adequately reflect the credit risk involved, particularly in the event of an economic downturn. While the BdF and the CB have repeatedly stressed such risks (including through the publication of a White Paper *(Livre Blanc)* on this matter), and have instituted a procedure for notifying all credits with abnormal margins to the CB, only limited results have been obtained so far. This issue is revisited under Principle 8.
Principle 8.	**Loan evaluation and loan loss provisioning** Banking supervisors must be satisfied that banks establish and adhere to adequate policies, practices and procedures for evaluating the quality of assets and the adequacy of loan loss provisions and reserves.
Description	CRBF Regulation 97-02, in particular Articles 18 and 24, requires banks to provide for an adequate system for assessing the quality of the loans, in particular through the classifications of loans into buckets according to their internal rating system. Provisioning is required on the basis of individual reviews of credit files or a statistical analysis of past losses. There is no harmonization as to the number of buckets or the standards for internal ratings, nor specific requirements for performing loans to be broken down into normal loans and special mention loans. Instead, credit institutions must use judgment, on a case-by-case basis (except for small customers loans with similar characteristics) for assessing their risk profile and determining the level of provisions. This approach is meant to induce banks to make their own assessments and seeks to avoid the potential pitfalls of excessively "mechanistic," "by-the-book" loan classification and provisioning procedures. In addition, accounting rules (Comité de la Réglementation Comptable, CRC No. 2002-03) require more detailed information regarding doubtful, "compromised" and restructured debts. New subcategories have been introduced: within the category of standard debts, a new category of restructured debts with nonmarket conditions has been created; within the "doubtful" category, a new category of "compromised" debts including restructured debts with outstanding payments and doubtful debts for which reclassification as "standard" is not foreseeable. According to these accounting rules and the former CB instruction 94-09, a debt must be classified as doubtful when it is probable or certain that the creditor will not recover all or parts of amounts due according to the contractual terms, in one of the following circumstances: (a) payments are three months overdue (six or nine months respectively for property loans or loans to local authorities); or (b) the situation of the debtor presents such characteristics that, even if no payment is yet overdue, it is probable or certain that the creditor will not recover all or parts of amounts due according to the contractual terms; or (c) legal proceedings have been filed against the debtor. Classifications by the banks are examined by the CB on a regular basis, both on-site and off-site. An effort by the CB to assess the

	consistency of the ratings (and rating systems) across banks is currently under way in order to prepare for the implementation of Basel II. Banks must seek to obtain recent and reliable information on the financial situation of their customers. In particular, they have access to a detailed Credit Register at the BdF (see Principle 16), which they also have the obligation to update. France also has a well-developed rating industry, including an in-house rating system at the central bank (*cotation BdF*), which is generally well used by the banks in their credit decisions and assessments. The level of provisions must take account of all prudently valued security (collateral or guarantees) and the costs and likelihood associated with their recovery. Provisions must be constituted as soon as a risk of nonrecovery arises. Provisions must cover at least the amount of recognized but not yet collected interest income in relation to doubtful loans. Moreover, CRC No. 2002-03 requires determining provisions using the discounting method whenever discounting impacts are significant. Besides the day to day and regular review and assessment of credit quality by independent credit risk divisions within the institutions (pursuant to CRBF Regulation 97-02), the main responsibility for regularly reviewing and assessing asset valuation and risk provisioning lies with the internal controller and/or auditor and the external auditors (the Commissaire Aux Comptes, CAC), the latter of whom, if they do not agree with the accounts as presented, may issue an adverse opinion or refuse to certify the accounts. However, the CACs are not required to certify the loan classification as such. During regular on-site inspections, loan classification and provisioning are reviewed by CB inspectors (comprehensively or through sampling), making use of information obtained from the Credit Register, the rating agencies and various BdF sources. These inspections often result in recommendations for re-classifications and additional provisions. The board of directors, is empowered to draw up the accounts, which are reviewed by the auditors. Where relevant, the CB may make a deduction from regulatory capital to compensate for under provisioning or, if it deeply disagrees with the accounts as presented, demand the publication of rectified accounting statements. As part of the quarterly reporting, the CB obtains detailed information on the loan portfolio of each credit institution. To assist in checking the risk concentration features of the portfolio, the CB has access to comprehensive databases at the BdF, which cover, inter alia, capital links between companies, management and board functions, and outstanding loan balances. Moreover, the staff of local BdF agencies can provide more detailed information about companies and individuals whenever required. The CB has built an information system that aims at a flexible exploitation of these databases, used in preparing and performing local on-site inspections.
Assessment	Compliant
Comments	As the CB strives to encourage prudent provisioning, some banks build up, in addition to specific loan loss provisions relating to doubtful loans–the amount of which can be determined on an individual or statistical basis, according to Regulation 2002-03, different types of general loan loss provisions that are not expressly provided for in the accounting rules and which are intended to cover credit risk related to nondoubtful loans. These additions to reserves are mostly not tax-deductible. Some loan loss provisions are recognized on the liability side of the balance sheets and are classified as contingencies and loss provisions, based on comprehensive estimations rather than statistical calculations; these provisions comprise provisions related to overall risks linked to particular countries or economic sectors. Others are recognized as a reduction of the carrying amount of the assets and are statistical provisions relating to homogeneous groups of loans, particularly in the field of consumer credits; they constitute a form of dynamic provisioning. However, the build-up of general loan loss provisions is not systematic, nor uniform, especially on the liability side.

	A system of general forward-looking (dynamic) provisioning–favored by the French authorities for the large numbers of standardized credits, based on historical and statistical analysis of large credit portfolios, was discussed at the international level notably with the IASB, which introduced such a proposal in its exposure draft on amending IAS 39 issued in June 2002. France, which has been somewhat of a precursor in this area with discussions on this issue starting as early as mid-1998, published an exposure draft proposing to introduce this provisioning approach in March 2002. However, the IASB finally decided to maintain an "incurred loss model" in its final amended IAS 39 issued in December 2003. But it introduced the possibility to use bankers' expert judgment to estimate or adjust amounts of impairment loss. This is a first step toward recognition of a more forward looking provisioning for banks.
Principle 9.	**Large exposure limits** Banking supervisors must be satisfied that banks have management information systems that enable management to identify concentrations within the portfolio and supervisors must set prudential limits to restrict bank exposures to single borrowers or groups of related borrowers.
Description	CRBF Regulation 93-05 and CB Instruction 2000-07 limit large exposures to a single borrower or group of connected borrowers to 25 percent of the bank's own funds. This limit is to be applied on a consolidated basis for on- and off-balance sheet exposures. The aggregate of such large exposures, defined as individual exposures of 10 percent or more of the bank's own funds, may not exceed 800 percent of own funds. A large exposure is to be measured net of collateral, guarantees or other deductions. A "single borrower," as the basis for defining large exposures, is formulated by CRBF Regulation 93-05 Art. 3 as: "persons connected in such a way that, were one of them to encounter financial problems, the others would probably experience payment problems." Regulation 97-02 requires banks to put in place adequate monitoring procedures for large exposures, actively involving top-management in the assessment process. Notwithstanding these precise prescriptions, the CB has large discretion in assessing and adapting the notion of closely related exposures to deal with the complexity of relations between companies, groups and individuals acting as managers or directors. Moreover, while institutions are required to comply with the rules on a consolidated basis, the CB may require compliance on an individual or sub-consolidated basis, especially when it considers that the distribution of own funds within a group is unsatisfactory with regard to the exposure of the institutions concerned. The regulation also requires that monitoring of group exposures be backed by a sector-wide and geographical analysis of the portfolio. All exposures over 10 percent (see above) must be reported to the CB on a quarterly basis (5 percent in the case of exposure to a shareholder or manager). Moreover, quarterly reporting is mandatory bearing on all exposures in excess of 10 percent of the banks' own funds and credit institutions must declare their principal risks on a gross basis if those risks exceed 10 percent of own funds or EUR 300 million (CB Instruction 2000-07 on large exposures and exposures on a gross basis). The CB obtains detailed information on the loan portfolio of each credit institution on a quarterly basis. To assist in checking the risk concentration features of the portfolio, the CB has access to comprehensive databases at the BdF, which cover, inter alia, capital links between companies, management and board functions, and outstanding loan balances. Moreover, the staff of local BdF agencies can provide more detailed information about companies and individuals whenever required. The CB has built an information system that aims at a flexible exploitation of these databases, used in preparing and performing local on-site inspections.
Assessment	Compliant
Comments	
Principle 10.	**Connected lending**

	In order to prevent abuses arising from connected lending, banking supervisors must have in place requirements that banks lend to related companies and individuals on an arm's-length basis, that such extensions of credit are effectively monitored, and that other appropriate steps are taken to control or mitigate the risks.
Description	The 1966 Commercial Companies Act regulates all transactions with related parties for all corporations and fully applies to all credit institutions. These transactions require arm's length lending, full board authorization and reporting to the annual General Assembly of shareholders of transactions between the company and a director or senior manager (including their close relatives) which is not in the line of a company's day-to-day business or not entered into under normal market conditions. Related parties, as defined by banking regulations (CRBF Regulation 93-05, Art. 3) are persons that have capital links such as one of them exercises, directly or indirectly, exclusive or joint control or that are subject to common management, or persons connected in such a way that, were one of them to encounter financial problems, the others would probably experience payment problems (see description of BCP 9). CRBF Regulation 97-02 (modified by Regulation 2001-01), Art. 21, and Art. 42 (f) provide that credit institutions and investment firms should set up adequate internal control in view of monitoring and controlling risks, including for connected lending. Lending to related parties and to their parent companies, subsidiaries, significant shareholders (or their partners) must be reported under the same regulations and procedures as that for reporting large exposures whenever they exceed 5 percent of the banks' own funds. Under the discretionary powers available to them, supervisors may also require that exposure to borrowers between whom there is no apparent link be aggregated. To tighten up these regulations, the authorities introduced measures (CRBF Regulations 90-02, Art. 6 ter, and 2000-09), which impose a deduction from the bank's regulatory own funds of all commitments to shareholders or linked staff exceeding 3 percent of own funds. Some exceptions, essentially for investment grade commitments to related parties, are allowed.
Assessment	Compliant
Comments	
Principle 11.	**Country risk** Banking supervisors must be satisfied that banks have adequate policies and procedures for identifying, monitoring and controlling country risk and transfer risk in their international lending and investment activities, and for maintaining appropriate reserves against such risks.
Description	Banks' country risk exposure, including credit, market risk, is regulated in CB Instruction 2001-01 on international claims, which applies to all balance sheet and off-balance sheet exposures to private or public borrowers residing in non-G10 and non-EEA countries or having a non G10 or non-EEA nationality. Also included are local claims denominated in local currencies on the private sector and short term local commercial loans. Moreover, through the CRBF Regulation 97-02, banks are required to have information and management systems that allow for proper identification, monitoring and controlling of country-risk. These policies and procedures are reviewed during the regular on-site inspections. Annual (semi-annual for the share held by large or internationally active banks) reports on country risk exposure except to G10 and EEA countries, are sent by credit institutions to the CB, which closely monitors exposures. Exposures are broken down by type of borrower and type of credit. The CB carries out cross studies on the basis of prudential reports. Country-risk provisions are not mandatory, and each credit institution is entirely responsible for the level of its reserves. Nevertheless, the CB has strongly recommended, on a case-by-case basis and if the economic situation of a given country deteriorates, to constitute what it considers to be a minimum provision. Special attention is given to country risk provisioning by

	both the external auditors and the CB in the audit of financial reports. The CB also pays particular attention to large international groups' internal control systems for country risk, especially as regards procedures for setting limits and channels for issuing authorizations and centralizing loans. The CB also carries out regular cross studies on emerging economies or countries at risk. It also performs stress tests in order to assess the resilience of French banks to a deterioration of economic or financial conditions in emerging countries and to evaluate the potential impact of an emerging crisis.
Assessment	Compliant
Comments	
Principle 12.	**Market risks** Banking supervisors must be satisfied that banks have in place systems that accurately measure, monitor, and adequately control market risks; supervisors should have powers to impose specific limits and /or a specific capital charge on market risk exposures, if warranted.
Description	CRBF Regulation 95-02 and its annexes contain detailed capital adequacy rules for banks. Banks are required to retain sufficient capital to cover trading portfolio risk, exchange rate risk, and settlement risk. The CB can authorize banks to use internal models for calculation of the capital requirement for market risk. The regulations also set criteria for risk measurement and prudential limits. Market risks are covered by appropriate own funds, namely residual own funds after the solvency ratio has been covered, and own funds specifically earmarked for coverage of market risks. Supervision, especially for large banks and trading banks, is based on the analysis of specific returns relating to compliance with prudential requirements and on verification of control systems. On-site inspectors verify these aspects within the framework of general assignments or assignments focusing specifically on trading activities. Credit institutions may use the standard method for calculating own funds requirements or their own internal models. In the latter case, the CB must give its explicit approval after the model has been validated by a specially assembled team of experts. Until now, five models have been validated by the CB. Institutions using their own models must also apply a multiplier, which has hitherto consistently been set at a higher level than the regulatory minimum. Semi-annual reporting to the CB is imposed by its Instruction 96-01. Regulation 97-02 (for both credit institutions and investment firms) on internal control define strict organizational internal control requirements and set strict conditions for the recording of information on market exposure, for the measurement and monitoring of market risk and for its supervision by top management and the board of directors. Internal control systems should record trading book and foreign exchange operations on a daily basis, contain all information for assessing the related risk, and assess the capital adequacy to cover these risks daily. Systems accepted by the CB can be both fully fledged models, specifically agreed to by the CB, and appropriate management information systems for banks with more limited market activities. Formal agreements on model validation rely on an extensive expert report from a specialist team at the CB. Model validation is based on state of the art statistical and mathematical analysis, using VAR approaches, Monte Carlo models and other techniques. Each agreement procedure also contains extensive stress-testing of the models. Consideration must be given to maximum potential loss and maximum limits must be set for each category of risk. The systems must also be able to aggregate positions in different products and markets, at both individual and group level. During on-site supervision, substantial attention is given to the adequacy of systems and controls (including at times renewed testing of models), to that of limits and segmentation and

	to the validity of assumptions for both day-to-day measurement and stress-testing. The model validation specialists are actively involved during such on-site inspections. As a result of such reviews, the CB often makes comments or asks for changes to be made. Similarly, bi-annual returns relating to the calculation of prudential ratios are carefully scrutinized, and disciplinary action may be taken in the event of an infringement.
Assessment	Compliant
Comments	
Principle 13.	**Other risks** Banking supervisors must be satisfied that banks have in place a comprehensive risk management process (including appropriate board and senior management oversight) to identify, measure, monitor, and control all other material risks and, where appropriate, to hold capital against these risks.
Description	CRBF Regulation 97-02 provides for rules on all major risks, including explicitly credit, market, interest rate, and settlement and liquidity risk. Furthermore, Regulation 90-07 addresses interbank risk, Regulation 88-01 deals with liquidity, while CB Instructions 88-03 and 89-03 regulate liquidity risk in more detail, providing a quantitative "liquidity ratio" banks must abide by. In addition to the follow-up of this liquidity ratio, the CB aims at ensuring that the bank has a general strategy, approved by top management and the Board of Directors, and that it is regularly audited by the internal auditor of the bank. Furthermore, the strategy should avoid over-reliance on the lender of last resort, in particular in the case of major banking groups, through adequate liquidity monitoring systems, and a detailed set of limits within each institution. Also, the CB ensures that adequate stress tests and contingency plans are developed and implemented. Banks are required to describe their liquidity and asset/liability management procedures in their annual reports. The CB has had intensive discussions with some institutions to increase their long term funding and to reduce their dependence on a limited number of funding sources, and has instituted specific monitoring requirements (on a daily or weekly basis) when serious doubts arose about a bank's liquidity position. No liquidity squeezes have been reported over the past two years. At the time of licensing, the internal risk management systems are also reviewed by the CECEI in collaboration with the CB. Under the terms of Articles 32 to 37 of regulation 97-02, the systems must measure and monitor internal limits, both overall and operational. These must be reviewed at regular intervals. Furthermore, Articles 11 and 17 of CRBF Regulation 97-02 require banks to regularly review their risk measurement systems and their relevance to the risk profile of the bank. Under Art. 11, the bank must assure that the risk inherent in any new activity has been rigorously analyzed, that systems for measurement, limitation and control of the risk are adequate, and that improvements in the systems are made as needed. The structure and content of the system of prudential standards in the French supervisory system, which are applied on a consolidated basis, are a strong impetus for good risk management practices in French banks. Banks' supervisory reporting requirements imply that they register and monitor risk relevant data. Developments in the quality of assets must be analyzed rigorously and at regular intervals, in particular with a view to making any necessary reclassifications and determining the appropriate levels of provisions (see Principle 8). Under Art. 20 of the regulation, the bank must analyze the profitability of credit transactions before entering into the transaction, including an assessment of all operational and financing charges and costs, and remuneration of capital. Next to the detailed attention to credit risk and market risk, special attention is given to large

	exposures (see Principle 9), transformation risk (interest rate risk), foreign exchange risk and liquidity risk. With respect to liquidity and interest rate risks, precise and comprehensive guidelines and limits have been established by the CB. In the case of liquidity risk, institutions are required to maintain a minimum ratio between current liabilities and liquidity, determined according to precise rules that take account of the potential risk of withdrawal or immobilization of resources and exposures. As mentioned under Principle 6, the CB may impose additional capital requirement in relation to the individual risk profile of a bank. Articles 38 and 39 of Regulation 97-02 require that the non-executive board members meet at least twice a year to review the results of the internal audit (if an audit committee exists, this meeting shall be held only once per year), based on information provided by the executive management. At least once per year the executive management of the bank informs the nonexecutive members of the main risks the bank has incurred and the measures taken to limit the risks. Regular corporate law provides for general rules regarding the responsibility of the board of directors and individual directors. It has been amended in 2001 by the *Loi sur les Nouvelles Régulations Economiques* which contains provisions on the respective functions of Chairman of the Board and general director and rules governing plurality of offices. For example, no individual is allowed to hold more than five non-executive board memberships at the same time. Furthermore, the 2003 FSA introduces specific requirements to ensure that the board is able to exercise effective control over every aspect of the bank's activity and risk management. In this respect, the Chairman of the Board of Directors is asked to produce a report to the shareholders' meeting on internal controls. The external auditors are required to comment on this report. Banks are involved in the development of a more formalized approach to operational risk, under Basel II. A working group on operational risk has been established by the General Secretariat of the CB to prepare the implementation of Basel II. The CB monitors compliance with these regulations in the course of its off-site review and periodic on-site inspections. The largest six banking groups are monitored on a continuous basis.
Assessment	Compliant
Comments	In view of the adoption of the *Loi sur les Nouvelles Régulations Economiques*, and the 2003 FSA, improvements have been introduced in corporate governance since the previous assessment. Furthermore implementation of Basel II—which is already being prepared—will in general be a strong impetus for continued improvement of risk management practices in French banks. EU regulators are cooperating to develop a common approach to Basel II implementation.
Principle 14.	**Internal control and audit** Banking supervisors must determine that banks have in place internal controls that are adequate for the nature and scale of their business. These should include clear arrangements for delegating authority and responsibility; separation of the functions that involve committing the bank, paying away its funds, and accounting for its assets and liabilities; reconciliation of these processes; safeguarding its assets; and appropriate independent internal or external audit and compliance functions to test adherence to these controls as well as applicable laws and regulations.
Description	Efforts have been undertaken to strengthen bank governance, particularly to ensure that the composition of the board of directors allows for a full understanding and assessment of all activities undertaken by a bank and the risks it assumes. Indeed, in two reports published respectively in 1995 and 1999, the *Rapports Viennot*, special attention has been drawn on the importance for financial institutions to conform to the principles and rules of corporate

	governance, expecting French performance in this respect to be enhanced. The *Rapports Viennot* have been followed by the *Rapport Bouton* in September 2002 which recommends an increase of independent board members and the strengthening of audit committee. Banks have taken important steps to introduce the necessary changes. Major French banks now have an audit committee. The establishment of a continuously updated database on bank managers with regard to whom "fit and proper" characteristics may be at issue, developed by the CECEI (FIDEC; see Principle 3), is helpful. CRBF Regulation 97-02 updates the existing rules introduced in 1990 and incorporates all the main recommendations relating to internal controls issued by the Basel Committee in recent years. A mandatory and comprehensive annual reporting system is in place on internal control systems of banks, and on auditors' reports. The CB regularly requires banks to improve their systems, and to ensure that top management is capable of exercising full control and responsibility for the business. The general guidelines regarding the role and responsibility of corporate managers, also of banks, are covered by the Commercial Companies Act of July 24, 1966. Specific regulations for bank managers are more strict. Senior bank managers (Art. L.511-13 of the COMOFI) must fulfill certain conditions of competence, training and reputation. The CECEI ensures compliance with these requirements, and must approve management appointments. As a disciplinary measure, the CB is authorized to temporarily suspend or require the resignation of one or more senior managers (Art. L.613-21 of the COMOFI), and to appoint a provisional administrator as warranted. CRBF Regulation 97-02 modified by Regulation 2001-01 and 2004-02 gives a very comprehensive set of instructions, requirements and criteria to define, monitor and evaluate the overall internal control structure of banks and investment firms. Appropriate rules are provided on internal controls and the appointment of internal auditors, which are monitored by the CB through specific reports from the banks, which are regularly verified. All good practices such as segregation of duties, checks and balances, delegation of functions and responsibilities, reconciliation of accounts and information of senior management are properly provided for. The internal audit office is required to have unfettered access throughout the bank and its adequate staffing, independence and functioning are periodically reviewed during on-site inspections. Significant progress toward enhancing the responsibility and awareness of the boards of directors has been made by major banks by establishing incipient audit committees, as explicitly referred to by the said regulation. The CB pays close attention, both during on-site inspections and through the off-site analysis of internal control reports, to the independence of internal controllers within the firm, to the procedures for making decisions and delegating powers, the quality of internal control and the resources made available for it, and the practical procedures for informing the decision-making body. Supervisors may call for the reporting hierarchy to be changed or for additional staff so that internal controllers are fully independent of operational departments and can regularly review all areas of activity in a timely manner. Similar recommendations may also be made with regard to specific departments, such as accounts or information technology. These on-going measures have helped to focus the attention of managers on the importance of rigorous internal control. Systems to limit exposure are steadily being introduced and credit risk is being monitoring more closely. The external auditor and the CB are in regular contact. If the auditor encounters irregularities that could threaten the delivery of a "clean" opinion on the annual statements, the auditor is obliged to inform the CB. The auditor routinely receives the CB's findings of an on-site inspection.
Assessment	Compliant

Comments	Further efforts are being made to generalize the use of internal audit committees. A next step could be to require that all boards include the participation of external, properly qualified members. CRBF Regulation 97-02 has been amended by a new Regulation 2004-02, to cover more specifically aspects such as operational risk and business continuity planning. This initiative is in line with the discussions within the Financial Stability Forum and of the on-going work at the European level.
Principle 15.	**Money laundering** Banking supervisors must determine that banks have adequate policies, practices and procedures in place, including strict "know-your-customer" rules, that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements.
Description	The COMOFI requires banks to identify their customers and verify their identity on the basis of a reliable document; they must identify and verify the identity of occasional customers with respect to transactions above EUR 8000 in a similar manner; they must also obtain information about the true identity of the persons on whose behalf an account is opened or a transaction conducted if there are any doubts as to whether the customer is acting on his or her own behalf. *Décret* No. 91-160, sets out additional requirements specific to the identification of legal entities. The COMOFI requires banks to retain records on the identity of their clients and on transactions for five years. It also requires banks to report to TRACFIN transactions that they suspect may be related to drug trafficking or organized criminal activity. Decree 91-160 requires banks to adopt written internal rules defining procedures for implementation of the AML provisions of the COMOFI and the Décret 91-160. They must ensure that all staff involved in combating ML are kept informed and receive training. Regulation 91-07 of the CRBF requires banks to establish internal controls and procedures to ensure compliance with the AML provisions of the COMOFI and the Décret 91-160, including an audit system to verify compliance with the above-mentioned procedures. Regulation 97-02 requires banks to appoint an officer to ensure the consistency and effectiveness of the internal audit for prudential purposes. There is no requirement to appoint an AML officer with explicit responsibility for AML compliance. The licensing authority for banks is the CECEI. The COMOFI provides that the CECEI may refuse authorization should the persons responsible for directing the bank's activity lack sufficient integrity, skills and experience. The CB is responsible for regulating and supervising banks' compliance with the legislative requirements applicable to them, including AML/CFT requirements, and to sanction breaches in compliance. The CB has authority to conduct on-site and off-site examinations. It also conducts special AML/CFT examinations. Banks are required to submit annually a detailed questionnaire on compliance with AML/CFT requirements, as well as a report on the state of their internal controls, including for AML/CFT. The CB appears to have a robust program of examinations and sufficient human and financial resources to carry it out. It prioritizes its activities for AML/CFT on a risk basis, focusing attention on entities engaged in riskier activities, those whose questionnaire responses are not satisfactory and on those with regard to whom TRACFIN has signaled lapses in the quality and quantity of suspicious transaction reports. The CB can impose adequate disciplinary sanctions on entities that fail to comply with their legislative and regulatory obligations, ranging from a warning up to the withdrawal of a license to operate or removal from the register. It can impose fines of up to an amount equal to the

	minimum capital of the legal entity. CB indicates that AML/CFT compliance levels are generally good and steadily improving. The CB has imposed sanctions for breaches relating to AML/CFT requirements. The sanctions ranged from a warning to removal from the register, but the most frequent sanction was a warning plus a fine. Decisions involving the imposition of sanctions mainly for failure to implement AML/CFT requirements were systematically publicized.
Assessment	Compliant.
Comments	A more comprehensive assessment of compliance against international AML/CFT standards can be found in the AML/CFT detailed assessment report.
Principle 16.	**On-site and off-site supervision** An effective banking supervisory system should consist of some form of both on-site and off-site supervision.
Description	The COMOFI, Art. L.613-6, states that the General Secretariat of the CB shall carry out off-site monitoring and on-site supervision. In 2003, the CB conducted 188 inspections in banks and investment enterprises. With regard to the largest banks, the CB conducts more focused inspections rather than comprehensive inspections. In 2003 the focus of the inspections in the largest banks was on credit risk and information systems. Foreign establishments of French banks were the object of 22 inspections, of which 17 outside the EEA. The *Direction du Contrôle des établissements de crédit et des entreprises d'investissement* (DC) of the CB counts approximately 160 staff and conducts off-site analysis both sector-wide (including for instance sector or geographical risks), and of each individual institution. Around 40 staff of the DC focus specifically on the six largest banking groups. The *Délégation au Contrôle sur Place* (DCP) numbers around 180 staff and conducts on-site inspections. The *Direction de la Surveillance Générale du Système Bancaire* (DS) numbers approximately 100 persons and is in charge of international relations, accounting matters, IT and macro-prudential studies and/or scenarios and research projects. For purposes of off-site analysis the supervised institutions are divided into four categories, allocated to four separate divisions within the DC: (a) "general" non mutual credit institutions; (b) "specialized" credit institutions; (c) mutual credit institutions and provincial banks; and (d) investment firms and market operators. Persons working in DC and DS participate periodically in on-site inspections, and vice versa. Off-site supervision is based on systematic, continual analysis of quantitative and prudential reports, including e.g., reports produced by the bank's management and financial accounting systems, periodic reports on compliance with laws and regulations, and on the bank's internal controls. Also publicly available documents, e.g., the credit institution's annual report and accounts are included in the off-site analysis. Furthermore, off-site supervision is supported by a number of supervisory tools which help identify the need for corrective action or an ad-hoc inspection • The *Organisation et Renforcement de l' Action Préventive* (ORAP): a CAMELS-type risk analysis and rating system for individual banks. In ORAP, each credit institution is assessed on a series of 15 indicators covering: (i) the bank's current activities; (ii) its observance of prudential ratios and the strength of its capital base; (iii) the current risk profile of each of its main business lines; (iv) earnings; (v) internal risk monitoring procedures, (vi) the appropriateness of its organizational structure; (vii) internal control system; and (viii) the professional capacities of its senior management. This assessment produces an overall rating of the bank, a rating for each major risk category, and, as applicable, identifies areas for corrective action. • The *Système d'Aide à l'Analyse Bancaire* (SAABA), an automated early warning system focused on weaknesses in a bank's financial condition. Combining data from twenty-five

	databases, SAABA produces: (i) a detailed loan quality analysis on each credit institution;; (ii) a partial analysis of the principal aspects of banking risk; and, as required; (iii) an aggregate overview of these aspects across the banking system. It can also be adapted to simulate the effects of various events, e.g., sector-specific economic shocks. Besides the BdF's databases, SAABA also uses the product of special surveys (e.g., real estate risk, country risk) and external sources, such as rating agencies. • The *Base des agents financiers* (BAFI), which is drawn from accounting and prudential returns filed by supervised institutions with the CB; • The *Service Central des Risques* (SCR), which contains information on performance of all loans of more than EUR 75,000 to nonbank entities reported to the BdF by credit institutions; • The *Fichier Bancaire des Entreprises* (FIBEN), which collects information on businesses and managing directors and contains accounting and financial data reported to the BdF by all nonbank businesses in France with annual gross revenues exceeding EUR 750,000. FIBEN covers 200,000 firms, and thus accounts for 90 percent of total bank credit to businesses in France. Thus, FIBEN provides a regularly updated rating system for most French businesses, that goes substantially beyond the capacity of the private rating agencies, and thereby plays a fundamental role in bank lending to small and medium businesses. • Furthermore, the CB has access to databases maintained by the BdF. Further, the CB has developed a cross-industry methodology for "homogenous line(s) of business groups" (peer groups) enabling it to analyze profitability and capital structures of credit institutions with closely comparable line(s) of business profiles. The off-site supervision process also encompasses regular direct contact with the credit institution's management by telephone or in meetings, to discuss with bank management the results of the off-site analysis. On-site supervision is especially important to determine the exact state of the credit institution's loan portfolio or its system of internal controls. Various types of inspections are held: (i) a general, periodic inspection; (ii) inspections limited to a specific sector of the activity (especially used with regard to the largest banks); (iii) triggered by the bank's perceived financial condition; (iv) "thematic" inspections, focused for instance on AML/CFT compliance; (v) preparedness for Basel II; and (vi) "follow-up" of compliance with earlier recommended corrective actions. In addition to the supervisory tools supporting off-site supervision an on-line *Système d'Information de l'Inspection Générale* (SIGAL) to retrieve financial information, accessible to inspectors on their laptops during inspections. SIGAL analyzes accounting statements and prudential reports, extracts statistical information concerning the structure and quality of a credit institution's loan book and scans for connected borrowers. A wide spectrum of risks (credit risk, liquidity risk, operational risk, etc.) may be addressed in the course of on-site inspections, with particular focus on internal control systems, adequacy of regulatory and management reporting, internal and external audit and management capabilities. More specific areas of attention include capital adequacy, asset quality, management, earnings, liquidity and sensitivity to market risk, as well as compliance with the law and regulations. On-site inspection "teams" are led by a Chief Inspector, assisted by two or more examiners, with the same "team members" remaining as a unit for several inspections. The "teams" are helped, as needed, by two groups of specialists, specifically on Information Technology and Model Risk Analysis. For the "Big Six" largest banking groups, on-site inspection is almost continuous, focusing on key risk areas, and on a consolidated basis, including foreign branches and subsidiaries where deemed necessary. Comprehensive on-site inspections of nonsystemic institutions and where

	off-site supervision has not revealed significant weaknesses, are conducted on a three-to-five year cycle. On-site inspections outside the "Big Six" may also have a specific focus (e.g., rapid growth in assets, marked deterioration in observance of prudential standards or, on a general basis, a specific activity, such as lending to particular segments of the economy). In addition to general licensing, prudential and supervisory rules which fully apply to this kind of credit institutions, the COMOFI, Articles L.511-31 and L.511-32, states that central bodies of mutualist credit institutions shall ensure that the laws and regulations applying to these institutions are implemented and exercise administrative, technical and financial supervision over their organization and management. On-site supervision may be extended to their direct and indirect subsidiaries and to those of affiliated institutions. Central bodies may take disciplinary action as authorized by the laws and regulations. Without prejudice to the powers conferred on the CB to exercise supervision, the central bodies shall assist in implementing the laws and regulations. The central bodies shall bring any noncompliance to the attention of the CB. On-site inspections are conducted on the basis of specific standardized, written procedures. The program of inspections is proposed by the DC, after input from on-site inspectors, and approved by the CB, and can be modified as needed. Approximately 240 on-site inspections per year are performed. On-site inspections are characterized by ongoing communication with the DC, the DS (accounting and prudential issues) or the DSJ (legal matters). During the inspections (especially when a credit institutions or an investment firm appears in distress) the team leader files progress reports to the CB, so the CB could be informed as quickly as possible. The DC sends letters with recommendations or requirements for action to banks with a "substandard" or "poor" rating. It can also ask for remedial action when a banks has been perceived as financially vulnerable, or sensitive to the deterioration of individual clients, sectors, geographical areas or macro-economic developments. To minimize misunderstandings, a draft inspection report is first discussed with the top management of the credit institution who may submit written comments. Where the inspection report contains matters of concern (e.g., regarding provisions, the organization and the management, the interpretation of the license or of the regulations) the Senior Inspector usually discusses its content in detail with the DC, so as to cross-check the technical or regulatory features. The final report is signed by the Senior Inspector and forwarded to the DCP. The result of the on-site inspection –i.e., the follow-up letter (*lettre de suite*) of recommendations and prescriptions- has to be communicated to the institution's Board of Directors or the managing or supervisory board (or other similar decision-making body) and to the external auditors (COMOFI Art. L.613-10). The *lettre de suite* is drafted by the DC and signed by the CB's Secretary General or, in certain instances, by the Governor of the BdF, as chairman of the CB. Follow-up of the required remedial actions is the responsibility of the DC. The Senior Inspector in charge of the inspection is kept informed of the bank's follow up actions. Staff of the four divisions of the CB can exchange views in periodic working groups, e.g. on draft regulations or reviews of emerging risks. Monthly meetings between the senior management of the CB and the Senior Inspectors permit discussion of current issues. To foster collaboration, the four divisions of the CB regularly exchange personnel. Recruits to the other divisions are regularly seconded to DCP inspection teams to gain field experience. Heads of divisions periodically head on-site inspections. Conversely, inspectors are seconded to positions in the DC at various hierarchical levels. Staffing numbers have increased considerably since 1995 in order to cope with the growing demands of banking supervision. Currently the CB and the CECEI together have some 585 staff at their disposal. In addition, in response to the growing complexity of banking, the CB has recruited specialists, for instance on derivatives. The CB continues to complement its micro economic analysis by strengthening its capacity to

	assess macro-prudential risks and to take early action to limit systemic risks. In particular, DC and DS use databases, and collect detailed information from the banks when needed, to analyze what impact a macro-economic or sectoral deterioration could have on the financial soundness of the credit institutions. The CB is developing a module in the SAABA system to simulate the impact of for instance a deterioration in the housing and construction sectors, or fluctuations in macroeconomic variables such as the interest rates, exchange rates, or growth rates. Over the past years reinforcement of the supervision of large systemically important groups has been one of the main objectives of the CB, and has led to the design of a "reinforced surveillance program," including a significant increase in staff supervising these groups. A yearly or semi-annual meeting takes place with top executives of the groups (including heads of business lines, financial officers, risk managers), more specific meetings on issues identified by the off-site analysis performed by the CB, with the objective of assessing the risk profile of the institution more precisely, and the ability of the institution to monitor the risks. The results of these contacts serve as input to the on-site inspection program. A number of inspections take place with regard to each group per year, for instance different types of risk, risk management regulatory compliance and audit functions. CBRF Regulation 97-02 on internal controls is to be amended soon to include a requirement for business continuity planning by banks.
Assessment	Compliant
Comments	Analytical tools are improved continuously to stay abreast of the changing environment and emerging issues, and to introduce macro-prudential approaches to supervision. Ongoing work on macro-prudential issues within the ECB's Banking Supervisory Committee comprising the 15 banking supervisory authorities and national central banks, remains of great importance.
Principle 17.	**Bank management contact** Banking supervisors must have regular contact with bank management and a thorough understanding of the institution's operations.
Description	Also see the description under BCP 16. In general, the CB enhances its understanding of the bank's operations and management through meetings with senior management. These meetings are an integral part of the supervisory process. Overall, with a degree of variation depending on the significance of the institution, contacts between the bank and the CB are frequent, including for instance the quarterly discussion of the results, some ten meetings annually of the CB's and the bank's specialists on technical matters, and a yearly meeting between top management of the banks and the CB. The inspection process with regard to the big six groups in practice is virtually an ongoing process, with some four to five inspections per year, covering different topics. The CB meets regularly with the CACs of the banks to discuss broader issues relative to the banks. During an on-site supervision working meetings take place with senior management and external auditors, permitting the supervisory authority to convey its impression of the standard of performance achieved by both. Off-site supervisors also hold regular contacts with banks' senior management and are kept well-informed by on-site supervisors, as well as through the outputs of the analytical tools at their disposal. On-site inspections also give the opportunity to meet with management and the external auditors, to convey the ongoing findings of the inspection, listen to explanations and, where required, resolve matters of interpretation. On completion of the examination, inspectors discuss the draft report with the bank before the final report is officially forwarded to the CB and the chairman of the bank. The inspection process helps to inform the CB's assessments of top managers, especially their ability to define and implement a consistent and sound strategy for the institution, and of the quality of the management team. Inspection assessments are taken into account in the ORAP

	criteria. If serious operational deficiencies or statutory infractions are encountered, the CB may take disciplinary action against the Chairman and/or the executive officers. Also outside the inspection process, periodic contacts take place between the bank's key officers and top management and the DC and the DS, but also with the Secretary-General of the CB and his/her deputy. The agenda of these meetings depends on the size and risk profile of the institution and may include discussions with such key executives as the chief financial officer, the chief risk manager, the head of internal audit, the external auditors and the senior officers responsible for the critical risk areas, as established by the CB's risk-based approach to supervision. Discussions include remedial actions, amendments to corporate strategy, operational performance, changes in asset quality and any other significant issues that have arisen in the period under review. CRBF Regulation 96-16, requires that banks notify the CECEI of any significant changes in their circumstances, including the appointment of senior managers (Articles 9-11). The CECEI can inform the bank that a modification of the license is needed, or that a proposed management appointment is not acceptable.
Assessment	Compliant
Comments	
Principle 18.	**Off-site supervision** Banking supervisors must have a means of collecting, reviewing and analyzing prudential reports and statistical returns from banks on a solo and consolidated basis.
Description	Under Principle 16 an extensive description is provided of the review and analysis function of the CB. In accordance with the COMOFI, Art. L.613-8, "the CB shall draw up a list of the documents and data to be submitted to it and determine their form and the deadlines for filing. In addition, it may require the credit institutions and investment firms to provide any information, clarification or proof necessary to the exercise of its functions. It may ask to receive the auditors' reports and, in general, all accounting documents (and, when necessary, for them to be certified), as well as all other relevant information and data." Accordingly, the CB's database is compiled from documents that include off-balance sheet transactions, doubtful loans and the corresponding provisions for loss. Large institutions file monthly reports on their activities and situation in France, and they must, like other institutions, file quarterly reports, which include their foreign branches. Profit and loss accounts must be filed twice a year. Consolidated accounts must be filed annually (see above), but the larger institutions now publish consolidated data on a quarterly or semi-annual basis, as expected by the market. Filings made to the CB that are repeatedly found to be in error or late may subject the bank to sanction. Specifically, the CRBF and the CB have issued a series of regulations and instructions on prudential standards, which include statistical and prudential reporting requirements. These include for instance regulations on Own Funds (Regulation 90-02, and CB Instruction 90-01); Solvency, (Regulation 91-05; CB Instruction 91-02); Large Exposures (Regulation 93-05; CB Instruction 2000-07); Capital Adequacy for Market Risks (Regulation 95-02; CB Instruction 96-01); Liquidity (Regulation 88-01; Regulation 92-06; CB Instruction 88-03); Own Funds and Permanent Capital Ratio (Regulation 86-17; CB Instruction 87-03). Most of the CRBF Regulations and most of the CB's instructions require institutions to provide reports or statistical returns on both a solo and a consolidated basis. In particular, credit institutions must comply on a consolidated basis with Management Standards on Solvency, Large Exposures and Internal Control. Further, should the CB consider that the distribution of an institution's own funds within a financial group is unsatisfactory from the standpoint of safety and soundness, it may require that the institution complies with certain regulatory

	standards on an individual or sub-consolidated basis. The CRC's Regulation 99-07 applies consolidation rules according to the nature of the activity carried out by the consolidated entity and the level of control. Thus, institutions constituting an economic group must prepare and publish audited consolidated annual accounts, a copy of which must be sent to the CB. In accordance with the COMOFI, Art. L.511-37, the CB ensures that periodic publication takes place. CRBF Regulation 2000-03 on consolidated supervision, as modified by Regulations 2001-03 and 2001-05 to explicitly include the mutualist groups, reflects the new accounting rules introduced by CRC Regulation 99-07. Regarding the particular case of mutualist groups–in which, typically, local banks hold the capital stock (and elect the Board of Directors) of regional banks and the latter, in turn, hold the capital stock of the central institution–the CRBF Regulation 2001-03 clearly obliges such groups to provide fully consolidated accounts. It must also be pointed out that new reporting obligations have been set, for each mutual or non mutual group, concerning subsidiaries and branches abroad. The data received though the reporting system provide the input for a number of supervisory tools, i.e., the SAABA system, which analyses each bank's risk profile, ORAP, which grades the individual banks and serves as an early warning system. Furthermore, the CB may require banks to provide any information the CB considers necessary for its supervision.
Assessment	Compliant
Comments	Since the 2001 assessment, measures have been taken to ensure that the mutualist groups report on a consolidated basis,
Principle 19.	**Validation of supervisory information** Banking supervisors must have a means of independent validation of supervisory information either through on-site examinations or use of external auditors.
Description	Under CRBF Regulation 91-01, banks are under an obligation to publish annual financial statements. The statements must be certified by a registered public accountant (CAC). This system provides an important means of verification of the supervisory information provided by the bank. Furthermore, the supervisor has access to all information concerning the supervised institution's affairs and, where necessary, to its Board of Directors, senior management and staff. The COMOFI, Art. L.613-8, authorizes the CB to require supervised institutions to deliver to it all information the CB considers necessary, and in the format and with the frequency that it deems appropriate. Included in this broad power is the CB's capacity to "require delivery to it of the official auditors' reports and, in general, all accounting documents (and, when necessary, for them to be certified)." Art. L.613-9 also authorizes the CB to ask for any clarification from the bank's external auditors with regard to their work for the bank. If the CB strongly objects to the bank's financial statements, it can demand that a rectification be published (Description of BCP 8). As noted in the discussions of Principles 16 and 17, the CB operates a highly developed system of off-site and on-site supervision, the latter providing—as part of its mandate—a means of verification. Integral to the supervision process is the practice that the CB inspectors hold two meetings with the CAC in the course of an on-site inspection. The external audit is entrusted to a CAC, who is required to be a member of the CNCC. In order to reinforce the supervision of this profession, the 2003 CSF created the *Haut Conseil du Commissariat aux Comptes* (HCCC), which is in charge of monitoring the CACs activities and, together with the CNCC, has established a code of conduct for CACs. Decree 84–709, as modified by decree 2002-30, provides (Art. 29) that a credit institution must advise the CB of the external auditors that it proposes to nominate and that the CB has two months to give its

	opinion on such a nomination. This opinion has to be brought to the attention of the institution's shareholders meeting. Under COMOFI Art. L.613-9, the CAC is required to inform the CB of any cases of noncompliance with the rules and regulations, which could impact the financial condition, the profits or the own funds of the bank, could endanger the continuity of the institution, or lead to a qualified auditors' opinion on the annual financial statements. The CB may also provide the external auditors with information for them to accomplish their assignment. There is no barrier of professional secrecy between the CB and the CAC. In practice, contacts between the CB and the CAC are frequent and informal, and there are no statutory barriers of professional secrecy between the CB and the CAC. The CB has the right to designate a supplementary CAC when it considers this necessary (COMOFI Art. L.511-38) and may ask the Court or the CNCC to dismiss or suspend a CAC (Art L.613-9), and/or inform the CAC's professional governing body of any infraction of the COMOFI, as amended, or where the external auditors appear to be insufficiently independent of the client. Though the CB is not involved in the evaluation of the quality of the work of the auditor (or of the firm to which he/she belongs), nor in the definition of his/her mission, the 2003 CSF now specifies that the Ministry of Justice, when deciding to conduct an inquiry on a CAC, can ask the CB's cooperation. On a case by case basis, the CB has been able to require an audit firm, other than that nominated by the credit institution, to conduct a specific mission in that credit institution. This occurs several times per year. Given its resource limitations, and the three to five-year examination cycle, the CB has under review the means by which it may derive greater benefit from the work of the external auditors in the execution of its own mandate. Important reforms have been made in this regard, through close consultations between the CB, the AMF and the CNCC and the assessment of the external auditors is often asked for by the supervisory authority. Should the CB have some doubts about the quality or the level of the works done by the CAC of a credit institution or an investment firm, it has the capacity to nominate an additional external auditor.
Assessment	Compliant
Comments	Following the adoption of the 1999 SFSA, France has acquired a corpus of legislation that should enable external auditors and supervisors to develop more effective relations within the framework of their respective legal responsibilities. The implementing decrees concerning the CAC nomination proceedings toward the CB are now in force. Decrees of application of the 2003 FSA remain to be adopted, and the new Code of Ethics of the accountancy profession confirmed.
Principle 20.	**Consolidated supervision** An essential element of banking supervision is the ability of the supervisors to supervise the banking group on a consolidated basis.
Description	According to the rules set out in CRBF Regulation 2000-03 (which codified previous regulations), as amended by Regulations 2001-03, and 2001-05, banking regulations taken as a whole (see below) require regulatory filings to be prepared on a consolidated basis. The CRBF Regulation 98-03 (Art.) provides that the CB may insist that an entity be excluded from the scope of consolidation where there exist obstacles to the transfer of information necessary to determine accurately the level of exposure, or in those cases where consolidation would be misleading or inappropriate from the standpoint of prudential supervision. As noted in Principle 18, the applicable CRBF Regulations and CB instructions require that institutions provide to the supervisory authority their reports or statistical returns on both a solo and consolidated basis. The CB is well aware of the overall structure of banking organizations or groups (i.e., the credit institution and its subsidiaries) and has an understanding of the operations conducted therein. The COMOFI, as amended, empowers the CB to supervise the entire activities of a credit

	institution, whether those activities are carried on directly (including branch operations located outside France), or by means of subsidiaries and/or affiliates. At the same time, the CB's on-site and off-site supervisory processes enable it to evaluate the risks that nonbanking activities conducted by a credit institution or the other elements of the banking group may pose for the institution or group as a whole. The CB's risk-based approach to supervision encompasses the evaluation of all significant activities of the institution, whether or not these constitute "banking operations" within the meaning of the term given by the COMOFI, as amended (Art. L.511-1) (see Principle 2). As discussed above, the CB has access to all the records of a credit institution or investment firm. In addition, the COMOFI (Articles L.613-10 and L.613-11) requires that the CB has on-site access to the business and records of the corporate entities controlled by the institution, including subsidiaries or affiliated companies, as well as to the business and records of "the legal persons directly or indirectly controlling it (i.e., the institution) and to their subsidiaries." For corporate entities located outside France, the CB has all powers necessary to collect data and information from the group's corporate headquarters in France and to extend its supervisory activities (including on-site inspections) to those entities when necessary. In that regard, the CB has signed a large number of MoUs with supervisory bodies within and outside the EU. When no MoU has been concluded, on-site inspections will require the permission of the host country. In addition, the CB monitors the relationships of credit institutions with regulatory bodies in other jurisdictions to ensure that the credit institution complies with all regulatory requirements, on a globally consolidated basis. The CRC Regulation 99-07 contains new rules for the drawing up of consolidated accounts for credit institutions. It includes a definition of exclusive control and introduces consolidation criteria for special-purpose entities, including the possibility for networks affiliated with a "central body" (as defined in the COMOFI, as amended, Articles L.511-31 and L.511-32) to draw up consolidated accounts comparable to those of other bank groups. Thus, as indicated under Principle 18, the CRBF Regulation 2001-03 obliges the mutualist groups to report fully consolidated accounts, and all mutualist groups now prepare a form of consolidated accounts. Under COMOFI Articles L.613-10 and L.613-11, the CB may inspect the activities of a bank's direct or indirect parent and sister companies. Protection of the credit institution against adverse developments at the parent or nonbank affiliate companies would be achieved through application of the general provisions of the COMOFI on sanctions (Articles L.613-15, L.613-16 and L.613-21). In respect of owners of parent companies, the CRBF Regulation 96-16 requires the prior authorization—by the CECEI—of the acquisition of defined levels of direct—or indirect—equity interests in credit institutions. Indirect acquisitions of French credit institutions through acquisition of parent companies by acquirers domiciled outside France require immediate notification to the CECEI, which may find reason that the credit institution's authorization be reexamined. Given the close operational links between the CECEI and the CB, the supervisor thereby has a means of establishing and enforcing "fit and proper" standards for owners. For senior managers, the COMOFI, as amended (Art. L.517-1), makes "financial holding companies" subject—inter alia—to the "four eyes" principle, laid down in Art. L.511-13 of the COMOFI, under conditions set out in Regulation. CRBF Regulation 96-16 (Art. 9) requires notification of changes in senior management to the CECEI, affording the latter the opportunity to state whether an appointment is seen as compatible with the credit institution's authorization. This provides an oblique means of establishing and enforcing "fit and proper" standards for senior managers of parent companies of credit institutions. Information exchange mechanisms with other domestic and foreign regulators allow the CB to adequately access information on the financial condition and the risk management practices and controls of business vehicles within a banking group. In non-EEA countries, bilateral

	agreements are strengthening this aspect of supervision, though the scope of competence is a frequent stumbling block in certain countries with a tradition of opacity (see Principle 24).
Assessment	Compliant
Comments	The authorities are encouraged to continue attempts to obtain access to information from all countries where French banks have business units.
Principle 21.	**Accounting standards** Banking supervisors must be satisfied that each bank maintains adequate records drawn up in accordance with consistent accounting policies and practices that enable the supervisor to obtain a true and fair view of the financial condition of the bank and the profitability of its business, and that the bank publishes on a regular basis financial statements that fairly reflect its condition.
Description	The COMOFI (Arts L.511-36 and L.511-37), refers to the CRC the competence and responsibility to issue accounting regulation for banks and investment firms, after formal consultation with the CCLRF. Before 1998, the CRB, then (after 1996) the CRBF was the only body enabled to regulate accounting matters for banks (and then investment firms). Between 1998 and 2003, the CRC was entitled to issue accounting regulation for banks and investment firms, after formal consultation with the CRBF. Most of the current regulations were defined by the CRB, then the CRBF, before the CRC was created. The CRB, in particular in Regulation 91-01, has elaborated extensive accounting and valuation rules for the financial sector, thus providing for a framework specifically adapted for keeping bank records and for publishing statutory accounts for financial institutions. In particular, French regulations (88-02, 90-01 and 90-15) allow for "mark to market" valuation for the trading book under the conditions that it concerns assets that are likely to be traded, and that appropriate management and control procedures are in place. Moreover, CRBF regulation 97-02 on internal control issues strict rules regarding internal control procedures in accounting aiming specifically at ensuring the "auditability" of accounts (audit trail). CRC Regulations 99-07 (for banks, financial holdings and most investment firms) and 99-02 (for some investment firms) further specify the modalities for the preparation of consolidated accounts. As explained under Principle 19, the CACs play a fundamental role in certifying banks' accounts and the 1999 FSFA has strengthened the CB's capacity to request the assistance of the CAC in monitoring the activities of the credit institutions and investment firms and ensuring the reliability of their reports. A joint white paper (*Livre Blanc*) issued by the COB (now the AMF) and the CB in December 1998 noted that much remained to be done toward strengthening the transparency of reporting by French banks and making it comparable to practices prevailing in many other G-7 countries. In particular, the report stressed the more limited and less standardized disclosure by banks of information on credit risk, including information allowing an assessment of the quality of the bank's assets, provisioning and treatment of interest on nonperforming loans. The report also noted some weaknesses with regard to reporting of market risk, including disclosure of derivatives activities and counter party risk. The quality of the notes to the financial statements could be improved in view of the practices in other G7 countries. Moreover, the heterogeneity of presentation of financial statements across banks hindered comparison across banks. In its Annual Report of 2001, the CB compares 15 large U.S. and European banking groups' disclosure practices. with a view to setting a disclosure agenda for the French banking system in 2005, when the IAS will become the standard for financial disclosure in the EU (although IAS 39 is still a contentious issue between the IASB and the EU, and France in particular.) Since the issuance of the *Livre Blanc,* in 1998, the authorities have undertaken a number of

	measures to improve the quality of financial disclosure by banks. • Decision 98.05 and recommendation 98.R.01 of the *Conseil National de la Comptabilité* (CNC), on market risk disclosure; • Joint recommendation of the COB, precursor of the AMF, and the CB of January 2000, on credit risk disclosure, which recommends that banks' financial disclosure break down credit risk by economic sector, counterpart (government, banks, businesses, individuals, etc.) and geographical area, as well as provide information on bad loans and provisions, and the ratio between general provisions and overall credit risk; • Joint Recommendation of the COB and the CB of November 2002 on deconsolidation and separation of assets; • Regulations of the *Comité de la Réglementation Comptable* (CRC) No. 2000-03 on solo accounts, and No. 2000-04 on consolidated accounts; • Regulation of the CRC No. 2002-03 on disclosure of credit risk. Furthermore, the annual analysis by the Transparency Group of the Basel Committee, for the accounts of major French banks (BNP Paribas, SG, CASA, CL) over bookyear 2002 shows that major improvements have taken place since 1999, although the improvements relate to different aspects across banks. In its 2001 Annual Report, the CB published a study on financial disclosure by banks, summarizing the main international developments on bank accounting, and foreshadowing the need for change in the French financial accounting system. Again in its Annual report over 2002, the CB performs a preliminary analysis of the coming changes to the international accounting system. Clearly, the CB wishes to keep the debate alive, and to sensitize the French financial institutions to the need to adapt to more internationally recognized standards. Specifically with regard to credit risk, the Report states on page 173 that "current French standards appear to be too restrictive and insufficiently conservative with regard to credit risk provisioning, to the extent that provisioning often takes place rather late.." Under current rules, provisioning seems to depend on classifying a loan as "doubtful," which requires occurrence of a concrete event. The CB expects that implementation of IAS 39, a main component of which relates to credit risk, would lead to earlier and smoother provisioning. However, these comments were issued in a context where the exposure draft of IAS 39 published at this time was based on an "expected loss" model, incorporating a concept of "dynamic provisioning" largely suggested by the CB. The final version of IAS 39 is based finally on an "incurred loss" model which appears to be a bit more restrictive than the actual French Regulation (see comment on Principle 8). French banks are making progress toward meeting the requirements of Pillar 3 of the new Basel Capital Accord. A survey conducted by the CB in May 2003 shows that French banks have fulfilled the majority of the Pillar 3 requirements for market risk disclosure, but still need to continue work on credit risk disclosure. Nevertheless, CRC Regulation 2002-03, of December 2002, addresses a number of important areas of credit risk disclosure. It requires banks to make a distinction in their accounts between standard and doubtful loans, dividing the latter into two categories, "non compromised" doubtful loans and "compromised" doubtful loans, the latter of which where payment is not expected, assuming that loans for which a loss occurs are derecognized from outstanding amounts in the balance sheet to the extent of the loss amount (Articles 3 and 9). Banks are required to disclose in their financial statements the gross amounts of standard, restructured, doubtful and compromised loans, as well as the criteria used to define these categories (see Articles 22 and 24). The rules applied by the banks to determine the level of provisions need to

	be disclosed (Art. 26) as well any changes made in these rules since the last set of statements. All loans need to be broken down into categories relative to the most significant sectors (within geographical, economic sector, counterparty (also interbank)), and by residual maturity. The doubtful and compromised loans, as well as the provisions taken must be broken down into the same categories (see Articles 28 through 30, and Chapters 3 and 4). The CNC envisages to resolve one area of divergence concerning the choice offered to French banks in the calculation of the present value of restructured loans by proposing to the CRC to allow only the calculation of the present value on the basis of the original loan conditions. However, no formal decision has been announced yet by the CNC, which prepares the future regulations to be adopted by the CRC. The issuance of regulations since 2000 by the CRC, in particular Regulation 2002-03 that ensure broader disclosure "on a uniform and internationally comparable basis," have thus contributed to the improvement of disclosure by the French banks. Financial statements have also been improved by harmonization of key ratios that facilitate the comparison of banks' performances. The most delicate matter concerns communication by banks of problem situations. Notwithstanding clear evidence, as noted in the report on financial transparency, of the beneficial effects of timely crisis communication, most bankers remain reluctant to accept regulations or to make firm commitments in this respect. While the CB has encouraged banks to adopt a policy of open and timely communication on any significant difficulties and on relevant external events that affect their risk-exposure, results so far have been mixed.
Assessment	Compliant
Comments	Progress is being pursued toward greater convergence with IAS, and the authorities clearly stimulate greater convergence, in the interest of greater comparability of financial statements.
Principle 22.	**Remedial measures** Banking supervisors must have at their disposal adequate supervisory measures to bring about timely corrective action when banks fail to meet prudential requirements (such as minimum capital adequacy ratios), when there are regulatory violations, or where depositors are threatened in any other way. In extreme circumstances, this should include the ability to revoke the banking license or recommend its revocation.
Description	As noted with regard to Principle 1(4), the COMOFI, Articles L.613-1, L.613-15-19, and L.613-21-23 confer a broad range of enforcement and sanctioning powers upon the CB. Measures range from a recommendation (Art. 613-16) to an injunction both aiming at making the credit institution take appropriate corrective action within a given period of time in order to improve its financial situation, enhance its management methods or insure the adequacy of its organization to its activities or development targets up to the withdrawal of the license (Art. L.613-21). The most common and effective means to obtain remedial measures are the *lettres de suite* following an on-site inspection. They call on the responsibility of both management and Board of Directors to ensure correction of the situation. Under COMOFI Art. 613-21, if a bank ignores a recommendation or is in breach of a law or regulation, the CB can: (i) issue a warning; (ii) issue a supervisory reprimand; (iii) prohibit to perform certain activities; (iv) suspend one or more managers, with or without appointment of a temporary administrator; (v) remove one or more managers, with or without appointment of a temporary administrator; (vi) withdraw the license, with or without appointment of a liquidator. Pecuniary sanctions may also be imposed upon the bank in addition to these measures. Moreover, the CB may impose the withdrawal of the voting rights of certain or all shares, the prohibition to pay dividends or other form of remunerations to shareholders and the obligation

	for the credit institution to disclose, at its own expenses, the disciplinary sanctions. The CB may mention infringements or criminal offenses to the Public Prosecutor's Office. Whenever a bank is deemed to be at risk of not being able to meet its commitments toward its customers, the CB can request intervention of the FGD (COMOFI Art. L.312-5). Given that the primary concern in such case is the optimal protection of the interest of private customers covered by the FGD, the CB and the FGD cooperate closely both in the decision-making and the implementation of the measures. When imposing sanctions, the CB is an administrative judiciary authority (Art. L.613-23 of the COMOFI), and its decisions and sanctions can therefore only be challenged before the *Conseil d'Etat*, the highest administrative judicial authority. In particular, bank customers and/or management and directors can contest the appointment of temporary administrators by the CB. They can also contest the decisions and actions of these administrators. In urgent cases, appeals against the decisions of CB to appoint an administrator or a liquidator do not suspend their implementation (Art. L.613-23 II). Moreover, under Art. L.613-21, the CB may prohibit payment of dividends or other form of remunerations to shareholders and the obligation for the bank to disclose, at its own expenses, the disciplinary measures. In 2002, the CB issued one injunction against a bank, 8 warnings, 15 supervisory complaints (some of which with a pecuniary penalty), ordered one bank to limit its activities, and delicensed three investment companies for disciplinary reasons. Five disciplinary actions were initiated against money changers.
Assessment	Compliant
Comments	
Principle 23.	**Globally consolidated supervision** Banking supervisors must practice global consolidated supervision over their internationally active banking organizations, adequately monitoring and applying appropriate prudential norms to all aspects of the business conducted by these banking organizations worldwide, primarily at their foreign branches, joint ventures and subsidiaries.
Description	CRBF Regulation 2000-03 specifically obliges banks and their holding companies to comply with the prudential standards on a consolidated basis, without distinction whether consolidated entities are located abroad or not. Furthermore, with regard to internal controls and banks' management of specific types of risk, CRBF Regulation 97-02 requires that banks view their risks on a consolidated basis, including all its foreign subsidiaries and branches, and its controlling entity and to the subsidiaries of the latter. One of the key-features of Regulation 97-02 on internal control is that each institution must ensure that its organization and procedures are adequate for its activities and that of the group it belongs to. This covers the inclusion of foreign branches and subsidiaries in management information, the internal control structure of the organization and the daily oversight responsibility of management. During on-site inspections on internationally active banks, the CB ascertains that the organization and internal control of the French parent fully meet this requirement. Part of the on-site inspection is in many cases carried out at the premises of foreign branches (and in some cases even jointly with the local supervisor) of French banks. Even when rules, regulations and requirements are not fully equivalent to those for the parent bank, the CB requires fully consolidated prudential information on all entities of a group, both purely national groups and those also operating abroad, on the basis of the groups' internal accounting and external prudential norms. The French regulations make a distinction between EEA branches and other entities. In the case of EEA branches, which have to be notified to the CECEI prior to their establishment, the "home" supervisory authority retains all its sanctioning powers and can withdraw the

	authorization to run a branch that is deemed to be unsound or in violation of the home regulations. The home authority should advise (and consult with) the "host" authority. In the other cases, if the branch does not comply with the host country's regulations, only the host supervisor can directly sanction it. However, as home supervisor, the CB could sanction the parent bank or require it to stop or limit its activities, making use of the powers specified by COMOFI Art. L.613-21. As noted in Principle 1(6), the CB and CECEI have established an extensive network of MoUs with supervisory authorities Within the EEA, specific directives require the supervisory authorities to cooperate by mutually allowing each other to properly exert consolidated supervision. Thus, France has a wide range of MoUs in place to implement these directives. Wherever a significant presence of French banks abroad (or vice versa for foreign banks) exists, these MoUs give rise to regular consultations, both formal (MoU meetings on a regular basis) and informal. For a limited number of international financial conglomerates, involving French banks, these consultations are frequent and intense and are covered by special, sometimes multi-party MoU agreements. It should be noted that the EU Directive 2002/87/EC on the supplementary supervision of financial conglomerates further expands the scope of consolidated supervision. For some non-EEA countries, similar bilateral agreements have been established following the 1999 SFSA vesting the CB with the power to conclude bilateral agreements with the authorities of a state not party to the EEA entrusted with duties similar to those entrusted in France to the CB. Apart from this formal aspect, the CB already engages in close cooperation with all the main G10 or industrialized countries' supervisory agencies. In this framework, regular individual sharing of information is carried out between the CB and non-EEA supervisors, periodic meetings take place and stand alone or joint on-site inspections of French branches and subsidiaries are usual, especially in North America and Asia where most French foreign operations are located. These bilateral agreements, regarding mutual cooperation and exchange of information in the performance of prudential supervision, provide for arrangements for the collection and sharing of information, in particular through on-site inspections. In this case, information should be shared in support of the objective to facilitate and meet the requirements for effective consolidated supervision. However, for countries for which the scope for cooperation is limited by the opacity of local rules on establishment, supervision and professional secrecy, the CB asks the institutions themselves, on a case by case basis, to provide the information it requires in order to carry out its supervisory duties on a consolidated basis. Any inspection carried out by foreign supervisory authorities representatives may only concern compliance with the prudent management standards of the State concerned so as to permit assessment of the financial situation of a banking or financial group. A report on the inspection must be provided to the CB, which alone may impose sanctions with regard to the branch or subsidiary inspected in France. In addition, the 2003 FSA has broadened the scope of cooperation with non-European banking groups. In particular, it enables undertakings established in France that are part of the financial group or mixed group to which belong credit institutions or investment firms having their registered office in a State with which France has concluded a bilateral agreement of sharing of information, to transmit the necessary information to undertakings of the same group having their registered office in the State party to the bilateral agreement. These exchanges of information can cover, in accordance particularly with COMOFI Art. L.511-34, all matters related to the consolidated supervision of the financial situation of a cross-border establishment as well as the organization of the fight against money laundering and the financing of terrorism. In order to address the cross border implications of the implementation of Basel II, the CB has created working arrangements with all foreign supervisory jurisdictions in which French banks

	have establishments or which have establishments in France.
Assessment	Compliant
Comments	
Principle 24.	**Host country supervision** A key component of consolidated supervision is establishing contact and information exchange with the various other supervisors involved, primarily host country supervisory authorities.
Description	French laws and regulations provide a comprehensive framework for cooperation with foreign authorities. As already mentioned in Principle 1 (6), the 1999 SFSA has extended the power of the CB, which may now conclude bilateral agreements with the authorities of a country that is not an EEA Member State, in order to: (a) perform on-site inspections on entities in the jurisdiction of the signing authorities; (b) allow the national authorities to perform on-site inspections, upon request of the co-signing authority or jointly with them, on subsidiaries or branches of institutions under the supervision of the said foreign authority; and (c) lay down conditions and modalities for the exchange of information. The main conditions for exchange of information are that the counterpart authority be subject to the same professional secrecy regulations as the CB, that regulation and supervision in the country concerned be reasonably equivalent to those in France, and that the reciprocity principle be fully respected. For some countries, where the elaboration of a formal agreement is still under negotiation, pragmatic arrangements for informal information sharing are in place and appear to function reasonably well. Whenever French banks have the intention to branch out to a country or acquire or establish a banking activity there, the CB must approve the project and negotiate the cooperation on supervisory matters of the authority concerned. For EEA or OECD member countries, the CB is authorized to rely on these counterparts having faithfully implemented EEA legislation or OECD recommendations and, thus, fulfilling all the requirements and conditions set by the French laws. The CB establishes with the competent authority the practical means and ways of cooperation. For other countries, the CB investigates whether acceptable terms for cooperation can be agreed on. In case of unsatisfactory supervision or unacceptable conditions for supervisory cooperation, the CB can oppose a proposal to branch out. As explained under Principle 23, the CB and CECEI have in place a number of MoU agreements with EEA authorities. For these MoUs, a practice of regular consultation and cooperation has been established, frequently exceeding the minimum frequency of meetings prescribed in the MoUs, certainly with regard to countries with important financial markets. For a heterogeneous financial conglomerate, a more elaborate three-party MoU has been prepared, which allows for far-reaching cooperation and for a clear sharing of responsibilities and information between the supervisors concerned. For heterogeneous international financial conglomerates the CB has in place arrangements for cooperation and exchange of information with other domestic supervisors, such as the AMF (see above) and the CCAMIP. In addition, EU Directive 2002/87/EC provides for a set of rules on the supervision of financial conglomerates. The Directive establishes the principle of supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate. Supplementary supervision should cover all financial activities identified by the sectoral financial legislation. This directive obliges to increase collaboration between authorities responsible for the supervision of credit institutions, insurance undertakings and investment firms, including the development of ad hoc cooperation arrangements between authorities involved in the supervision of entities belonging to the same financial conglomerate. France is planning to bring into force the laws, regulations and administrative provisions necessary to comply with this directive before August, 2004. For all foreign establishments of French banks and vice-versa, satisfactory agreements for supervisory cooperation are in place and operational. Furthermore, informal exchanges of

	information have been taking place for several years now with other supervisors of the world's leading financial markets. Other formal bilateral agreements are under preparation. However, the CB wishes to limit the formal bilateral agreements to countries which share the same concern for transparency in the communication of information, professional secrecy and, more generally, compliance with and effective application of the criteria developed by the Basel Committee. In the context of international arrangements for the exercise of supervision over cross border financial institutions or conglomerates, the arrangements include names and coordinates of contact persons, to facilitate and expedite the establishment of contact between home and host supervisors, of which there could be several, between countries as well as within countries. At present, the activities of French banks in other EEA countries are generally small when compared to their domestic activities (by contrast, operations in the United States and in several Asian countries account for a significant part of the consolidated balance sheet of the largest banking groups). Thus, the coordination of France's supervisory activity with that of its counterparts appears to be sufficient, based on bilateral MoUs, and discretionary exchanges of information. The active participation of the French authorities in both European and international consultation forums on matters of cooperation places them in the forefront of international cooperation.
Assessment	Compliant
Comments	
Principle 25.	**Supervision over foreign banks' establishments** Banking supervisors must require the local operations of foreign banks to be conducted to the same high standards as are required of domestic institutions and must have powers to share information needed by the home country supervisors of those banks for the purpose of carrying out consolidated supervision.
Description	As stated under Principle 24, the CB has full power to enter into any agreement or arrangement to mutually share information with its peers abroad concerning internationally active banks. For branches of EEA banks, European regulation entrusts full supervisory responsibility to the home-country supervisor, with the exception of liquidity supervision and the compliance with rules of conduct and money laundering provisions. Branches of non-EEA banks are subject to the same rules and regulations as are French banks. The CB may, however, accept that these branches meet different requirements (e.g., with regard to solvency and large exposures) provided that: (a) the home-country regulations require full consolidation of the risks taken abroad by the mother-bank; (b) the latter commits itself to supervise the operations and the situation of its branch on the same basis and principles as for a home-based institution and this under the supervision of its national supervisory authority; and (c) an equivalent treatment is granted to the branches of French banks in the country concerned. For subsidiaries, France, as the host-country, must provide for the full respect of its rules and regulations, as such institutions are incorporated under French law, and hence are subject to full CB-supervision, with both on-site and off-site examinations, on the same basis as French banks. The CB also has the same sanctioning powers over such subsidiaries as over French banks, inclusive of the right to close their operations. Unlike branches of foreign banks, French subsidiaries of foreign banks are also covered by the FGD. Since branches of EEA banks are covered by the deposit guarantee scheme of their home country, in accordance with EEA directives on deposit guarantees, the coverage of their customers is equivalent to that under the French regime. Cooperation with the home-country supervisor ensures that the latter is enabled to perform fully consolidated supervision and that it can be called upon to take supervisory action whenever serious problems might occur. In addition, for licensing, the CECEI, before making any

	decision, may seek the advice from the home-country supervisory authority and its assessment of the project. Overall, the prudential norms applied to foreign banks are as stringent as those applied to French banks. Within the EEA, prudential rules are harmonized. Nevertheless, the CB may allow exceptions for branches from countries whose regulations are at least as stringent as in France. Furthermore, the CB does not rule out the possibility of asking such branches to increase their own funds if they appear insufficient in relation to their exposure. Off-site supervisors regularly verify the rules that apply to foreign institutions. Likewise, the CB frequently organizes on-site supervision of the branches of foreign banks, as for branches of French banks. In the event of a serious deficiency, the matter may be referred to the home country authorities, a practice which has become more widespread with the possibilities offered by the 1999 FSFA. The annual report of the CECEI describes in more detail its practices with regard to cooperation with foreign supervisory authorities, including obtaining in all cases of establishment of a foreign bank in France the approval of the supervisory authority charged with the supervision on a consolidated basis of the group.
Assessment	Compliant
Comments	

Table 2. Summary Compliance of the Basel Core Principles

Core Principle	C[1/]	LC[2/]	MNC[3/]	NC[4/]	NA[5/]
1. Objectives, Autonomy, Powers, and Resources	**X**				
1.1 Objectives	**X**				
1.2 Independence	**X**				
1.3 Legal framework	**X**				
1.4 Enforcement powers	**X**				
1.5 Legal protection	**X**				
1.6 Information sharing	**X**				
2. Permissible Activities	**X**				
3. Licensing Criteria	**X**				
4. Ownership	**X**				
5. Investment Criteria		**X**			
6. Capital Adequacy	**X**				
7. Credit Policies	**X**				
8. Loan Evaluation and Loan-Loss Provisioning	**X**				
9. Large Exposure Limits	**X**				
10. Connected Lending	**X**				
11. Country Risk	**X**				
12. Market Risks	**X**				
13. Other Risks	**X**				
14. Internal Control and Audit	**X**				
15. Money Laundering	**X**				
16. On-Site and Off-Site Supervision	**X**				
17. Bank Management Contact	**X**				
18. Off-Site Supervision	**X**				
19. Validation of Supervisory Information	**X**				
20. Consolidated Supervision	**X**				
21. Accounting Standards	**X**				
22. Remedial Measures	**X**				
23. Globally Consolidated Supervision	**X**				
24. Host Country Supervision	**X**				
25. Supervision Over Foreign Banks' Establishments	**X**				

[1/] C: Compliant.
[2/] LC: Largely compliant.
[3/] MNC: Materially non-compliant.
[4/] NC: Non-compliant.
[5/] NA: Not applicable.

Recommended action plan and authorities' response to the assessment

Recommended action plan

26. The system in France for banking regulation and supervision is of high quality, and only one BCP has been assessed largely compliant and not fully compliant. However, notwithstanding this conclusion, the authorities might usefully consider taking additional steps to address two issues which the mission wishes to bring to the attention of the authorities.

Table 3. Recommended Action Plan to Improve Compliance of the Basel Core Principles

Reference Principle	Recommended Action
Investment criteria (BCP 5)	Introduce the obligation to obtain prior approval of the CECEI for acquisitions of equity in nonfinancial enterprises by banks (measures have been developed but not yet enacted)
Accounting Standards (BCP 21)	Continue to strive toward convergence between French accounting standards and IAS

Authorities' response to the assessment

27. The authorities are broadly in agreement with the assessment.

II. Observance of the IAIS Insurance Core Principles

General

28. This assessment examines France's observance of the International Association of Insurance Supervisors (IAIS) Insurance Core Principles (ICP) on the effective supervision of the insurance sector. The assessment was performed according to the new October 2003 ICP methodology by a two person team as part of the IMF FSAP.[3]

Information and methodology used for assessment

29. The assessment of observance of the IAIS Core Principles involved the review of: (i) an extensive self-assessment prepared in 2000 prepared by the former *Commission de Contrôle des Assurances* (CCA) based on the old methodology; (ii) comparison with the Core Principles and the Core Principles Methodology; and (iii) a review of the relevant laws governing the insurance sector in France. The legal basis regulating insurance is the *Code des Assurances* (as amended), which is supported by numerous decrees and implementation regulations, and the recent *Loi de sécurité financière* (Financial Security Law, LSF).

30. In addition, through the period of January 29–February 11, 2004, a series of meetings and discussions were held in France with officials from the insurance supervisory authority,[4] the MINEFI, the BdF, the CB, the insurance industry associations (*Fédération*

[3] The mission took place in February 2004. The team consisted of Andrea M. Maechler (IMF) and Helmut Müller (formerly German *Bundesaufsichtsamt für das Versicherungswesen*).

[4] Legally, the insurance supervisory authority refers to the newly created CCAMIP, in accordance with the new Financial Security Law of August 1, 2003. In practice, however, the CCAMIP was not operational yet at the time of the assessment and the meetings were held with the CCA. While the new legislation was fully in effect, some areas, such as the

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francaise des sociétés d'assurance–FFSA and the *Groupement des Entreprises Mutuelles d'Assurances*–GEMA), the actuaries association (*Institut des Actuaires*), private insurance companies, associations of intermediaries, auditors (the *Compagnie Nationale des Commissaires aux Comptes*–CNCC), and other financial institutions. On this basis, the assessors attempted as far as possible to evaluate whether the legal framework is implemented faithfully and effectively.

31. The supervisory staff at the insurance supervisory authority and other concerned agencies cooperated fully with the assessment, providing answers to an extensive questionnaire, preparing the self assessments against the IAIS Core Principles, meeting additional requests for information, and being available for a wide variety of meetings. In addition, the insurance supervisory authority and MINEFI staff assisted with logistical arrangements for the meetings with industry bodies and companies, for which the mission expresses its gratitude.

32. The assessment was undertaken during a period of transition. On the one hand, the ICP are relatively new. The old version dating from 2000 was revised in 2003.

33. On the other hand, the French supervisory environment has been significantly modified by the Financial Security Law of August 1, 2003. This legislation created the joint insurance supervision body, called *Commission de Contrôle des Assurances, des Mutuelles et des Institutions de Prévoyance* (CCAMIP), as the result of the merger of the CCA, responsible for the supervision of companies regulated by the old insurance code, and the Commission de Contrôle des Mutuelles et des Institutions de Prévoyance (CCMIP), responsible for the supervision of certain mutual insurers. The provisions of the law also gave financial independence to the CCAMIP, strengthened coordination with the banking sector supervisors, and extended the powers of the supervisory authorities to request and receive information from supervised entities and auditors. The implementation orders (*décrets d'application*) for the new law were under review by the *Conseil d'Etat* at the time of the assessment; the transition period ended as of July 2004 with the publication of outstanding orders.

Institutional and macro prudential setting—overview

34. The French insurance sector is large and of systemic importance. With a 5 percent market share of gross premiums in the OECD in 2001, France's insurance sector was ranked the fifth largest in the world and the third largest in Europe.[5] In terms of density (premiums

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operational set-up of the CCAMIP, needed the publication of additional implementation orders (*décrets d'application*) for the new law on financial security to come into force. The current assessment, however, is based on the new legislation and refers to the new supervisory agency CCAMIP.

[5] OECD, 2003, Insurance Statistics Yearbook 1994–2001.

per capita), France ranks slightly lower at the tenth position in the OECD. With an insurance penetration ratio (premiums as a percentage of GDP) slightly over 10 percent, France ranks eighth in the OECD.

35. The French insurance industry includes a variety of insurance companies, including life, and health and accident (henceforth referred to as "mixed") (126), nonlife (295) and reinsurance (33).[6] In 2002, the French insurance sector was largely dominated by the life and mixed sectors, accounting for over 80 percent of total assets (30 percent for life and 53 percent for mixed). Non-life insurance represented only 14 percent of total assets. Reinsurance plays only a minor role, accounting for 4 percent of total insurance assets.[7] By legal form, stock companies accounted for 80 percent of premium income, mutual insurance companies 11 percent, public-owned institutions 9 percent, and the branches of foreign companies (outside the EEA) less than 0.1 percent.[8]

36. The insurance industry seems to be supported by a healthy level of competition. Market concentration is higher in the life insurance sector, where at end 2002 the three (10) largest insurance companies represented 29 percent (60 percent) of total assets. In nonlife, the three (10) largest companies represented 22 percent (45 percent) of total assets. A notable feature of the industry is the prevalence of bancassurance: a large minority (by assets) of insurance companies are subsidiaries of banks, which also offer policies from nonsubsidiaries. The French insurance market is notable for its broad range of distribution channels, which include tied agents, insurance brokers, salaried sales forces (as in the case of bancassurance), direct writing mutuals, and financial institutions.

37. In life sector, the most common product is a type of savings product (*assurance à capital différé avec contre-assurance en cas de décès* or "mixed capital insurance" product), accounting for almost 65 percent of total life premium income. This product is subsequently paid out in the form of a lump-sum benefit or multiple payment if the insured dies or outlives the term of the policy. This product can be taken out directly by the individuals or through an employer or association (group policies account for 7 percent of pure endowment premium income). Such policies have a guaranteed rate of return which is used to calculate technical provisions. The second largest type of life insurance policies (representing 15 percent of total life premium income) is a unit-linked contract. This type of policy is expressed in the units of an investment vehicle, such as shares of a mutual fund or a real-estate partnership. Since the

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[6] Unless indicated otherwise, the health and accidents sectors are lumped together with life sector.

[7] In terms of total premium income, however, reinsurance accounts for a much higher market share, with 14.5 percent of total premium income.

[8] There are approximately 80 small mutual companies not under the supervision of the CCAMIP and regulated by the code of social security. These companies provide social security related insurance (health, unemployment, maternity leave, etc.) and are under the control of the state.

contract benefits fluctuate with the market values of the underlying investment instruments, the investment risk is entirely borne by the policyholders, unless there are linked to some minimum guarantees.

38. The regulatory framework for life insurance companies relies on three pillars: (i) solvency requirements (approximately 4 percent of total mathematical provisions for endowment products and 1 percent for unit-linked contracts);[9] (ii) regulations on the measurement of liabilities (i.e., technical provisions); and (iii) regulations governing investment policies (including conservative accounting principles applied to asset valuation). At end-2002, the solvency margin (including unrealized capital gains) was estimated at 9.3 percent of provisions, or 2.4 times the required minimum. Non-life insurance companies are required to have a minimum regulatory ratio equal to 18 percent of annual premiums (16 percent for large companies), or 26 percent of average claims paid out in the preceding three years (23 percent for large companies), whichever amount is higher.[10] At end-2002, the solvency margin (including unrealized capital gains) was estimated at 39.3 percent of provisions, or 4.8 times the required minimum.[11] In addition, the CCAMIP is promoting a sound level of asset-liability management expertise on the industry-wide basis. Since 2001, insurers are required to conduct periodically a series of stress tests, aimed at monitoring the ability of insurance companies to model and anticipate the consequences of various financial market shocks (such as movements in interest rates, or equity or real estate prices) on their asset-liability match.

39. Overall, the condition of the French insurance industry suggests that systemic vulnerabilities are well contained. The sector seems to have demonstrated its resilience in the face of a number of significant shocks in recent years (including, among others, a significant fall in international equity prices in 2001–2003, historically low interest rates, and international and national natural catastrophes, including September 2001 and major storms or flooding in France in 1999 and 2000).

40. Sources of stability include: (i) the ability of the life sector to reduce progressively the level of guaranteed interest rates (to zero percent for most new contracts) and shorten the contract duration, in an effort to reduce interest rate risks borne by the insurers; (ii) greater product mix diversification with unit-linked products, where the investment risk is fully borne by the policyholders (even after the recent poor equity market performance, unit-linked products continue to represent 18 percent of life and mixed insurance premiums); (iii) a conservative investment portfolio, with over three quarter of total assets invested in fixed-

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[9] In life insurance, this minimum requirement can be lowered up to 15 percent, depending on existing reinsurance agreements.

[10] In non-life insurance, this minimum requirement can be lowered up to 50 percent, depending on existing reinsurance agreements.

[11] Alternatively, at end-2002, the solvency margin (including unrealized gains) represented 72.4 percent of premiums.

income instruments (in life, equity represents only 12 percent of total assets and real estate less than 5 percent, leaving the remaining 84 percent invested in fixed-term instruments; this asset composition has helped shield the French insurance sector from the consequences of the recent fall in international equity prices); (iv) despite the presence of large bancassurance groups, limited risk transfer between the banking and insurance sectors; and (v) a relatively small reinsurance activity, accounting for only 3 percent of total assets in the French insurance sector.

41. The insurance industry is facing a number of challenges. These include: (i) the demographic trend (longer life expectancy and decline in working population), which creates concerns about financial sustainability of the currently fully state-funded pension and medical plans; (ii) the up-coming implementation of the new International Accounting Standards (IAS) norms in 2005, which expose the insurance industry to vulnerable accounting risks; and (iii) a possible sharp and sustained increase in interest rates, which could generate a wave of contract repurchases, which in turn would force insurance companies to sell some of their assets (fixed-income instruments) at loss-making values in order to pay out the surrender values. However, the authorities seem aware of these challenges and are considering how to take preemptive measures, including the promotion of a new generation of private retirement products or ensuring a sound and sophisticated system of asset-liability management at the industry-wide level.

General preconditions for effective insurance supervision

42. The supervision of insurance companies in France is based on the EU Directives and French insurance law, ordinances, codes and circulars. The legal requirements governing insurance companies originate in both company law and insurance law. In France, the regulation of insurance falls under the jurisdiction of the MoE, while the supervision is under the responsibility of the CCAMIP and the CEA.

43. The legal system in France operates effectively. The auditing and accounting professions in France are well developed and follow best international practices. In the case of large companies, the accuracy of the financial statements must be confirmed simultaneously by two sets of external auditors. The auditing and accounting rules applicable to insurance companies generally comply with international standards. Further harmonization will be achieved in 2005 when the whole EU area will implement IAS. The actuarial profession is large and well-developed in France.

44. The French economy is well large, well diversified, and generally relatively stable in both real and nominal terms. These conditions not only contribute to the growth of the insurance sector, but also facilitate effective supervision.

Principle-by-principle assessment

45. The legal, regulatory and supervisory framework observes a large majority of the essential criteria of the IAIS Principles Methodology. The assessment reveals that most of the

28 ICP of the IAIS are observed. ICP 9, 10, 17 and 18 are largely observed, and ICP 3, 24 and 28 are partly observed.

46. The level of observance for each principle reflects the assessments of the essential criteria established by the IAIS. A principle is considered **"observed"** whenever all the essential criteria are considered to be observed or when all the essential criteria are observed except for a number that are considered not applicable. For a criterion to be considered **"observed,"** it is usually necessary that the authority has the legal authority to perform its tasks and that it exercises this authority to a satisfactory standard and ensures that requirements are implemented. The existence of a power in the law is insufficient for full observance to be recorded against a criterion except where the criterion is specifically limited in this respect. In the event that the supervisor has a history of using a practice for which it has no explicit legal authority, the assessment may be considered as **"observed"** if the practice is substantiated as common and undisputed.

47. A principle is considered to be **"not applicable"** when the essential criteria are considered to be "not applicable." A criterion would be considered 'not applicable' whenever the criterion does not apply given the structural, legal and institutional features of a jurisdiction.

48. For a principle to be considered **"largely observed,"** it is necessary that only minor shortcomings exist which do not raise any concerns about the authority's ability to achieve full observance with the principle. A principle will be considered **"partly observed"** whenever, despite progress, the shortcomings are sufficient to raise doubts about the authority's ability to achieve observance. A principle will be considered **"not observed"** whenever no substantive progress toward observance has been achieved.

Table 4. Detailed Assessment of Observance of the IAIS Insurance Core Principles

Principle 1.	**Conditions for effective insurance supervision** Insurance supervision relies upon • a policy, institutional and legal framework for financial sector supervision, • a well developed and effective financial market infrastructure, • and efficient financial markets.
Description	The environment in which the French insurance supervisory authority operates is conducive to effective supervision and the achievement of its objectives. **1. Financial sector policy framework** France pursues policies, at the national as well as at the international level, aimed at ensuring financial stability, including through the effective supervision in insurance and other financial sectors. An example of this policy is the Financial Security Law of August 1st, 2003 (*Loi de securité financière,* LSF), which is designed to strengthen the efficiency of financial sector supervision. The legal and institutional framework is mostly enshrined in the form of codes (the *Code des Assurances*, for instance), which are comprehensive, carefully drafted, and publicly disclosed.

	The laws and regulations are updated, as necessary, to maintain consistency with developments in national and international standards and best practices. **2. Financial market infrastructure** The infrastructure necessary for effective supervision is in place. The general legal system (civil law, administrative law, penal law, tax law, etc.) is accountable and reliable; the court system is generally reliable and transparent; accounting, actuarial and auditing standards are consistent; qualified and experienced actuaries, accountants, auditors and lawyers are available; general and special statistics are accessible; professional associations are available to assist and protect persons and companies in their various different functions for the insurance sector. Macroeconomic policy promotes overall stability and the conditions under which the population and industry have incentives to make use of insurance (for example, by maintaining low and stable inflation rates). Tax policy is also used to encourage demand for insurance. **3. Efficient capital market** Paris is one of the most important and sophisticated financial centers of the world, with well functioning money and security markets.
Assessment	Observed.
Comments	None.
Principle 2.	**Supervisory objectives** The principal objectives of insurance supervision are clearly defined.
Description	The supervisory objective is clearly defined in Art. L.310-12 *Code des Assurances*. The main objective is the protection of the interests of the insured. These interests are defined in a broad sense that includes the interests of the policyholder, the insured person, the beneficiaries and—in the case of third party liability insurance—the interests of the victims. There are no other legal objectives which could conflict with the attainment of the main target.
Assessment	Observed.
Comments	None.
Principle 3.	**Supervisory authority** The supervisory authority: • has adequate powers, legal protection and financial resources to exercise its functions and powers • is operationally independent and accountable in the exercise of its functions and powers • hires, trains and maintains sufficient staff with high professional standards • treats confidential information appropriately.
Description	**Supervisory bodies** Most supervisory responsibilities are allocated between the *Comité des Entreprises d'Assurance* (CEA) and the *Commission de Contrôle des Assurances, des Mutuelles et des Institutions de Prévoyance* (CCAMIP). The new LSF assigned to the CEA some of the responsibilities that had been the responsibility of the MoE. Hence, the CEA is responsible for the issuing of authorizations (see ICP 6), for the test of whether owners, board members and senior managers are fit and proper to fulfill their roles (see ICP 7), and for authorizing portfolio transfers and mergers of undertakings (see ICP 8).

	The Financial Security Law mandated the merger of the *CCA* with the *CCMIP*, which was the authority supervising mutual health insurance societies and professional protection schemes. The new CCAMIP will supervise all insurance undertakings as defined in Art. 8 of the First EU Non-Life and the First EU Life Insurance Directives. The MoE has retained some functions in insurance supervision (e.g., power to issue rules by administrative means, and the possibility of asking the CEA to postpone any of its decisions; see Art. L.413-5 *Code des Assurances*). The CEA is composed of a chairman (appointed by the MoE), the director of the treasury, the chairman and the secretary general of the CCAMIP and eight members whom the Minister of the Economy, Finance, and Industry appoints for terms of three years. These comprise: two representatives of insurance companies; one representative of the staff of insurance companies; one representative of the health mutual societies and professional protection schemes (the last without voting right); two members representing the *Conseil d'Etat* and the *Cour de Cassation*; and two are individuals selected for their knowledge in the insurance sector. The CCAMIP is composed of nine members: the chairman; the governor of the BdF; one member of the *Conseil d'Etat*; one member of the *Cour de Cassation*; one representative of the *Cour des Comptes*; and four individuals selected for their competence in insurance. The CCAMIP has a secretariat headed by the Secretary General, to whom responsibility for on-going operations is assigned. The Secretary General attends meetings of the CCAMIP but has no voting power. **Legal framework** The *Code des Assurances* clearly fixes the allocation of authority in insurance supervision**.** Neither the CCAMIP nor the CEA have the power to issue rules by administrative means. The legal framework provides sufficient and appropriate powers to the supervisors for effective discharge of supervisory responsibilities. **Independence and accountability** Internal governance requirements are in place, but they are dispersed in several laws and regulations (*Code Pénal, Code des Assurances*, etc.). The CCAMIP has prepared a Code of Conduct for its staff, which is expected to come into force after approval by the new Commission. This Code contains the legal requirements (e.g., requirements regarding professional secrecy), principles of the jurisprudence, prohibitions (e.g., regarding the holding of shares of insurance companies), and guidelines on staff conduct, internal information sharing, etc. Procedures regarding the appointment and dismissal of the head and members of the CCAMIP are in place. The chairman and the other members of the Commission cannot be removed during the period they are appointed, except in a case they commit a crime. Institutional relationships between the supervisory authority and other organizations of the executive, legislature and judiciary are clearly defined. The supervisory authority and their staff are free from undue political, governmental and industrial interference. For example, the Minister of the Economy, Finance and Industry does not have the power to give directions or guidelines to the supervisor. The supervisory authority is financed in a manner that does not undermine its independence (see below). Supervisory processes are transparent. The decisions are consistent across similar cases, and need to be justified. Proposals for new legislation or regulation are normally subject of prior hearings with market participants. New legislation or regulation as well as changes in supervisory policy must be publicly explained by the supervisory authority. The disclosure of information limited only by the confidentiality principle and the need to protect the interests of

	policyholders. **Powers** The supervisory authority has nearly all the powers needed to exercise its function efficiently (preventive measures as well as corrective ones); some limitations are mentioned below in ICP 9, 10 and 18. The supervisory authority is mandated to ensure that insurance companies are able at any moment to fulfill their obligations to the policyholders (Art. L.310-12 §2 *Code des Assurances*). Where there is no regulation or poor regulation, or where a certain function is not prescribed by law (see for instance ICP 9 or 10), the CCAMIP cannot intervene. In these cases, the supervisor can give only recommendations, on the basis of an assessment that it would be more in the interests of the policyholder for the company concerned to change policies or to establish relevant functions or systems. **Financial and human resources** The secretariat of the CEA is provided by the MINEFI. The CCAMIP has budgetary independence and its own budget. The budget is proposed by the secretary general of CCAMIP (Art. L.310-12-3 *Code des Assurances*). It needs to be approved by the CEA. The expenses of the CCAMIP are paid by the supervised entities (Art. L.310-12-4 *Code des Assurances*). At the time of the assessment, a decree determining the implementation details regarding this provision in the LSF was still under review by the *Conseil d'Etat*. Legislation on public service (which covers the civil service) provides legal protection to the supervisory authority and its staff. At the moment the CCAMIP has a staff of around 130 persons. Of these, 50 are *commissaires-contrôleurs*, that is, working in the operational supervision. They have to supervise about 500 insurance companies. In addition, more than 1,000 health mutual societies and professional protection schemes must be supervised now according to the stricter standards defined in the insurance code and enforced by the former CCA. So far, these mutual institutions were supervised by local civil servants and the 6–7 members of the former CCMIP according to a special mutual code, which was not fully compliant with EU Directives; the staff of this Commission will be transferred to the new CCAMIP. However, the CCAMIP is optimistic that it will be possible to attract and to maintain highly skilled staff and rely upon an adequate supervisory infrastructure, since it will be able to provide more and better training; it will also be possible to contract specialists in insurance. **Confidentiality** The staff of the supervisory authority must observe requirements of confidentiality, which are established in the relevant EU Directives.
Assessment	Partly observed.
Comments	The supervisory authority lacks powers to issue rules by administrative means. This power belongs exclusively to the MoE. This situation is not compliant with ICP3: while the laws lay down the principles of supervision, the details within the legal framework must be determined by regulations of the supervisory authority. The latter has better knowledge and more experience, and above all, the supervisor is responsible for the achievement of the legally fixed supervisory objectives. It is indispensable that only this authority and nobody else should have the power to issue the necessary indications of how the legal supervisory principles have to be

	interpreted and respected. This duty can be fulfilled not only by regulation, but also by circulars, guidelines, codes of conducts, etc.[12] The number of staff has to be increased. The CCAMIP has staff of very high quality and motivation, but effective supervision under the high standards of the current regulatory and supervisory regime of the CCAMIP is not possible with the existing staff of the former CCA and CCMIP. First, in recent years, the complexity and scope of activities of the CCA expanded significantly, with little additional staff, in a broad range of activities, such as the supervision of conglomerates, cross-border activities, reinsurance, anti-money laundering. In the near future, the CCAMIP will also have to supervise thousands of intermediaries due to the implementation of the EU Intermediaries Directive. Second, the activities of the mutuals, which used to be regulated and supervised under a less stringent regime, are now to be conducted in full compliance with EU directives according to the higher standards and stricter prudential rules of the former CCA. Furthermore, the LSF strengthens insurance supervision and provides more responsibility for the supervisory agency. Finally, the CCAMIP aims to intensify on-site inspections so that each company is inspected every three to five years. This objective can be reached only if the number of commissaires-controleurs will be increased from 50 to at least 75–80. The new organization of the supervision seems to be segmented with four different functions responsible for insurance supervision and regulation: the MoE for regulation; the CEA for licensing issues and withdrawals, fit and proper tests of managers and owners as well as for portfolio transfer; the CCAMIP for sanctions; and the general secretariat, which is part of the CCAMIP, for other on-going supervision issues. There is a concern that this system might operate slowly and therefore handicap efficient supervision. The French authorities downplay this risk and refer to their experiences in the banking supervision. The insurance industry is involved in the supervisory functions of the CEA. This can be a source of conflicts of interests and may impair the work not only of this body but of the insurance supervision as such. The French authorities argue that persons with practical experience need to be represented on the CEA. As this experience can be provided by the new advisory bodies (the CCSF and CCLRF), there seems to be no need for the participation of insurers in the supervisory process. In addition or alternatively, representatives of policyholders might be introduced to act as counterweigh to the representatives of the industry. Compliance with this Principle, and operational efficiency, would be improved if the CCAMIP and CEA were merged, while retaining the segregation of duties within CCAMIP between monitoring and decision making on sanctions. The decision making body should be balanced, independent from industry and have adequate insurance expertise. The splitting of responsibilities within the CCAMIP is considered necessary by the French authorities to ensure compliance with the jurisprudence of the French *Conseil d'Etat* in relation to Art. 6 of the European Convention of Human Rights. Moreover, if CCAMIP acquired the powers to issue regulations by administrative means, then it would be imperative that its decision making body be properly constituted. The merging of CCAMIP and CEA would streamline supervisory

[12] The fact that in its introduction (para. 8), the ICP methodology acknowledges that the body that sets out the legal framework may be different from the body that implements it, is not inconsistent with the requirement in ICP3, essential criterion b, that the supervisory authority must have the administrative means to issue and enforce the regulatory framework. The legal framework in this case refers to the totality of the relevant laws, whereas the regulatory framework refers to the totality of the regulations, which must be under the responsibility of the insurance supervisory authority. Otherwise, ICP3, criterion b would not make any sense.

	processes and allow the planned increase in staff to be deployed in the most efficient manner possible. The current arrangement (four functional units) is, however, very new and its performance should be closely monitored, and a date set for reviewing the structure. In view of the fact that three of the main essential criteria (no administrative regulation power, possible conflicts of interests in the CEA and not enough staff) are not fulfilled, the ICP must be considered as only partly observed.
Principle 4.	**Supervisory process** The supervisory authority conducts its functions in a transparent and accountable manner.
Description	The supervisory process is established in the *Code des Assurances* and in the associated regulations. These are updated regularly following discussions with the insurance industry. Measures taken by the supervisory authorities are consistent and equitable. Insurance companies have the right to appeal to the relevant court against decisions of the supervisory authority. An action against a supervisory measure does not lead to its suspension. A full description of the role, objective and activities of the supervisory authorities is published on the internet, in annual reports and other media (see also Annex III of the Annual report of the former CCA). Information about the situation of the insurance market, national and international developments, the most important decisions, cooperation with other national and international institutions, and other current issues is contained in the CCAMIP's annual report and its *tableaux de synthèse des entreprises d'assurance et de réassurance*.
Assessment	Observed.
Comments	None.
Principle 5.	**Supervisory cooperation and information sharing** The supervisory authority cooperates and shares information with other relevant supervisors subject to confidentiality requirements.
Description	The CCAMIP is allowed to exchange information with other French financial supervisors without any restrictions. In October 2001, the CCA and the *CB* concluded a *Charte relative à la coopération en matière de contrôle et d'échange d'information*. As regards the relations between the French supervisor and foreign supervisors, a distinction must be made between supervisors in the EEA and non-EEA supervisors, since for the latter the possibilities of cooperation are more limited. Cooperation between EEA insurance supervisors, including information sharing, is regulated through several directives and multilateral protocols of application. These arrangements allow for the unrestricted exchange of information, including on a cross-sector basis in the case of supervision of insurance groups or financial conglomerates. The French legislative has transferred these arrangements into French law. As regards non-EEA insurance supervisors, the CCAMIP has the authority to enter into agreements with foreign competent authorities on the exchange relevant information (provided the foreign supervisor is subject to professional secrecy constraints); allowing the French supervisor to carry on on-site inspections in foreign branches of French undertakings; and allowing, under certain conditions, foreign supervisors to participate in the on-site inspections carried on by the CCAMIP in French branches of foreign companies (Art. L.310-21 *Code des Assurances*.)
Assessment	Observed.

Comments	None.
Principle 6.	**Licensing** An insurer must be licensed before it can operate within a jurisdiction. The requirements for licensing are clear, objective and public.
Description	Carrying out insurance business in France without a license is prohibited. This principle is not valid for companies having their home office in the EEA because the member states of EEA have agreed to mutual recognition. That is possible because nearly all conditions required for licenses in the insurance sector are coordinated in the relevant EU Directives. Freedom of services rules therefore imply that all companies with a home office in one of the member states can carry on business in France through a branch or without setting up a branch. Hence, a license from the French authorities is necessary for French companies and branches of companies coming from outside the EEA (some exceptions are granted to Swiss companies under European conventions). Subsidiaries from foreign companies are considered as French companies. Freedom of services is not granted to companies having their head office outside the EEA. Licenses were issued by the MoE before the Financial Security Law came into force. Now the new CEA is responsible for the licensing process. The CCAMIP, which is in charge of conducting on-going supervision, advises the CEA, which ensures that the legal and prudential criteria which are applied in the process of checking a license application are in line with the criteria on which on-going supervision is based. If the CCAMIP has objections to the granting of a license, the CEA must refuse the application. This is, however, an informal arrangement and CCAMIP have no legally enforceable power to over this aspect of supervision. After the granting of a license, the CCAMIP makes a special check of whether the commitments of the insurance undertakings toward the policyholders are fulfilled. Licensing requirements transpose the criteria laid out in the relevant EU Directive, which in turn are reflected in the essential criteria of ICP6. The Insurance Code distinguishes several permitted legal forms. Owners and managers have to submit information adequate to assess their suitability. The authorized representatives of a foreign branch are submitted to the same controls as the directors of French firms. Regarding owners, the provisions require that the CEA is informed of the names of the natural and legal persons holding a direct or indirect qualifying participation in the applicant company. The insurance supervisor is authorized to ask for submission of audit reports and other key information such as extracts from the register of commerce. The insurance supervisor has the power to exchange information with other relevant authorities inside and outside its jurisdiction which respect minimum reciprocity and confidentiality requirements. In the case of licenses for branches of companies from outside the EEA, or in the case that French companies intends to provide insurance outside the EEA, the supervisor shares information with the competent authority in the other country, provided that confidentiality requirements are met (information is also shared among supervisors of the EEA.) The supervisor may refuse to grant the license if the applicants are deemed not fit and proper with regard to their possession of the necessary knowledge (such as commercial experience) and integrity; relevant evidence includes whether the applicants have a criminal records and their complete curriculum vitae. The license can also be refused if facts exist from which it can be deduced that the holders of a qualifying participation: (i) are in an economic situation which may endanger the soundness of the applicant; or (ii) do not have sufficient resources to keep the company solvent on an on-going basis; or (iii) have been directly or indirectly involved in

	illegal transactions affecting their suitability; or (iv) intend to abuse the insurer for criminal purposes (e.g. money laundering); or (v) are connected with the applicant company in a way that would obstruct effective supervision. The applicant is required to submit a business plan outlining the proposed business of the company for five years ahead. In particular, the business plan should provide information on the types of obligation the company proposes to incur (in the case of life insurance); the types of risk it proposes to cover (in the case of nonlife insurance); the basic principles of the company's insurance and reinsurance program; the estimated installment costs and the financial means to be used for this purpose; and the projected development of business (forecast balance sheets and profit and loss accounts, including the underlying assumptions, coverage of technical provisions (liabilities toward policyholders), solvency margins, cash situation). A minimum amount of capital is required for all insurance companies. The supervisor can request and check information on the products offered by the insurer (general policy conditions, technical basis for the calculation of premium rates and provisions). The articles of incorporation as well as information on actuaries and auditors are also to be provided. A company licensed to operate life insurance may not be licensed to operate nonlife insurance, and vice versa. There are, however, restricted cases of licensed companies operating both life and some limited nonlife insurance activities (health and disability), as permitted by the EU Directives and the Insurance Code. In such cases, the supervisory authority checks that there are clear provisions ensuring that risks and related assets are handled separately. In accordance with the EU Directives, insurance companies are not allowed to carry on noninsurance business. The refusal of a license application has to be motivated and notified to the applicant company. The CCAMIP has the right to withdraw a license on the grounds of substantial irregularities, notably if the company no longer meets the licensing requirements with regard to solvency, provision requirements and the investment rules, and thus threatens not to fulfill its commitments toward the customers.
Assessment	Observed.
Comments	None.
Principle 7.	**Suitability of persons** The significant owners, board members, senior management, auditors and actuaries of an insurer are fit and proper to fulfill their roles. This requires that they possess the appropriate integrity, competency, experience and qualifications.
Description	The *Code des Assurances* (Art. L.322-2) requires that the board members have to be fit and proper in the sense of competency, experience and integrity. The details are laid down in decrees. They are compliant with the standards in the EU and with the criteria of ICP7. The insurer has to justify that the candidate fulfils the requirements. The company has to inform the supervisor at least one day before an appointment comes into force; the CEA must decide in at least three months whether the license has to be removed due to a change of board members (Art. R. 321-17-1, A. 310-2 *Code des Assurances*). In practice the CCAMIP takes other, more appropriate measures if a manager is deemed not fit and proper, such as the appointment of a temporary administrator who substitutes for concerned person. An insurance company is not required to inform the supervisory authority if it becomes aware of circumstances that may lead to doubts about the fitness and propriety of the person in question. The supervisory authority exchanges information on board members with other authorities at

	home and abroad, if necessary. Actuaries are not legally required to be employed in an insurance company. France has not foreseen the institution of an appointed actuary (as in the UK) or a responsible actuary (as in Germany) with special functions and duties. External auditors (*commissaires aux comptes*) must be notified to the supervisory authority (Art. L.319-19-1 *Code des Assurances*). If the CCAMIP has doubts or concerns about the quality of the auditor, it may not ask the company to nominate another person or itself appoint another person. Rather, it can nominate a second auditor in whom the CCAMIP is confident. In the case that the auditor has violated its duties, the CCAMIP can ask the relevant court to dismiss the auditor.
Assessment	Observed.
Comments	Regulations should be introduced requiring an insurance company to inform the supervisory authority if it becomes aware of circumstances that may lead to doubts about the fitness and propriety of owners, senior management, and others in positions of responsibility. Senior managers of French companies are members of the board (whether the Administrative Board or the Managerial Board).
Principle 8.	**Changes in control and portfolio transfers** The supervisory authority approves or rejects proposals to acquire significant ownership or any other interest in an insurer that results in that person, directly or indirectly, alone or with an associate, exercising control over the insurer. The supervisory authority approves the portfolio transfer or merger of insurance business.
Description	**1. Changes in control** The process regarding the changes in control of an insurance company is laid down in the relevant EU Directives, which are transposed into French law. The European requirements are compliant with ICP7. The *Code des Assurances* lays down the obligation to notify to the CEA of changes in control and whenever changes in shareholding are planned that affect 10, 20, 33 or more than 50 percent of shares or voting rights. The CEA is entitled to refuse the operation within a maximum delay of 3 months. Any violation of the obligation to declare changes in participation exceeding the thresholds indicated by the *Code des Assurances* is a cause for the suspension of the voting rights attached to the shares concerned. In all cases, the suitability of the new owners and the consequences of these changes for the business plan are checked, and on this basis the CEA can oppose the operation or ask for commitments ensuring the soundness and stability of the insurance undertaking. **2. Portfolio transfer** The transfer of portfolio (totally or partly) needs prior approval of the supervisory authority (the CEA) (*Code des Assurances,* Art. L.324-1). The policyholders and the creditors must be informed by publication in the *Journal Officiel*. They can present their objections during the two month following publication. The CEA checks together with the CCAMIP whether the interests of the policyholders of both the transferee and the transferor are protected. The policyholders can immediately cancel their contract even if the CEA approves the transfer. A transfer is possible without approval of the supervisory authority if all policyholders declare explicitly that they agree to the transfer and consent to conclude a new contract with the cessionary.

Assessment	Observed.
Comments	None.
Principle 9.	**Corporate governance** The corporate governance framework recognizes and protects rights of all interested parties. The supervisory authority requires compliance with all applicable corporate governance standards.
Description	Regulations on corporate governance are largely covered in the *Code de Commerce* (Art. L.225-17 etc.) for joint stock companies, and in the *Code des Assurance* (L.322-26-2, etc.) for mutual companies. These regulations are not very detailed and have a general character. Many of the requirements in the essential criteria of ICP9 are not mentioned in the regulations (for example, on the establishment of independent risk management functions and audit and actuarial functions, distinction between responsibilities, decision-making, interaction and cooperation between the different boards and functions, establishment of a remuneration policy, fair treatment of customers, responsibilities of the senior management, prohibition of incentives that would encourage imprudent behavior, and appointment of a compliance officer). The supervisory authority (CCAMIP) requires and verifies (mainly through on-site inspections) that the insurer complies with the existent corporate governance principles. In the case of irregularities, the supervisor can give recommendations (Art. L.310-17 *Code des Assurances*) and, if necessary, take sanctions on the basis of the general legal clause in Art. L.310-18 *Code des Assurances*. Where principles are not clearly established in the regulations, the supervisory agency can still make recommendations (Art. L.310-17 *Code des Assurances*), but it is much more difficult for the CCAMIP to require and enforce the observance of these principles, except in cases of serious infringements, where it can easily prove that that noncompliance may threaten the solvability margin and fulfillment of policy commitments of the supervised entity (see Art. L.310-12 § 2 of the *Code des Assurances* for CCAMIP's scope of responsibilities and Art. L.310-18 for possible sanctions).[13] Neither the legislative, the supervisory authority, nor the associations of the insurance industry have issued code of conducts regarding corporate governance. Some of the largest companies (especially these which are listed on the New York Stock Exchange) have established their own code.
Assessment	Largely observed.
Comments	Many of the principles laid down in the essential and advanced criteria of ICP 9 are established in the regulations dealing with corporate governance. It is recommended to give to the CCAMIP the power to issue a Code of Conduct of Corporate Governance for all insurance companies supervised by this authority. This suggested Code of Conduct should also contain the requirements for efficient internal control that must be resected by all supervised insurance companies.
Principle 10.	**Internal control** The supervisory authority requires insurers to have in place internal controls that are adequate for the nature and scale of the business. The oversight and reporting systems allow the board and management to monitor and control the operations.

[13] A similar argument applies also to ICP 10 and 18.

Description	The situation is similar to that existing in the field of corporate governance. The legal framework is rather poor: while internal control is mentioned expressly in Art. R. 336-1 *Code des Assurances*, the requirements of this article refer only on the investment policy and investment business of an insurance company. In this field, nearly all requirements of the criteria of ICP 10 are fulfilled. Another legal base for internal control matters is Art. L.322-2-4 *Code des Assurances*, according to which the board of directors has to prepare an annual report on solvency. This report contains information on the financial condition of the company, on which basis it is to fulfill its commitments (technical provisions and assets). This report has to be submitted to the external auditors as well as to the supervisory authority. However, regulations do not address how the internal auditing function is exercised (regarding having access to all business lines, all files, all other information; independence and sufficient resources, etc.). There is no regulation about the internal control of actuarial and compliance functions, of market conduct activities, or of the regular (not only annual) provision of information. As in the matter of corporate governance, the supervisory authority can directly require and enforce actions only in the areas expressly mentioned in the regulation. In all other areas, it can give recommendations (Art. 310-17 *Code des Assurances*), which can be enforced on the basis of the already mentioned general clause in Art. 310-18 *Code des Assurances*. Nevertheless, these sanctions represent only indirect enforcement powers, which may not be sufficient to ensure that insurance companies implement proper corporate governance principles in a timely manner.[14] Internal control systems are checked in the course of the on-site inspections.
Assessment	Largely observed.
Comments	Current regulations focus mainly on investment policy and the preparation of a limited report. The supervisory authority cannot require and enforce directly some of the measures and systems that are mentioned in the ICP and necessary for an efficient internal control. It is recommended to empower the supervisory authority to issue a Code of Conduct containing the requirements for efficient internal control that must be respected by all supervised insurance companies. This code could be combined with a code addressing the requirements for adequate corporate governance.
Principle 11.	**Market analysis** Making use of all available sources, the supervisory authority monitors and analyses all factors that may have an impact on insurers and insurance markets. It draws the conclusions and takes action as appropriate.
Description	The CCAMIP analyzes market conditions that can influence the insurance sector, with the aim of foreseeing trends and future scenarios that could cause systemic and other risks. This analysis is based on perceptions from in and outside the supervisory authority, published as well as confidential information, national as well as international developments. The supervisory authority may require the provision of information only in certain areas defined in legislation; other information is provided on a voluntary basis. The CCAMIP as well as the associations of insurance companies (*Fédération Française des Compagnies d'Assurance*—FSSA—and GEMA) publish aggregated market data (see for instance the *Tableaux de Synthèse des entreprises d'assurance et de réassurance* published by

[14] See also ICP 9 and 18, where a similar argument applies.

	the CCAMIP).
Assessment	Observed.
Comments	None.
Principle 12.	**Reporting to supervisors and off-site monitoring** The supervisory authority receives necessary information to conduct effective off-site monitoring and to evaluate the condition of each insurer as well as the insurance market.
Description	Insurance companies have to send the following documents to the CCAMIP every year (Art. A. 344-8 *Code des Assurances*): ▪ within 5 months after the end of the financial year, a detailed file including: general information on the company (name, bylaws, managers, auditors, classes and countries of activity, staff including intermediaries, list of reference contracts); balance sheet (including off-balance sheets accounts), profit and loss accounts and appendix; forms analyzing the accounts (coverage of technical provisions, solvency margin, claims, technical provisions and their development, claims ratio per year of occurrence of the claims etc.) ▪ within a month after their approval by the shareholders' meeting: the balance sheet; the profit and loss account and the appendix; the management report by the company's board and the report by the auditors; in motor insurance, provisional forms analyzing the accounts are to be provided before March 15. In addition, each insurance company has to send a quarterly report (Art. A.344-13 *Code des Assurances*) concerning their investments and other data (number of contracts, premiums, claims, expenses, financial returns) to the CCAMIP. Furthermore, each company has to provide the CCAMIP with the annual solvency report (Art. L.322-2-4 *Code des Assurances*) demonstrating the adequacy of technical provisions, the required solvency, and the capacity of the company to fulfill its commitments, and a report on its investment policy. The standards for preparing all these documents are set by the *Code des Assurances*. All these documents are analyzed by insurance supervisors. In addition, insurance supervisors have all powers of investigation and may obtain additional information through special requests, on site inspections and communication with auditors. According to Articles R. 332-23 to R. 332-29 *Code des Assurances*, the CCAMIP can prescribe the valuation of any kind of asset by an expert at the expense of the company. In some circumstances when companies want to waive a rule of tariff (e.g., relating to death insurance) or of valuation of provisions (e.g., relating to building guarantee and liabilities), they need to provide evidence based on actuarial estimates.
Assessment	Observed.
Comments	None.
Principle 13.	**On-site inspection** The supervisory authority carries out on-site inspections to examine the business of an insurer and its compliance with legislation and supervisory requirements.
Description	The CCAMIP has wide-ranging powers to conduct on-site inspections and to gather in this way all information deemed necessary to fulfill its duties (*Code des Assurances* Art. L.310-12 to 310-17, Art. L.310-19 to 21, Art. R 310-17 and 18). On-site inspections are undertaken exclusively by the staff of the CCAMIP (*commissaires-*

	contrôleurs.) The power of investigation of supervisors concerns all the operations of licensed insurance undertakings. Supervisors can at any moment verify on site the operations of any company. The *Code des Assurances* (Art. L.310-15) also lays down that, whenever the CCAMIP feels the need, it can extend the checking to "any company in which the supervised insurance company holds, directly or indirectly, more than half the capital or voting rights, as well as to bodies of any nature having signed directly or indirectly with the said company a management, reinsurance or any other type of agreement likely to affect its independence of operation or decision-making." When a company has been subject to remedial and protective measures, on-site inspection can also be extended to the legal persons who control it directly or indirectly, in order to check whether these persons have the capacity to provide sufficient financial support to the company in question. The CCAMIP can also decide to submit to supervision any natural or legal person having received an underwriting or management mandate from an insurance company which it supervises, or pursuing insurance brokerage in whatever respect. Supervisors can examine all the company documents, particularly its books, registers, contracts, statements, reports and accounting vouchers. The focus of an on-site inspection is at the discretion of the supervisors. Supervisors may too extend their investigations without any formal procedure to address issues that become of concern in the course of an investigation; the range of an inspection is never limited a priori. The on-site inspection procedure entails a full hearing of both sides. In each case, the supervision report is sent to the managers of the company concerned, who are invited to make any remarks before the supervisor drafts his final conclusions.
Assessment	Observed.
Comments	None.
Principle 14.	**Preventive and Corrective Measures** The supervisory authority takes preventive and corrective measures that are timely, suitable and necessary to achieve the objectives of insurance supervision.
Description	The *Code des Assurances* (Art. L.323-1, L.323-1-1, R. 323-1 to 323-10) provides the supervisory authority with a wide range of powers. These powers enable the CCAMIP to act preventatively to protect the interests of the policyholders, even before law or regulation has been breached. The regulation foresees progressive escalation of appropriate actions and measures. The CCAMIP may also ask for information on all important decisions the company intends to take in the near future. The CCAMIP has powers to verify that the company concerned is fulfilling legal and supervisory requirements and demands. Specifically, the CCAMIP can take the following protective measures and powers of injunction: *Protective Measures* When the financial situation of an insurance company is such that policyholders' interests are jeopardized or are likely to be so, the CCAMIP takes measures to protect those interests. It can place the company under special supervision, and in particular require that a recovery program be submitted for approval, within one month. It can also restrict or prohibit the free use of company assets. In addition, the CCAMIP can appoint a provisional receiver to whom the necessary powers of company management are transferred (Art. L.323-1-1 *Code des Assurances*).

	Should the circumstances so require, the CCAMIP can order a life insurance company to suspend the payment of surrender values or of advances on contracts (Art. L.323-1). Finally, when the solvency margin does not reach the required level, the CCAMIP requires a restoration plan, and if the solvency margin falls below the guarantee fund (one third of the required solvency margin), the supervisor requires the undertaking to submit a short-term finance scheme to its approval. These decisions can be taken without first holding a full hearing of both sides; the law authorizes the CCAMIP to hear the managers at a later date. However, when it restricts or prohibits the free use of assets or appoints a provisional administrator, the CCAMIP must either withdraw or confirm these measures within a period of three months, after having allowed the managers to present their remarks. *Power of injunction* The CCA uses, whenever necessary, the powers conferred on it by Art. L.310-17 of the *Code des Assurances*: it can send a warning to a company which is deemed to have infringed a legislative provision or adopted a behavior that endangers the fulfillment of its underwriting liability toward its policyholders and beneficiaries of contracts. Similarly, it can send a company whose operation or situation justifies such action an injunction compelling it, in a given frame of time, to take all necessary measures to re-establish or strengthen its financial balance, or correct any practices deemed to be prejudicial to the interests of the policyholders. The warning and injunction powers also apply, under Art. L.310-18-1, to reinsurance companies subject to French supervision (only French reinsurers) and to insurance holdings companies which infringe a legislative or regulatory provision applicable pursuant to Book III of the *Code des Assurances*.
Assessment	Observed.
Comments	None.
Principle 15.	**Enforcement or sanctions** The supervisory authority enforces corrective action and, where needed, imposes sanctions based on clear and objective criteria that are publicly disclosed.
Description	The supervisors (*commissaires-contrôleurs*) have no sanctions power; only the Commissioners of the CCAMIP have the powers to sanction the companies. Definite legal rules have to be respected in the sanction process. After issuing an injunction, the CCAMIP assesses the measures implemented in response by the insurance company concerned. Should the CCAMIP consider that the company has not adopted sufficient measures or if the company infringes the law, it has the power to start disciplinary proceedings against that company or its managers. Disciplinary proceedings entail a full hearing of both sides: the company managers are heard by the Commissioners once they have heard from the supervisors who were responsible for preparing the report that identified the infraction. The Commissioners, meeting in the presence of the secretary general, can then impose one or several of the sanctions under Art. L.310-18 *Code des Assurances*, namely: • a warning; • a reprimand; • prohibition to carry on certain operations and other limitations on the pursuit of business; • temporary suspension of one or several company managers;

	• total or partial withdrawal of license; • compulsory transfer of all or part of the portfolio of contracts; or • pecuniary sanctions, which cannot exceed 3 percent of the company's turnover before deducting VAT during the last closed tax year (5 percent for a repeat offence). When a reinsurance company subject to supervision or an insurance holding company infringes an applicable legislative or regulatory provision, or does not comply with an injunction, the CCAMIP can, in the same conditions as for insurance companies, pronounce a warning or a reprimand, decide on its publication, and impose pecuniary sanctions.
Assessment	Observed.
Comments	None.
Principle 16.	**Winding-up and exit from the market** The legal and regulatory framework defines a range of options for the orderly exit of insurers from the marketplace. It defines insolvency and establishes the criteria and procedure for dealing with insolvency. In the event of winding-up proceedings, the legal framework gives priority to the protection of policyholders.
Description	Winding-up follows the withdrawal of the license (Art. L.326-2 *Code des Assurances*). The license can be removed as a sanction if the company has not fulfilled the requirements of the legislation (Art. L.310-18 *Code des Assurances*). The company can also lose its license if it has not begun to carry on business in the first year after the license was granted or had no business during the last two years (Art. R. 321-20/21 *Code des Assurances*). The procedure is defined by law (Art. L.326-1 etc. *Code des Assurances*). The court has to open the procedure on application by the CCAMIP. Two liquidators are appointed: one by the court, another by the CCAMIP. The latter has to establish in detail and verify the insurance obligations and the assets linked to the obligations. A certain priority is given to the policyholders in receiving payouts for all lines of business and all assets (*privilège général*). A policyholder protection fund has been established for life insurance policies and compulsory insurance (details see Art. L.423-2 and 421-1 *Code des Assurances*).
Assessment	Observed.
Comments	None.
Principle 17.	**Group-wide supervision** The supervisory authority supervises its insurers on a solo and a group-wide basis.
Description	The supervision of insurance groups, mainly in order to avoid risk concentration or double or multiple gearing of capital, is regulated on the EEA level by the EU Insurance Group Directive, which has been transposed into French regulations (Art. L.334-2 and 334-2, Art. R. 334-40 to R. 334-45, A. 334-4 and 334-5, A335–14 *Code des Assurances*). Some practical issues relating to the implementation are fixed in the so called "Protocol of Helsinki," elaborated by the former Conference of the EU Supervisory Authorities (now called the Committee of European Insurance and Occupational Pension Fund Supervisors, CEIOPS). Insurance groups as well as the scope of supervision are clearly defined. Effective group-wide supervision can be ensured by the CCAMIP. The legal framework allows cooperation with other supervisors at home and abroad. The responsibilities are well defined. Group structure, capital adequacy, reinsurance relationship, risk concentration, intra-group transactions and

	exposures, internal control mechanisms, risk processes and fit and proper tests of the management are object of the group-wide supervision as a supplement of the solo supervision of the individual companies belonging to a group. The CCAMIP requires groups to have reporting systems in place that allow them to fulfill information requirements. The license can be removed if the structure of the group hinders effective supervision. The EU Directive dealing with financial conglomerates is not yet transposed into French law. The CCAMIP monitors in close cooperation with the relevant banking and security supervisors the existing conglomerates on an informal basis.
Assessment	Largely observed.
Comments	At present, regulation on financial conglomerates is incomplete. The supervisory authority lacks the power to intervene if necessary. In the near future the relevant EU Directive will be transposed. The assessment will then possibly be "Observed."
Principle 18.	**Risk assessment and management** The supervisory authority requires insurers to recognize the range of risks that they face and to assess and manage them effectively.
Description	The supervisory authority has the power to require a risk management system for the investment policy of the company (R. 336-1 *Code des Assurances*). For other risks, such as technical risks and operational risks, there is no special legal basis for regulation. However, big insurers have in place risk management policies and systems capable to assess all or the main material risks. The CCAMIP has the possibility of assessing the financial situation of the companies through off-site and on-site inspection. The solvency report (Art.322-2–4 *Code des Assurances*) and the accounting information delivered to the supervisory authority are useful information tools which help the supervisor to see whether the calculation of premiums and technical provisions are sufficiently prudent, or whether the reinsurance policy are appropriate. When the supervisory agency finds significant inadequacies regarding a supervised entity's risk management systems, it is entitled to issue recommendations (Art. 310-17 *Code des Assurances*) and impose sanctions if the company does not respect these recommendations (see general clause of Art. 310-18 *Code des Assurances*). In the case of less serious risk management shortfalls, however, it is more difficult for the CCAMIP to impose direct sanctions and it relies mostly on making recommendations and following-up on these recommendations.[15]
Assessment	Largely observed.
Comments	Under current arrangements, an insurer may fail to manage its business in a prudent manner, and the supervisor may not be able to apply directly preventive supervisory measures in a timely fashion. The legislation should require explicitly that all insurance companies establish risk management systems which touch all material risks. The supervisor should have powers to require that all supervised entities establish an effective risk management system, appropriate to the complexity, size and nature of the insurer's business.
Principle 19.	**Insurance activity** Since insurance is a risk taking activity, the supervisory authority requires insurers to evaluate and manage the risks that they underwrite, in particular through reinsurance, and to have the

[15] See also ICP 9 and 10, where a similar argument applies.

	tools to establish an adequate level of premiums.
Description	The CCAMIP requires that the companies have in place underwriting and tarification policies. The approval of the board is not expressly required in the regulation, but it is clear that such important items can only be applied with agreement of the board. The insurance companies have to establish controls for the expenses related to premiums and claims (acquisition costs, expenses for administration and claims settlement (Art. A.344-10 *Code des Assurances*). In life insurance, the companies have to fulfill the requirements regarding the mortality tables and interest rate (Art. A.335-1 *Code des Assurances*). In nonlife, form C10 and C11 (Art. A.344-10 *Code des Assurances*) permits the CCAMIP to check whether the tariffs and expenses for claims settlements were calculated in a prudent manner. The CCAMIP has the power to ask any information necessary to fulfill its duties, especially those regarding tarification (Art. L.310-14 *Code des Assurances*.) A company's reinsurance strategy (including the nature and amount of ceded risks, as well as the choice of the reinsurance company) must be approved by the board of administration or supervision (Art. R. 335-5 *Code des Assurances*.) The CCAMIP reviews the appropriateness of the reinsurance cover and the security of the reinsurer. Two new forms (C8 and C9 (Art. A. 344 – 10 *Code des Assurances*) will be introduced in the near future asking companies for information on their reinsurance strategies, the names of the reinsurers and some simulations of negative events.
Assessment	Observed.
Comments	None.
Principle 20.	**Liabilities** The supervisory authority requires insurers to comply with standards for establishing adequate technical provisions and other liabilities, and making allowance for reinsurance recoverables. The supervisory authority has both the authority and the ability to assess the adequacy of the technical provisions and to require that these provisions be increased, if necessary.
Description	The *Code des Assurances* contains requirements for establishing technical provisions, including detailed accounting and actuarial principles. The CCAMIP is responsible for assessing the sufficiency of the technical provisions on a regular basis through on-site and off-site inspections. The CCAMIP has the authority to require these provisions to be increased if necessary. Liabilities toward policyholders are assessed before reinsurance. The CCAMIP allows amounts recoverable under reinsurance agreements with a given reinsurer to cover gross liabilities, provided that the collectability of these amounts (claims to be paid and other technical provisions due from reinsurers) is reliably secured (by collateral or letters of credit). Reinsurance arrangements are not approved a priori by the supervisors. However, if the supervisor believes that the cover is not sufficient, he can ask the company to change its cover. The requirement of a reinsurance cover report will be included in the regulation in the near future. Financial reinsurance must include an element of risk transfer; otherwise the CCAMIP will not accept it as a valid method to affect the valuation of liabilities. The CCAMIP can prescribe changes in the accounting treatment of a financial reinsurance arrangement if it is not accurate;

	these powers have been reinforced by the implementation of the new solvency rules and in particular its provisions on the calculation of technical provisions (see ICP 23).
Assessment	Observed.
Comments	None.
Principle 21.	**Investments** The supervisory authority requires insurers to comply with standards on investment activities. These standards include requirements on investment policy, asset mix, valuation, diversification, asset-liability matching, and risk management.
Description	EU insurance directives require the member states to set up standards ensuring the safety, profitability and liquidity of the assets which should, at all times, cover the technical provisions. In accordance with EU directives, the *Code des Assurances* (Art. 332-2 to 332-30) contains provisions defining: • The categories of assets eligible for the covering of technical provisions (debt securities, bonds and other money and capital market instruments, loans, shares, buildings and immovable property rights, etc.) • Requirements concerning diversification of assets covering technical provisions, in order to ensure that there is no excessive reliance on any particular category of asset, investment market or investment. Every insurance undertaking is required to invest no more than 65 percent of its total gross technical provisions in shares, other negotiable securities treated as shares, and unsecured loans; 40 percent of its total gross technical provisions in land and buildings; 10 percent in secured loans. • Quantitative limits aiming at avoiding risk concentration on the same type of assets. Except for bonds issued by OECD countries, the general rule is that every insurance undertaking is required to invest no more than 5 percent of its total gross technical provisions in loans, shares and other negotiable securities issued or guaranteed by the same undertaking (this limit may be raised to 10 percent if an undertaking does not invest more than 40 percent of its gross technical provisions in the loans or securities of issuing bodies and borrowers in each of which it invests more than 5 percent of its assets). One piece of land or building can not represent more than 10 percent of total gross technical provisions, and unlisted securities or unsecured loans cannot represent more then 0.5 percent of this amount. In addition, the CCAMIP can, in some specific and exceptional cases, grant derogations. • Limits for the allocation of assets by geographical area: Assets covering technical provisions have to be located in the EEA. • Limits for the allocation of assets by currency: Risks underwritten in a certain currency have to be covered by assets ruled by the same currency up to 80 percent (currency matching). • Valuation principles: Assets covering technical provisions have to be valued net of any debts arising out of their acquisition. They must be valued on a prudent basis, allowing for the risk of any amounts not being realizable. In France, as in a majority of EU Member States, assets are valued on a historical cost basis. However, their market value is disclosed in the annex to the balance sheet. The CCAMIP is responsible for assessing the insurance undertaking's compliance with these principles. It also makes sure that the undertaking monitors and manages its asset/liability position to ensure that their investment activities and asset positions are appropriate to their

	liability profiles. By legal requirement (Art. L.322-2-4 *Code des Assurances*), the board has to describe its investment policy in the solvency report. This report has to be provided to the external auditors as well as to the CCAMIP. New regulations were introduced in 2002 that require the preparation of an investment report (including the risk management and internal control of the asset management) (Art. R. 336-1 to 336-4 *Code des Assurances*). Annual reports must disclose the assets owned by the company item by item, in order to provide a clear comprehension of the company's investment policy. The company is also required to report the situation of its portfolio, broken down by type of assets (bonds, listed equities, real estates, etc.), on a quarterly basis. According to the French regulation on internal control (Art. R. 336-2 *Code des Assurances*), the risk management system has to take into account market, credit and liquidity risk. The companies must report quarterly on assets liabilities adequacy (interest rate risk) and stress testing. The CCAMIP requires that every insurance company has in place an asset/liability management system (see *état T3 -simulation actif-passif* ; Art. A. 344-13 *Annexe du Code des Assurances*.) The proceedings of management are reviewed in the case of on-site inspections.
Assessment	Observed.
Comments	None.
Principle 22.	**Derivatives and similar commitments** The supervisory authority requires insurers to comply with standards on the use of derivatives and similar commitments. These standards address restrictions in their use and disclosure requirements, as well as internal controls and monitoring of the related positions.
Description	The requirements currently in place regarding investment, indirectly address restrictions in the use of derivatives and other off-balance sheet items, since these products are considered as financial assets. Derivatives can be used only to reduce the risks of the insurance company. Insurance companies are not allowed to act as pure counterparts. However, a new series of rules–both qualitative and quantitative–aimed at strengthening restrictions in the use of derivative products came into force in July 2002 (Articles R.332-45 to R.332-58 *Code des Assurances*). The new rules define the purposes for which derivatives can be used and the types of derivatives that are restricted or not authorized, considering in particular the illiquidity of the market, and the scope for independent (i.e., external) verification of pricing. The new rules make clear that the detailed formulation of an insurance company's asset management policy and internal risk control methodology is the primary responsibility of the Board of Directors, which should have investment risk management systems capable of identifying, measuring, controlling and reporting (both internally and to the supervisor) the risks from derivatives activities.
Assessment	Observed.
Comments	None.
Principle 23.	**Capital adequacy and solvency** The supervisory authority requires insurers to comply with the prescribed solvency regime. This regime includes capital adequacy requirements and requires suitable forms of capital that

	enable the insurer to absorb significant unforeseen losses.
Description	The insurance company's solvency, that is, its ability to fulfill its commitments at any time, relies, according to EU insurance directives, on the level of technical provisions (see ICP 20), the adequate coverage of these provisions by relevant assets (see ICP 21), and the existence of an additional capital buffer. Requirements regarding this additional buffer (the solvency margin) are defined in the EU directives, and transposed in the *Code des Assurances*. In life insurance, the minimum solvency margin roughly corresponds to 4 percent of mathematical provisions. In nonlife insurance, it is defined roughly by the highest of the two following indexes: 18 percent of the premiums (16 percent for large companies) or 26 percent of the claims (23 percent for large companies). The solvency margin corresponds to the assets of the undertaking free of any foreseeable liabilities, less any intangible items. The following are included: paid-up share capital, any profits brought forward, half of the unpaid share capital, subordinated debts, and hidden reserves (the last two items are admitted only according to specific conditions). The EU Directives forbid member states to prescribe any rules as to the choice of the assets covering the solvency margin. For the purposes of restoring the financial situation of an undertaking whose solvency margin has fallen below the minimum required, the CCAMIP is entitled to require that a plan for the restoration of a sound financial situation be submitted for its approval. If the CCAMIP finds that the financial situation of an undertaking jeopardizes or is likely to jeopardize policyholders' interests, it takes safeguarding measures, such as restricting or prohibiting the free disposal of the undertaking's assets. The EU directive on consolidated supervision of insurance groups–which is currently being transposed into French law–empowers the CCAMIP to prevent the inflation of supervisory capital through double or multiple gearing. It should be noted in this context that the EU solvency requirements are currently being reviewed by the European Commission in consultation with the member states. In a first round, the existing solvency requirements were adjusted for inflation recorded since they were put in place (Art. 323-1-1 Code des Assurance). In a next step, the European commission will provide a new proposal for a solvency directive, which—after a long in-depth analysis of the current solvency system—will have more sophisticated risk-based features. The current law does allow the CCAMIP to require a company to hold more capital than the legal requirement only in the case that some other requirements are not fulfilled (e.g., inadequate coverage of technical provisions). Since the financial year 2001, the adequacy of the capital at the group level is assessed (Art. R. 334-40 to R. 334-45 *Code des Assurances*). It should be mentioned in this context that every company has to provide the CCAMIP with the annual solvency report (Art. L.322-2-4 *Code des Assurances*), justifying the sufficiency of the technical provisions, the required solvency and the capacity of the company to fulfill its commitments, and the report on the investment policy.
Assessment	Observed.
Comments	None.
Principle 24.	**Intermediaries**

	The supervisory authority sets requirements, directly or through the supervision of insurers, for the conduct of intermediaries.
Description	Intermediaries (brokers and agents) must be honorable and must have the necessary professional knowledge; brokers have to provide financial guaranties and a professional third party liability insurance cover. Brokers (not agents) must be registered (register of commerce and societies). The CCAMIP has no enforcement powers regarding the intermediaries (for example, it cannot force a broker to apply for registration). Intermediaries who violate existing legal requirements can be sanctioned (Art. R.511 -8- *Code des Assurances*). The CCAMIP has no power to require that intermediaries give customers the information about their status (broker or agent). The intermediaries have no such obligation.
Assessment	Partly observed
Comments	The supervisory authority lacks the powers to supervise insurance intermediaries (i.e., brokers and independent agents). Agents are not registered. Brokers cannot be forced to apply to be registered. Compliance with existing requirements does not seem to be monitored or enforced. There is scant on-going supervision. The transposition of the EU Intermediary Directive into French Law (scheduled for beginning of 2005) will most likely conduct to full compliance of ICP 24.
Principle 25.	**Consumer Protection** The supervisory authority sets minimum requirements for insurers and intermediaries in dealing with consumers in its jurisdiction, including foreign insurers selling products on a cross-border basis. The requirements include provision of timely, complete and relevant information to consumers both before a contract is entered into through to the point at which all obligations under a contract have been satisfied.
Description	The objective of French insurance supervision is the protection of the policyholder in a broad sense (including insured, beneficiaries and victims in the third party liability insurance). The requirements of professional competence are high for the management as well as for the intermediaries (Art. L.322-2, R. 513 -1 to 4 *Code des Assurances*). The CCAMIP monitors compliance with these requirements. The requirements of professional competence are high for the management as well as for intermediaries (Art. L.322-2, R. 513 -1 to 4 *Code des Assurances*). The CCAMIP monitors compliance with these requirements. The CCAMIP monitors, through on-site supervision, the commercial practices of a company affecting its clients. The *Bureau des Relations avec le Public* of the CCAMIP, which has the function of helping the insured and to respond to their complaints and questions, collects information consumer concerns about the insurance business. The CCAMIP has the power to intervene if a company or an intermediary fails to respect regulations on fair and correct treatment of the policyholder. In accordance with the requirements of the Third EU Directives, the CCAMIP requires insurers and intermediaries to assess a client's needs before they conclude a contract. Companies and intermediaries have to inform their clients about the product, the obligations of the policyholder, the expenses, etc. (Art. L.112-2, L.132-5-1, A.132-4, L.140-4 *Code des Assurances*). The CCAMIP and the insurers' associations have establish institutions dealing with complaints and claims of policyholders (*Bureau des Relations avec le Public* of the CCAMIP, *Médiateur du* FFSA, *Médiateur du* GEMA.)

Assessment	Observed.
Comments	None.
Principle 26.	**Information, disclosure and transparency toward the market** The supervisory authority requires insurers to disclose relevant information on a timely basis in order to give stakeholders a clear view of their business activities and financial position and to facilitate the understanding of the risks to which they are exposed.
Description	Insurance companies have to report to the public their financial positions and the risks to which they are exposed, as do other commercial entities (Art. L.342-1, R.341-1 to R.341-8 *Code des Assurances*.) Insurance companies have to produce audited financial statements. These are made available to the stakeholders (Art. R.341-2, R.341-8, A.344-4 *Code des Assurances*.) Based on Art. L.310-12 § 2 *Code des Assurances*, the CCAMIP monitors that the prescribed information is disclosed.
Assessment	Observed.
Comments	None.
Principle 27.	**Fraud** The supervisory authority requires that insurers and intermediaries take the necessary measures to prevent, detect and remedy insurance fraud.
Description	Insurance fraud is regulated under the *Code Pénal*, as are all other kinds of fraud. The MoE issues regulations in this area. The supervisory authority does not have powers to establish any regulations in this area. It lacks powers to require that companies take measures to combat fraud. It monitors, through on-site inspections, whether companies take effective action to prevent fraud, and provides recommendations. The industry itself has taken necessary measures in nonlife as well as in life insurance (death). The supervisory authorities are given explicit authority to cooperate with supervisors abroad to combat fraud (see ICP 5).
Assessment	Observed.
Comments	None.
Principle 28.	**AML/CFT** The supervisory authority requires insurers and intermediaries to take effective measures to deter, detect and report money laundering and the financing of terrorism.
Description	The COMOFI sets out the main AML/CFT requirements and the scope of application of such requirements. The requirements apply to insurance companies, agents and brokers, as well as other financial institutions. The COMOFI sets out suspicious transaction reporting requirements and other measures of diligence for financial institutions. The *Code des Assurances* sets out additional requirements for insurance companies. In general, there are no specific CDD requirements for financial institutions to take account of particular risks associated with non-face–to–face transactions, politically exposed persons and reliance on third parties for the conduct of customer due diligence, nor a requirement to systematically identify and verify the identity of beneficial owners in a manner required by the revised FATF 40 Recommendations. Although the CCAMIP has issued recommendations to assist insurance companies in complying with AML/CFT requirements, they are neither enforceable nor do

	they extend to intermediaries. However, the authorities are in the process of reviewing the existing regulatory framework and drafting legislative amendments to comply with the revised FATF 40 Recommendations. The CEA is responsible for issuing business authorizations, including the application of fit and proper tests, and other transactional authorizations. The CEA does not take into consideration the existence or appropriateness of AML/CFT internal controls in the issuance of authorizations. Authorities should consider introducing such a test. The CCAMIP, which supervises insurance companies for prudential purposes and compliance with professional rules, is also responsible for the AML/CFT supervision of life and non life insurance companies and intermediaries. The CCAMIP employs some 130 persons, and also has an inspection department consisting of about 35 persons and an AML/CFT unit of two persons. The CCAMIP carries out a range of on-site and off-site examinations and other compliance related activities. Each team of inspectors is assigned to the supervision of a particular insurance company for a number of years, which increases supervisory effectiveness. However, the CCAMIP has conducted only 28 on-site examinations in the last four years and only two sanctions have been imposed for failure to comply with AML requirements. It is recommended that the examination efforts and corresponding resources of the CCAMIP be increased substantially. Insurance brokers and agents do not require any business authorization. Brokers are required, however, to register with the Corporations Register. They are also strongly encouraged by the CCAMIP and professional associations to register their business on a list maintained by a professional association (Association de la Liste des Courtiers d'Assurance). A registration requirement will be introduced for EU insurance brokers according to the implementation of up-coming EU Directive on Intermediaries (2002–92) that is soon to be adopted by the French Parliament. In contrast to insurance companies' examinations, the CCAMIP must take a formal decision to conduct an on-site examination of insurance brokers; this procedure should be reviewed to ensure that there are no impediments to effective supervision. Since 1996, the CCAMIP has conducted only two on-site examinations of brokers. Moreover, it does not have the authority to sanction brokers for failure to comply with AML/CFT requirements, although legislative amendments will be introduced in the near future to correct this. Currently, the supervisory efforts with respect to brokers are neither sufficient nor effective and remedial action is recommended. Although the reporting of suspicious transactions by insurance companies and intermediaries is steadily improving, the levels remain generally low. The mission would encourage the CCAMIP to maintain its important efforts, including through its cooperation with TRACFIN and private sector associations, to raise awareness of the need to detect and report suspicious transactions, notably with respect to brokers.
Assessment	Partly observed.
Comments	While significant steps have been taken by the authorities, there remain some gaps in the regulation and supervision of insurance companies and intermediaries. The main issues include: (i) the authorities do not consider the quality of insurers' AML/CFT internal controls when issuing business authorizations to insurance companies; (ii) the rate of on-site examinations of insurance companies is generally low and overall, there is an urgent need for a substantial increase in supervisory resources, both in the case of insurance companies and intermediaries; (iii) there is no effective supervision of intermediaries, including appropriate sanctioning powers; and (iv) guidelines (i.e., recommendations) that have been issued are neither enforceable nor do they extend to intermediaries, and there are no specific measures to implement the CDD requirements under the revised FATF 40 Recommendations, notably for the handling of higher risk customers.

Table 5. Summary Observance of IAIS Insurance Core Principles

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Observed	21	ICP 1, 2, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 25, 26, 27
Largely observed	4	ICP 9,10, 17,18
Partly observed	3	ICP 3, 24, 28
Non-observed	0	--
Not applicable	0	--

Recommended action plan and authorities' response to the assessment

Recommended action plan

49. The recommendations are summarized in the following table.

Table 6. Recommended Action Plan to Improve Observance of IAIS Insurance Core Principles

Reference Principle	Recommended Action
Supervisory authority	• Give power to the supervisory authority to issue regulation. • Increase of the staff of the supervisory authority. • Monitor the effectiveness and efficiency of the new organization, setting a date for reviewing the structure. • Eliminate the participation of the industry in the supervisory decision making process.
Suitability of persons	Introduce requirement that an insurance company must inform the supervisory authority if it becomes aware of circumstances that may lead to doubts about the fitness and propriety of owners, senior management, and others in positions of responsibility.
Corporate governance	Empower the CCAMIP to issue and enforce a Code of Conduct of Corporate Governance for all supervised insurance companies.
Internal control	Empower the CCAMIP to issue and enforce a Code of Conduct containing the requirements for effective internal control for all supervised insurance companies. This code could be combined with the code dealing with the requirements of corporate governance.
Group-wide supervision	Issue regulation regarding the group-wide supervision of financial conglomerates headed by insurance companies (transposition of the EU Directive on financial conglomerates).

Reference Principle	Recommended Action
Risk assessment and management	Require by law that all insurance companies establish risk management systems which cover all material risks of an insurance company.
Intermediaries	Empower the CCAMIP to supervise intermediaries. Require that all agents and brokers be registered.
Anti-money laundering	Increase supervisory staff and raise AML/CFT on-site inspections of insurance companies and intermediaries. Regulate and supervise, with appropriate enforcement powers, intermediaries for AML/CFT activities. Consider adequacy of internal AML/CFT controls when issuing business authorizations. Issue enforceable guidelines for insurance companies and extend these to intermediaries. Promptly enact draft legislative amendments to comply with FATF 40 Recommendations.

Authorities' response to the assessment

Regarding ICP 3 comments

Essential Criterion b: "The legislation gives the supervisory authorities the power to issue and enforce rules by administrative means."

First, the French supervisory and regulatory framework distinguishes, on one hand, the Treasury, which sets out the legal framework for insurance supervision, and on the other hand, the Insurance Control Commission, which implements it. **This framework is explicitly allowed by Insurance Core Principle n°3.**[16]

Second, **the Financial Security Law, that was passed on August 1, 2003, harmonizes the bank and insurance regulatory framework**. Both the insurance supervisory authority and the Commission Bancaire will participate to the newly created financial regulation advisory council, which issues an opinion before any law or decree is passed. The law also creates the CCAMIP, as the only insurance companies and mutuals supervisory authority. The CCAMIP is enabled to recruit staff and to invest in any equipment judged necessary to reinforce its expertise and its control.

Lastly, the Financial security law **transferred the responsibility for licensing insurance companies from the Minister of Finance to an independent and collegial body (the CEA)**, which limits even more the concentration of powers by the Ministry of Finance.

[16] "Insurance supervision within an individual jurisdiction may be the responsibility of more than one authority. For example, the body that sets out the legal framework for insurance supervision may be different from the body that implements it. In this document, the expectation is that the core principles are applied within the jurisdiction rather than necessarily by one supervisory."

Essential Criterion g: "The supervisory authority and its staff are free from undue political, governmental and industry interference in the performance of supervisory responsibilities."

The question that is raised by the mission deals only with CEA (participation of the industry in this body). Or, CEA members are retired professionals, who are tied by strict deontology and secrecy rules.

As far as the CCAMIP is concerned, it is entirely free of undue interference.

Therefore, we would request that the observance of this criterion be considered as "largely observed."

Essential Criterion o: "The supervisory authority has its own budget sufficient to enable it to conduct effective supervision. The supervisory authority is able to attract and retain highly skilled staff, hire outside experts as necessary, provide training, and rely upon an adequate supervisory infrastructure and tools.."

Although the merging of CCA and CCMIP may lead to temporary shortage of staff, the financial independence of the CCAMIP will enable it to manage its own budget (this budget will be funded by a levy from the industry) and, therefore, to hire sufficient staff in a near future.

Therefore, we consider that this criterion is "largely observed."

Other comments:

50. In the third paragraph of the comments, it is stated that "Four different administrations are responsible…the CCAMIP for sanctions; and the secretariat of the CCAMIP for other on-going supervision." In fact CCA (MIP) is one entity and the distinction between the board and the secretariat is a distinction of functions inside an entity which remains an unique one. According to the Art. 6 of European Convention of Human rights, when a body is entitled to take sanctions it is absolutely necessary that preliminary investigations would be separated from the decision. It is the reason why clear distinction is made between the board and the staff of the *Secretariat Général*.

Regarding ICP 28

The financial autonomy of the CCAMIP should facilitate staff recruitment, which is necessary to reinforce AML/CFT controls, and higher the rate of on-site controls. Until now, the CCA has focused on life companies (as the principles stresses it).

As far as the supervision of brokers is concerned, it should be noted that the Financial security law authorized the supervisory authority to impose sanctions on brokers. Moreover, the directive on insurance intermediates, which should be implemented in France very soon, creates a national registry of all intermediates, comply them to have a financial guarantee and

a professional civil responsibility insurance police, centralize the control on fit and proper conditions, and enables the CCA to withdraw a broker's registration on grounds of regulation infringement.

Finally, the CEA is considering regulatory measures, so that the quality of insurers' AML/CFT internal controls be considered when licensing insurance companies.

To the extent that criterion a, b, c, e are observed, considering ICP 28 as "partly observed" would not give an exact picture of the reality.

III. Observance of the CPSS Core Principles for Systemically Important Payment Systems

General

51. This part of the report contains the assessments of the compliance of the three systemically important payment systems in France with the Core Principles developed by the Basel-based CPSS. The systems covered are: *Transferts Banque de France* (TBF) (a public sector Real-Time Gross Settlement system–RTGS), Paris Net Settlement (PNS) (a private sector large-value payment system) and *Système Interbancaire de Télécompensation* (SIT) (a private sector retail payment system). The assessments were conducted during the two missions in February and May 2004 in the framework of the IMF/World Bank Financial Sector Assessment Program (FSAP) and prepared by Daniel Heller of the Swiss National Bank and Jan Woltjer of the IMF (MFD).

Information and methodology used for assessment

52. The methodology for the assessments was derived from the Guidance Note for Assessing Observance of Core Principles for Systemically Important Payment Systems of the IMF and the World Bank of August 2001. Prior to the mission the BdF made self assessments for all the relevant systems and filled in the Questionnaire on Payments and Securities Settlement Systems. In addition, the assessors studied laws, articles, brochures, guidelines, data and presentations provided by the BdF, and used information published in the CPSS publication on "Payment and Settlement Systems of Selected Countries."

53. The assessments involved discussions with directors and senior officials from several departments of the BdF. In addition, several meetings with the private sector operators (*Centrale des Réglements Interbancaire*, CRI, and *Groupement pour un Système Interbancaire de Télécompensation,* GSIT), the Bankers' Association and commercial banks took place.

Institutional and market structure—Overview

54. The French banking law gives a broad definition of means of payments, referring to "all instruments which, irrespective of the medium or technical procedure used, enables any person to transfer funds." The issuance and the management of means of payments are

defined as banking operations that may, according to the COMOFI, be conducted only by credit institutions, the Treasury, the Post Office, the CDC, the BdF and the monetary institutions for the French Overseas Departments and Territories.

55. Following the merger and consolidation process within the financial sector, roughly 1,000 credit institutions conduct business in France (compared to 1,608 in 1994). The Post Office's financial arm plays a significant role in the French financial system as it holds a significant number of demand accounts and time accounts.

56. Payment system oversight forms an integral part of the BdF's statutory tasks. It performs its duties of ensuring the smooth functioning and the security of payment systems within the framework of the tasks of the European systems of Central Banks (ESCB), as mentioned in the Art. 105 (2) of the Treaty of Maastricht and in Articles 3 and 22 of the Statute of the ESCB. The responsibilities and powers of the BdF with respect to payment system oversight are laid down in the COMOFI. The oversight task also explicitly cover the oversight of Securities Settlements systems (SSSs) and Central Counter Parties (CCPs). The BdF is also entitled to monitor the security level of the different payment media and to make recommendations about it.

57. In addition to cash, the check is still widely used in France. However, the relative share of checks in cashless payments has been declining since 1993. Direct debits have been very successful ever since their introduction in 1967. They are generally used for recurrent payments such as electricity, gas, phone and water bill payments. The use of the interbank order *Titre Interbancaire de Paiement* (TIP) has been growing steadily. A TIP works in the same way as a direct debit, except the payer is required to consent to each payment by signing the TIP form, which is sent with the corresponding invoice.

58. Credit transfers are also widely used in the retail area, for instance, for payments made by companies, government agencies and local authorities. The interbank exchange of all credit transfers takes place in paperless form. Ordinary transfers are settled on the day of presentation while credit transfers for payment on a future due date are presented two or three days in advance of the settlement.

59. Bank cards are mostly debit cards which can be used for both payments and cash withdrawals through a nationwide network of Point of Sale (POS) terminals and Automated Teller Machines (ATM). Since several years, cards have been equipped with a computer chip which resulted in a decline of fraudulent transactions to a very low level. A specific network is used for the transmission and authorization for withdrawals and payments. This network enables an ATM or a POS terminal to obtain authorization from the issuing bank. This authorization also means that the payment is guaranteed for the beneficiary. At the end of 2001, 32,500 ATMs and 750,000 POS terminals were installed nationwide. As in other EU countries, the circulation of electronic money is still fairly limited. Three consortiums are currently providing their e-money schemes.

60. The interbank payments area is dominated by three systems, each of which is considered systemically important by the French authorities. Large-value operations are processed in two systems: the RTGS system TBF which is the French component of the TARGET. TBF is managed and operated by the BdF. The hybrid system PNS is managed and operated by the CRI, an interbank body owned by 10 banks and the central bank.

61. Retail transactions are processed in the French Automated Clearing House SIT. SIT is a deferred net settlement system and is managed and operated by GSIT, a group of 12 founding members (banks).

62. The banking industry and the BdF are continuing their efforts to improve the safety and efficiency of the payment infrastructure. At the BdF, a separate oversight unit has been established within the payment department in order to deepen the quality and independence of this activity. Both TBF and PNS, while technologically still modern systems, are approaching the end of their life cycles since they will be obsolete with the introduction of TARGET 2 in 2007. The clearing of an increasing number of retail payment instruments in SIT has led to the appraisal of the BdF that SIT is of systemic importance. Hence, SIT is one of the very few retail payment systems that has to comply with the Core Principles. One of the challenges for SIT will be the still unclear effects of the Single European Payments Area (SEPA) on the landscape for the clearing and settlement of retail payments.

Payment systems infrastructure

63. France fulfills all prerequisites for effective payment clearing and settlement systems. Historically, the private sector has been playing an important role both in the provision of payment instruments and in payment clearing services. The BdF, in turn, is also an established player in the area of payment services. In the field of payments, the relationship between the BdF and the banking sector is well established and co-operative. The needs of the users are accounted for in the development of the payment infrastructure.

64. The oversight of payment systems is three-tiered: defining the principles or standards underpinning their conception and operation, monitoring their implementation and lastly overseeing actual conditions of operation and use. The oversight activities are embedded into the framework which was developed by the Eurosystem.

65. The legal framework is sound. Fraud and delays are minimal. Mechanisms for dispute resolution are in place and respected.

Assessment of observance of the CPs by the TBF

Table 7. Detailed Assessment of Observance by the TBF of CPSS Core Principles for SIPS

Principle 1.	**The system should have a well-founded legal basis under all relevant jurisdictions.**
Description	French law and the contractual arrangements within the framework of TBF payment system provide a well-established and reasonably comprehensive legal foundation for fund transfers

	in a RTGS. *Completeness and reliability of framework legislation* ▪ There is a consistent and reliable set of laws, regulations, and contractual arrangements that form the legal basis for TBF and payment transfers executed in this system. *Enforceability of laws and contracts* ▪ All relevant laws as well as contractual arrangements within the framework of TBF between the different parties involved are fully enforceable. *Definition of timing and legal protection of irrevocability and finality* ▪ Although a zero hour rule and a regulation on a suspect period exist under the French Bankruptcy law, these regulations do not apply while transactions are processed within a payment system or SSS (Art. L.330 I-II of the Monetary and Financial Code). TBF falls within the scope of this finality regulation and is notified to the European Commission as a payment system pursuant to the Finality Directive (directive 98/26 EC). ▪ Irrevocability and finality are clearly defined in the law and in the rules of the system and are ensured even in case an insolvency procedure is opened against a direct or indirect participant in the system. ▪ All payment orders are irrevocable from the moment they are accepted by the system. After acceptance the sender cannot revoke, cancel or modify the orders. ▪ Finality occurs at the moment the account of the bank involved is debited. According to the functioning of the system, the account of the receiving bank will simultaneously be credited. Final payments made by a direct participant on its own behalf or on behalf of an indirect participant cannot be challenged and no retroactive action is possible. *Enforceability of collateral arrangements for intraday and overnight credit* ▪ Collateral arrangements in payments and securities settlement systems are fully enforceable. The legal basis for collateral arrangements in payment and securities settlement systems is formed by Art. L.330-2 of the COMOFI. Transfer of collateral is performed through a transfer of ownership without any formal requirement to inform third parties. The transfer of collateral in the form of highly liquid and first-rate securities to cover intraday and overnight credit takes place in RGV2 via repo transactions. In RGV2, repurchase agreements (repos) are settled trade for trade, in real time and on a delivery versus payment basis. The international master agreement for these repurchase agreements is fully recognized under French Law. The transfer of ownership of bank loans to the private sector, that are used to collateralize intraday credit granted by the BdF at the opening of the system, is also well regulated under the *Loi Dailly*. *Legal support of electronic processing* ▪ Art. 1316-3 of the Civil Code specifies that a payment order may be given electronically and that electronic data has the same value to settle a dispute as a writing on paper. Also recognition of the electronic signature is well established in French Regulations (Art. 1316-4 of the Civil Code and decree no. 2001-272 of March 30, 2001). *Relevance of laws outside the domestic jurisdiction* ▪ BdF as system provider requires foreign participants (both branches and remote

	members) to become participants in the system, and to provide a legal opinion compliant with the terms of reference given by the Governing Council of the European Central Bank (art 1.2 of the *Conditions spécifiques d'accès aux systèmes PNS et TBF*). However, providing of legal opinion was not requested from foreign participants already participating in the system before 1999. Within the context of the European Central Bank a grandfather clause was agreed upon for this category in all large-value systems in the European Union. At the moment, there are 10 direct foreign participants in TBF, only four of them having provided a legal opinion. ▪ However, the relevance of foreign law is limited while there are no participants from outside France that participate on a remote access basis. The foreign banks that participate in the system do so via their branches in France to which French law will apply.
Assessment	Observed
Comments	
Principle 2.	**The system's rules and procedures should enable participants to have a clear understanding of the system's impact on each of the financial risks they incur through participation in it.**
Description	*Description of the system* Annex 7 of the TBF settlement account convention *Specifications utilisateurs TBF*, gives a comprehensive description of the system design, functionalities, timetables and risk management procedures. *Understanding of risk and comprehensiveness of the relevant regulations* ▪ The relevant rules and regulations of the systems extend over a number of documents issued by the BdF and the CRI. For many issues documents of both sources are relevant. The overall organization of the documentation should be clarified. Similarly, a handbook could be made available in which the relevant topics would be accessible to users in a practical way (topic by topic, including the references to the different rules and regulations) and which would be updated regularly. ▪ Some essential issues are not dealt with in the agreements signed by the participants, such as: – the procedures and behavior of participants in case of a failure of their own platform; – the behavior of participants in case of a technical failure of a major participant; and – the procedures to be followed in case of bankruptcy of a direct participant or an indirect participant and the manner in which a participant might or should react. *Availability and public access* ▪ All participants in the TBF system are provided with the relevant documents when they sign the appropriate contracts with the BdF (the system provider) and with the CRI—the operator of the common platform used for communication between the system and the participants and the link with the SWIFT network. All rules and

	regulations relating to payment systems, enclosed in the COMOFI are published on the internet
Assessment	Broadly observed
Comments	▪ Transparency in stress situations could be improved and the smooth functioning of the system could be promoted if procedures were set out with respect to the behavior of participants in case of technical failures of their own technical platform or in case of a technical failure of the platform of a major user or in case of a bankruptcy of a direct or indirect participant. ▪ The accessibility of the rules and regulations and their ready understanding could be increased by improving the overall organization of the documentation and making them available in a more practical way.
Principle 3.	**The system should have clearly defined procedures for the management of credit risks and liquidity risks, which specify the respective responsibilities of the system operator and the participants and which provide appropriate incentives to manage and contain those risks.**
Description	*General* As an RTGS-system with queuing facilities, which settles in central bank money, TBF offers protections against credit risk. Liquidity risk is addressed through unlimited intraday credit provided against collateral. No interest rate or other fees are charged. Liquidity in the infrastructure for payments and securities settlement is abundant due to: 1) the policy of the Eurosystem to allow banks to use their cash reserve requirements during the day for payment purposes; 2) the liquidity optimization facilities, especially in the Paris Net Settlement System (PNS), a hybrid system that reduces liquidity needs for the settlement of large-value payments (see the assessment of PNS); 3) the liquidity bridges between TBF, PNS and the RGV2 system. These liquidity bridges facilitate liquidity management for the users and make it possible to transfer on line real time liquidity to the system where it is needed most urgently and makes an optimal liquidity management possible; and 4) the easy access to intraday liquidity facilities of the BdF and the broad range of eligible collateral (securities as well as private bank loans). Due to the abundance of liquidity and the fact that a substantial fraction of large-value payments in France is channeled through the PNS, TBF is an extremely fluid system. More than 99 percent of the payments are settled without being queued. Some of the banks do not uses their cash reserve requirements at all during the day. *Intraday finality and queuing mechanism* Payments settled in TBF are final (irrevocable and unconditional) and no retroactive action is possible in the event of a bankruptcy of a direct or indirect participant due to the finality regulation in the COMOFI. Funds received can be used without risk to fulfill the payment obligation of the beneficiary. Payments that cannot be settled immediately due to a lack of funds in the account are queued. There are two queues, one for high priority payments and one for all other payments. High priority is given to monetary policy operations, settlement of debit positions

	of ancillary systems, payments related to CLS pay-ins via TARGET and requested returned payment orders in case of errors. Payments in a queue are settled on a strict FIFO (first in, first out) basis. There is a possibility to place time-critical payments in a queue and to check them against the settlement criteria at a point in time designated by the sender. If a payment in the queue is not settled at the end of the day, it is automatically rejected by the system. However, the number and value of payments rejected by the system is very low. In 2002, four payments of a total value of EUR 109 million were rejected at the end of the day. *Optimization mechanisms* TBF uses two optimization routines to speed up the settlement of queued payments. The first (global optimization) computes virtual balances for each group of accounts. The second is invoked for the settlement of the ancillary systems. *Liquidity arrangements* BdF has two arrangements in place for the granting of intraday credit: ▪ Intraday loans guaranteed by bank loans (*Prêts garantis intra journaliers*). The bank loans are claims of participants on firms assessed by the BdF and holding the highest credit rating. Participants using this scheme have to transmit every week to the BdF a file containing the amount of these loans and to indicate each day which amount of these loans they wish to allocate to the collateralization of intraday credit on the following day. After checking the eligibility and applying the relevant haircuts, the BdF credits the account of the participant at the opening of the system. There is an explicit legal framework in place for transferring the ownership of these claims (*Loi Dailly*). The scheme is not fully watertight because there might be a risk that the underlying assets do no exist, or have been transferred to another financial institution. Within this context CB is empowered to perform on-site of checks of the books of the credit institutions. ▪ Intraday repos made on domestic assets issued in the European Economic Area (EEA). The assets are to be held in Euroclear France or in another country of the euro area. To conduct an intraday repo the participant has to send a request to the BdF. The underlying assets should be declared eligible by the Eurosystem and a haircut as set by the ECB should be applicable. Intraday loans have to be reimbursed at the end of the day. BdF can extend an overnight loan by conducting a repo under the Lombard facility to roll over the intraday loan. Pursuant to TARGET rules, investment firms are also allowed to get intraday credit from BdF in RGV2 to settle their transactions. However, investment firms are not eligible counterparties to monetary policy operations. Therefore, in order to prevent spillover to overnight credit, investment firms that want to obtain intraday credit with BdF, have either to obtain the financial backing of a credit institution, or be subject to credit limits defined by BdF. If an investment firm is unable to square its intraday credit at the end of the day, BdF will extend an overnight repo either with the backing credit institution of the investment firm (if any) or with the investment firm itself (if a limit has been fixed by BdF). In the latter case, BdF would apply dissuasive penalties to the defaulting investment firm or even modify the conditions under which this investment firm can obtain intraday credit. *Account group structure* Within the context of an account group structure an exception is made to the rule requiring a participant not to incur a debit position in its TBF account. The system checks whether the

	group as a whole would have enough balances in their accounts. In that situation TBF settles a payment of an individual participant of this group by debiting its account even if the outcome would result in a debit position. If the group does not have sufficient balances, payments are queued. All participants sharing in an account group are collectively responsible for the debit positions that may arise within the groups. BdF has a certain discretionary authority to distribute possible losses over the group members. The account group/settlement account structure has been deemed legally enforceable, particularly as regards the French regulations and jurisprudence pertaining to centralisation of cash flows within groups of firms. According to the law, centralisation of cash flows between different firms does not fall under the qualification of misuse of company property if: • these firms belong to the same group (for the purpose of defining a "banking group," the provisions of Art. L.511-20 of the COMOFI are applied); and • there is a common interest for such centralisation, deriving from (i) a fair pricing of the claims between the different firms; (ii) the fact that any inconvenience resulting for one of the firms as a consequence of the arrangement is justified by the common interest of the group and (iii) the fact that the arrangement does not put at stake the existence or the future of such firm. Compliance with both these requirements is a prerequisite to open an account group in which distinct participants have settlement accounts. *Timing of payments and throughput guidelines* The operating hours of TBF are in line with the TARGET Guideline. There are no throughput guidelines in the form of quotas of the daily turn-over to be settled before certain designated points in time. *Pricing policy* Pricing is not currently used as an incentive to manage risks in TBF or to promote throughput in the system by giving an incentive for early payment. However, the rules and regulations allow for levying a special fee for late payment. In practice this is not used. *Other incentives to settle in a timely fashion* If participants fail to settle specific transactions such as their end of day debit position in netting schemes that settle in TBF, they are charged a fine of EUR 7,600 and may be excluded from the system. *Y-copy message flow structure and liquidity risks* The Y-copy message flow structure in SWIFT allows a receiver to be notified of payments that it is due to receive, but are still held in the sending banks' queues. As in all systems with queue transparency, a prospective receiver may wrongly react to this sole information, prior to the finality of these payments. Under normal circumstances, this risk is negligible due to the fact that payments tend to be settled immediately (or queued only for a few seconds) in TBF. Only very rarely are payments in the queue rejected at the end of the day (see above), confronting the counterparty with possible liquidity problems, which normally can be easily solved by borrowing under the Lombard facility of the BdF (albeit costly it is). However, in unusual situations, such as a bankruptcy, the risk might be more imminent and is more difficult to assess as long as there are no clear procedures for such an event (see Principle 2).
Assessment	Observed

Comments	
Principle 4.	**The system should provide prompt final settlement on the day of value, preferably during the day and at a minimum at the end of the day.**
Description	TBF is a real time gross settlement system that provides final settlement during the day at the moment the account of the payer is debited and the account of the receiver is credited. Finality is fully endorsed under French law and no retroactive actions are possible in case of a bankruptcy of a direct or indirect participant, other than those due to willful negligence and fraud.
Assessment	Observed
Comments	
Principle 5.	**A system in which multilateral netting takes place should, at a minimum, be capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single settlement obligation.**
Description	TBF is a real-time gross settlement system and not a multilateral netting system that settles the clearing results at the end of the day.
Assessment	Not applicable
Comments	
Principle 6.	**Assets used for settlement should preferably be a claim on the central bank; where other assets are used, they should carry little or no credit risk and little or no liquidity risk.**
Description	TBF is operated by BdF and settles in central bank money.
Assessment	Observed
Comments	
Principle 7.	**The system should ensure a high degree of security and operational reliability and should have contingency arrangements for timely completion of daily processing.**
Description	*Complexity of the structure of the system* TBF consists of three different platforms: 1) the TBF platform, on which TBF operations are executed; 2) the CRI platform, which provides IP technology-based communication services for both TBF and PNS); and 3) ICOTT, the platform that ensures the communications between the domestic and European networks within the TARGET framework. Different communication protocols are implemented to organize the exchange of information between the three platforms. In addition, there exists a separate interface between TBF and PNS to handle liquidity transfers between the two. TBF also has interfaces with different ancillary systems for the settlement of multilateral clearing results (SIT, the clearing system for retail payments and with Relit+, a securities settlement system). Other interfaces include a liquidity bridge with RGV2, the system in

	which the on-line, real-time **trades for trade** settlement of securities transactions in the OTC market take place, as well as all credit operations of the BdF, collateralized via repo transactions. Finally, TBF is connected to ADCRI, the platform through which information and payment orders are channeled to and from systems for the reserve requirements and cash transactions, the management of the accounts of clients of the BdF, and various back office facilities. As indicated in different internal audits, the complexity of the structure of the system makes TBF vulnerable to technical failures. Severe technical incidents occurred in 2001 and 2002; one of them resulted in a long recovery time. *Contingency* Contingent measures are in place to ensure business continuity. Within this framework both BdF and CRI have back up systems and secondary production sites at their disposal for production purposes, as well as monitoring and supervision. The secondary sites are at an adequate distance of the primary sites. All production and data communication back up facilities and disaster recovery procedures are regularly tested. In the extreme situation where all production sites are unavailable and no communication exchange via SWIFT or telephone is possible, a specific disaster procedure, the *Plan de Secours de Place* can be activated by the physical exchange of floppy disks, ensuring the settlement of time-critical domestic and cross border payments, monetary policy operations and the settlement of multilateral netting results in ancillary systems. A crisis team is installed in which the BdF, the CRI, the main ancillary systems managers and several users are participating. In the context of the September 11 events, new threats were identified. In the opinion of BdF, payment and securities settlement systems need to address these threats adequately. With this in mind, the central bank has undertaken an analysis of the resilience of the French infrastructure to deal with these threats, taking into account the central role of payment and securities settlement systems for the functioning of the financial sector and for the execution of monetary policy. Several concrete actions have been initiated including inter alia the set up of a Paris Market Place Crisis Committee, gathering all operators of payment systems and Securities Settlement Systems, as well as BdF and participants. This committee is charged with formulating proposals to improve business continuity of the whole chain of the settlement infrastructures. Within this context it was also decided to conduct emergency tests of several systems simultaneously. *Risk analysis and auditing* The system is audited by the internal Audit Department of the BdF. Within the TARGET framework a new and sophisticated methodology for security risk analysis and quality control has recently been implemented within the BdF. The Payment Policy Division is in charge of this TARGET Security Analysis. In addition, there is a separate division of the Payment System Department in charge of the oversight of TBF. *Protection of data communication* Measures are taken to ensure integrity, confidentiality, protection against the failure of rejection and authentication of data communication between the different systems and between the system and the participants/users. Firewalls are in place to protect the systems from intrusion attempts by outsiders. *Development and procurement* Adequate measures are in place to ensure the quality of the development of new software and testing of new updates and releases. *Availability and scalability*

	The availability of the system between May 2001 and May 2004 was 99.94 percent and is considerably above the TARGET requirement of 99.4 percent. At the moment the sufficiency of the peak capacity of the systems is difficult to test due to the complex structure of the system. In particular, the capacity of ICOTT, the TARGET Interface, seems to be the weakest spot in this respect. It is difficult to test peak capacity due to the lack of technical facilities to simulate peaks during the day.
Assessment	Broadly observed
Comments	It is recommended: ▪ to analyze whether there are ways to simplify the complex structure of the system; ▪ to suppress systems features which are not or no longer needed; ▪ to investigate whether procedures for processing critical payments in contingency mode could be automated. Meanwhile, a policy decision should be taken which categorizes how the domestic critical payments should be handled in priority in the situation where all delivered payments in an emergency situation exceed the volume capacity of contingency procedures; ▪ to require participants to make their securities and emergency procedures available to the system operator for analysis; ▪ to require participants to test their emergency procedures frequently and make the switch to the second site regularly, sending summary reports of these tests to the system operator; ▪ to implement a "payment injector" capable of transferring a high volume of payments of different kinds (like the standard operations of ancillary systems) to the TBF testing environment for throughput test purposes; and ▪ to investigate the potential merits of regular annual audits conducted by competent internal or external bodies.
Principle 8.	**The system should provide a means of making payments, which is practical for its users and efficient for the economy.**
Description	*Crucial functions of the system* TBF is the channel through which monetary policy operations are implemented, thus enabling the Eurosystem, along with other TARGET components, to fulfill its main task. It also provides the settlement channel for ancillary systems that clear on a multilateral or bilateral basis, thus enabling the payments in these systems to acquire finality. TBF is also widely used for commercial and interbank payments, on a cross-border as well as on a domestic level. It fully contributes to the creation of uniform money market conditions—one of the conditions assigned to TARGET at the time it was implemented. *Available functionalities in the system* All the usual facilities in an RTGS-system for sending, queuing and inquiry are in place. In addition, optimization procedures facilitate the clearing results of the different ancillary systems and also serve to promote the throughput in the system. An algorithm is available to solve imminent gridlocks. Moreover, there is a special facility for time-critical payments and the settlement of payments within a group account structure. *Liquidity management and availability of intraday credit*

	Within the framework of the payment policy of the Eurosystem, banks can use their cash reserve requirements during the day for the settlement of payments. Intraday credit is granted against eligible paper on the tier 1 and tier 2 lists of the Eurosystem and is abundantly available. The opportunity costs for banks with collateral placed on the French tier 2 list (for the largest segment bank loans to the private sector) are particularly low. These loans cannot be used as collateral elsewhere in the financial markets. No fee is levied by the BdF for the rating, registration, transfer and holding of collateral in custody. A participant can channel liquidity via liquidity bridges from its TBF account to its PNS account and RGV2 account, while managing its liquidity needs in the different systems on line and in real time. In addition, it can easily raise intraday credit via a repo transaction in RGV2 and channel the liquidity to TBF. All things considered, TBF is an extremely fluid system. More than 99 percent of payments are processed without being queued and the average settlement time is about seven seconds. *Cost recovery and pricing* A deficiency of the system is its lack of cost recovery. TBF is heavily subsidized by the BdF. From a strict accounting point of view, only 15 percent of all costs (operating costs and investment costs) are covered by revenues. The lack of cost recovery is all the more severe when the substantial costs related to the provision of intraday credit against private bank loans are taken into account. The latter are not addressed in the accounting methodology used. [17] The lack of cost recovery is partly due to the possibility of settling large-value payments in PNS and securities settlement transactions in RGV2, using cash accounts with BdF operated in aforementioned systems. This reduces the need to settle in central bank money in TBF and therefore reduces the turnover and limits the economies of scale. The membership fee also includes access to PNS for the relatively small number of banks that qualify for direct participation in PNS. In addition, a bank has to pay the costs of sending SWIFT messages. Due to the Y-copy structure such messages are more expensive than standard SWIFT payment message types. However, the additional SWIFT services might have limited advantage for smaller banks using TBF.
Assessment	Broadly Observed
Comments	It is recommended: ▪ to revise the methodology used to determine costs of a TBF payment by isolating the CRI costs relative to PNS from those relative to TBF to avoid any cross-subsidies between the two systems; ▪ to analyze whether there might be ways to simplify the current structure of the system in order to save costs; ▪ to examine whether the acceptance of private loans as collateral creates an undesired subsidy to the financial industry, since assessing and (potentially) realizing these loans is relatively costly for the BdF.

[17] One of the reasons not to take the cost of accepting collateral into account in the standardized TARGET Cost Analyzing methodology was that collateral is also used for monetary policy operations.

Principle 9.	**The system should have objective and publicly disclosed criteria for participation, which permit fair and open access.**
Description	Participation is open to credit institutions and investment firms established in France as well as from other parts of the European Economic Area (EEA) when they are authorized to carry on activities in France under the European passport. Credit and investment firms incorporated outside the EEA but established in France or in other parts of the EEA are also allowed to participate, provided they have a European passport in the latter case. Smaller banks, which mainly use the system for monetary policy operations, can benefit from specific price conditions. If a smaller bank opts for this procedure, it may conduct all its monetary operations in TBF, without any restriction, but is not allowed to send more than 500 payment orders a year. Smaller banks, not willing to open an own account, can become an indirect participant. This possibility is not used very often. At the moment, there are only 21 indirect participants in TBF. Alternatively, a small bank can become a customer of a direct participant in order to be able to make and receive payments through TBF. It is not known how many banks make use of this possibility. Investment firms do not have the possibility to apply as indirect participants
Assessment	Observed
Comments	
Principle 10.	**The system's governance arrangements should be effective, accountable and transparent.**
Description	TBF is operated by BdF. Within the BdF an appropriate framework is in place for the operating, auditing and oversight of the system. Decisions concerning system changes are made by the *Assemblée Générale* (General Assembly) of CRI. Within this framework or in the working groups under the General Assembly, users of TBF have the possibility to voice their needs and can influence the development of the TBF system. Smaller banks have no representative in the *Assemblée Générale* but are allowed to participate in the working groups.
Assessment	Observed
Comments	

Table 8. Summary Observance of TBF of the CPSS Core Principles

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Observed	6	Core Principles 1, 3, 4, 6, 9 and 10.
Broadly observed	3	Core Principles 2, 7 and 8.
Partly observed	0	--
Non-observed	0	--
Not applicable	1	Core Principle 5.

Recommended action plan for the TBF

Table 9. Recommended Actions to Improve Observance of TBF of the CPSS Core Principles

Reference Principle	Recommended Action
Legal foundation	None.
Understanding and management of risks	– Set out procedures with respect to the behavior of participants in case of specific emergency situations; – Improve the accessibility of the rules and regulations.
Settlement	None.
Security and operational reliability, and contingency arrangements	– Analyze whether there are ways to simplify the complex structure of the system; – Suppress systems features that are no longer needed; – Analyze whether the procedures for processing critical payments in contingency mode could be automated. Categorize the critical payments and define priority rules to process the different payments categories in situations where all delivered payments in an emergency situation exceed the volume capacity of contingency procedures; – Require participants to make their securities and emergency procedures available to the system operator for analyzing; – Require participants to test their emergency procedures frequently and to send summary reports of these tests to the system operator; – Improve the technical facilities to conduct throughput tests; – Investigate the potential merits of regular annual audits conducted by competent internal and external bodies.

Reference Principle	Recommended Action
Efficiency and practicality of the system	– Revise the methodology used to determine the costs of a TBF payment by isolating the CRI cost relative to PNS from those relative to TBF to avoid any cross- subsidies between the two systems; – Analyze whether there are ways to simplify the current structure of the system in order to save costs; – Examine whether the acceptance of private loans as collateral creates an undesired subsidy to the financial industry since assessing and (potentially) realizing these loans is relatively costly for the BdF.
Criteria for participation	None.
Governance of the payment system	None.

Assessment of observance of the CPs by the PNS

Table 10. Detailed Assessment of Observance of Paris Net Settlement System (PNS) of the CPSS Core Principles for SIPS

Principle 1.	**The system should have a well-founded legal basis under all relevant jurisdictions.**
Description	French law and the contractual relations within the framework of PNS provide a well-established and reasonably comprehensive legal foundation for funds transfers in this system. *Completeness and reliability of framework legislation* ▪ In France, a consistent and reliable set of laws, regulations, and contractual arrangements is in place that forms the legal basis for PNS and payment transfers executed in this system. *Enforceability of laws and contracts* ▪ All relevant laws, as well as contractual arrangements between the different parties involved within the framework of PNS, are fully enforceable. *Definition of timing and legal protection of irrevocability and finality* ▪ Although a zero hour rule exists in French Bankruptcy law, this regulation is overruled for payment or financial instruments deliveries in a payment or securities settlement systems under the finality regulation in the COMOFI (Art L.330 I-II). PNS falls within the scope of this regulation and is notified to the European Commission as a payment system pursuant to the Finality Directive (directive 98/26 EC). ▪ Irrevocability and finality are clearly defined in the law and in the rules of the system and are ensured even in case an insolvency procedure is opened against a direct or indirect participant in the system. ▪ All payment orders sent in are irrevocable from the moment they are accepted by the system. After acceptance, the sender cannot revoke, cancel, or modify the

	orders. ▪ Finality occurs at the moment the account of the bank involved is debited. According to the functioning of the system, the account of the receiving bank will be credited simultaneously. Final payments by a participant made on its own behalf or on behalf of an indirect participant cannot be challenged and no retroactive action is possible. ▪ However, due to the restricted-access criteria and the actual design of the relationship between settlement banks (direct participants) and financial institutions that make use of their services (customer banks), in practice, the scope of the protection under the finality regulations is not as large as it could be while the relationship between a customer bank and its settlement agent does not fall under the finality protection, exposing the settlement bank to retroactive action in case of an insolvency of its client. There are at least four hundred customer banks, and possibly far more. *Legal recognition of netting arrangements* ▪ Off-setting, bilateral, and multilateral netting in the framework of PNS are fully recognized (Art. 1289 of the civil code). *Enforceability of collateral arrangements for intraday and overnight credit* ▪ This issue is not relevant because no collateral arrangement exists within the framework of PNS. Intraday credit is granted in TBF or in RGV2 and the funds are transferred to PNS via the existing liquidity bridges between the relevant systems. Although bilateral and multilateral offsetting takes place in PNS, no loss sharing or liquidity arrangements are necessary to ensure the timely settlement at the end of the day as in the case of classical large-value netting schemes. Offsetting of payments in PNS will only take place if there is enough liquidity in the accounts of the involved participants. In that situation, all payments involved in the offsetting will immediately be settled simultaneously in real time and will be final (intraday finality). Payments in the queue that cannot be executed due to insufficient balances will automatically be rejected at the closing of the system. *Legal support of electronic processing* ▪ Art. 1316-3 of the Civil Code specifies that a payment order can be given electronically, and that electronic data have the same value to settle a dispute as a paper document. Recognition of an electronic signature is well established in French Regulations (Art. 1316-4 of the Civil Code and decree no 2001-272 of 30 March 2001). *Relevance of laws outside the domestic jurisdiction* ▪ The relevance of foreign law is limited. For the time being there are no remote participants. According to the French principles of international law, in the event of bankruptcy of a foreign bank participating in a payment and securities settlement system via its branch in France, French bankruptcy law will apply to the French branch including the finality protection offered under the finality regulations. However this will change when the new winding-up regulation for a financial institution comes into force. ▪ Foreign participants not established under French law (both branches and remote members) applying to become participants in the system have to provide a legal opinion compliant with the terms of reference given by the Governing Council of

	the European Central Bank (Art 1.2 of the *Conditions spécifiques d'accès aux systèmes PNS et TBF*). However, providing a legal opinion was not requested from foreign participants already participating in the system before 1999. Within the context of the European Central Bank a grandfathering clause was agreed upon for this category in all large-value systems in the European Union. At the moment, there are five direct foreign participants, none of whom have provided a legal opinion.
Assessment	Broadly observed
Comments	It is recommended: to bring the wording of the definition of "irrevocability" in the different bylaws of the system into line throughout the rules and regulations, in order to avoid confusion; to see whether the BdF can act as a catalyst to encourage settlement banks to change the status of their customers from that of customer banks to that of indirect participants, or can find alternative means to reduce the legal risks for the settlement bank by changing the status of customer banks into that of indirect participants, for instance by bringing this issue to the attention of the banking supervisory authority.
Principle 2.	**The system's rules and procedures should enable participants to have a clear understanding of the system's impact on each of the financial risks they incur through participation in it.**
Description	*Accessibility and transparency of the rules and regulations* The rules and procedures of PNS enable participants to understand the risks resulting from their participation in the system under normal circumstances. Direct and indirect participants have to sign a *lettre d'adhésion*. The annexes to this document detail the functioning of the system and the financial risks participants incur by participating in it. The *Règlement Général* sets out the roles and liabilities of parties and the legal basis of the system. Further on in this document a chronology of a typical day in PNS and a clear timetable of the system are given. *Emergency events* The understanding of risk and the smooth functioning of the system could be promoted if there were procedures in place on how participants should behave in stress situations such as a technical failure of their own platform or in case of a bankruptcy event and if the transparency on the possible policy measures of the authorities and system provider would be enlarged. *Understanding of legal risk in case of a customer bank* PNS has, due to its design and its access criteria, a so-called tiered structure. Only banks and investment firms with a capital above EUR 250 million can become direct participants. At present, there are 19 direct participants. Banks that do not fulfill these criteria have to make use of the services of a settlement bank. Most of the smaller banks and investment firms make use of the settlement services of around 10 settlement banks to execute their payment flows in PNS, usually as a so called "customer bank." Over 440 banks and investment firms are referenced in the CRI directory as "customer banks," but the total number is probably higher, since for customer banks there is no obligation to be notified and to appear in the directory. Only financial institutions using a settlement bank that have the status of "indirect participant" have to be registered officially. Each indirect participant has to sign a *lettre d'adhésion* with PNS. There are currently 26 indirect participants in PNS.

	The settlement bank of the customer bank that gets into financial trouble will be exposed to credit risk, for instance, due to the fact that the rules of PNS make it impossible for the settlement bank to cancel or modify payment orders accepted by the system, but not yet executed, and still stored in the queue. This issue was analyzed and discussed in the Rules and Regulation committee (group *Règles*) at the CRI (1999/2000). Legal and payment experts of TBF[18], PNS participants, and the BdF participated in this working group. The group provided tools to allow the stakeholders to mitigate this risk in the form of creating the fully fledged status of indirect participant and drafting a standard master agreement between the direct participant and the indirect participant. Due to the work of the group the risk is well known at least among settlement banks.
Assessment	Observed
Comments	Risk management and understanding of risk and the smooth functioning in stress situations could be improved if procedures were in place concerning the behavior of participants in the event of a technical breakdown of their own platform or that of a major user, and in a bankruptcy event. It might also be considered to improve transparency about the risk management policy of the authorities in a bankruptcy event and the possible actions.
Principle 3.	**The system should have clearly defined procedures for the management of credit risks and liquidity risks, which specify the respective responsibilities of the system operator and the participants and which provide appropriate incentives to manage and contain those risks.**
Description	*Real-time settlement and bilateral limits* PNS enables participants to manage their credit and liquidity risks vis-à-vis their counterparties, not only via real-time gross settlement of payments in central bank money, but also by setting bilateral limits on the amounts to be exchanged during the processing cycle. Outgoing payments that exceed this limit are queued. *Intraday finality* The payments settled are final (irrevocable and unconditional), and funds received can be used immediately to settle payments obligations to other participants. *Obligation to settle all validated payments.* To release payments in the queue for a specific counterparty, a participant can increase the limit established for this counterparty. Although payment orders still remaining in the queue at the closing of the system are automatically rejected, participants are obliged to prevent rejection by settling all payment orders sent in before the closing of the system. The system operator contacts, as a routine, all the participants who have payments in their queues that might be rejected at the close of the system. *FIFO rule* The system applies a FIFO (first in, first out) rule for queued payments. An exception to the

[18] In TBF as well, smaller bank financial institutions clear and settle their payments via a settlement bank. The number of customer banks in this system and the amount/volume of payments executed on their behalf are not known, but are probably smaller than in PNS.

	FIFO rule is made for payments of less than EUR 1 million. *Bilateral optimization* If there are also payments for the participant involved queued by its counterparty, the system will settle incoming and outgoing queued payments simultaneously. This will be done as long as the net amount to be exchanged between the two parties involved in this operation remains within the bilateral limits established for each other, and if there is enough liquidity in the account of the participant with a debit position in this bilateral netting to make the implied net fund transfer possible. Within the framework of the bilateral optimization facility, the system scans each time when payments from A to B or from B to A are queued and attempts to settle as many payments as possible between the two participants involved, taking into account the constraints formed by the bilateral limits set and the amounts of liquidity in the accounts. The bilateral limits and the bilateral optimization facility protect the credit institutions from the risk of making all the payments to their counterparties without being paid or being paid very late in the day. Participants can monitor and change their limits vis-à-vis any other participant in real time by sending requests to PNS. They can both monitor the limits they have established for other participants, as well as those limits other participants have set for them. *Multilateral optimization* The system also has a multilateral optimization facility that can be launched by the system operator when a gridlock might be imminent. This mechanism tries to settle simultaneously as many payments as possible considering the bilateral limits and the funds in the accounts. To broaden the effectiveness of the multilateral optimization, the FIFO rule is bypassed. The facility is also launched automatically three times during the day (10:30 a.m., 2:30 p.m., and at the close of the system at 4:00 p.m.). The multilateral optimization usually unlocks an important part of the queued payments (30-80 percent) at 10.30 AM. However, the value of the payments involved is relatively low (1-10 percent of the queued payments). *Monitoring liquidity needs and liquidity management* At the opening of the system participants have to transfer a minimum amount (EUR 15 million) from their cash account in TBF to their cash account in PNS via the liquidity bridge between the two systems in order to ensure a smooth functioning of the system (Art. 8 of the Convention PNS). However, no clear procedure has been established in case a participant does not meet this requirement. Participants are obliged to calculate on an ongoing basis their "virtual position," the sum of the liquidity in their PNS account plus all queued incoming payments from all other participants minus their outgoing payments. Because of the SWIFT Y-copy format, participants are aware of the payments sent in by other participants to be paid to them. Also the system can provide them with information on their virtual position. The virtual position gives an indication of the additional liquidity needed to settle all the payments in the queue, provided that all incoming payments will be settled. The notification under the Y-copy message flow scheme might bring forward credit and liquidity risks, due to the fact that the prospective receiver of a queued payment releases its

[19] According to Article 5.1 of the Convention PNS all payments accepted by the system must be settled before the end of the day.

	own payment obligations prematurely. This risk is, however, negligible, since the payments are only queued for a very short time and the participants are aware that queued payments are not yet final. Nonetheless, a good registration of rejected payments is essential, as are adequate measures to be taken by the system provider to prevent the rejection of the payments at the end of the day and, if payments do have to be rejected, to ask for a justification under art 11 of the Convention PNS and to require adequate measures from the participant involved to prevent repetition. [19] Participants have to monitor closely the liquidity in their account during the operating day. They can actively manage their balances in their PNS cash account (which is an account with the BdF) by sending liquidity to and from their account in TBF via the liquidity bridge between the two systems. No debit balances are allowed in PNS. No intraday liquidity is provided in PNS. However, a participant can, if necessary, raise intraday funds by sending in a request for intraday credit to BdF in TBF. This request will be granted and executed immediately via a repo transaction, if there are enough eligible securities in the account of the participant in RGV2. The funds raised can be transferred via TBF to PNS. Sending liquidity to its PNS account might be necessary if the virtual position is negative. *Timing of payments and throughput guidelines* The system has rules set for the timing of specific payments and throughput guidelines are defined, i.e., percentages of the total daily volume of payments to be sent in and settled before certain points in time. The timing of payments is in line with the guidelines of the European Banking Federation (EBF) for TARGET payments. *Pricing policy* Pricing is not currently used as an incentive to manage risks in PNS or to promote throughput in the system by giving a cost incentive for early payment. However, the possibility of using a different price for late payment exists in PNS (Art. 2.3.1.1 of the *Règlement général*). *Monitoring of behavior of participants* The system operator monitors the behavior of participants in the system—for instance, the payments in the queues, the liquidity in the accounts, the virtual liquidity positions, the bilateral limits set, the meeting of throughput guidelines, technical problems, and the like. The system rules specify that any participant's behavior deemed to disturb the smooth functioning of the system is recorded and must be justified by the participant (Art. 11 of the *Convention PNS*). In such a situation, the participant has to report to the system provider the measures it has taken to prevent repetition of such an action. The BdF as overseer is also able to monitor the system and holds regular meetings with the main participants in the system. *Managing risks in emergency situations* Due to the lack of established procedures how to behave in an emergency situation and a lack of transparency with respect of the possible policy of the authorities and the system provider in such a situation, risk management by participants, their customers and others might be complicated.
Assessment	Observed
Comments	It is recommended: ▪ to take adequate actions under Art. 11 of the *Convention PNS* in the event a participant does not transfer the required minimum amount of liquidity to its PNS

	account at the opening of the system, in addition to ensuring that measures are taken by the participant involved to prevent a repetition of the event; ▪ to ensure an overview of all relevant data regarding the behavior of participants, along with a clear recording of all rejected payments; ▪ to take adequate actions in case of rejected payments by asking justification of the participant involved and requiring measures to prevent repetition if there is a breach of Art. 5.1 of the *convention PNS*, which specifies that payments sent in should be settled before the end of the day; ▪ to establish clear and comprehensive procedures to deal with emergency situations.
Principle 4.	**The system should provide prompt final settlement on the day of value, preferably during the day and at a minimum at the end of the day.**
Description	PNS is a real-time gross settlement system that provides final settlement during the day at the moment the account of the payer is debited and the account of the receiver is credited. Finality is fully endorsed under French law and no retroactive actions are possible on payments done on behalf of the participant itself or on behalf of an indirect participant, other than those due to willful negligence and fraud.
Assessment	Observed
Comments	BdF and CRI should continue their efforts that broaden the scope of the finality protection (see recommendation for CP I).
Principle 5.	**A system in which multilateral netting takes place should, at a minimum, be capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single settlement obligation.**
Description	PNS is a real-time settlement system and not a multilateral netting scheme that settles the clearing results at the end of the day in some other payment system. No debit balances are allowed in PNS. Although PNS has optimization facilities that try to settle different payment obligations by offsetting a restricted number of payments on a bilateral or a multilateral basis, the payments involved in such an offsetting arrangement are not settled at the end of the operating day, but in real time with immediate finality. The multilateral optimization facility is operated automatically by the system three times a day. The facility can also be activated by the system provider in case a gridlock is imminent. However, settlement takes place only if there are sufficient balances in the account of the involved participants. Otherwise, the payments remain in the queue and have to be settled during the normal operation or they will be rejected at the end of the day. Due to the above-mentioned design of the system, no loss sharing or liquidity arrangements to ensure timely settlement at the end of the day are necessary.
Assessment	Non applicable
Comments	
Principle 6.	**Assets used for settlement should preferably be a claim on the central bank; where other assets are used, they should carry little or no credit risk and little or no liquidity risk.**

Description	*Use of central bank money* PNS settles in central bank money. The cash accounts opened in PNS by the participants are accounts with the BdF and, according to an agreement between CRI, the systems provider of PNS, and the BdF, CRI is authorized to manage the settlement accounts according to the rules of PNS. At any moment of the operating day, participants can transfer money in their account in PNS to their TBF account and vice versa via the liquidity bridge between the two systems. This opportunity makes the liquidity management in the total infrastructure for the settlement of payments and securities highly efficient.
Assessment	Observed
Comments	Due to the restricted access to PNS, smaller banks and investment firms have to make use of private settlement banks (direct participants) and are thus exposed to deposit or settlement bank risk. The amounts at risk are not known and neither is the concentration of banks using the same settlement agent. It is not known whether they can transfer their balances on the same day to their account in TBF, if they have such an account. No specific measures are taken by the system provider to reduce this risk. It is recommended: ▪ to thoroughly map the concentration of payment flows initiated by customer banks via the most important settlement banks; ▪ the supervisory authorities and the overseer analyze the risks involved in this concentration and, if deemed necessary, prescribe that adequate risk management measures be taken by the system provider to reduce these risks.
Principle 7.	**The system should ensure a high degree of security and operational reliability and should have contingency arrangements for timely completion of daily processing.**
Description	*Contingency* Contingency measures are in place to ensure business continuity. CRI has back up systems in place (all computers are duplicated, or clustered, and in a ready standby mode), together with a secondary production site for production purposes and a separate secondary site for monitoring and supervision. The secondary sites are an adequate distance from the primary site. All production, data communication back up facilities, and disaster recovery procedures are regularly tested. In the extreme situation where all production sites are unavailable and no communication exchange via SWIFT or telephone is possible, a specific disaster procedure, the *Plan de Secours de Place*, can be activated through the physical exchange of floppy disks. A crisis team is installed in which the BdF, the CRI, the main ancillary systems managers and several users are participating. Participants are required to have a secondary site (Art. 5.1 of the *Règlement général*). *Risk analysis and auditing* The PNS system is not regularly audited by an external auditor. As user of the CRI platform and as settlement bank of PNS, BdF is entitled to carry out on-site inspections and audits on a contractual or voluntary basis. The Audit department of the BdF carried out audits of the CRI platform in 1998 and 2000. *Protection of data communication* Measures are taken to ensure integrity, confidentiality, nonrepudiability and authentication

	of data communication between the different systems and between the system and the participants/users, via the SWIFT-network. *Development and procurement* Adequate measures are in place to ensure the quality of the development of new software and testing of new updates and releases. *Availability and scalability* The availability of the system between April 2001 and March 2004 was 99.98 percent and was clearly above the TARGET requirement of 99.4 percent. There is enough capacity to handle unpredicted peaks. Due to the migration toward the SWIFT NET FIN, the capacity of the communication network has improved significantly.
Assessment	Observed
Comments	It is recommended: ▪ albeit not explicitly phrased in the Core Principles, to consider whether external audits should be carried out on a regular basis (see also the Guidance Note page 21 under q, which was endorsed by the CPSS); ▪ to require participants to test their back up sites regularly and send in summary reports to CRI; ▪ to require participants to transmit their securities procedures to the system provider.
Principle 8.	**The system should provide a means of making payments, which is practical for its users and efficient for the economy.**
Description	*General* Due to the payment system's liquidity saving facilities and its efficient risk and liquidity management tools, along with its relatively short processing times and intraday finality, the system is practical for its users. *Cost recovering* Although the settlement fee is relatively low for a large-value payment system in Europe (EUR 0.25 per payment), the system is able to fully recover its costs. However, it is not known whether the cost accounting methods are based on a fair distribution of costs between CRI as provider of PNS and the BdF as provider of TBF for the use of common facilities operated by CRI and whether there might be cross-system subsidies. *Practicality and efficiency for indirect participants and customer banks* There is no information available whether the system is efficient and practical for indirect participants and customer banks. It is not known whether customer banks are satisfied with the services offered by the settlement banks and whether there is enough competition between settlement banks to ensure efficiency and low costs for their clients.
Assessment	Observed
Comments	It is recommended: ▪ to revise the methodology used to determine the costs of a PNS payment so as to isolate the exact costs relative to PNS and those relative to the CRI platform, which is also used by BdF for the connection with the participants of TBF.

Principle 9.	**The system should have objective and publicly disclosed criteria for participation, which permit fair and open access.**
Description	*Access criteria: capital requirements* The PNS system is open to all banks and investment firms with a capital above EUR 250 million established in the European Economic Area (EEA), the *Caisse des depots et Consignations* and public sector bodies authorized to hold accounts for customers. There is a possibility to be registered by the system as an indirect participant, which does not have to meet the capital requirement of EUR 250 million. All indirect participants must first sign an agreement with a direct participant through whom all payments are issued or received. However, investment firms and public bodies authorized to hold accounts for customers are not admitted as indirect participants. *Technical access criteria* The ability to participate in the system is monitored by CRI through such criteria as (i) the ability to send correctly formatted payment messages and information requests; (ii) the existence of a database recording all operations; and (iii) the ability to fall back on a remote back up site in case of an incident on the primary site. Before being allowed to participate in the system, these points must be approved by CRI. *Minimum volume of transactions* There is no minimum volume of transactions requested. *Substantiation of the capital requirements* Originally, the capital requirements were requested in the *Système Net Protégé* (SNP), the predecessor of PNS replaced by PNS in April 1999. SNP was a traditional multilateral netting scheme for large-value payments, which fulfilled the Lamfalussy standards. Within such a context, risk measures in the form of specified capital requirements or ratings provided by rating agencies are often implemented to limit the possibility that the liquidity and loss sharing arrangement will be activated, particularly if there is an element of mutualisation in the aforementioned arrangement (survivors pay schemes). However, PNS is now a real-time gross settlement system and the limitation of access can no longer be considered an appropriate risk management measure while liquidity and loss sharing arrangements are no longer in place. However, there may be efficiency considerations for limiting access. Within the context of a hybrid system the setting and managing of limits on a large number of counterparties could be cumbersome and impractical. It might however be advisable to consider this notion in more depth as in practice, banks often do business with a limited number of counterparties. Although it appears to be clear that the bilateral optimization feature would work better if there is a concentration of payments between direct participants, it is not apparent to what extent this justifies the present tiered structure. In the end, efficiency gains have to be balanced against the higher risks caused by the limitations of the scope of the finality regulations (Principle 1), the reliance on settlement banks (deposit risk) and concentration in the system. Moreover, the present structure might limit competition and present an unleveled playing field for smaller financial institutions and might not be in line with the competition regulations in Art. L.420-1 to L.420-4 of the Commercial Code. Last but not least, there are similar systems in other countries that function without restricting access. *Exit Criteria* An institution may terminate its participation in PNS after providing a written notice. The termination will be effective after a period of three months (Art. 3 of the *lettre d'adhésion*).

	A participant can be eliminated if it no longer fulfils the access criteria, or if its behavior is deemed to jeopardize the system's security and efficiency. No time lag will apply in this situation.
Assessment	Broadly-observed
Comments	The access criteria can be considered as fairly restrictive due to the capital requirement of EUR 250 million. As stated in the Core Principles, access restrictions can be justified by risk (safety) or efficiency considerations (p.54). The original substantiation was based on risk management considerations in the multilateral netting scheme that was replaced by the present system. But these considerations are no longer valid in the present design. In this context it should be noted that for this reason, EAF 2 moved to open access when it introduced the real-time feature in RTGS+. Balancing the efficiency gains for the settlement banks (the major settlement banks are the owners of the system) against the increased risks brought about by a tiered structure—for instance an increase in concentration risk— the mission is of the opinion that restricting access is difficult to justify on efficiency grounds alone. This is all the more so since it is not known whether there might be sufficient competition between settlement banks to ensure practicality and efficiency of the system for indirect participants and customer banks. Of course, it would be costly for an indirect participant to become a direct participant. The decision on how to access the system should, however, preferably be left to the participant and not to the operator. For these reasons, it is recommended that the capital requirement be dropped from the access criteria.
Principle 10.	**The system's governance arrangements should be effective, accountable and transparent.**
Description	The PNS system has an effective, accountable and transparent governance structure. Decisions are taken by the *Assemblée Générale* of CRI shareholders acting as the majority of voters. At present, CRI is owned by nine major banks (eight French and one foreign) and the BdF. All shareholders currently own the same number of shares. Limits are set on the maximum amounts of shares that can be held by any one institution. The BdF has two representatives in the *Assemblée Générale*. Pursuant to the statutes of CRI, the BdF, as the system's overseer, is entitled to veto any decision that might jeopardize the security or the smooth functioning of the system. The *Assemblée Générale* meets every month. CRI has a budget consisting of a system of three-year budgets and plans. By statute, CRI's president cannot spend more than what has been budgeted and approved by the assembly of shareholders. CRI is able to fully cover its costs. Certain risks, such as operational risks or fraud are covered by insurance or by a loss-sharing mechanism between the owners of CRI. CRI has set up different working groups in which the participants in the system can express their needs and concerns and make remarks. These groups monitor the participants' satisfaction of the system and participate in the definition of the evolutions they would like to see. They meet periodically and their conclusions are reported to the *Assemblée Générale*. Customer banks are not officially represented in the decision structure or in the consultation framework, although they are sometimes asked to participate in the context of certain issues.
Assessment	Observed
Comments	

Table 11. Summary Observance of PNS of the CPSS Core Principles

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Observed	7	Core Principles 2, 3, 4, 6, 7, 8 and 10.
Broadly observed	2	Core Principles 1 and 9.
Partly observed	0	--
Non-observed	0	--
Not applicable	1	Core Principle 5.

Recommended action plan for the PNS

Table 12. Recommended Actions to Improve Observance of PNS of the CPSS Core Principles

Reference Principle	Recommended Action
Legal foundation	– Make the wording of the definition of "irrevocability" in line in the different bylaws of the system in order to avoid confusion; – Encourage settlement banks to change the status of their clients to that of indirect participants in the system, in order to enlarge the scope of the finality regulations and reduce the existing legal risk for settlement banks.
Understanding and management of risks	– Improve the understanding and transparency of risk management in stress situations by establishing clear and comprehensive procedures concerning the behavior of participants in specific stress situations; – Take adequate actions under Art. 11 of the PNS Convention in the event participants do not transfer the required minimum amount of liquidity at the opening of the system; – Provide a clear overview of all relevant data regarding the behavior of participants along with a clear recording of all rejected payments; – Ask justification in case of rejected payments at the end of the settlement day and take adequate action to prevent repetition of the breach of the obligation of participants to settle all payments sent in to the system before the closing of the system.
Settlement	– Thoroughly map the concentration of payment flows initiated by customer banks via the most important settlement banks; – Analyze the concentration risk due to the tiered structure and, if deemed necessary, take adequate measures to reduce this risk.

Reference Principle	Recommended Action
Security and operational reliability, and contingency arrangements	– Consider whether external audits should be carried out on a regular basis; – Require participants to test their back up sites regularly and to send summary report of the results to CRI; – Require Participants to transmit their securities procedures to the system provider.
Efficiency and practicality of the system	– Revise the methodology used to determine the costs of a PNS payment so as to isolate the exact costs relative to PNS and those relative to the CRI platform which is also used by BdF for TBF.
Criteria for participation	– Broaden the access to the system by abolishing the capital requirement in the access criteria.
Governance of the payment system	None.

Assessment of observance of the CPs by the SIT

Table 13. Detailed Assessment of Observance of Système Interbancaire de Télécompensation (SIT) of CPSS Core Principles for SIPS

Principle 1.	**The system should have a well-founded legal basis under all relevant jurisdictions.**
Description	*Legal Framework* SIT is operated on a contractual law basis, ruled by the French civil code (agency rules for transfers, set off rules for netting), the French commercial code (rules governing Economic Interest Groups (EGII)) and the COMOFI (rules governing payment systems—L.330-1, L.330-2, rules governing the oversight of payments systems—L.141-4). The Settlement Finality Directive (SFD, 98/26/EC of 19 May 1998) was transposed in French law under Art. L.330-1 and L.330-2 of the COMOFI, supplemented by a decree (executive order) published on March 7, 2003. Provisions as regards instruments of electronic payments apply within the French Law (e.g. Art. 511-7 of the COMOFI and the Regulation of the CRBF of November 21, 2002 transposing the e-money Directive) and within the Community Law (e.g. the EU Regulation number 2560/2001 of December 19, 2001 relating to cross-border payments, including those made with electronic payment instruments). There is no specific legislation in place relating to the electronic processing of payments settled through interbank settlement systems like the SIT. However, the general provisions of the French Civil Code recognize electronic evidence. A payment order may be given electronically: Art. 1316-3 of the Civil Code (introduced by Law No. 2000-230 of March 13, 2000) specifies that "a writing on an electronic support has the same value according to the law as a writing on paper" and Art. 1316-4 of the Civil Code (and decree n°2001-272 of March 30, 2001) recognizes the electronic signature. Concerning the execution of a payment order by a payment system, the question of proof is dealt with in the rules of the system. The *Charte Interbancaire Régissant les Conditions d'Echange* (hereafter CIRCE) applies to

	the participants to SIT and provides *the rules of the system*. The rules contained in CIRCE are approved by the Management Committee (*Comité de Direction*) of GSIT. This document is of a contractual nature, since the so-called Committee has no power of regulation on the members of GSIT. The participation to SIT is submitted to an approval of the Management Committee of GSIT and to the participant's commitment to comply with the CIRCE rules. Several sets of contractual documents govern the system operator, i.e., the GSIT: - The *Statuts du GSIT* binds the members of the GSIT together. GSIT is the entity responsible for managing SIT. - The *Règlement intérieur* provides for the rules concerning the different assemblies that govern the EGI (Economic Interest Group). According to the definition stated in the SFD, SIT has to be considered a payment system. This ensures the legal basis for protecting the payment and payment orders processed in the system against insolvency rules. In 2002, SIT has been designated as a payment system by the Ministry of Economics and Finance and notified to the European Commission, pursuant to Art. 10 of the SFD, following a recommendation of the BdF. *Irrevocability and finality* According to CIRCE (Art. 6.4 regarding the irrevocability of the operations), "a file of payment orders exchanged via SIT is, under normal circumstances, deemed to be irrevocable if the receiver after having checked the contents of the file and being conclusive, sends a message of acknowledgement to the sender" (the so-called M2 message). Furthermore, upon receipt of the M2 message, the sender informs the Accounting Center via an M3 message of the transfer of the file between the two participants involved. Based on these messages, the Accounting Center calculates the balances between the different direct and/or indirect participants, which are at the end of the operating period settled on the TBF accounts. If the settlement of the netting balances is completed, all underlying payments made through SIT are final. According to the last paragraph of Art. 6.4, the exchanged operations can only be revoked if a participant is not able to settle its SIT balance on the books of the BdF. Hence, the payments made through SIT are final when the SIT balances are settled on the TBF accounts of the participants held with the BdF. Art. L.330-1 paragraph 2 of the COMOFI protects the finality of the settlement in case a participant goes bankrupt, whereas paragraph 3 of the aforementioned regulation provides for the enforceability of payment orders as from the moment they have become irrevocable. Therefore, a bankruptcy cannot challenge any payment processed via SIT once the M2 message in which it has been collected has been issued.
Assessment	Observed
Comments	The operations of SIT are embedded into a solid legal framework. The documentation and the rules with regard to the revocability and conditionality of payments are described in a clear and comprehensive way in CIRCE.
Principle 2.	**The system's rules and procedures should enable participants to have a clear understanding of the system's impact on each of the financial risks they incur through participation in it.**

Description	CIRCE and its technical annexes lay down the terms and rules of the system; they are binding for all participants. Direct participants have to sign CIRCE when joining the system. CIRCE comprises 14 chapters on SIT principles and user requirements supplemented by technical annexes and operational documentation. In total, CIRCE consists of more than ten binders. These documents are currently only available in a paper-based format. Overall, the rules and regulations of the system are repeatedly updated. The last revision of CIRCE as a whole took place in March 2004 when the processing of truncated checks was included. Inter alia, CIRCE covers the following points: - the rules of the system, clearly including a description of its design and operating timetable; - the rights and obligations of all relevant parties in the system (direct participants, indirect participants, GSIT members and GSIT/operator); - the netting process and a description of the financial risks that the participants incur through participation in SIT; - rules for payment rejection and correction of erroneous payments; and - procedures in abnormal situations (contingencies and business continuity management). The latest version of CIRCE and its annexes is available at GSIT. The costs are EUR 140 for CIRCE plus a total of EUR 735 for the different annexes. GSIT is responsible for the dissemination of one set of CIRCE updates free of charge to the direct participants, to some of the indirect participants called "clients indirect participants" and against charge to all "subscribers." Direct participants have the obligation to disseminate the relevant CIRCE updates to their indirect participants. It is the responsibility of the former to implement procedures that ensure the timely dissemination of CIRCE updates. SIT rules and GSIT statutes are currently not publicly available and there is no comprehensive public document of the rules and regulations relating to SIT.
Assessment	Observed
Comments	CIRCE and its annexes enable the participants to understand the risks they bear from their participation in SIT. The documentation is updated regularly at appropriate intervals. Recommendation: The current process for the dissemination of the rules of the system ensures that their latest version is readily available to direct participants. It is, however, unclear whether the indirect participants have wide access to the latest version of CIRCE. GSIT might find it appropriate to investigate whether the documentation could be made available in digital versions and distributed more directly through electronic channels.
Principle 3.	**The system should have clearly defined procedures for the management of credit risks and liquidity risks, which specify the respective responsibilities of the system operator and the participants and which provide appropriate incentives to manage and contain those risks.**
Description	*Credit Risk* Out of a total of some 1000 participants, 14 are direct participants in SIT. In order to avoid concentration of risk on these few direct participants, a rule states that the value and volume exchanged by a direct participant for its indirect participants have to remain below

	30 percent of the total of the direct participant's own payments. The fulfillment of this criterion is, however, not systematically monitored by the operator of the system. The upper limit of a payment to be accepted at SIT is EUR 800,000. Direct participants are required to have an account in TBF. There are volume-based, but no financial access criteria (for instance, minimum capital) for direct participants (for more details see CP IX). In the event of settlement failure, the balances are sent back to the system's operator, which recalculates participants' net balances after the defaulter's transactions have been removed. The new positions are then again submitted to TBF for settlement. This unwinding procedure eliminates credit risk with regard to the settlement vis-à-vis the defaulting direct participant. Non-defaulters bear the credit risk of having irrevocably paid their clients without having received the corresponding funds in TBF. As in any multilateral netting system liquidity risk materializes in the event of the inability of a participant with a debit position to fund it when due, causing an unwinding which can adversely impact other participants, even if they have exchanged no payments with the defaulter. Currently, there is no safety mechanism in place to deal with the settlement failure of a direct participant. GSIT provides a statistical report on the gross values processed and on the net balances before settlement in TBF. The netting ratio in SIT is close to 65 percent (sum of debit positions divided by sum of settled amounts). GSIT also releases quality indicators about the processing. The system operator has no direct responsibility in credit risk management, but it provides the participants with near real-time information about their position in SIT. An alarm is triggered automatically should the payment orders sent by a bank differ significantly from a forecast provided to GSIT. When the settlement of SIT positions is delayed, the TBF sends a message to GSIT indicating the reason for the delay. Standard routines are in place to address the various reasons for delay. The direct participants have several monitoring tools at their disposition, for instance information on their positions and account statements (twice a day). To limit the risk of the inability of a participant to settle its debit position in TBF, the settlement in TBF is structured in two periods: a control period and a settlement period. - *Control period:* Before submission for settlement in TBF, the calculated debit and credit positions in SIT are communicated to the participants. This "control period" allows them to check whether the calculation is accurate and, if necessary, to fund their debit position. - *Settlement period:* At the end of the control period, the debit and credit positions are posted in TBF for settlement during a "settlement period." Several settlement mechanisms exist in TBF to facilitate the settlement of ancillary systems. According to TBF rules, a participant can be suspended or excluded if its behavior jeopardizes TBF's security and efficiency. This statement includes multiple failures to settle a debit position in an ancillary system such as SIT. In addition, each participant at the origin of a default (even temporary) has to provide explanations to the BdF in its capacity of overseer of TBF. Furthermore, the latter can transmit the file to the *Commission Bancaire* (the French banking supervisor) for information. A fine of EUR 8,000 applies if a participant fails to settle the net obligation from an ancillary system such as SIT. According to the rules of SIT (CIRCE, chapter 14), a participant can be suspended or excluded from the system by the Management Committee in the event it does not honor its obligation with

	regard to the rules of the system and jeopardizes its smooth functioning.
Assessment	Observed
Comments	SIT provides only limited tools to manage risk in the system. Since SIT is an ancillary system in the retail area that settles in TBF, the extent of the liquidity risk also depends on the functionality of TBF.
Principle 4.	**The system should provide prompt final settlement on the day of value, preferably during the day and at a minimum at the end of the day.**
Description	The system rules and procedures regarding the clearing and settlement process are described in CIRCE (chapter 5). The SIT network is open 24 hours a day, 6 days a week, with 5 settlement days. The working day is structured in different exchange periods (*périodes d'échange*) for the various types of operations and one technical period (*période de servitude*) during which the system is not open to exchanges. The exchange period can be defined as a period when certain types of payments have to be exchanged in order to be settled on a given settlement day. The technical period can be defined as the period lasting from the suspension of the sending of payment orders to the re-opening to exchanges. It is used for the completion of technical tasks such as end-of-day procedures and data warehousing. In the SIT network, there are several cut-offs. These cut-offs indicate the end of the exchange period for a given type of operations. Payment orders submitted after the cut-off are settled on the following settlement day. Currently, there are the following cut-offs: - Cut-off 1 (1:30 pm): credit transfers and card-based transactions for same-day settlement; - Cut-off 2 (6:00 pm): truncated checks, Interbank Payment Orders (TIP) and truncated bills of exchange (*Lettre de Change Relevé* –LCR-) for next-day settlement; - Cut-off 3 (7:30 pm): direct debits for next-day settlement; and - Cut-off 4 (9:10 pm or 11:10 am on Saturday): nonaccounting transactions and referenced credit transfers for next day settlement. The closing of accounts (multilateral netting) occurs at 2:30 pm. Final settlement is scheduled to take place in TBF between 2:45pm and 3:40pm on value day. As already mentioned in Core Principle I, payment orders become irrevocable upon the release of the confirmation message (M2) by the recipient. Usually, M2 messages are sent just a few seconds after the payment instruction M1 is received. Participants are required to reconcile their accounts with SIT twice a day. For this purpose, they are supplied with statements of account issued by the network and with the results of the account tracking carried out in the bank's processing center.
Assessment	Observed
Comments	According to CP4, the promptness of final settlement on the day of value entails "ensuring that the interval between the system's acceptance of a payment and the payment's final settlement at least never lasts overnight and preferably is much shorter" (p.33). In a deferred net settlement system like SIT acceptance by the system is defined by the moment when netting takes place (p.32) and not by the point in time when a payment instruction becomes irrevocable. Since netting in SIT occurs at 2:30 pm and settlement takes place about

	15 minutes later, CP4 is observed.
Principle 5.	**A system in which multilateral netting takes place should, at a minimum, be capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single settlement obligation.**
Description	SIT processes transactions between participants in three stages: continuous exchange of payment orders directly between banks' IT centers, multilateral netting of orders in an accounting center, and forwarding of net positions for settlement in TBF. All transactions related to a sender or receiver in SIT, i.e., all transactions of the direct participants and its indirect participants, give rise to a balance discharged on the BdF account of the direct participant. Each direct participant must also request from BdF the opening of a CCR (*compte courant de règlement*) within the group of accounts in which it also participates in TBF. The C.R.I. and BdF have allocated to GSIT: - a primary timeslot of 25 minutes (from 3:15 PM to 3:40 PM), dedicated to the settlement of the daily balances; - a discretionary additional timeslot, in case of a delay in the posting of the daily SIT balances or for the settlement of the balances in case of a contingency situation. There are no measures in place to ensure settlement in the case of a default of the participant with the largest debit position. The only safeguard is an alarm that is triggered should a participant's position differ from the expected level (see CP3). The multilateral netting in SIT creates interdependencies among all of the participants in the system, since the failure of a single participant with a net debit position prevents the settlement of the balances of all participants, according to the TBF principle of "all or nothing," and consequently of all the underlying transactions processed by the system. At the request of the BdF, GSIT has developed ways to protect the system against the default of its largest net debtor. Several task-forces were created by GSIT, bringing together the different parties involved, i.e., the operator of the system, and representatives of the participants, under the aegis of the French Banking Federation. The safety mechanism foreseen for the SIT is based on the following principles: protection against the failure of the participant with the largest single debit position, establishment of a permanent mutual fund—supplemented as necessary by individual collateral—and setting of upper limits to the transactions exchanged. Collateral would take the form of central bank money holdings. In line with a grandfathering clause of the Eurosystem, this protection has to be implemented no later than 2008.
Assessment	Not observed
Comments	The fact that SIT operates almost entirely without safeguards against the default of the largest net debtor poses a substantial threat to the financial system. Recommendation The planned protection should be implemented as soon as possible, preferably before 2008. The present fall back on an unwinding in case of a failure to settle is, from a practical and technical point of view, difficult to execute, since banks already have processed the received files in their own systems. Thus, an unwinding is not just a recalculation of the balances by the accounting centre, but involves also a very cumbersome and time-consuming operation in the systems of the direct and indirect participants to identify and reverse the already

	processed payments involved, if such a reversal is possible at all.
Principle 6.	**Assets used for settlement should preferably be a claim on the central bank; where other assets are used, they should carry little or no credit risk and little or no liquidity risk.**
Description	As described in Core Principles 4 and 5, settlement takes place in the books of the BdF in TBF. Since TBF settles in central bank money, the settlement asset does not carry any credit risk. Also, balances held in TBF can be speedily moved to another system (PNS) or another financial institution.
Assessment	Observed
Comments	
Principle 7.	**The system should ensure a high degree of security and operational reliability and should have contingency arrangements for timely completion of daily processing.**
Description	*Operational reliability* The system operator is committed to delivering an efficient service, including an explicit commitment for a minimum rate of availability. CIRCE covers several aspects of operational reliability, for instance, minimum capacity for the network and the processing sites, minimum redundancy of the telecommunication network, contingency arrangements, and maintenance procedures. The SIT operation and the development and maintenance of the software are partially outsourced to two private companies: Capgemini and ATOS Origin. Responsibility for the development of the software, its maintenance, and the technical and banking monitoring is shared between GSIT and Capgemini. The relations between GSIT and Capgemini are covered by an SLA (Service Level Agreement). Responsibility for the operation of the network is shared between GSIT and ATOS. Also, according to the contractual agreement signed by the parties, ATOS must provide additional staff in abnormal situations if requested by GSIT. The availability of the system has been 100 percent in the years 2000 to 2003. For the same period, the availability of the participants' gateways has been between 99.86 percent and 99.88 percent. The capacity of the system (central systems, network, gateways) is closely monitored. The minimum capacity of the network depends on the expected annual peak day plus a safety margin of 10 percent. Based on its individual forecast, each participant is also required to adapt its capacity to send and receive messages. A minimum daily and hourly capacity is determined accordingly. The Operations department (*Direction des Opérations*), has set up a Change Management Steering Committee (*Cellule de pilotage des changements*), which reviews, from a risk point of view, every significant change which occurs on SIT's network. This committee is also responsible for the follow up of the recommendations identified after the occurrence of an incident. In development, GSIT uses test software, which is integrated into the incident management process. Methodological guides for development and project management are also used. All incidents, whether on the production or on the test networks are logged and systemically investigated through network administration software. Also, in the event of an incident

	impacting a workstation, three levels of intervention have been defined according to the gravity of the incident. *Security* The system operator has defined clear security policies. They are documented in the "Security Policy of SIT and GSIT" (*Politique de sécurité du SIT et du GSIT*). The policy is based on ISO 17799. The general objectives of the security policies are to protect the system physically and systemically against fraud, theft or sabotage of the hardware or the software. No assessment of the security controls of GSIT against the security policy has been performed so far. CIRCE (chapter 9) also contains, at a general level, the security policies and the operational service levels that should be met by both the system operator and the participants. Moreover the security policies are fully developed in the "SIT security correspondent handbook" (*manuel du correspondant de sécurité*). The SIT network has several levels of security to protect its network. The primary network links together the participants' gateways, the Management Center and the Accounting Center. It also ensures the security of the messages between these different entities. Connections are made over a TCP/IP Virtual Private Network, the security of which is two-tiered: - the telecom operator provides GSIT with a TCP/IP MPLS Virtual Private Network completely dedicated to SIT; and - the authentication, confidentiality and integrity of the messages are provided by GSIT—operated IP encrypting equipment (their security and key management processes are under GSIT's sole responsibility.) Nonrepudiation is not currently available for two main reasons: - participants have not expressed a clear desire for nonrepudiation (although there have been talks about this issue); and - the technical solution which was envisaged was not compatible with the high volumes exchanged in SIT. The secondary network links the participants' gateways and their internal system. The primary responsibility for the security of this network remains with the participants, but GSIT issues strong recommendations with regard to the level of security which should be achieved (Art. 9.3.2 of CIRCE). *Audits* GSIT has set up an Audit, Security and Risk Management Department (*Direction de la Gestion des risques, de l'Audit et de la sécurité* - DGL/GR), in charge, for instance, of the internal audit and of the review of the risk management processes. The DGL/GR is also to identify potential risks that may arise and establish appropriate measures to mitigate them. GSIT top management is also involved in the risk management process, through a monthly meeting of the "Security Committee" (CODIRSEC, *Comité Directeur de la sécurité*), chaired by the General Manager of GSIT. This committee deals with all relevant questions with regard to the security and the risks of GSIT: it approves the security policy and ensures that it is adequately implemented. The participants' security correspondents regularly meet to discuss issues related to the security of SIT's network. The follow-up of the implementation of the recommendations of DGL/GR is ensured by CODIRSEC. In 2000, top management decided that an external "interbank" audit should be performed. This audit was carried out by the internal audit departments of SIT's main users. This audit focused on two issues:

	- the implementation of the recommendations of a former "interbank" audit carried out in 1995, following several operational incidents; and - the review of SIT's objectives and strategy. Overall, no major issues have been raised by the auditors. They acknowledged the improvements made since the previous "interbank" audit. The next audit of this kind is planned to take place in 2005. *Business Continuity* SIT's overall objective is to be able to resume operations within 48 hours according to a variety of plausible scenarios, including a wide area disaster. The business continuity objectives are based on a risk analysis, which was first carried out in 1993 and validated by top management in 1994. All business continuity arrangements have been formally endorsed by senior level management. There are several levels of business continuity and contingency arrangements. Three critical components have been identified, each located in a different site: the Accounting Center, the Management Center and the Remote Control Center. *Accounting Center* The first level of continuity is the use of a high availability fault tolerant hardware. The last failure of this component occurred in 1999. The second level of continuity, in the event of a total failure of this component, is a cold backup. Depending on when the failure occurs it can take up to three days for the cold back up to become operational. The backup site is located more than 25 kilometers away from the primary site. The primary and the secondary site are alternatively used in production. The migration to the secondary site does not necessitate relocation of personnel, since the site is operated remotely from the Remote Control Center. *Management Center* In the event of a total failure of the Management Centre, a fall back on its backup site is possible within 10 minutes. The backup site is located more than 25 kilometers from the primary site. The primary and the secondary site are used alternatively in production. As above, no migration of human resources to the secondary site is necessary, since operations take place out of the Remote Control Center. *Remote Control Center* In the event of a total failure of the Remote Control Center, a fall back on its backup site is possible within 4 hours. Two backup sites are located more than 25 kilometers from the primary site. The backup site is regularly tested and used in production several times a year. Staff have to relocate from the primary to the secondary site. Each SIT Center has redundant access to the primary network through multiple lines that are physically separate (no single point of failure). The lines are connected to at least two different France Telecom gateways nodes. The primary network linking the three critical GSIT components is also built in such a way that a total failure of a link between any two of the three sites does not isolate any of the sites. The SLA between GSIT and the telecom operator mentions that in the event of a failure of any of the lines, the connection should be restored within 4 hours. GSIT uses a single telecom provider. A variety of business continuity procedures are tested regularly with the participants. Clear lines of responsibilities and decision making process exist to set up a crisis team in the event of a disaster. Procedures cover both internal and external communication. According to the gravity of the incident, an alert team, crisis team (with GSIT top management) or an enlarged crisis team (with the main participants in the system) is set up. Each participant in

	the different teams has access to the crisis procedures, which are clearly documented. The availability of the participants in the crisis teams is tested periodically.
Assessment	Broadly observed
Comments	GSIT is paying careful attention to issues of operational reliability. Even though CP7 does not explicitly require a hot secondary site, the current business continuity arrangements appear to be insufficient with regard to the back up site. Recommendation: Measures should be put in place as soon as possible to be able to settle on the day of value in case of a large operational disruption. Recommendation: The costs and benefits of more regular external audits, for instance every three years, should be analyzed.
Principle 8.	**The system should provide a means of making payments, which is practical for its users and efficient for the economy.**
Description	SIT is the sole retail payment system in France. In the past few years, it has achieved a high degree of operational reliability. Its capacity was large enough to smoothly process an increasing volume of transactions. GSIT, pursuant to its statutes, is a nonprofit organization. Full-cost recovery is achieved. The average processing fee is EUR 0.0599 per transaction. Additional fees that a participant has to pay are most notably the annual membership fees which are EUR 147,000 for a direct participant and EUR 13,100 for an indirect participant. The pricing policy and the fees are formally endorsed by the Management Committee, which is composed of the majority of the direct participants, a representative of the other direct participants, as well as two observers (see CP10). The "GSIT profile" provides an indication of the quality of the service delivered to the participants. Indeed, GSIT periodically issues the "GSIT profile," which summarizes, through a large series of indicators, the quality of the services it delivers. The indicators fall under three different categories: - operational reliability (31 indicators showing, among others, the number of technical failures, the quality of management and the quality of the tests of the disaster procedure); - new projects (8 indicators showing, among others, how well GSIT controls the costs of the projects and keeps the initial schedule); and - general and administration (5 indicators including, among others), how well GSIT controls the budget). The latest profile available did not reveal any serious issue with regard to the quality of services delivered. GSIT communicates with its users through a wide range of decision making and consultation bodies. There is also no evidence in the different user groups that SIT currently does not fulfill the needs of the participants.
Assessment	Observed

Comments	SIT provides a reliable service to its direct participants that appears to fit the needs of its users. Cost recovery is achieved and the transaction fees are at an internationally competitive level.
Principle 9.	**The system should have objective and publicly disclosed criteria for participation, which permit fair and open access.**
Description	There are three types of participants in SIT: direct participants, indirect participants and customer banks. The category in which a financial institution falls is largely determined by the volume of transactions that it sends to the system. The thresholds are set up by the Management Committee. *Direct participants* A direct participant has full technical and financial responsibility vis-à-vis the banking community as a whole for all the payments exchanged with it, whether on its own behalf or on behalf of the institutions it represents. Only direct participants in the system are allowed to send and receive payment orders in the system. *Indirect participants* An indirect participant is also known as a "connected institution." It exchanges its transactions via a direct participant of its choice. Indirect participants are known by the system. *Customer banks* This group consists of "customer" credit institutions that perform their transactions via a direct or an indirect participant. They are unknown by the system. At the end of January 2004, SIT counted 1,084 participants: 14 direct participants, 626 indirect participants and 444 customers credit institutions. According to CIRCE (Art. 2.2.1) the following entities can be admitted as participants: - credit institutions incorporated in France; - credit institutions and investment firms established in the EEA and authorized to carry on activities in France under the European passport; and - public entities covered by Art. 8 of the French Bank law (BdF, IEDOM, Treasury, the *Caisse des dépôts et Consignations* and the Post Office). There are no financial criteria to access the system either indirectly or directly. There are, however, volume-based access criteria. For a direct participant, there is a minimum volume requirement of 0.20 percent of the whole volume exchanged in the system (for a participant's own traffic). This is the equivalent of around 20 million payments a year. A direct participant may lose its status if its volume falls below 0.15 percent of the whole volume exchanged two years in a row. There is also a minimum volume of payments to be an indirect participant. The minimum volume is 5,000 transactions exchanged yearly and the maximum is 0.20 percent of the whole traffic in the system. As mentioned in CP3, there is also an upper limit for the payments by indirect participants that a direct participant is allowed to process (30 percent). Customer banks are not allowed to exchange more than 5,000 transactions per year. Above this threshold they would have to become an indirect participant. In practice, however, GSIT has no information on the volume of transactions exchanged by "customer" banks. The Management Committee determines a maximum number of direct participants in the

	system. This maximum number is currently 25, somewhat below the present technological constraint of the number of the decentralized structure of the system. The exit criteria and procedures are illustrated in CIRCE (Art. 2.3). They cover the procedures for the resignation, exclusion, suspension, change of status of participants. A banking failure of a participant is not covered by these procedures.
Assessment	Broadly observed
Comments	The access criteria of SIT can be considered as quite restrictive (only 14 direct participants). According to CP9 access restrictions are to be justified on the grounds of safety or efficiency. Safety does not seem to be a sufficient reason here since the settlement values in SIT are relatively low for a SIPS and intraday credit in TBF is abundant and inexpensive. If safety concerns existed nonetheless, they could- in light of CP3-be addressed more appropriately with financial soundness criteria rather than with the current volume based criteria. Alternatively, the volume threshold could be lowered. This would increase the competitive pressure from new entrants. In terms of efficiency, there appears to be a few degrees of freedom since the system could cope with a few additional members without jeopardizing the quality and reliability of the service. The "power of netting" also cannot count as an efficiency argument, since the netting ratio is already fairly low. It should be mentioned that the current access criteria are stated in way that would provide automatic access to the direct membership should a bank account for more than 0.2 percent of the total volume. It seems remarkable in this context that the group of direct participants overlaps to a great extent with the group of owners of the system. Recommendation: The access criteria should be adjusted in a way to provide the option for a small number of currently indirect participants to join the club of the direct participants. This goal could be reached in several ways. For instance, the volume based access criteria could be lowered. In light of CP3, access could also be broadened, through the introduction of explicit financial soundness criteria. Of course, a combination of the two options would be possible as well.
Principle 10.	**The system's governance arrangements should be effective, accountable and transparent.**
Description	*Governance* All the rules regarding governance arrangements are embodied in a document called *Statuts du GSIT* (April 2003). In addition, another document called r*èglement intérieur* specified the conditions of application of the dispositions of *Statuts du GSIT*, and in particular the rights and obligations of GSIT members. The system is owned and managed by GSIT, an economic interest group owned by 12 banks. GSIT was created in 1983 with the objective if contributing to the economic activity of its members through the design, development, management, operation and evolution of a SIT. The statutes of GSIT provide for GSIT being constituted as a g*roupement d'intérêt économique* ((GIE) Economic Interest Group), which is a form of legal entity governed by the French Commercial Code (FCC), dedicated to non profitable activities (it therefore is a nonprofit organization), GIEs are nevertheless subject to insolvency law, since Art. L.620-2 of the FCC submits all private law legal entities to insolvency law. GSIT has no capital but, as an GIE, its members are liable for all debts incurred by GSIT. The Members of GSIT being only credit institutions and investment firms, one can consider that the liabilities of

	GSIT are warranted by a sufficient amount of assets. The balance sheet of an GIE is audited. Currently, GSIT is composed of 229 member banks. These 229 members are represented by 12 founding members (the owners of GSIT), who participate in the decision and management structure of GSIT, the Management committee. No new members are accepted since new members would not have contributed to the initial funding of the system. Articles 13 to 41 of GSIT's Statutes detail the structure, roles and responsibilities of the different entities involved in the decision making process and the control of the decisions taken. The Management Committee (*comité de direction*) is composed of representatives of the signatories of the Articles of Association of GSIT, a representative of the other direct participants (nonsignatories of the Articles), a representative appointed as an observer by the French Association of Credit Institutions and Investment Firms (*AFECEI- Association Française des Établissements de Crédit et des Entreprises d'Investissement*) and a representative designated as an observer by the French Banking Association (*Fédération Bancaire Française (FBF*). Among others, the Management Committee defines GSIT strategy, elects the Chairman, elects the members of the Executive Committee and approves the budget. The Executive Committee (*le bureau*) is composed of the Chairman of GSIT, a BdF representative (BdF is an ex officio member of the Executive Committee by virtue of its oversight responsibility), five representatives of the GSIT Management Committee elected within this body, and the General Manager of GSIT. It is mainly a consultative body providing assistance to the chairman and the General Manager. The Executive Committee and the Management Committee of GSIT meet every other month. The General Meeting is composed of all the members of the GSIT. They have competence to approve the accounts of the past exercise, validate the budget, elect and revoke the General Manager, the account controller and the management controllers, admit new members and exclude current members, and modify the Statutes. GSIT has also set up several specialized committees such as an Operating Committee, a Development Committee and an Administrative and Organization Commission. *Transparency* Information on the system and its operation is available to participants and to the public through several documents: - GSIT's annual report is disclosed freely to all participants and is available on GSIT's website. This document encompasses the value and volume processed in the system, safety, reliability and quality of the system indicators, the evolutions of the system operation and management; - GSIT's annual information document is publicly disclosed on its website. This handbook details the system operations as well as the changes and prospective; - GSIT monthly reports are publicly disclosed on the GSIT website. It includes statistics on operations exchanged through the system (value, volume and peaks); and - Monthly reports for direct participants: the GSIT disseminates to direct participants and governing bodies monthly reports on SIT's operations, covering essential statistics, the quality of service, safety and reliability, incidents, profiles of participants in the system, and the GSIT's administrative role. The participants which are represented at the Executive Committee or at the Management

	Committee have access to all information available within these governing structures.
Assessment	Observed
Comments	The governance structure is in line with the requirements of the Core Principles. At an international level, the governance arrangements are by and large comparable with those of other private sector systems.

Table 14. Summary Observance by SIT of the CPSS Core Principles

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Observed	7	Core Principles 1, 2, 3, 4, 6, 8 and 10.
Broadly observed	2	Core Principle 7 and 9.
Partly observed	0	--
Non-observed	1	Core principle 5.
Not applicable	0	--

Recommended action plan for the SIT

Table 15. Recommended Actions to Improve Observance by SIT of the CPSS Core Principles

Reference Principle	Recommended Action
Legal foundation	None
Understanding and management of risks	- Investigate whether the documentation on SIT rules and procedures could be made available in digital versions and distributed more directly through electronic channels.
Settlement	– Implement adequate safeguards against the default of the largest net debtor as soon as possible.
Security and operational reliability, and contingency arrangements	– Put in place as soon as possible adequate measures to ensure settlement on the day of value in case of a large operational disruption; and – Consider whether to establish more regular external audits.
Efficiency and practicality of the system	None.
Criteria for participation	Broaden the access to the system via a revision of the present participation criteria.

Reference Principle	Recommended Action
Governance of the payment system	None.

Assessment central bank responsibilities in applying the CPs

Table 16. Detailed Assessment of the Responsibilities of BdF in Applying the Core Principles

Central Bank Responsibilities in applying the CPSIPS	
Responsibility A.	**The central bank should define clearly its payment system objectives and should disclose publicly its role and major policies with respect to systemically important payment systems.**
Description	*Legal and institutional framework* The objectives, roles and major policies of the BdF with regards to payment systems are clearly defined and publicly disclosed, in particular through a sound legal and institutional framework. The BdF operates within the context of the European System of Central Banks (ESCB). The ESCB framework with regards to payment systems is specified in Art. 105(2) of the Treaty establishing the European Community and in Art. 3 of the Statute of the ESCB and of the European Central Bank, which state that "the basic tasks to be carried out through the ESCB shall be […] to promote the smooth operation of payment systems." The ESCB has three different kinds of involvement in payment systems issues: a. Operational involvement through the provision of payment services (TARGET); b. The oversight function, recognized in the Treaty and in the Statute; and c. A catalyst role in inducing changes in the field of payment systems through supportive actions aimed at facilitating private sector initiatives. Art. 22 of the Statute of the European System of Central Banks and of the European Central Bank states that "the ECB and national central banks may provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payment systems within the Community and with other countries." At the domestic level, Art. L141-4 of the COMOFI states that "the BdF shall ensure the smooth operation and the security of payment systems, within the framework of the task of the ESCB relating to the promotion of the smooth operation of payment systems." The Governing Council of the ECB formulates the common policy stance, and in line with the principle of subsidiarity, in areas not specifically covered by the common policy, policies are defined directly by the BdF. The Governing Council determines in particular the objectives and core principles of a common Eurosystem policy in those cases where the functioning of payment systems may affect the implementation of monetary policy, financial stability, the establishment of a level-playing field between market participants and cross-border payments within the EU and with other countries. Art. L.141-4 of the COMOFI is also the basis for the BdF's threefold role with regards to payment systems. - The BdF is operationally involved in payment systems since it operates TBF, the

	French RTGS and component of TARGET, and is the settlement agent of the other French payment systems (PNS – *Paris Net Settlement*, the second French LVPS, and SIT – *Système Interbancaire de Télécompensation*, the French retail payment system). - The BdF is legally entrusted with the oversight of payment systems, within the Eurosystem framework. According to the principle of decentralization, the ECB's Governing Council defines the general oversight framework, while the enforcement of this general oversight policy, as a rule, entrusted to the NCB of the country where the system is legally incorporated. - The BdF fulfills a role as catalyst with the French and European banking community in order to achieve its policy objectives. In this capacity the BdF participates in various working groups, for instance: • The Payment instruments steering committee of the French banking federation (*Comité d'orientation des moyens de paiements de la Fédération Bancaire Française*); • The Banking and Financial Regulations Committee (*Comité de la Réglementation Bancaire et Financière, CRBF*); • The French Committee for Banking Organisation and Standardisation (*Comité Français d'Organisation et de Normalisation Bancaires, CFONB*); • the interbank automated clearing group (*Groupement pour un système interbancaire de télécompensation; GSIT*); • the Center for Interbank Funds Transfers (*Centrale des Règlements Interbancaires; CRI*). *Public Disclosure of role and objectives* With regards to oversight, the BdF has a policy of forwarding the public statements of the Eurosystem to the national community (e.g. *"The role of the Eurosystem in the field of payment systems oversight," "Information guide for credit institutions using TARGET," "TARGET Annual Reports," "Guideline of the European Central Bank on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET)," "TARGET Interlinking specifications").* In addition, the BdF regularly informs the public from an operational and an oversight perspective in its Annual Report. On its website, it publishes articles on topics such as its objectives in the oversight of payment instruments, payment and securities systems. The website also contains a comprehensive overview of TBF and TARGET, including their architecture, main features and statistical data. It also provides links to other central banks that are operating components of TARGET as well as to the ECB's website. Additional information outlets that are frequently used are the BdF Monthly Bulletin Digest and the semi-annual Financial Stability Review. Each time a new policy is defined or a major change in an existing policy implemented, it is disclosed and published in order to ensure that the information is available and easily accessible for all interested parties.
Assessment	Observed.
Comments	The BdF has a sound legal framework on which its oversight activities in the area of systemically important payment systems are based. The BdF has close relationships with the banking industry. It informs the public thoroughly about new developments and envisaged

	changes. The public is also well informed about the role of the BdF and its objectives in the payments area.
Responsibility B.	**The central bank should ensure that the systems it operates comply with the core principles**
Description	The BdF is the operator of the real-time gross settlement system TBF which is also the French component of TARGET. In order to ensure compliance with the Core Principles the BdF has implemented the following measures. *Separation of operational and oversight functions* At the BdF, one organizational unit is responsible for oversight (SEPI *Service de surveillance des systèmes de paiements et de titres*). Other units are in charge of operational issues (SERI—*Service des règlements interbancaires*—operates TBF and SEMOP—*Service études, maîtrise d'ouvrage et organisation des systèmes de paiements*—deals with business and policy issues). SEPI, SERI and SEMOP all report to the same general director. The oversight unit is composed of 8 experts in payment systems (plus support staff) with different skills (a legal expert, an engineer with a background in information technologies, and several economists). SEPI is in charge of three main tasks: • Defining the principles or standards underpinning the conception and operations of the overseen objects: the BdF participates actively in the definition of new international and European standards applicable to LVPS and retail systems, within the framework of ESCB Committees and working groups and/or larger fora such as CPSS working groups. The BdF also works with the domestic committees on banking standards and organization as well as with several other interbank think tanks on payment systems. • Monitoring the implementation of the Core Principles: the BdF has assessed TBF and PNS in 2003, and SIT in 2004. It has also assessed whether the TARGET risk management framework observes at a minimum CP7 and whether there is a clear process at the level of the operator to ensure compliance with the framework. • Ongoing oversight by monitoring the actual conditions of operation and use: this task encompasses the collection and analysis of information regarding the operations of the system and the involvement in crisis management. a. In order to monitor the functioning of large-value payment systems, the BdF has set up a statistical observatory, which, for instance, monitors the behavior of participants in these systems, and a simulation tool. b. Other information sources used by the oversight division are multilateral meetings organized at interbank level, annual bilateral meetings with participants and the in-house payment systems steering committee (*Comité de Pilotage Système de Paiements*), which the overseer attends and where discussions with service providers take place and technical incidents are commented on. c. In case of an operational problem, the BdF is immediately informed of the consequent developments, and jointly defines with the managers of the systems and the major market participants, the measures that are necessary to avoid spill-over effects. *Assessment of TBF against the Core Principles* In May 2003, the oversight division of BdF finalized an extensive assessment of TBF against the Core Principles using the methodology defined by the Eurosystem. The assessment consisted of the review of all the documentation available and of meetings with

	the system operator. The self assessment is 93 pages long. The assessment concluded in a full observance of CP1, CP6, CP9, and CP10, in a broad observance of CP2, CP7 and CP8. The overseer expressed specific and detailed recommendations in order to improve the level of compliance. The oversight division also suggested improvements where the observance with the CP had already been achieved. According to Eurosystem rules and procedures, the assessment of TBF will become final once it is officially approved by the Governing Council of the ECB, who will also authorize some form of publication of its results. In the meantime, the overseer has already informed the system operator of its main findings, which have also been published in the BdF Annual Report for 2003.
Assessment	Observed.
Comments	The organizational setup with the division between operations and oversight allows the BdF to oversee TBF effectively. The assessment of TBF is thorough and complete. The skills of the oversight team are appropriate. However, for some issues, such as operational reliability, the cooperation with other internal and external entities (in particular auditors) could be strengthened.
Responsibility C.	**The central bank should oversee observance with the core principles by the systems it does not operate and it should have the ability to carry out this oversight**
Description	As pointed out in the description of Responsibility A, the BdF can rely on a clear legal and institutional framework to carry out oversight of systems it does not operate. Currently, there are two systemically important payment systems that fall into this category (PNS and SIT). With regard to the oversight of these systems the BdF uses moral suasion in order to achieve its objectives. The BdF reserves the right to veto certain decisions at the General Assembly of CRI (*Centrale des Règlements Interbancaires*), which is the operator of PNS. The oversight unit is also represented on the Executive Committee (*le bureau*) of GSIT where it can voice its opinions before the decisions are made at the Management Committee (*comité de direction*) where the BdF is represented by its Banking Services unit. On the basis of either contractual provisions with the operator of the system or with their consent, the BdF could also perform on-site inspections. An additional oversight tool is provided by regulations issued by the ECB (Art. 22 of the Statute of the ESCB and the ECB.) The same unit (SEPI) that oversees TBF is also in charge of overseeing PNS and SIT (see description of Responsibility B). SEPI exercises its oversight function through an on-going oversight of the functioning of the systems and assessments of their compliance with the Core Principles. With respect to the task of overseeing the actual conditions of operation of the systems, SEPI has developed an oversight database. The database contains a directory of participants, all payment orders (whether they have been executed or rejected) back from 1999 and relevant information related to the latter (for instance, reference of the payment order, participant credited [BIC, account, group of accounts,…], participant debited, amount, date and time of the payment order, date of time of the execution of the payment, whether the payment was queued or not, if queued, the kind of optimization that has released it, specific information for monetary policy operations, specific information for settlement of ancillary systems,…). The oversight database also contains all necessary information in relation with the intraday credit granted to the participants (type and amount). This database is used to produce analyses on the functioning of the system. It is also used to prepare the annual bilateral meetings that the overseer holds with participants. Each year, the oversight division

	organizes bilateral meetings with the bigger participants of French payment systems and a sample of smaller participants. Additional sources of information are the minutes of the governing bodies of the systems (*Assemblée Générale de la Centrale des Règlements Interbancaires* (AG CRI) for PNS and Executive Committee of the GSIT for the SIT), where the BdF is represented, and other documentation collected by the oversight team such as audit reports, financial reports, rules and procedures of the system. In 2003, SEPI finalized a 58 page assessment of PNS against the Core Principles. The assessment was based on a review of all the documentation available and on meetings with the system operator. The assessment concluded that there was full observance of CP1, 3, 4, 5, 6,7,8,9,and 10 and broad observance of CP2. The overseer expressed specific and detailed recommendations in order to improve the compliance with the CP. The oversight division also proposed improvement that had no implication for the observance of the CP in fields covered by the CP1, 3, 7, 8 and 9. In spring 2004, SEPI produced a first draft assessment of SIT against the Core Principles (67 pages). The assessment found a full observance of CP1, 2, 5, 6, 8, 9, and 10, and broad observance of CP3, and nonobservance of CP7. Currently, the BdF is waiting to receive feedback on the draft assessment from GSIT, the operator of SIT.
Assessment	Observed.
Comments	BdF is charged by law with the oversight of payment systems operated by the private sector and fulfils this task in line with international standards.
Responsibility D.	**The central bank, in promoting payment system safety and efficiency through the core principles, should cooperate with other central banks and with any other relevant domestic or foreign authorities.**
Description	The BdF is in close cooperation particularly with the central banks of the Eurosystem. It has signed several MoU with other authorities. The cooperation between the BdF and central banks of the Eurosystem for payment systems in Euro is governed (1) by the oversight framework adopted by the Governing Council in June 2000 and (2) the specific decisions of the Governing Council with regards to TARGET. At the level of the Eurosystem, the BdF has two representatives in the PSSC. The PSSC has an advisory role to the Governing Council of the ECB on payment systems issues. In particular, the mandate of the PSSC is to advise in important issues regarding TARGET and cross-border use of collateral. In addition, the PSSC addresses policy and oversight issues for payment and securities settlement systems. The BdF is also represented in two working-groups of the PSSC: The PSPWG and the TARGET management working group (TMWG). At the level of the G10, the BdF is a member of the CPSS. The cooperation among G10 central banks is laid out in the so called Lamfalussy Principles on cooperative oversight. The BdF takes part in CPSS Subgroup on Foreign Exchange Settlement Risk, which is in charge of the cooperative oversight of CLS. Currently, the BdF is also represented in the other working groups of the CPSS. The BdF has signed several MoUs with other supervisory authorities. In April 2001, the BdF and the French Commission Bancaire signed an MoU of the Eurosystem between payment systems overseers and banking supervisors, on specific arrangements for co-operation and

	information sharing in the area of large-value payment systems. In addition, some provisions of the MoU of March 2003 on high-level principles of co-operation between the banking supervisors and central banks of the European Union in crisis management situations apply to payment infrastructures. This MoU aims to enhance the practical arrangements for handling crises at the EU level, since smooth interaction between supervisory and central banking functions will facilitate an early assessment of the systemic scope of a crisis and contribute to effective crisis management. The MoU consists of a set of principles and procedures for cross-border co-operation between banking supervisors and central banks in crisis situations. These principles and procedures deal specifically with the identification of the authorities responsible for crisis management, the required flows of information between all the involved authorities and the practical conditions for sharing information at the cross-border level.
Assessment	Observed.
Comments	The BdF has a well-developed network for cooperation with other authorities and is paying careful attention to matters of cooperative oversight.

Table 17. Summary Observance of the Central Bank Responsibilities in Applying the CPs

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Observed	4	Responsibilities A, B, C and D.
Broadly observed	0	--
Partly observed	0	--
Non-observed	0	--
Not applicable	0	--

Recommended action plan on central bank responsibilities

Table 18. Recommended Actions to Improve Observance of the Central Bank Responsibilities in Applying the CPs

Reference Principle	Recommended Action
Responsibility A	None.
Responsibility B	Strengthen the cooperation with other internal and external entities (especially auditors).
Responsibility C	None.
Responsibility D	None.

Authorities' response to the assessment

66. The BdF takes note that the IMF largely endorses its own findings regarding both the overall situation of the French payment infrastructure and the assessments of TBF, PNS and SIT, performed against the Core Principles as well as BdF responsibilities.

67. The BdF would also like to mention that it has already taken several steps to urge payment systems to achieve full observance with the Core Principles, in the few remaining areas where some improvement is still needed. In particular, compliance of SIT with CP5 is planned to be achieved no later than 2008, in line with the policy stance endorsed by the Eurosystem.

IV. IMPLEMENTATION OF THE IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION

General

68. This assessment addresses the securities regulatory framework in France. France modernized the legal structure for financial services by the Financial Security Act of August 1, 2003 (*Loi Nº. 2003-706, de Sécurité financière* or LSF). The new law simplifies and consolidates the law affecting financial market institutions, products and professionals. The compilation of the statutory provisions is known as the *Code Monétaire et Financier* (COMOFI). The revised regulatory framework can be described as a sophisticated, so-called, "twin peaks" model, which separates the performance of prudential and conduct of business regulation, although insurance providers are treated separately and not comprehensively integrated.

69. A twin peaks model was chosen to:

- Take account of the different cultures (and expertise) related to the supervision of banking and trading firms;
- Acknowledge the differences in techniques between prudential and conduct of business oversight and enforcement techniques;
- Provide separate lines of decision making that may reduce the potential for conflicts of interest in addressing particular regulated institutions; and
- Provide coverage of all relevant financial intermediaries, including for example managers of portfolios for third parties and financial analysts.

70. This model, as articulated in the LSF, is fairly complex, albeit simpler than the previous structure. The *Autorité des Marchés Financiers* (AMF) merges the COB, the *Conseil des Marchés Financiers* (CMF) and the *Conseil de discipline de la gestion financière* (CDGF). The AMF has broader powers with respect to collective investment vehicles, asset management, international information sharing and enforcement than is typical of twin peaks models. It also shares certain licensing powers with the prudential authorities. This new framework reflects the evolution of financial market regulation in France and in the

European community. In particular, it reflects the devolution of market oversight from a shared supervisory activity between a professional body, the CMF, a successor to the *Conseil des Marchés à Terme* (CMT), and an independent administrative authority, the COB, effected in l996 by the Financial Modernization Act (Loi MAF) (which also integrated cash and derivatives oversight) to today's new model, where these oversight powers are concentrated in the independent regulatory authority that is the AMF. The new French framework also maximizes the protections that implicate the process of imposing regulatory sanctions and setting regulatory standards, by creating an independent structure for imposing sanctions.

71. As a consequence of this complex structure, this assessment focuses on the remit of the AMF, while also taking account of the activities of several other institutions in so far as the competences of those institutions have responsibilities with respect to investment services providers, markets, clearing and settlement and thus can affect implementation of the IOSCO Objectives and Principles of Securities Regulation (Principles). It also must particularly assess the efficacy of the arrangements whereby such institutions interact and cooperate in the performance of their regulatory, supervisory and enforcement functions. In this regard, the discussion below and in Principle One describes in some detail the various institutional components of the regulatory structure.

72. This assessment is being performed by a securities expert designated to the IMF in accordance with an IOSCO Protocol for the designation of securities experts. Ms. Andrea Corcoran, Director of the Office of International Affairs of the US Commodity Futures Trading Commission and Chairman of the IOSCO Task Force on Implementation of the Principles, is conducting the assessment. It is understood that the conclusions in this assessment are provided in her personal capacity as an expert under contract to the IMF and not in her capacity as an employee of the US government or in her capacity as a representative of IOSCO. It is also understood that such assessments are intended generally to test the legal and regulatory framework—and the application in fact of that framework—to securities regulation against the standards set by IOSCO but that such assessments "…cannot be expected to provide assurance against a political or economic failure or the possibility that a sound regulatory framework can be circumvented." Understanding of the details behind this assessment will be enhanced by review of the working papers, in particular any answers provided to the IOSCO Assessment Methodology.

Information and methodology used for assessment

73. In making this Assessment, the following guidance with respect to application of the IOSCO Principles was used: the Principles themselves, the Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation (Assessment Methodology), to the extent applicable, the Assessment methodology for "Recommendations for Securities Settlement Systems" (RSSS Assessment), the consultation draft of the CPSS/ IOSCO Recommendations for Central Counterparties released in March, 2004, IMF Guidance Notes and Templates, and, as relevant, the IOSCO reports referenced in the Assessment Methodology and the Principles.

74. The assessment also is based on meetings with the MINEFI; interviews with senior staff of the AMF responsible for each of the functional areas addressed by the Principles and the Chairman and Secretary General; sessions with knowledgeable staff of the *Commission Bancaire* (CB), the *Comité des Etablissements de Crédit et des Entreprises d'Investissement* (CECEI), the BdF (with respect to their respective roles in the securities framework), and the *Agence des participations de l'Etat* (APE) (in connection with market structure); discussions with Euronext, NV (Paris operations) (regarding cash and derivatives markets), Euroclear (regarding payments and settlement), LCH-Clearnet, SA (regarding clearing); meetings with selected asset management and investment firms (and the related professional associations) representing different scales and complexity of financial services activity; selective review of the websites of the foregoing; annual reports; the COMOFI, existing regulations and published guidance, instructions, and recommendations; statistics on operations; systems for publishing information on issuers; the combined database composing the registry of licensing information; the regulatory and other official mechanisms for publication of regulatory actions; exchange operational oversight and regulatory surveillance systems; AMF responses to the IOSCO "high level" questionnaire and IMF questionnaires on Mutual Funds and Market Structure; the draft AMF responses to the Methodology; reference to the predecessor to the AMF, the COB, responses to detailed questionnaires used by IOSCO to explicate functional aspects of Member programs; information, charts and demonstrations of programmatic elements requested and delivered during the course of the on-site portion of the assessment; and multiple conference calls to address matters of detail. The assessment also reflects the sharing of views of the mission team at mission meetings in which participants briefed each other on findings in their particular areas of emphasis.

75. The AMF and the other institutions and entities and their representatives with securities competences were well-prepared, expert in their areas of focus, consistently helpful and the management of the assessment was well-organized while still sufficiently flexible to accommodate further exploration of particular nuances. The AMF provided a draft answer to the Assessment Methodology for Assessing the Implementation of the IOSCO Objectives and Principles of Securities Regulation. The IMF, however, did not require the AMF to submit its response using the Methodology. Responses to the Assessment Methodology, suggested by IOSCO, have benefited the development of this detailed report.

Institutional and macroprudential setting, market structure

Structure of the securities industry in France

76. Capital markets in France are large and sophisticated, with a range of equity, debt, derivative, and mutual fund products available to investors. As a percentage of household savings in France, investments in securities and mutual funds[20] comprise roughly 7.9 percent

[20] Negotiable debt securities, bonds, shares and equity, mutual funds shares, claims on insurance companies.

of disposable income (savings/disposable income of 16.7 percent in 2002), with life insurance products and savings accounts[21] comprising 6.4 and 2.7 percent respectively.

77. Mutual funds of various types, including the so-called UCITS, are an important investment vehicle in France. Among industrialized countries, only the U.S. had a larger mutual fund asset to GDP ratio (68 percent) than France (64 percent) in 2003. A large proportion of the mutual fund products held by investors are created and sold for the account of life insurance firms. The reason for this is that there are substantial tax benefits to households holding life insurance saving products, including those in the form of mutual funds.

78. The financial sector as a whole is dominated by universal banks—in large part by the six major domestic banks. There are 90 licensed investment/broker firms, 346 commercial banks (1011 credit institutions) and roughly 500 asset management firms. The largest domestic broker/dealers (i.e., investment firms) are part of the same six largest financial institutions. Also, an important portion of assets under management in France (41.5 percent) is managed by the big six banks' asset management companies[22].

Equity and risk shifting markets

79. France's only stock exchange, Euronext Paris, which is a subsidiary of Euronext, NV, operates a fully electronic equity exchange. In terms of stock market capitalization, France ranked fourth in the world after the U.S., U.K., and Japan in 2003 (Table 19).

Table 19. Stock Market Capitalization

	U.K.	U.S.	Japan	France	Germany
In percent of GDP	146	110	74	73	40
In US$ billions	2,041	10,904	1,782	968	620

80. Euronext Paris was formed as a result of the partial consolidation of European stock markets that took place in 2000. The stock exchanges in Paris, Amsterdam, Brussels and, later on, Lisbon (and Porto) joined forces under the umbrella holding company Euronext NV, a demutualized, public company based in the Netherlands, whose shares are listed on the *Premier Marché* of Euronext Paris. The shareholders of these European bourses received

[21] Currency and deposits (banknotes and coins, transferable deposits, contractual savings, …)

[22] The top ten asset management companies are: CDC-Ixis AM, Crédit Agricole AM, AXA IM, SGAM, BNP Paribas AM, Crédit Lyonnais AM, AGF AM assurance, Natexis AM Banque Populaire Group, Groupama AM (assurance), AVIVA (assurance). The asset management functions of Crédit Agricole and Crédit Lyonnais will be merged on July 1, 2004.

shares in the new company in exchange for their original holdings. For regulatory oversight and other legal reasons, Euronext NV consists of a set of subsidiaries in each participating country, with each subsidiary holding the local stock market license. The subsidiaries then offer issuers, intermediaries and investors in each country local portals to what is now a unified trading structure. This means that there exists a single quote and a common cross-border order book for the listed securities emanating from each jurisdiction, creating a broader liquidity pool and greater transparency than would have been available before the consolidation. Moreover, there also is a single clearing system, LCH-Clearnet, SA, and a single settlement system, Euroclear France, for all equity securities traded on Euronext markets.[23] However, as noted above, the local markets are not merged, and hence they continue to be regulated by their respective local authorities. For Euronext Paris, this means that it is overseen by the AMF. The cross-jurisdictional nature of Euronext Paris, LCH-Clearnet SA, and Euroclear France has lead to the implementation by the French authorities of innovative cooperative cross-border arrangements with the authorities in the other jurisdictions in which these firms are active.

81. The internal market structure of Euronext Paris remains as it was for the Bourse de Paris, with three segments: the Premier Marché, the Second Marché, and the Nouveau Marché. Euronext also offers companies the option to trade its overlapping NextPrime and NextEconomy market segments, which encompass stock listed in four Euronext stock markets. The Marché Libre is an unregulated market in which 258 issues are traded.

82. The total transaction value in equities (per the Electronic order book, counted on one side) was EUR 877.7 billion in 2003, with an average daily turnover of EUR 3,442 million. In 2003, the number of trades was 101 million with an average daily turnover of 396,288,[24] and the five most actively traded shares accounted for 30 percent of turnover. In 2002, the nine most actively traded shares accounted for 30 percent of the total number of trades. According to BdF statistics, equities are primarily traded by institutions and foreign investors.

83. The exchange traded futures and options markets in Paris (MATIF and MONEP respectively) are now also part of Euronext. The Paris derivatives markets have been integrated into the Euronext-liffe trading structure, thus taking advantage of the added liquidity and transparency offered by the common cross-jurisdictional platform. As is the case with the stock exchange, activity in the various derivative instruments that are traded in the Paris segment of Euronext-liffe are regulated by the French authorities. The CAC 40 is the most active contract; most financial futures are traded through the London portal.

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[23] Overall, European equity markets remain relatively fragmented compared to the U.S. and Japanese markets. There remain a large number of separate markets in Europe, with differing systems to settle cross-border trades. This increases overall settlement costs.

[24] These figures include all domestic and foreign shares traded on Euronext Paris.

Bond markets

84. The current structure of the government bond market includes long-term debt instruments (7 to 30 year initial maturities; OATs, OATis, OAT€is, and TEC10 OATs), medium term debt instruments (2 and 5 year initial maturities; BTANs) and short-term debt instruments (1 year or less; BTFs). OATs comprise of 65 percent of the marketable government debt outstanding, BTANs 20 percent, and BTFs the remainder. Inflation-linked OAT issuances have grown, particularly with the recent introduction of European inflation-linked bonds (OAT€is) in 2001. Inflation-linked bonds now comprise about 10 percent (Euro 44.5 billion) of the outstanding stock of OATs (or 8 percent of total outstanding government debt instruments). The introduction of large, liquid 10 and 30-year bonds linked to European inflation is said by investment banks to have helped trigger the issuance of other (nonsovereign) inflation-linked (IL) debt instruments (mainly, IL medium term notes) by European institutions as well as the creation of an inflation-linked swaps market.[25] The main investors are insurance companies, international pension funds, asset managers and alternative traders. These IL debt instruments provide a natural hedge against their inflation-linked obligations.

85. The nonfinancial corporate bond market in France has grown substantially with the introduction of the Euro. At the end of 1998, the corporate bond market comprised 12 percent of outstanding French bonds, while it now stands at 22 percent. Most of this (20 percent) is issued by credit institutions. By comparison, however, this market share is still below that in the U.S., where corporate bonds represent roughly 40 percent of outstanding bonds.

86. Inter-dealer trading for the French government bond market, and to a lesser extent the nongovernment bond market, has almost completely migrated to the MTS electronic trading platform. By significantly improving the market liquidity conditions faced by dealers, the MTS systems generated a significant reduction in trading cost. Although the dealers (banks and investment firms) who trade on the system gain directly from the improved liquidity, the whole of the sovereign bond market also realizes reduced trading costs as competitive forces cause the intermediaries to pass on some of the savings in more transparent and liquid bond trading to their clients, mainly institutional investors.

87. There is also Powernext, a commercial energy exchange owned by Euronext in which nonintermediated trading occurs.

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[25]In an inflation-linked swap one party (periodically) pays a fixed rate on a notional amount and the other receives the inflation rate, typically the European inflation rate (known as HICP ex. tobacco).

Description of regulatory structure and practices

88. The AMF is an independent public authority with legal personality and 'taxing' authority, comprised of a 16–member Board[26] (College), chaired by a full time Chairman and a separate 12-member *Commission des Sanctions*, and 5 consultative commissions, each with its own Chairman and Vice Chairman as follows: (1) *Organisation et fonctionnement du marché*, in regard to transposition and implementation of the new investment services directive and market abuse directive; (2) *Activités de compensation, de conservation et de règlement-livraison*, in regard to international work on clearing and settlement; (3) *Activités de gestion individuelle et collective*, in regard to application of European guidance, creation of new management techniques and rules of good conduct for managers of individual and collective investments; (4) *Opérations et information financière des émetteurs*, application of the new transparency and prospectus directives; and (5) *Epargnants et actionnaires minoritaires*, with regard to minority shareholders and savings.

89. As such, in describing the advent of the AMF, the French press characterized the new institution as enjoying a sui generis legal status.

90. The AMF licenses and prudentially supervises operators of publicly offered collective investment schemes, and portfolio (asset) managers for third parties; regulates the public offer and reporting of financial information with respect to issues, and marketing generally, and also the flow of information relative to takeover bids. The AMF also has responsibility for custodians for securities and assets of collective investment schemes, and for clearing and settlement systems and related custodians, without prejudice to the functions of the BdF and its specific role with respect to payments. The AMF has broad sanctioning powers which must be exercised through its separately constituted *Commission des Sanctions*.

91. Proceedings before this panel can be commenced against any person, whether or not that person is a regulated person. The Secretary General of the AMF opens investigations, which remain under his authority until referred to the *rapporteur* designated by the *Commission des Sanctions*. Cases may be referred to the *Commission des Sanctions* by the AMF board, based on a report of an investigation undertaken by the Secretary General.

92. They can also be referred by the AMF board, upon review of a file submitted by the Governor of the BdF, or the Chairman of either of the CB or the CCAMIP (L.621-15).

93. Licensing (except for insurance companies engaging in insurance activities) is committed to the CECEI (in consultation with the AMF in the case of credit institutions and investment services providers engaged in investment services, pure custodians and clearing members, and with approval of the program of operation if authorization for asset

[26] The Board Members, like members of a typical business board, may engage in other professional activities in addition to their service on the College.

management activities is sought by such firms). Prudential oversight, including oversight over members of markets, clearing organizations and custodians, but not including insurance companies acting in the capacity of insurance companies, is committed to the CB. The BdF commits staff to the licensing and prudential supervisors, and provides leadership through its Governor's participation as Chair of both the CB and the CECEI (L.613-3; 612-3). The BdF also has competence over payment system functions, and as a consequence certain aspects of securities settlement.

94. Coordination with the prudential authorities and the AMF is organized, in the case of day-to-day operations, through inter-staff contacts, information sharing, certain combined databases, and regular monthly meetings. In the case of general policy and matters of particular cross-market or common interest, such coordination is accomplished through an inter-institutional, statutorily-prescribed board composed of the heads of the financial services agencies (the *Collège des autorités de contrôle des entreprises du secteur financier*, henceforth the College (L.631-2), which must meet at least three times a year, and is presided over by the Minister of Finance or his representative. Cross membership of the regulatory/supervisory authorities also fosters cooperation, for example, through the statutory participation of the AMF Chair as a participant on the Board of the CECEI (L.612-3), and participation of the governor of the BdF on the AMF Board.

95. In the case of regulated markets and related clearing arrangements, the AMF may delegate (license specified individuals to perform) certain investigative activities and compliance activities as to their members, including with respect to the transmission of orders by financial services providers (L.621-9-2), in accordance with procedures specified by regulation and subject to conditions of exercise defined by decree of the *Conseil d'Etat* (the highest administrative court) (Art. 11, 12 and 13 of the Decree).

96. In general, the exchanges and clearing and settlement organizations control/monitor their operations through rules adopted subject to review of the competent authority and those rules (and any powers or actions with respect to their infringement) are regarded as founded in contract and not in public law.

97. Protocols exist among the national regulators and markets within the Euronext, NV group, and the related clearing and settlement institutions in the various jurisdictions which comprise Euronext, Euroclear and Clearnet, that determine how those institutions are operated and supervised. In this respect, Euronext France; LCH-Clearnet, Ltd., the British-based holding company for the clearing organization; and LCH-Clearnet, SA are credit institutions with consequent implications for how supervision and regulation of these entities is organized—that is, the CB and the BdF as well as the AMF have specific responsibilities.

98. The law applicable to securities is largely contained in the COMOFI and in the precursor instructions, recommendations, and regulations that are in the process of being revised in a to-be-proposed *Règlement Général* of the AMF. The *Règlement Général*, when complete, will consolidate, streamline and update previous guidance and fully enforceable regulations of the COB and CMF, respectively, as well as bring the French regulatory

framework, which currently implements existing directives, fully into line with new European directives.

99. Pending the conclusion of this project, the rules of the CMF and the COB remain in full force and effect. Applicable law is also found in certain related legislation, such as company law, bankruptcy law, commercial law, property law, penal law, and administrative codes or human rights doctrines that apply to the substance or application of securities laws within France. Indeed, many fundamental protections are referred to as dating from 1789. As part of the EU, France also recognizes credit institutions and investment firms, including market undertakings, that passport into France from other European Economic Area jurisdictions in which they are authorized either by exercising a right of establishment or a right to provide cross border services. France does not automatically recognize remote clearing members, although this conservative approach is not uniformly followed throughout Europe.

100. French financial law also mandates two specific and different forms of consultation, which inform governmental decision-making: (1) the *Comité Consultatif du Secteur Financier* (CCSF) (composed of representatives of financial professionals representing each of the sectors including insurance agents and their clients) concerning relations between the financial sector and its clients and (2) the *Comité Consultatif de la Législation et de la Règlementation Financières* (CCLRF) (L.614-1-2), yet to be formed at the time of writing, (concerning all legislation and rules except for those within sole competence of the AMF (L.621-7V), prior to approval by the Ministry). Membership for these bodies is required for each financial services provider. Each investment services provider and market also must adhere to an association of its choice charged with representing the collective rights and interests of members (L.531-8). This organization will be affiliated with the *Association Française des Etablissements de Crédit et des Enterprises d'Investissement* (L.511-29), which is the related association for credit institutions.

General preconditions for effective securities regulation

101. In general, the preconditions for an effective regulatory framework for capital markets and the provision of financial services assume the existence of a legal framework that supports the integrity of contract and property rights, a legal structure that recognizes the instruments traded in the market and the rules that facilitate their trading, a commercial and insolvency regime that facilitates the taking of collateral, the use of clearing services, and the enforcement of guarantees, sound company law that protects direct investors, laws which support the ability to identify and protect client assets, reliable and consistent accounting standards, and the confidence of the marketplace that the rules will be consistently and equitably enforced and that the rules of the marketplace can be applied notwithstanding the bankruptcy of particular market participants. These assumptions are further premised on the assumption that the judicial, administrative, and regulatory authorities will reliably honor and equitably apply the rule of law. Certainty as to the application of the law, and confidence in its equity, is fundamental to the reliable functioning of markets and market confidence. There is no evidence that these preconditions are not met in France. Also of particular importance is

the ability of the regulatory system to respond to new issues, such as those raised by the problems of sell-side analysts.

102. As for the openness of its markets, the market regulators in France historically have been open to cross-border arrangements within the EU—and beyond—and they have been creative in addressing these arrangements, putting in place the regulatory and legal supports necessary for their functioning. The French authorities also are interested in increasing the ability of national jurisdictions in Europe to address events and to implement the new European directives that are pending in a timely way. In particular they indicated support for maximizing the use of the Lamfalussy process, which would more perfectly harmonize the national approaches among various jurisdictions within the single European market, specifically by broader use of the mechanisms for regulatory development and consultation of the Committee of European Securities Regulators (CESR).[27]

103. Based on anecdotal interview evidence, there is some indication that the fiscal treatment of various instruments may (1) induce the market to favor insurance products that may not be the most value-based investment for the retail public or may (2) predispose high wealth individuals to offshore investment. In connection with the foregoing, it should be noted that IOSCO has not comprehensively treated the preconditions for effective regulation and effective securities markets other than by exposition of the Principles themselves. Many issues related to the functioning of markets, such as the stability of the governmental and legal system, and the macroeconomic situation, are beyond the remit of the IOSCO Principles and while applicable in all cases, are most relevant in less mature or sophisticated systems.

104. The twin peaks structure as applied in France is intended to permit that system to focus contemporaneously on high priority customer protection and prudential issues, such as finality of netting.[28] At the same time, the ability of the system to respond to general and specific problems in the market depends on effective and consistent cooperation as necessary and appropriate among authorities with different functional competences on a day-to-day basis and in the event of a crisis. Although the new framework for securities regulation in France builds upon the preceding high quality structure and preceding interdependent relationships between sectoral authorities and is explicitly designed to meet international standards, the functionality of the framework should be tested after there has been some experience with the changes effectuated by the LSF.

105. Also, while the design of the regulatory framework is intended to take account of the different cultures of securities conduct of business and prudential regulation, to maximize

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[27] There are now CESR-like arrangements for insurance and banking as well.

[28] This does not mean that such matters may not be well addressed by alternative regulatory structures.

functional expertise and to avoid conflicts of interest related to protecting customers from misconduct and protecting institutions and markets from systemic risk, the design could valuably be kept under review to determine if further efficiencies and streamlining are possible and whether essential cooperation continues to occur.

106. Finally, the AMF, although continuing the tradition of its predecessors, just commenced operations November 24, 2003 and announced its new organizational structure, February 12, 2004. Further review of the tentative ratings in this document after some period of operations would more correctly reflect the implementation of changes currently in progress.

Principle-by-principle assessment

Table 20. Detailed Assessment of Observance of the IOSCO Objectives and Principles of Securities Regulation

Principles Relating to the Regulator[29]	
Principle 1.	The responsibilities of the regulator should be clear and objectively stated.
Description	The AMF is the successor agency to the COB, the *Conseil des Marchés Financiers* (CMF), and the *Conseil de Discipline de la Gestion Financière* (CDGF), created by merger under the LSF, dated August 1, 2003, as made effective November 24, 2003, and reflected in the COMOFI and appurtenant Decrees (especially Decree N° 2003-1109, dated November 21, 2003). The responsibilities, powers and authority of the AMF are clearly and objectively stated, primarily in Section 4, Book VI, Unique Chapter on the AMF, which in modernizing securities regulatory institutions, builds on two traditions: one drawn from the governmental overseer and the other drawn from the market. The AMF's remit reflects the three objectives of IOSCO: investor protection, fair, efficient and transparent markets and reduction of systemic risk. The AMF oversees the protection of funds invested in financial instruments and other investments offered to the public, the disclosure of information to investors and the proper functioning of the markets. It also participates in European and international forums and works with other sectoral regulators, which are the primary supervisors of bank and insurance companies for their banking and insurance activities and conduct prudential oversight of investment firms, markets and clearing and settlement arrangements also subject to regulation by the AMF. (See description of the regulatory scheme above, L.621; L.614-1-3; Chapter II, Book VI of the COMOFI).

[29] The assessor's comments for the first five principles, while the result of reviewing the regulatory system for securities overall, have focused on the AMF, with the CB and CECEI and BdF being more comprehensively treated in the Introduction from the perspective of the organizational structure of regulation and in each of the functional segments from the perspective of their specific functions. Nonetheless, the assessor sees no basis to change the ratings for the Regulator under the IOSCO Principles based on an analysis of those securities functions performed by the CB and the CECEI and by the BdF.

	More particularly, the AMF's responsibilities related to the offering of securities or issues (including the oversight of disclosures related to takeover bids); to the oversight of the conduct of business by investment services providers and their management and compliance employees *responsable du contrôle des services d'investissement* (RCSI) in the case of investment firms), including asset managers and publicly offered collective investment schemes; the sale or solicitation of securities; the organization and functioning of markets and the rules for execution thereon; the rules relating to the organization and functioning of clearing and settlement systems; any derogations from the concentration rule (i.e., L.421-12); the surveillance of investment services providers (including, among others, brokers, markets, asset managers, depositories and custodians, in connection with AMF competences), as to their professional obligations for example with respect to market abuses and insider trading, as specified in the law (L.621-9); enforcement and information sharing; and representation in international forums (L.621-1). The AMF can exercise general regulatory authority to carry out its program subject to validation by the MoE. To be effective such regulation must be made public in the *Journal offficiel de la République Française* (JORF), and other regulatory information appears in the BALO (*Bulletin des annonces légales obligatoires*), such as approvals of the rules of regulated markets. Therefore the AMF either has sole power and responsibility, or power combined with other authorities, to effectuate a framework of regulation covering each of the functional areas specified in the IOSCO Principles and related Assessment Methodology. Although certain requirements are applied differently to marketing by credit institutions and to other matters for insurance firms, there are no significant gaps or inequities, in the overall framework for securities regulation. In this respect it should be noted as described with some particularity in the introduction, the CECEI, addresses licensing of intermediaries (L.612-1 to L.612-7); the CB, addresses prudential issues for investment services providers except asset managers (L.613-1 to L.613-34; L.613-2), which delineates the scope of oversight; L.613-21 to 24, which relate to disciplinary powers; and L.613-31 regarding liquidations affecting securities of a supervised entity traded on a regulated market, and the role of each is also more particularly described in the discussion of intermediaries below (Principles 21-24). The BdF contributes staff to both the CECEI and the CB and has responsibilities with respect to the operation of payments systems (See (L.141-1 to L.141-9, and in particular L.141-4). The responsibilities of each of the regulatory authorities in respect of securities are clearly spelled out in the COMOFI. See also the description in Principle 1(1) of the "Detailed Assessment of Compliance with the Basel Core Principles for Effective Banking Supervision" and the related segment on Transparency (henceforth, "Contemporaneous Basel Report"). The AMF can also issue instructions and recommendations that while not directly binding as a matter of law, can give more content and precision to existing regulation, and to the extent that they clarify or explain, in fact interpret legally binding guidance. The AMF is in the process of consolidating the rulebook and rulings of the merged entities and expects to have this process completed in 18 months. This consolidation is expected to materially improve the accessibility of applicable law, decisions, and regulation. In the interim, the rules and guidance of the CMF and COB remain in effect and some rules and decisions with respect to investment services providers may be more accessible than others. For example, not all are published on the AMF's own website, the CIS rules are difficult to locate as these are complex and some have been archived, and only some are also available in English (see Principle 4). The power of the AMF, or by delegation, its President, to apply the AMF regulations through

	instructions and recommendations must be exercised in conformance with specified procedures and within prescribed parameters of its competence consistent with applicable administrative "jurisprudence." For example, the AMF may be requested to provide a binding interpretation on a specific question as to the operation of regulations to a specific practice by any interested person (*"Procédure de Rescrit"*). See, *Règlement* COB 90-07. Like a "no-action position" in some jurisdictions, the *rescrit* only applies to the requesting person. A requesting person who in good faith follows the interpretation of the AMF as to the operation subject to the *rescrit* may not be sanctioned by the AMF for noncomplying with the regulation concerned; although they could be sued on other grounds. Transparency of the discretion to interpret its authority (as contemplated under the IOSCO methodology) is ensured by the publication of the *rescrit.* Protection against any abuse of discretion is provided both by the transparency of the action and by the fact that any subsequent procedure of sanction initiated after the *rescrit* against the requesting party is subject to review by the judicial authorities. The new structure has been designed to avoid gaps and to recognize potential qualitative differences among banks, insurance companies and investment firms and markets while providing comparable prudential and conduct of business protections in each case. Cooperation among the domestic authorities is supported by several structural and legal arrangements and is essential as powers of one authority are without prejudice to the others, (L.621-9). The domestic authorities have cross-Board membership, there is a requirement to exchange general information at the level of the head of the delegation, that is, the *Collège des autorités de contrôle des enterprises de secteur financier* and a requirement to cooperate in licensing determinations, the different agencies have the explicit legal authority to share information with each other as necessary and appropriate to fulfill their own missions (L.631-1), there is a long history of actual cooperation in practice, and the authorities are in the process of implementing arrangements for continuing cooperation under the new framework (See Principle 11). Although there is a requirement of the CECEI to consult with the AMF with respect to certain licensing decisions, cooperation among the various authorities that supervise the same entity is otherwise not required by law.
Assessment	Broadly Implemented.
Comments	The new framework is intended to make clear and transparent where one responsibility or competence begins and the other ends. Mechanisms, both formal and informal, for discussion and coordination of inspection activities among the various entities involved in regulation (that is the CB, the CECEI, the AMF and the BdF) currently exist and there is a long history of cooperation among domestic authorities and no evidence of past cooperative failures (See also Principles 8 and 11). Moreover, the authorities are working to develop new arrangements for working together, which reflect structural changes and new powers resulting from the adoption of the LSF. Nonetheless, although it is clear that information *may* be shared to support the mission of the AMF or the CB, and among any of the other relevant agencies, including the guaranty funds for insurance and deposit insurance and regulated markets and clearing organizations, in operating their respective programs, it is not clear that the CB *must* promptly support the AMF if it so requests (L.631-1) to prevent possible gaps of coverage. Cooperation may always occur in fact (and convincing evidence of such cooperation was provided by both AMF and the CB), but the practical arrangements and legal support for assistance could be even clearer. Indeed, although the Assessment Methodology indicates that "protocols" or exchanges of letters confirming arrangements for cooperation may suffice, it also states that

	where two authorities supervise the same entity, cooperation should be *required* as a matter of law[30]. The AMF believes that the "authorization" to share information between domestic authorities which supervise the same entity under Art. L.631-1 of the LSF is in fact the equivalent of a "requirement" based on a long-established practice of cooperation through the efficient functioning of the *Collège des autorités de contrôle et des entreprises du secteur financier* [Art. L.631-2] and the legal requirement of cross membership of the CB, CECEI and the AMF. Nevertheless, a more formal arrangement—such as an exchange of letters among the authorities—addressing the exchange of information procedures, is in the process of being considered. It is the opinion of this assessor that while there is always value in developing specific operational cooperative arrangements among authorities with different, but related, competences affecting the same entity, the French authorities have provided evidence that their current practices demonstrate that the lack of explicit legislative language requiring cooperation does not substantially affect the overall adequacy of the regulation that the Principle is intended to address.
Principle 2.	The regulator should be operationally independent and accountable in the exercise of its functions and powers.
Description	By law, the AMF is designated as an independent public authority with legal personality and financial autonomy with the power to impose specialized taxes (known in some jurisdictions as "user fees") on regulated entities(L.21-1; L.621-5-2) (see also Principle 3). It is comprised of a Board and a separate *Commission des Sanctions*. Salaries of Members of both the Board and the Commission of Sanctions are fixed by Decree that is submitted for an opinion of the *Conseil d'Etat* and their terms of office are set by law. The Members are compensated for their time. The Chairman of the AMF is vested with both "own" powers and powers delegated by the board; the latter are delegated to him within the limits of Decree n°1109 of November 2003, and allow him to take individual decisions to operate the AMF on a day-to-day basis (L.621-5) and to act in its name. The Secretary General of the AMF also has specific statutory powers, in particular related to investigations. The Secretary General is appointed by the Chairman in consultation with the Board subject to nonobjection of the Ministry. The Board and the *Commission des Sanctions* are separately constituted with no overlapping membership except for the *ex officio* representative of the Ministry, *the commissaire du gouvernement,* which is not a full Member but only sits at the Board and said *Commission.* More particularly, the AMF has a Board of 16 members including the Chairman, which comprises: a counselor appointed by each of three highest courts; a representative of the BdF; three qualified persons appointed by three Constitutional assemblies, six qualified persons appointed by the Minister of Finance after consultation with representative organizations of market professionals and investors, the Chairman of the *Conseil national de la comptabilité* (accounting board), and a representative of employee shareholders in consultation with unions. The *Commission des Sanctions* has 12 members: two counselors each from the *Conseil d'Etat* and the *Cour de Cassation* from whom the members elect a Chairman; six experienced members from the industry appointed by the Minister of Finance

[30] In the past the CMF and the CB had a protocol organizing cooperation between them. The COB was entitled to communicate with other authorities, in particular the CB.

	and two representatives of financial sector employees (L.621-2). The Board meets approximately fortnightly on a regular basis and otherwise as needed; the *Commission des Sanctions* meets as needed and can empanel two separate panels of six to hear cases. The members have fixed terms of five years (the membership is rotated by half every 30 months) and members are not removable except by reason of failure to attend meetings or by convening a special investigative committee. The *commissaire de gouvernement* attends both panels without a voice in deliberations (L.621-3). In the case of the Board, the *commissaire* can ask for a second deliberation; in the case of the *Commission des Sanctions*, the decisions are taken without his presence and he cannot ask for such a deliberation. By law, decisions of the Board and the *Commission des Sanctions* are by majority with the Chair as a tie-breaker. In practice, however, the decisions are by consensus. As a matter of law, the Minister also must approve the *Règlement Général* (L.621-6). The Minister does not take positions on individual matters or validate licensing determinations, although a representative of the Treasury sits on the licensing agency or CECEI. There are various mechanisms for consultation with the industry, through consultative commissions provided for under the LSF, through special committees formed by the AMF as stated in the introduction, through occasional open consultation, and through the facilities of the Committee of European Securities Regulators. With respect to accountability: the AMF's accounts are prepared by an *Agent Comptable* who serves at the discretion of the Minister, and these upon acceptance by the Board are deposited with and can be audited by the *Cour des comptes* (Comptroller). The AMF must submit an annual report (with financial statements) to the President and the Parliament, and can be asked to be heard or requested to appear before the Commission of Finance of both parliamentary assemblies (L.621.19 a 1-3 & 4). Regulations must be published in the JORF and other regulatory actions appear in the BALO. Most actions that affect the general industry or public and individual sanctions are subject to appeal to either the *Conseil d'Etat* (decisions of general scope against professionals) or to the Appellate Court of Paris, with further appeal on purely legal grounds to the *Cour de Cassation* (in the case of nonprofessionals). Persons affected by cases referred to the *Commission des Sanctions* must be duly "invited" to exercise their defense, or right to be heard, both vis-à-vis the *rapporteur* and the commission (Cf L.621-15 IV and Art. 19 and 20 of Decree n°1109 of November 23, 2003.). As a matter of law decisions must be *motivées*, that is, reasons must be given in writing for decisions. In the case of an exceptional abuse by a Member of the Board, the French Parliament could convene an Art. 6 Investigative Committee per the Ordinance (Executive Order) of November 17, 1958. In every case, the law of professional secrecy, which attracts criminal penalties, applies to the handling of information, which does not prevent that such information may be passed to another authority in appropriate circumstances through appropriate channels if necessary for the AMF to perform its mission or to assist foreign authorities (See Principle 13). Staff and Members of the Board have qualified immunity from lawsuits in the performance of their functions, in *bona fide* discharge of duties. The AMF has legal personality and therefore can itself be sued in respect to performance of its governmental responsibilities, which is an aspect of its accountability. Such suits would ordinarily only result in liability in the case of *faute lourde*, that is, a major failure to take action, exercise of powers in bad faith, or failure to follow its own procedures (See, for example jurisprudence of the *Conseil d'Etat* in regard to the operations of the COB, *"Société Pierre et Cristal, Société GIMIF et M. Jannes c/Etat ," 1984 et.seq.*) The Contemporaneous Basel Report indicates as follows: "The CB and CECEI are independent administrative authorities and their governance is subject to checks and balances that help maintain the operational autonomy of each. However, neither institution is

	independent of the BdF." That assessor concluded that dependence of the CB and the CECEI on the BdF is not a matter of concern but that fixed terms would be desirable for the Secretary Generals of each institution. The assessment also stated that it is difficult to assert that policies, plans and processes are set entirely independently from the government in view of the role of the Ministry of Finance with respect to adopting regulations, a substantially broader role than in the case of the AMF, which is able to initiate policies and procedures itself subject to homologation. The foregoing report nonetheless assesses the CB and CECEI as compliant with the Basel standards, and as noted in the Introduction to this securities assessment, the AMF has a well-defined role that respects its independence, with respect to each of these authorities. A decree of the Conseil d'Etat specifies the conditions for decision-making and deliberation of the CECEI. The *Règlement intérieur* as adopted by the committee is published in the *Journal officiel.* All decisions of the CECEI most be *motivées*, that is reasoned and in writing, but *le directeur du Trésor peut demander l'ajournement de toute décision du comité* (i.e., the director of the Treasury can ask for a dismissal of any decision of the CECEI). This factor raises some of the same issues with respect to the appearance of a potential for government interference in individual licensing cases. While this assessor is unaware of the predominant view with respect to banking institutions, securities standards have sought to insulate the licensing process as much as possible from interposition of a governmental authority and has at a minimum required a transparent process. The CB has particular powers to take prompt corrective action subject to general law, to the LSF provisions cited in Principle 1 and various decrees (See especially L.613-16) in matters committed to its competence. The CB (L.613-21] can also issue sanctions, which are appealable to the *Conseil d'Etat.* Each of the authorities' staff are protected by indemnification from lawsuits that do not involve bad faith and the BdF is subject to the general law of sovereign immunity. Information on Transparency is contained in the Banking section of the Transparency template.
Assessment	Broadly Implemented.
Comments	The IOSCO Principles take no position on whether securities commissions should be governed by full-time or business-type boards and indeed there are advantages to each system. IOSCO also takes no position on governmental structure per se; its focus is instead on the independence to act free of commercial and governmental/political interference. **The question is will this specific structure—an independent instrumentality, led by members representing a balanced spectrum of functions, including judicial, industry and public functions, with fixed terms and independent funding—which is unique within the French system, and explicitly designed to achieve independence as a matter of law, actually confer independence on the AMF in practice.** In this regard it should be noted that of the instrumentalities of financial regulation, the structure of the AMF provides the most safeguards to independent action. It should also be noted that various protections are in place to prevent undue interference, including appointment of members by a number of prescribed institutions, including the judiciary, which have no political ties, and that there is no record that the COB, or its leadership, have ever been inappropriately influenced by a change in administration or other political interference of any kind. From an external perspective, however, the most troubling issue about the new structure is the fact that a Ministry representative, albeit one that cannot deliberate and cannot be present for a decision in the case of sanctions, nonetheless has a "seat" on the *Commission of*

	Sanctions. The question is "to what end" does the representative need this seat. From the perspective of an international commenter, it appears that such a presence has the potential to have a chilling effect or otherwise to affect the course of the deliberations in practice, even on individual cases, and that the Ministry could remain appropriately and adequately informed of the actions of the *Commission des Sanctions* by other mechanisms. In effect, the *commissaire* is able to be a witness throughout most of the proceeding. (In fact, under the previous structure, COB administrative proceedings did not involve a *commissaire du gouvernement*.) Separately, with respect to Board decisions, the Ministry representative can request a second determination. This could either be seen as a means of information sharing or as a means to remind members of the position of the Ministry. While the day-to-day technical work of the AMF is insulated from interference from any sector, all significant decisions must come to the Board and the Board meets at least fortnightly, and even more frequently as necessary so the fact of this insulation is critical. In the case of the Board as opposed to the *Commission des Sanctions*, it is pointed out that this structure is not a new one and that past practice indicates that lack of independence is not demonstrated in fact. The AMF also states that the power of the Minister is only a consultative power and not a power to act. The AMF also documents that the input of the Minister with respect to the *Règlement général* is only to provide the "stamp" (*homologation*) necessary for the AMF to adopt rules of general application as a matter of law within the Civil Law system and that the Ministry has never refused to **"homologate"** a rule proposed by the COB, one predecessor of the AMF. Further, individual decisions are in all cases subject to appeal (L.621-30; Art. 27 Decree 2003-1109). An added protection is that increasingly rulemaking can be done on a Europe-wide basis under the Lamfalussy process and that this process, which permits direct implementation of Europe-wide rules, also reinforces independence. Almost 80 percent of legislation is with respect to implementation of Directives. It is for this reason that this assessor believes that the integrity of this structure and whether it correctly balances the interests between independence and accountability consistent with the cultural and legal framework within which it operates should be kept under review and tested in practice. Additionally, in that the composition of the Board includes private sector interest, strict enforcement of conflict of interest provisions should be assured. Among the first postings of the AMF of the new *Règlement* where those provisions relating to Conflicts. (See also Principle 5) The two-Board (operating and sanctioning) regulator replaces the previous structure, which had placed all public administrative sanctioning authority directly within the board of the COB. The previous structure was challenged under the fundamental rights concept of impartiality. In addition to keeping under review how independently each Board will execute its function, it may be useful for the Règlement Général to articulate more generally the scope of AMF discretion to act within the regulations on a day-to-day basis. Also, the deliberative process could be more transparent as transparency can be an important protection of independence and integrity. (See below in the section on Enforcement Principles a related concern vis-à-vis application of the doctrine of impartiality to AMF's administrative sanctioning process.) The AMF believes that the presence of a *commissaire du gouvernement* on the *Commission des Sanctions* has been much discussed and that the arrangement was designed with the potential risks in mind to avoid those risks. The AMF underlines that this official has never interfered with the decision-making process of that Commission. This assessor sees no reason to change its assessment of independence of the securities sector based on its review of the conclusions of other assessors with respect to the CB and the

	CECEI, noting that outside reviewers might perceive an inconsistency.
Principle 3.	The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.
Description	The AMF has the powers either by itself or in combination with the prudential authorities to fulfill, taking into account the structure of its markets currently, the various standards assessed in the IOSCO Principles, including: licensing (for investment services providers—other than asset managers—in conjunction with the CECEI), surveillance, inspection (in conjunction with the CB for investment services providers other than asset managers), investigation, enforcement and cooperation. (See Principles 8 to 30). In the case of asset management companies, AMF is the sole authority. The AMF is vested with financial autonomy ("*autonomie financière*") as a matter of law and its employees can be either public sector (*Droit public*), or private sector contractors (*Droit privé*) (L.621-5-1). AMF raises funds through its own taxing authority. The ability to set rates within very specific parameters and limits provided for in the COMOFI (L.621-5-3) is committed to the Government, through the Ministry. (See Decree). AMF currently has an annual budget of about 45 million Euros. AMF is able to apply its resources to its own regulatory priorities subject to presentation of its Annual Report to the President and the Parliament (L.621-19). In this regard, the AMF, consistent with its responsibilities, and subject to the specific arrangements in the law for accountability, is not restrained by an overall government budget in how it allocates its funds among its specific functions. As a result, AMF can set its own budget priorities and apply or accrue funds for initiatives that cannot be accomplished within a single fiscal year. This budget arrangement may permit more strategic planning than may be possible where an agency must compete for funds within a broader governmental budget structure. It also reinforces the insulation of the authority from other governmental concerns. For example, the AMF currently has a reserve account equivalent to one year's actual funding costs. The AMF remains accountable, as set forth in Principle 2, in that its accounts must be prepared by the *Agent comptable* (a civil servant from the Ministry of finance, named by the Minister in charge of budget, who is responsible for the receipts and payments made by the authority and who keeps the accounts of the AMF) (Art. 34 of the Decree n° 2003-1109). These accounts also must be approved by the Board prior to their submission to the *Cour des comptes*, and are subject to audit. With respect to human resources, the AMF had approximately 320 staff as of year-end 2003. Of those, 283 were former COB staff and the remainder came from the former CMF. The AMF regards all of its employees, even operational employees, as professional staff. Nonetheless, using a strict definition, approximately 18 percent of the AMF's staff is support staff. Employees of the AMF have a range of expertise, including legal; audit, accounting, statistics, and other quantitative disciplines; information technology; investigations; engineering; private sector market oversight and public administration. The AMF can hire staff on the basis of public law contracts (majority of the personnel) or private law contracts. Additionally, the staff directly hired by the AMF (from the private sector for instance) can be complemented by the offer of medium term positions at the AMF to civil servants from the central administration (i.e., BdF specialists.) Salaries of private sector contractors are represented to be comparable to private sector salaries, an important factor in attracting the types of expertise necessary to address complex financial sector issues. As it is considered prestigious in France to hire from a public authority, experience at the AMF has value in obtaining an improvement of salary within the

	private sector and this fact may also attract talented staff. How salaries will be harmonized after the merger may be an additional factor that can affect the retention of staff. In this regard, for the first time, portions of the labor code related to organization have been applied to the staff of the regulatory authority. The AMF enhances its human resources through the effective use of information technology. For example, it shares a database known as FIDEC (*Fichiers des dirigeants et actionnaires des établissements de crédit et des entreprises d'investissement*) on "fit and proper" characteristics of banking and financial institutions managers maintained by the CECEI with the CB and the CECEI. It also has developed and uses a sophisticated market surveillance system, and is in the process of expanding its use of technology to increase transparency of financial information required of issuers. Most staff is hired for their expertise, but training is also provided to staff in various areas. AMF statistics indicate an average of 4.86 training days per employee. In the past year, for example, training has been offered with respect to International Financial Reporting Standards for experts (accounting sessions, including income tax, cash flow statements, accounting policies, consolidated financial statements, etc); and specialized new financial instruments, such as credit derivatives, hedge, funds, structured products, financial mathematics, and alternative products. As the AMF has legal personality, the Board may permit it to borrow funds if there were a downturn in securities business that would significantly affect the extent of funds received from its regulated entities. If funding based on business activity appeared insufficient, the AMF would have to review its use of resources, but it could apply to the Ministry for augmentation of its funding authority. Current evidence is that the funding arrangements and the ability to direct that funding within the parameters established by law are adequate, although more human resources may be required if on-site monitoring is to be intensified to assure that AMF expertise can be applied on site. As per the Contemporaneous Basel Report and the related discussions of the team assembled to explicate more fully the French system, the CB and the CECEI believe that their current funding is adequate and of course the funding of the BdF is not an issue.
Assessment	Fully Implemented.
Comments	While staff size and expertise appear sufficient, in organizing its staff to implement the new law, the AMF may seek to devote more human resources to on-site inspections (See discussion at Principles 17 and 19), as currently such inspections by the AMF, and the staff allocated to them, are relatively limited. It is worth noting that the AMF can and does ask the CB, the Market undertakings and external auditors to make inspections on its behalf. The Note of the CB, p.4, indicates that from 1999, CB inspectors can be appointed by the AMF to investigate compliance of investment services providers with AMF rules; and cites that the AMF since 1996 also permits the use of external auditors. The LSF also provides new authority to conduct inspections. In that the AMF is the expert authority with respect to conduct of business matters (including miss-selling) and market conduct, and of monitoring of depository functions with respect to CIS, and in that such matters may require on-site reviews, the AMF should continue to be certain that it takes such steps as may be necessary to assure that it has sufficient resources to be able to secure effective coverage of these matters. At this juncture, it is the opinion of the assessor that the matter is largely a question of allocation of resources and not one of the overall amount. Further, there is a question whether in light of the way investment products are sold in France there should be additional capacity within the system to address: conduct of business with respect to products sold within the bank distribution network (currently provided in part by consumer law, in part by AMF response to complaints, and some monitoring) and, in the

	matter of resources, with respect to investment management services provided to third party portfolios (currently not a large share of business), whether resources will be sufficient if the business grows (see also Principle 17). IOSCO has not directly addressed a structure such as this one in which the banking authority takes responsibility for accounts under its competence. However, the situation with respect to marketing through that avenue would not be unique to France. Finally, as the distribution of functions puts a premium on adequate combined information systems and cooperative techniques among the sectors with respect to the supervision of individual entities, adequate human, technological and other resources must be committed to cooperation on a day-to-day and on an event driven basis, and this type of activity also requires commitment of resources (see Principle 1).
Principle 4.	The regulator should adopt clear and consistent regulatory processes.
Description	The regulator is subject to the general administrative law that applies to public authorities, any particular requirements relative to the conduct of investigations, the granting of *visas* and licenses, and the sanctioning process provided by Decree submitted to the *Conseil d'Etat* (See e.g., L.621-9-1), relevant procedural requirements established by the Paris Court of Appeal and the *Cour de Cassation,* and ultimately to the procedures to be included in *the Règlement Général*. It is also subject to requirements in the law with respect to matters of professional secrecy and conflicts of interest of members and to restrictions on trading and requirements of professional conduct contained in its *Règlement intérieur* (see also Principle 5). The AMF has procedures for consultation with the public but it has not established a specific policy for consultation on rulemakings. It has, however, constituted several consultative commissions, as permitted under the LSF (see introduction), to provide advisory opinions on various functions subject to the competence of the AMF, and to address: the organization and functions of markets; collective and individual asset management; clearing and settlement; and minority shareholders, from within the Board and using outside experts. Exposure drafts of rules and important policies, such as reforms relating to the disclosure of financial information, can be circulated to market participants and the AMF is actively represented in CESR, which has its own working groups and exposure process with respect to the implementation of European legislation. Additionally the new law provides for an instrumentality for consultation among the regulatory authority, the industry, and the general public (L.614-1) (see also the introduction above). These arrangements for consultation are intended to address the impact of regulation, including costs. All regulations are published in the JORF. They are also accessible on the AMF website http://amf-france.org and/or on the central French Administration website http://www.legifrance.gouv. The AMF website is easy to navigate and organizes material in several ways including by function and by type of action. In order for a rule to be enforceable it must be published. Other regulatory actions are published in the BALO or in the AMF *Bulletin Mensuel* or Review. The Annual Report for the period ending 2003 for the COB includes an extensive discussion of policies and actions taken, as well as a discussion of types of issues brought to the AMF mediation facility. Processes of the regulator are designed taking into account the French Courts' interpretation of the European Convention of Human Rights. Administrative actions are appealable to the *Conseil d'Etat*, including decisions that adversely affect a regulated person. Other decisions are appealable to the Court of Appeals in Paris. A person against whom a proceeding for sanctions is brought has an opportunity to be heard by the *rapporteur* first and then before the commission, and a right of appeal (L.621-15IV) (See also Art. 18,19, 20 II and the *texte de référence* of the Decree of November 21). If the powers of the regulator are not consistently applied, this matter would be grounds for appeal as the general law of fundamental rights encompasses a principle of equal treatment (*Principe d'égalité*) and no instance of inconsistent or inequitable treatment was raised during the onsite assessment process. A person who is

	sanctioned must be provided with the reasons in writing. (L.621-15 IV requires decisions to be "*motivées*," that is, justified or reasoned. (See also Decree, Art. 20 V). The criteria for licenses (and authorization of market undertakings and clearing and settlement systems) are contained in regulations published in the JORF (see principles on secondary markets and intermediaries) and/or guidance related to the European Directives, and application is via a common form known as the Authorization Dossier (*dossier type*), which also sets out relevant criteria. Investigative reports are not made public, only certain sanctions. Sanctions are treated such that publication is in effect a separate sanction. Publication is not required by law, but the support for publication has been widened and the practice has been to publish more broadly than just in the JORF, as was the prior practice. Further, sanctions relevant to status, such as a withdrawal of a license are public, as are any sanctions, which are appealed. Most sanctions are described and the disposition of investigations disclosed in the relevant Annual Report. The AMF expects to continue to make sanctions public in their cases, the objective being mainly to educate the public by informing the market of what is considered as misbehavior. The AMF produces brochures in plain language explaining various aspects of its program and requirements and holds seminars that are intended to inform investors about the markets and financial services professionals. It also has a documents room that is open to the public.
Assessment	Fully Implemented
Comments	Under the previous structure, the procedures related to proceedings before the CMF were published in its general regulations. Other relevant procedural requirements are also public, although they are not necessarily collected in one place. The AMF has indicated that it will develop and consolidate prior rules and instructions of the CMF and the COB, which continue in effect pending any revision, in a new *Règlement Général,* and that that compendium would include internal procedures. Making administrative procedures applicable to the operations and actions of the AMF as accessible as possible is recommended. While the general process for rulemaking is through Board adoption followed by submission to the Minister for its stamp, the AMF may wish to specify in its internal rules the procedures that it uses for rulemaking and its policies as to when it will conduct an open consultation process. The accessibility and understandability of AMF rules and procedures will be materially enhanced by adoption of a final comprehensive *Règlement Général.* With respect to the CB and the CECEI, see also the discussion under Principles 1 and 2 above and the Banking segment of the Transparency Report, which addresses accountability.
Principle 5.	The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality.
Description	Under the COMOFI (L.621-4), the members and the staff of the AMF as well as the experts appointed to any consultative commission under III of Art. L.621-2 are subject to professional secrecy requirements and subject to penal sanctions (L.642-1and L.621-4 II) for their violation. The provisions to avoid conflicts of interest involve disclosure of interests to the Chairman of the AMF, including interests and positions in the financial sector or the fact of a mandate with a legal entity held within two years of appointment, and any representation of the foregoing, in the case of Members. Members must recuse themselves with respect to deliberations involving any matter in which they participated or provided representation with respect to such

	relationship. There are also restrictions on the holding or trading of securities by staff. For example, the direct purchase of securities and management of a portfolio are prohibited, although staff may hold mutual funds (UCITS) or give discretion to a fund manager. As of March 30, 2003, Art. 1-1-6 of the *Règlement Général*, among the first new regulations of the AMF, makes similar restrictions applicable to board Members. The President of the AMF has all necessary powers to oversee the holdings of Members (see Art. 1-1-7). An internal audit group (although not currently staffed) is expected to be staffed with a Director and a Deputy during the summer. The internal audit group will do a review of all the operations of the AMF and report directly to the Board with respect to its recommendations for improving efficiency. Individual unit heads are separately accountable for the integrity of the operations of their sections and report to the Secretary General. The professional standards relating to staff not otherwise a matter of law are currently contained in a *Statut des personnels* (Code of Conduct), subject to review of the Ethics officer (*Déontologue*) (who reports directly to the President). The Ethics officer has the power to investigate violations including violations involving the Internet. All internal professional conduct regulations are expected to be consolidated within the *Règlement Général.* Procedural fairness also is assured under the LSF itself, general national law, and the European Convention on Human Rights. It is not the practice in most European jurisdictions to set forth administrative procedures in a single code. The Contemporaneous Basel Report finds the CB and the CECEI fully compliant with these requirements as well and further reference may also be made to the Banking segment of the Transparency Report. It should be noted that the professional staff of the CB and the CECEI are subject to professional conduct and confidentiality provisions similar to the AMF, which do not impair their ability to share information with each other or with the AMF.
Assessment	Fully Implemented.
Comments	Codification of internal professional rules of conduct can reinforce appropriate practice and should be strongly supported. Monitoring of compliance with applicable standards of ethics also is desirable as there have been experiences of lapses of compliance at the staff level in the past.
PRINCIPLES OF SELF-REGULATION	
Principle 6.	The regulatory regime should make appropriate use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, and to the extent appropriate to the size and complexity of the markets.
Description	There are no self-regulatory organizations as such in France; all regulatory powers are concentrated in governmental bodies[31].
Assessment	Not applicable.
Comments	Notwithstanding the foregoing, the regulated markets are required to enforce their own rules by means of contract. Oversight of regulated markets and other markets is addressed in

[31] But see the discussion with respect to the licensing of *demarcheurs* at Principle 21.

	Principle 25.
Principle 7.	SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.
Description	
Assessment	Not Applicable.
Comments	
Principles for the Enforcement of Securities Regulation	
Principle 8.	The regulator should have comprehensive inspection, investigation and surveillance powers.
Description	Book VI, Title II, Section 4, sub-section 3 outlines the provisions related to the powers of the AMF in respect to inspections and investigations. The AMF and, where within its competence, the CB have the power to inspect regulated entities' (that is, investment services providers, including asset management companies, custodians, market undertakings, clearing houses, central securities depositories (CSD), and persons providing one or more investment service in France) books and records and premises without prior notice, or evidence of specific misconduct, either in connection with a particular inquiry or on a routine basis. The AMF is also vested with the power to monitor the regulated markets and all transactions in French securities executed by financial services providers and has developed an electronic system in order to accomplish this. The prior systems of the CMF, with respect to markets and members, and the COB, with respect to issuers and asset managers, are being integrated as part of the implementation of the LSF. The AMF is able to require the provision of all information reasonably needed to ensure compliance with relevant standards, including books, documents, communications, and statements. However, if the AMF wishes to seize records rather than to obtain them voluntarily upon request, it must obtain a court order to do so from the President of the regional tribunal in which the records are located. Investigations must be conducted by investigators in accordance with the LSF, the *Règlement Général* and relevant portions of the Decree. If investigations are handled by third party investigators (such as, auditors and experts, judiciary experts or other competent authorities, such as the CB), these investigators must operate by appointment under oversight and according to requirements set by the AMF [L.621-9-1]. The conditions in which such powers are delegated to third parties are defined by law and further specified in the Decree 2003-1109 of November 21, 2003. Also, under the Act, (L.621-9-2 and Articles 11,12, 13 of the November 21, 2003 Decree), the AMF may "authorize" market undertakings and clearing houses to examine or investigate the activities and operations carried out by the members of a regulated market and of investment services providers which have transmitted orders on the market on behalf of the AMF. This authorization is accomplished by contract and can be withdrawn for any reason. It is a criminal violation for any person to obstruct an investigation (e.g., denying access or destroying documents), or under the new Act, to provide false information, punishable by two years imprisonment or a fine of EUR 300,000 (L.642-2). The AMF has broad investigative powers to obtain all documents regardless of the media in which they are maintained, including telephone records in investment firms for brokers, telephone data for every other person (legal or natural) and Internet information processed by telecommunications operators and Internet access providers (L.621-10). In this regard, telephone records in investment firms must be retained for six months (Regulation of the CMF, Art. 3-4-3, Decision No. 99-06), and

	transaction data under exchange and/or CMF rules, for five years (Regulations of the CMF, Art. 7-1-7, General Directive No. 99-05). The Commercial Code also requires accounting records to be retained, if not otherwise specified, for 10 years. The AMF may also summon and hear any person likely to provide information, have access to business premises (L.621-10) and obtain information on client identity of all customers of regulated entities, directly with respect to its areas of competence and indirectly otherwise. The CB enforces account recordkeeping requirements. The AMF cooperates with the CB in conducting inspections and oversight of investment firms. During the past year the AMF and CB engaged in 50 bilateral meetings and sent approximately 100 letters of correction. Additionally, since adoption of an agreement in 1999, the CB in the past three years conducted 10 (2001), 13 (2002) and 8 (2003) examinations of licensed entities on behalf of the AMF, related to regulatory compliance and market conduct: The CB also notifies the AMF of problems relative to the AMF's areas of competence, which it notes in the course of inspections. For example, the CB has advised the AMF of issues relative to custodian activities discovered in the course of an investigation. The AMF also has provided confirmation of market exposures relative to the CB's prudential oversight of an investment services provider and the CB has provided information at its disposal relative to a market abuse case investigated by the AMF. The reviews carried out by the CB in the name of the CMF/AMF were conducted on the basis of a pre-defined program of examination set by the CMF, which oversees the CB's work in such circumstances. In accordance with applicable procedures, reports of the CB must be sent to the licensed entity for comment and that entity would be asked to remedy any regulatory shortcomings. In two cases the AMF ultimately initiated disciplinary proceedings against the licensed entities and one CEO due to the seriousness of the violations identified by the CB. Some of the issues reviewed were account opening and client identification procedures, transaction reporting, transparency of commission sharing, time-stamping, personal dealing, irregular trading patterns, and improper margin netting.
Assessment	Fully Implemented.
Comments	It appears that except for matters committed to the sole authority of the AMF, the AMF's authority is subject to the power of the CB to conduct inspections with respect to matters within the competence of the latter (L.621-9II). The AMF can request that the CB conduct an investigation on its behalf. In that it is possible that conduct of business violations may be accompanied by prudential violations or may cause them and that prudential violations may cause conduct of business violations, coordination is important. The law (L.631-1) provides for sharing inspection information, and/or on-site teams, which involve both competences within a single inspection with respect to investment services providers. Use is made of the law on a regular basis; the AMF and the CB plan their yearly examination schedules jointly and exchange information on respective risk assessments. ATS are licensed as investment service providers and are subject to the rules and regulations generally applicable to such entities plus any specific conditions imposed by the regulator at the time of licensing. This assessment, which finds that the AMF can obtain beneficial ownership information as needed, should be compared with any work dedicated specifically to anti-money-laundering standards. In France, there are no shares printed on paper that can physically be transmitted from one person to the other as all shares have been 'dematerialized' and are now registered on share accounts. Even so-called "bearer shares, which remain permitted, are registered on accounts, which necessarily identify the persons to which they belong, natural or legal. The CB monitors account records.

	Arrangements for continued cooperation under the new framework should be kept under review. See also CIS Principles relative to oversight of depositories and Principle 10 relative to use of investigatory information in enforcement proceedings.
Principle 9.	The regulator should have comprehensive enforcement powers.
Description	The AMF has broad enforcement powers that apply to all legal and natural persons. For example, in addition to the inspection and investigatory powers detailed in Principle 8, the AMF can seek administrative fines against authorized and unauthorized persons, suspend authorization to do business, require cessation of violations (which can take effect immediately on a provisional basis), seek and seize records and freeze assets (regardless of who is holding them) through court order, and refer misconduct for criminal prosecution (L.621- 14 &15). Clear obstruction of the investigations carried out by the regulatory authority or the provision of false information is an administrative and a criminal offense. More particularly, the AMF, through its Secretary General, or in the case of a *"cease and desist"* order that immediately comes into effect provisionally, the Chairman of the AMF, may seek court orders from the judicial authorities. For example, the AMF can seek the freezing of assets, an escrow deposit by a malfeasor, or a temporary ban on regulated professional activities (L.621-13). It can also withdraw a license in its area of competence if the licensed entity no longer meets the licensing conditions in the case of credit institutions performing investment services. The Sanctions Commission can pronounce a temporary or permanent ban on investment service activities and licensed individuals. Through its Board, the AMF can order a company to make corrections to its offering documents or continuing disclosure, and if the listed company fails to do so, can make the changes itself at the company's expense (L.628-18-3). Fines that can be imposed range up to EUR 1.5 million and ten times the profit made, if any. Consistent with European law fines must be proportionate to the gravity of the offense (L.621-15 III). A suspension of trading in securities on a regulated trading system may be ordered by the AMF Chairman or one of his representatives for all or part of the transactions on the market if the market is prevented from functioning properly by an exceptional event. The suspension can only be extended beyond two consecutive days if agreed by the Minister of Finance. The Chairman of the AMF may also request the market undertaking to suspend trading in a particular instrument (L.421-4&5). The AMF Board reviews inspection or investigative reports and if it decides to open a proceeding, it notifies the person involved of the reasons. It sends this notice and the case including all the documents, to the *Commission des Sanctions,* which designates a *rapporteur* from among its members. This member must carry out an adversarial investigation (discovery) of the alleged wrongdoings and report to the Commission. The *rapporteur* does not participate in the *Commission des Sanctions* deliberations (L.621-15IV). As described in Principle 8, the regulator has the investigative and enforcement power to demand documents, although to seize documents if refused, the AMF must proceed through the court. Private persons can also bring actions for misconduct under the securities laws, and must do so to seek compensation. The AMF, however, provides a mediation facility for out of court resolution of conflicts. Information may be shared by financial regulatory and supervisory authorities and also with respect to the guaranty funds, with each other in respect of performance of their missions. The AMF may also share information with the Public Prosecutor and the judicial authorities.
Assessment	Fully Implemented.

Comments	As discussed more fully below in Principle 10, certain types of offenses must be reported to the Public Prosecutor and this may affect to whether, and to which extent, the AMF seeks to take action. For example, the AMF now has wider powers with respect to insider dealing under the LSF to proceed against "any person," but if a criminal proceeding is concluded no civil sanctioning proceeding can be commenced for the same offense. In this regard, the AMF does not have the power to seek disgorgement (and corresponding compensation to defrauded customers) through its administrative sanctioning process. The powers to address manipulation or provision of false information to the market are unlikely to be at all constrained by the related criminal authority with respect to these types of offenses as the types of cases brought by the AMF are frequently different in type from those in which the criminal authorities would be interested. Information may be shared by authorities in the performance of their respective missions. The CB has provided specific examples of how cooperation has occurred in individual cases and the AMF indicates that the COB, the CMF and the CB and CECEI have a long record of successful cooperation. Nonetheless, where issues require the comparison of market information and prudential information there is a premium on the ability for the CB and AMF to cooperate immediately. For example, it is clear that for the following responsibilities, constant communication is necessary: margin and market positions and exposures (AMF), appropriate segregation or disclosure of customer assets (AMF), client identity records (CB and AMF) and capital structure (CB), and proper operation of depositories for managed funds (AMF). The arrangements whereby the CB shares with the AMF in individual cases, where the information under CB competence is relevant to the AMF competence, could be even further clarified and kept under review (see L.621-9II, para.2 re inspection authority). In this regard, note that the CB advises that it has formalized its arrangements with the Insurance Supervisory Authority (CCAMIP) and with respect to oversight of clearing houses (see Principle 1).
Principle 10.	The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.
Description	The COB and CMF had active enforcement programs in the past, which are now being combined within the AMF. The AMF has an enforcement department composed of 50 persons with various types of competences (lawyers, accounting specialists, judges, police officers, and mathematicians, for example). Of these, 30 are investigators and 15 engage in market surveillance. Of the latter, eight monitor the equity markets. Within the *Direction des Prestataires de la Gestion et de l'Epargne,* there are also16 inspectors, most of which have prior industry experience, who are responsible for examining compliance of all regulated firms and entities with professional rules, regulations and other obligations under the regulatory scheme. The electronic system for reviewing transactions on regulated markets accounts for 50–60 percent of the investigations carried out by the enforcement staff of the AMF and uses statistical modeling and other information to identify unusual situations for further investigation. The structure of the LSF and the COMOFI increase the range of investment service providers within the authority of the AMF, adding certain financial analysts. The LSF and the COMOFI also combine the functions of the CMF and the AMF. The AMF makes off-site inspections routinely and on-site inspections based primarily on risks, review of external audit work, or based on complaint, although it is in the process of redesigning its inspection program and may include more onsite inspections, especially of depositories for CIS assets, if resources permit. The annual examination schedule is based on a ranking of the annual reports filed by

	investment service controllers, an evaluation of their responses to the topical questionnaires issued by the AMF and information gleaned through market monitoring, from other departments of the AMF or reported by other regulators, thus inspections are prioritized and not every firm is visited routinely. There is a yearly action plan but firms are scheduled for visits based on a risk weighting system, "on the basis of the information collected in accordance with CMF general regulation Art. 2.4-16, Art. 3.1.4 & Art. 7-1-4, 7-1-5, 7-1-6." The AMF also has a well-designed electronic system for monitoring market activity for insider trading, manipulation and other market abuses and carries out about 1200 verifications of unusual activity and 80 full investigations a year. This system analyzes information on transactions, media announcements, news and financial reporting services, among other things. The AMF also has systems for receiving certain information from asset management companies and for reviewing issuer information intended to facilitate oversight of compliance with the law and regulations relative to such financial services providers. The AMF has its own program to assess compliance with prudential requirements for asset managers and proper segregation and deposit of client assets committed to collective investments. Prudential requirements affecting investment services providers are the province of the CB, although the AMF can request the CB to undertake an investigation as to matters within AMF competence as to an investment services provider (see discussion in Principle 9). This program is being enhanced following the restructuring of the regulatory framework contained in the Act. The AMF has a system for handling customer complaints and also a mediation service (L.621-19 para.1, and see information on the *mediateur* on the AMF website). The AMF can assess sanctions against persons acting for, or under the authority of authorized investment services providers and markets, etc. subject to the provisions specified in the LSF and the COMOFI (L.621-15II (b)). Failure to supervise such persons, or to communicate relevant requirements can also be sanctioned by the *Commission des sanctions*. Individuals working for a regulated entity may be sanctioned for breach of regulations. Sanctions may include temporary or permanent withdrawal of his professional license. French regulation requires brokers to keep relevant order information for five years and phone conversations of trading desks must be recorded and kept for six months (see discussion above). Records of trading activity are provided to the AMF both in real time and daily in batch form to permit further analysis, and trades must be particularly identified at the broker to the trader by regulated market rules. From time to time trade allocations are reviewed (See Principle 17). Regarding insider trading, information from the CSD and client account records permits accounting for, or tracing back trades to specific traders and clients. The inspection department of the AMF indicates that 84 cases were presented to the Board of the predecessor agencies in 2003, as follows: 25 insider trading cases; 5 market manipulation cases; 17 dissemination of false information cases; 11 asset management related cases (3 on CIS, 5 on companies, 2 on depositories, 1 for unauthorized business); and 26 foreign assistance cases. AMF reports that, on average, an investigation takes 8 months to be completed. The minimum duration is usually 3 months and the maximum observed 18 months. In this regard, there are templates for the examination of the observance of regulatory requirements on financial analysis for instance, for licensees generally, to address emergent issues, such as late trading and on line brokers, and for asset management companies aimed at facilitating the review for compliance with AMF requirements. The AMF *must* transmit a case to the Public Prosecutor in Paris, where there is a special competency within the Court for financial crimes, which includes the record of the investigation whenever an AMF investigation discloses facts that constitute a criminal offense (e.g., insider

	trading) (L.621-20-1). If the criminal violation is within the scope of competence of the AMF, the court may request that the AMF file written submissions *(procès verbaux)* (L.621-20-1). The AMF may exercise its rights as a party to the complaint. Art. L.621-16-1 states that the AMF cannot at the same time be *partie civile* at the Criminal court against a specific person and for specific facts and, for these same person and facts, carry out a sanction procedure. However, the AMF may also bring an administrative case with respect to such violations if the Prosecutor declines to proceed, or can commence a proceeding for different sanctions (e.g., withdrawal or restriction of licenses). See also discussion under Principle 9.
Assessment	Broadly Implemented.
Comments	The staffing, powers, technical resources and expertise of the enforcement program are impressive. Impressive statistics also have been provided documenting the ability of the AMF to provide effective assistance to foreign authorities. However, although statistics have been provided indicating approximately 80 investigations per year, more information is desirable on dispositions. In this regard, the 2002 COB Annual Report includes information on cases referred to the Courts, decisions in such cases, and the course of subsequent proceedings related to the case. Annex 6 to the Report lists decisions relating to 16 firms. Nine of the cases in which new activity had occurred in 2001-2 had been in proceedings for 10 years, and the most recent four of these were transmitted to the courts in 1997. The types of issues addressed by these cases include: false information, fraud, illegal management of a portfolio, improper accounts, engaging in investment services without a license. The frequency with which recourse is made to lengthy court or administrative proceedings might be reduced if there were more provisions for alternative out-of-court settlement procedures, such as the setting of conditions and penalties by contract. There is also a question raised by a recent court proceeding, under the doctrine of impartiality, as to the ability of the *Commission des Sanctions* to use information obtained in the course of monitoring activities of the AMF. This case is now pending appeal. A resolution, which unduly constrained such use in sanctioning procedures would compromise both the inspection and the enforcement powers of the new AMF. In other words, a spectrum of robust enforcement powers is in place, some of which have been deployed in the past, and many of them have been expanded in the LSF. The AMF is in the process of implementing its new procedures and has posted decisions on its website relating to four sanction cases heard to date, addressing among other things "know your customer requirements," precedence of orders, dissemination of false information, and maintenance of internal controls. Arrangements for enforcement are still being refined and restructured to take full advantage of the new provisions included in the LSF and the COMOFI. This program should be kept under review and adjusted as needed as experience is gained. The AMF has appealed the court decision which could have an adverse effect on exercise of its powers and is precluded as a result from further comment. With respect to the relationship between the Public Prosecutor (*Procureur de la République*) and the AMF, and although the new law makes certain changes, the COB and the CMF had experience with these arrangements. With the exception of certain information obtained from a foreign counterpart under a confidentiality agreement, the AMF is subject to general provisions of the Penal Procedure Code that provides that "Any constituted authority, any public officer or civil servant who, in the discharge of his functions acquires the knowledge of a crime or an office, is bound to inform the *Procureur de la République* and to transmit to this magistrate all the information, reports and acts which relate to it." When the AMF sends its notification of alleged wrongdoings, and when the latter relates to facts that are likely to be

	qualified criminally as contemplated under Art. L.465-1 and 465-2, the AMF transmits its examination or investigation report. When the *Procureur* decides to bring a public action (i.e., to prosecute), he informs the AMF. He then transmits to the AMF either automatically or on request any procedural document relating to the facts subject to the transmission. If both the AMF and the Public Prosecutor take action against a wrongdoing (on administrative and criminal grounds), both administrative and judiciary authorities must comply with the principle of proportionality of the sanction to the wrongdoing (Art. L.621-16 and Cons. Const, déc. No. 89-260 DC, 28 July 1989:jo 1 August, p. 9676).
Principles for Cooperation in Regulation	
Principle 11.	The regulator should have authority to share both public and nonpublic information with domestic and foreign counterparts.
Description	The AMF has the authority to share public and nonpublic information with other domestic authorities responsible for financial sector supervision including the guaranty funds and market undertakings and clearing organizations, as necessary for the fulfillment of its mission, and with its foreign counterparts. It therefore can share information with respect to investigation and enforcement, authorizations, licensing, approvals, surveillance matters, client identification, regulated entities and matters subject to its competence, listed companies and companies that go public, market conditions and events, etc. (L.621-1). It also may share information with judicial authorities and the Public Prosecutor, and in some cases, must do so (see L.621-20-1). Information obtained in respect of requests from other jurisdictions in the EEA, or otherwise under the authority to provide foreign assistance in L.621-21, would not be automatically provided to the criminal authorities, but only upon specific agreement and for specified uses (see also Principle 13). The new Act combines in the AMF the previous powers of the CMF and the COB, thereby consolidating significantly the ability to share information within its files or obtained as the result of an inspection of a regulated entity, within a single entity. If a foreign Authority requests information from the AMF, and part of the information is in the hands of the CB, the AMF can request the CB to transmit this information to the AMF, which will then send it to the foreign Authority. Within its sphere of competence, the CB may directly exchange any useful information with EU states authorities and, subject to confidentiality requirements, with other foreign authorities responsible of surveillance of financial institutions, insurance companies and investment firms other than management companies (L.613-12 to L.613-14 which relate also to cross border controls). If the information is purely an issue for the CB (a prudential matter relating to an investment services provider that is not an asset manager), the AMF will send the request to the CB, which is allowed to answer directly to the foreign authority, according to the powers given by the COMOFI. No external approval by a Minister, or an attorney, or the person with respect to whom the information is shared, is required for information to be shared with either domestic or foreign authorities. The AMF may provide information to these other authorities on an unsolicited basis (L.631-1, § 2 & 3) and/or conduct investigations for particular foreign authorities. In such a case, it is not necessary for the AMF to have an independent interest in the matter or for the conduct to constitute a breach of French law if the activity were conducted within France. Banking secrecy requirements do not prevent the identification of persons beneficially owning or controlling bank accounts related to securities and derivatives transactions being disclosed to foreign or domestic counterparts. The *collège des autorités de contrôle des entreprises du secteur financier*, composed of the heads of the financial sector regulatory authorities, and chaired by the Minister of Finance,

	facilitates the exchange of information on matters of common interest (L.631-2). This college of regulators meets at least three times a year with respect to matters of general import that are of common interest, not specific cases. Nonetheless, the existence of such a vehicle for cooperation and information exchange generally assists in promoting a climate of cooperation among the functional authorities and can prevent inappropriate competition in the performance of their duties.
Assessment	Fully Implemented.
Comments	The exceptions to when sharing is required, e.g., in case of national security interest, are common to securities regulatory authorities. The restriction with respect to sharing where a criminal investigation on the same facts has been commenced has been a permitted exception under the Explanatory Notes to the IOSCO Assessment Methodology and accepted in connection with the IOSCO Multilateral MoU (MMoU), as is also required by EU law. The protection of information obtained in respect of foreign assistance from automatic provision to the criminal authorities is also not inconsistent with the IOSCO Principles and facilitates such sharing.
Principle 12.	Regulators should establish information sharing mechanisms that set out when and how they will share both public and nonpublic information with their domestic and foreign counterparts.
Description	The AMF has the power to enter into information sharing agreements by implication with respect to domestic authorities responsible for securities-related supervision and with market undertakings, and by law, with respect to its foreign counterparts. The AMF can communicate with the following domestic authorities, on matters related to its competence, free from professional secrecy requirements: the BdF; CECEI; CB (prudential bank supervisors); the CCAMP and the CEA (insurance supervisors), the FGD and the *Fonds de garantie institué par l'article L.423-1 du Code des assurances* (Deposit insurance for credit institutions and insurance respectively (L.312.4, L.423-1 of the insurance code). The AMF may also cooperate with the financial intelligence unit competent for anti-money laundering activities, known as "TRACFIN" (L.563-5). Exchanges of information between competent domestic authorities are subject to the professional secrecy provisions applicable to both the sending and the receiving authority (L.631-1). The AMF can enter into information sharing agreements with its foreign counterparts for matters within its competence under circumstances specified separately for the EU and third countries intended to assure confidentiality and reciprocity. These arrangements must be approved by the Board of the AMF and are published in the JORF (L.621-21, para.6). Certain recent Memorandum of Understanding (MoU) texts may be found on the AMF's official website. The AMF has signed 36 bilateral agreements, one regional agreement (with CESR) and two multilateral agreements (the Boca Declaration, in respect to certain derivatives with settlement in commodities of finite supply), and the IOSCO MMoU, for which the AMF was required to pass a screening procedure and to submit to a continuing monitoring process that confirms that the sharing committed to under the MoU is both possible as a matter of law and effectuated as a matter of practice. The lack of a specific arrangement does not however prevent the exchange of information by the AMF under circumstances that protect its confidentiality on the same conditions as if a formal arrangement existed. Where formal arrangements are executed, the AMF always confirms that confidentiality provisions are consistent with French legal requirements (L.621-21). The scope of information sharing in these arrangements covers both enforcement and surveillance issues. Information on fitness and propriety of market members is regularly

	exchanged for example with many authorities, and the various domestic authorities maintain a common data-base (FIDEC, or *Fichier des dirigeants et actionnaires des établissements de credit et des enterprises d'investissement*), which contains licensing status and sanctions. This facilitates such information sharing. In the last three years the French authorities opened 68 investigations on behalf of foreign authorities relating to a spectrum of abuses, primarily insider trading (see also Principle 13). The AMF has also entered into "second generation," or operational, memoranda of understanding specifying conditions for cooperation with respect to the Euronext, NV group which is the holding company for the French, Belgian, Dutch, Portuguese and English markets that comprise Euronext. Similarly, there is a Clearing Coordination Committee that has adopted an MoU or cooperation arrangement with respect to the Clearnet Group. This committee includes all competent domestic and international authorities responsible for oversight of Clearnet. The AMF and CB also have, pursuant to legal authority granted originally under the MAF, a specific agreement relative to performance by the CB of certain inspections for the AMF (See Principle 1).
Assessment	Fully Implemented
Comments	Where necessary information is in the hands or can be obtained by another domestic Authority within its competence, this other Authority will collect the information and then pass it to the AMF. The AMF may not obtain it by itself. In general this structuring of the channels for obtaining needed surveillance and enforcement information has worked. This may mean that foreign securities authorities with prudential competences must go directly to the CB. The CB has similar powers as the AMF with respect to information sharing arrangements but in principle, information on prudential matters provided to foreign securities regulators with respect to securities products, professionals, markets, clearing and settlement organizations, and transactions should be passed through the AMF regardless of the CB's (and/or BdF's) competences with respect to prudential supervision of certain of these entities (see Principle 13). As noted above, the AMF has agreed arrangements with other domestic and foreign regulators in respect to the oversight of the Euronext market complex. The AMF cooperates in practice with other domestic functional regulators with information relevant to investment services providers and has practical arrangements for the informal exchange of information through scheduled monthly staff meetings or on an *ad hoc* basis. The AMF may entertain exploring whether it would be useful to commit more of its domestic arrangements to formal protocols and whether the law regarding information exchange domestically is sufficiently permissive in respect to prudential matters.
Principle 13.	The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.
Description	The AMF may, under the same conditions, according to the same procedures and subject to the same penalties (i.e., civil) for the carrying out of its mission conduct investigations at the request of foreign authorities that are its counterpart (L.621-1 para.1). The AMF may require or request the production of documents or the taking of statements and may organize formal interviews of witnesses. The AMF may provide assistance when the following conditions are met: the foreign regulator carries out similar duties, there is reciprocity (this is not required within the European Economic Area), and the foreign regulator applies similar professional secrecy rules as those of the AMF. When the AMF commences an investigation for a foreign regulatory authority, it may obtain the same kind of information and exercise the same powers as it exercises domestically.

	Therefore the AMF can obtain all of the types of records referred to in the IOSCO Principles and related Assessment Methodology and the IOSCO MMoU concerning Consultation, Cooperation and the Exchange of Information. This includes records sufficient to reconstruct securities and derivative transactions, such as records of funds and assets transferred into and out of bank and brokerage accounts relating to those transactions, the name of the account holder, and the names of natural persons who control nonnatural persons located in France. All regulated entities including auditors are not bound by professional secrecy when providing information in response to a request from the AMF. The law specifies the types of entities and investment services providers, and the natural persons acting on their behalf, with respect to which the AMF has enforcement powers, including all investment services providers, securities depositories, market undertakings and members of regulated markets, clearing organizations and their members, settlement and payment systems, collective investment schemes, persons engaging in unsolicited selling of financial products, investment advisers, and persons providing financial analysis. The AMF is competent for conduct of business rules and securities regulation. The CB is competent for prudential issues, except for asset management companies, and for investment service providers or credit institutions. The AMF may assist foreign authorities whether or not it has an independent interest in the matter. The AMF may request documents in any media including telephonic records in investment firms and telephone data and information detained by Internet access providers for any other person (legal or natural) and can take statements. If documents are to be seized without prior notice, a request must be made to the President of the regional Tribunal for the jurisdiction in which the records are located. Assets and funds of persons under investigation can also be subjected to a freeze by action of the President of the Tribunal. Under L.621-14, the Board of the AMF, after hearing the person involved, may order termination of activities in violation of the Code and rules. The Chairman of the AMF may also apply to the courts for summary action that comes into force immediately (urgent injunction). The AMF opened investigations in the last three-year period in respect of requests for foreign assistance in 68 cases, the bulk of which were with respect to insider dealing, but some of which were related to manipulation and dissemination of false information. Anecdotal evidence exists that responses by the AMF to such requests for assistance are timely. With respect to financial conglomerates, the responsible authorities are the CECEI and the CB, which can share information on the structure of financial conglomerates, group requirements, intra-group exposures, etc., with the AMF, which in turn can share the information with foreign securities authorities, market undertakings or clearing organizations, as appropriate. Additional flexibility may result from the adoption of the conglomerate directive. Prudential control is the CB responsibility. Art. L.631-1 provides that information necessary to the performing of their respective missions may be shared domestically by a number of entities including the CB, the AMF, market undertakings, and clearing organizations. Art. L.632-1 provides for the international exchange of information between on the one hand French market undertakings, and clearing organizations and on the other hand their foreign counterparts and the foreign counterparts of the AMF. In addition, as stated under principle 11, the CB may exchange such information with its foreign counterparts (L.613-12 to L 613-14).
Assessment	Fully Implemented.
Comments	The ability to commence an investigation is within the scope of authority of the Secretary General of the AMF and no prior approval of any other authority is required. Therefore, although an investigation must be commenced in order for the AMF to provide foreign

	assistance, the means for commencing such an investigation can be timely. The AMF also submits an analysis to assure its response corresponds to the requested information. The AMF does not substitute its judgment for that of the requesting authority as to what information is relevant however. Although there is no evidence that responses are not made timely, the timeliness of this process should be kept under review. The ATS, as investment services providers, are subject to inspection and oversight directly by the CB. This may be a point of confusion with foreign authorities as they would ordinarily view such systems as more similar to markets.
Principles for Issuers	
Principle 14.	There should be full, accurate and timely disclosure of financial results and other information that is material to investors' decisions.
Description	The laws relative to disclosure are set forth in company law and in the AMF regulations that will be incorporated into the new *Règlement général*. These provisions set forth both specific requirements and an overriding general requirement that information be complete, accurate, precise and fairly presented. The specific disclosure requirements address each of the matters listed in the IOSCO Principles. The Code refers to certain sections of the *Code de Commerc*e in describing requirements relative to capital raising instruments. Issuers whose financial instruments are listed on a French-regulated market are subject to periodic financial disclosure obligations (publication of annual audited and semi-annual accounts as well as quarterly turnover, in the case of issuers of shares) (*Code de Commerce*, supplemented by AMF recommendations). Issuers of debt are subject to periodic and *ad hoc* disclosure requirements (AMF Reg. 98-01). Issuers whose financial instruments are not listed on a regulated market are subject only to the AMF's continuing disclosure regime, not company law. In that regard, annual accounts are considered price sensitive information and would therefore have to be disclosed under the continuing disclosure regime. Prospectuses are required to be prepared and published prior to a public offering and are subject to prior review and receipt of approval (*Visa*) by the AMF. These must contain specified information as well as any information necessary to make an informed investment decision (AMF Reg. 98-01;95-01; 98-08). Issuance of *Visas* are published daily on the AMF's website and in the BALO (the BALO is published 3 times a week). The AMF review is for compliance with the relevant disclosure and other requirements and, as such, is not a merits based review. Therefore, no public offering of shares, whether or not listed, can be made in France without approval of a prospectus. After such approval, new information, whether ad hoc or periodic, must be disclosed to the public through a prospectus supplement or a press release. All public issuers (whether or not their shares are listed) must disclose to the public on an ongoing basis information that could have a significant impact on (i) the price of their securities or on the situation of the holders of such securities; or (ii) on the price of financial derivatives or underlying securities if an issue underlies a listed financial instrument (AMF Reg. 98-07), or is otherwise material to investors making informed decisions on an ongoing basis. In this regard, public offerings are defined to include admission to trading on a regulated market and issue or sale of securities using solicitation, advertising or financial intermediation. There are two types of private placement exception: (1) for certain qualified investor entities that are financial institutions, commercial companies with total assets of EUR 150 million, or governmental entities acting for their own account; and (2) for limited offers to ("restricted circle") persons with professional, family or personal connections with the issuer. With respect to ongoing disclosure, issuers may publish (including on the AMF website) on a voluntary basis (except the Nouveau marché where such publication is mandatory), an annual

	registration (*document de référence* or shelf registration) with the option to update periodically to meet periodic disclosure requirements (AMF Reg 95-01; 98-01). For issuers on the *Nouveau Marché* publication of such a document is mandatory (Reg 95-01). In 2003, approximately 400 issuers have published a *document de référence*. Of these, 138 are listed on the *Nouveau Marché* and 262 publish voluntarily. Issuers on the *Marché libre* (which is not a regulated market) have the same continuing disclosure requirements as listed issuers. All listed issuers have been required to publish a full set of accounts, semi-annually since June 2000 (AMF Recommendation 99-01). The mid-year report must be accompanied by a "limited review" auditor's report and a statement of the management that the accounts produced are true and correct. In the case of takeover bids, similar disclosure requirements apply (prospectus requirements, on going obligation). In addition, specific information relative to offers, including crossing of thresholds and purchases and sales of insiders is posted on the AMF website, which is updated daily. Foreign issuers within France are subject to the same prospectus requirements. For continuing disclosure, foreign issuers also are subject to the same disclosure regime (including the requirement to make equivalent disclosures in France to any made to the foreign markets in which they are issuing securities). Full disclosure is required in connection with shareholder voting decisions, in particular in connection with the general meeting approving the annual accounts or any extraordinary meeting approving a major transaction or a share issue. Notice is required at least 15 days before the annual meeting approving accounts or before any extraordinary meeting approving a major transaction (see Principle 15). In addition to membership requirements, intermediaries authorized in France acting on a futures market must provide specific disclosure as to the terms of the contracts, the trading mechanisms and the risks associated with such trading. And if derivatives are offered on securities, appropriate information must be available on the underlying. The AMF also may provide additional guidance. For example, in 2002, it reminded issuers to disclose risk factors precisely, requiring them to be specific to the issue offered, and to address off-balance sheet commitments, goodwill amortization, and corporate governance. In 2003, recommendations were made with respect to credit derivatives, among other things. Advertising is reviewed and must be consistent with required published disclosures (L.621-8; 412-1). If false information is provided in connection with disclosures, the AMF can bring an administrative action, a criminal action under the COMOFI (L.621-9;465-1) or an *action en responsabilité civile* under the *Code Civil* if causation of damages can be proved. If shareholders believe that they have been improperly informed, they can complain to the AMF. The AMF identifies on its website those public companies that have not filed periodic reports, can request amendments of reports at the issuer's expense and regularly brings actions, even against issuers whose securities are traded on the *Marché libre*, initiating investigations in 7 cases in the last two years. For issuers listed on a regulated market, the AMF monitors compliance with periodic obligations, and if issuers fail to publish reports even after their name is posted, the AMF can bring a legal action in Commercial court. In practice, most issuers comply upon demand. The Chief Operating Officer, the preparers of the prospectus as identified therein, and the auditors each have responsibility for its accuracy. Intermediaries offering securities must also undertake appropriate due diligence. Breach of these obligations may give rise to administrative, civil, or criminal liability.

	Required ongoing disclosure can only be deferred (for "legitimate" business purposes, such as negotiations, as determined by the issuer itself), subject to the injunction that the issuer is accountable for maintaining the confidentiality of the information and cannot trade on nonpublic information. The AMF can require an issuer to disclose such information if the issuer is not able to maintain its confidentiality or can elect to disclose the information itself. The ongoing disclosure regime applies not only to issuers but also to anyone whose transactions may be considered price sensitive (AMF Reg. 98-07).
Assessment	Fully Implemented
Comments	The IOSCO Principles do not define what should be construed to be a public offering and the definition of the French system is consistent with international practice. Further, the system applies continuing disclosure obligations across the board and not just to companies listed on the so-called regulated market. With respect to periodic information, the law requires updated disclosure and the provision for semi-annual reports that include a full set of accounts (recommendation 99-01). IOSCO requires at least semi-annual financial reporting for it to be considered timely. In this case the disclosure should be enough to permit the investor to evaluate the mid-period performance of the issuer, but summary reports are permitted. It is suggested that the new *Règlement Général* use the authority provided in the COMOFI (L.212-12; relating to the mission of overseeing the savings invested in financial instruments and the ongoing disclosure requirements to assure adequate public access to periodic financial information). The AMF has been proactive in providing guidance on issues, such as use of financial indicators. It also facilitated access to public information on listed and unlisted public issues readily to the investing public. The same requirements apply to government owned entities.
Principle 15.	Holders of securities in a company should be treated in a fair and equitable manner.
Description	Company law (the *Code de commerce* and the *Code Civil*) and applicable COB guidance (to be incorporated in AMF rules) require issuers to treat shareholders in a fair and equitable manner, as evidenced in takeover and allotment procedures, and prohibitions on selective disclosures. Although the AMF does not have direct jurisdiction over corporate organization for example, if a company law provision is not met and is likely to be detrimental to investors' rights, the AMF may ask for a court order to force the issuer to comply with its legal obligations. French companies are either SAs (*Sociétés anonymes*) or SCPAs (*Société en commandité par actions*), which are like limited partnerships. Shares in a listed company can be held in registered or bearer form, and must be negotiable. All securities are dematerialized and hence even so-called "bearer shares" must be transferred through an electronic registry. Most listed companies are SAs. Art. 1844 of the French Civil Code provides that shareholders must participate in collective decisions, that profits and losses must be distributed in proportion to capital contributions, and that, in the event of a winding up, shareholders must participate in proportion to their stake (see Art. 1844-9 of the Civil Code). Different classes may be treated differently, but preferential shares would not carry voting rights. The rights and interests of shareholders cannot be changed without a vote, and in the case of classes, without a vote of the class affected. For general meetings shareholders are entitled to (i) financial and accounting documents; (ii) the Board of Directors management report, which since 2003 must address governance and internal controls; (iii) the annual report of statutory auditors; (iv) the proposed resolutions; (v) the aggregated amount of salaries paid to the senior management; and the (vi) list of related-party transactions (which require approval of the board prior to execution, a special auditor's report, and shareholder approval). Notice of meetings must be given 30 days in advance of convening the meeting, and documents must be provided

	at least 15 days in advance. In the case of tenders, shareholders have some particular rights: the bid is subject to prospectus requirements, a bidder must offer the same terms and conditions to all shareholders for 100 percent of the share capital, and the consideration is effectively subject to AMF approval when it issues its *Visa.* Also management may be required to make additional disclosures and to provide a fairness opinion. Additionally, if a 10 or 20 percent threshold is reached, notice must be given to the AMF of the acquirer's intentions, including whether additional purchases or appointments to the issuers board of directors are contemplated or if the person is acting in concert, and this notice is made public. At a certain threshold (33.33 percent), a mandatory bid must be made. In the case of a takeover bid, shareholders have at least 25 days notice, increasing to 35 days in the case of a hostile takeover. If the bid subsequently is altered, the time frames are extended. These percentages are applied to persons acting individually as well as in concert. With respect to disclosure of insider transactions in listed companies' securities, disclosure of significant changes in ownership, 5 percent or more, are required in all offering documents, and in the issuer's annual report. They must also be made to the AMF and the issuer if a specified threshold is crossed (5, 10, 20, 33.33, 50, or 66.66 percent). All such threshold crossings are published on the AMF's websites. Under existing recommendations, which have been codified for the most part by the LSF and related decrees, transactions in securities by directors and senior managers are recommended to be held in registered form and internal dealings to be reported to the issuer as determined by the issuer, to be published twice a year and to be held in registered shares. [AMF Recommendation No. 2002-01; L.212-12]. All transactions considered to be price-sensitive are required to be reported immediately as a matter of ongoing disclosure. Also purchases and sales of insiders during a public offer period must be made public immediately. The AMF's predecessor published specific recommendations directed to managers of listed issuers reminding them of the duties and restrictions relating to their personal dealings in the issuer's securities (*Vademecum* of August 2002). In this regard, Regulation 98-07 also requires any person who contemplates, for his own account, a transaction likely to have an impact on the price of an issuer's securities or the situation of the holders of securities, to disclose, as promptly as possible, the terms of that transaction to the public.
Assessment	Broadly Implemented
Comments	The public float in French companies can be relatively small and there remain companies in which there is significant governmental ownership or so-called "golden shares." The activities and interest of the government in these entities is transparent, however, and the extent of such participation is declining. IOSCO does not take a position on these matters. While disclosure is made in the listing documents and Annual Report of shareholdings of officers and directors, it is not clear that material changes in beneficial ownership are sufficiently timely made to the public, if the change is not sufficient to constitute price sensitive information. IOSCO requires very timely disclosure of price sensitive change of control transactions, large shareholder transactions at levels well below a controlling interest, and "material" changes in beneficial ownership of insiders holding voting shares, when no tender is pending. The Assessment Methodology does not define materiality, but disclosure at the 5 percent threshold or at the price sensitive threshold would not necessarily be sufficient. Disclosure to the issuer is not a substitute for disclosure to the public. For example, a sale of all securities by an insider might be of interest, and the requirement of transparency is also a discipline on insider dealings. Although the LSF (which codified the current AMF recommendation on the topic) now requires directors and senior managers to report their dealings (regardless of the size of the transaction) to the issuer, in order for the issuer to

	disclose that information to the public (as described above), the issuer is not required to publish that information unless it meets another requirement more than semi-annually. As such disclosure is now a legal obligation (as opposed to a recommendation) as to which the AMF is vested with the power to set forth, in the *Règlement Général*, the framework for disclosure, including the deadlines, this rating can be upgraded at such time as further guidance as to timeliness of information provided to the general public is made evident. The *Règlement Général* may include changes based on a consultation commenced by the AMF relative to the improvement of information dissemination to the market and the AMF has the capacity to develop additional regulations with respect to management's voting shares and major shareholders. The AMF has recently constituted a specialized commission on minority shareholders' rights, which may make additional enhancements. In this respect, the AMF advises that a draft proposal for the transposition of the provisions of the market abuse directive in regard to the disclosure obligation of transactions of managers and insiders is being reviewed.
Principle 16.	Accounting and auditing standards should be of a high and internationally acceptable quality.
Description	French accounting standards are set forth in the *Code de Commerce*, the *Plan Comptable General* and in Regulation CRC no. 99-02. Since 1999, semi-annual financial reports are required to contain a condensed portion of financial statements. The accounts are prepared using a prescribed format, on an historical cost basis (that is, not marked to market) and demonstrate the accountability of management for the resources entrusted to them. The accounting principles require true and fair presentation, comparability and consistency and are used both for prospectuses and ongoing financial reporting. Annual audited statements are required for listed companies. French accounting standards are set by the *Conseil National de la Comptabilité* (CNC), a body of 58 members representing all parts of the French economy. The CNC also interprets standards through a board of 11 members including an AMF representative. The *Comité de la Règlementation Comptable* (CRC)—composed of 15 representatives, a majority of whom are public representatives, including the AMF—approves standards, which must be endorsed as regulations by the Ministers of Justice and Finance. These standards are moving toward convergence with the International Financial Reporting Standards (IFRS), which will be required by the EU in 2005. In the interim, IFRS may be used by foreign companies listed in France, with reconciliation to French standards, if they diverge too far from French GAAP. The AMF has strong powers of enforcement with respect to the accounting and auditing of listed companies, including information on auditor's appointment and renewal, explanation of exceptions to accounting statements, and the ability to entertain questions raised in the course of reviews [L.621-22]. Auditing standards are set confidentially through a technical committee, known as the *Comité des Normes Professionnelles*, to which the Ministry of Justice and the AMF are observers. A scheme for oversight of auditing standards by a public body, the *Haut Conseil du Commissariat aux Comptes* (HCCC) was added by the Law of 2003 at the urging of the securities regulator, but the processes for endorsing those standards and the level of transparency of the procedures have not yet been determined. That law now also prevents participation by the CEO of the Board in the auditor selection process. However, the resignation of an external auditor is not required to be disclosed. Further, the process of selection will not necessarily be independent in fact and appearance from the management of the company, even when done under the responsibility of an audit committee of independent directors (as provided for under nonbinding corporate governance codes), as such selection is committed to the board of directors by the French Commercial Code. Enforcement of auditing standards is possible but currently remains under the responsibility

	of a professional peer group known as the *Compagnie Nationale des Commissaires aux Comptes* (CNCC), which has a quality control mechanism that meets current EU standards. A debriefing after a quality control review is held with an AMF representative but cannot lead to a revision of the audit. Standards for independence of auditors are general avoidance of an appearance of impropriety coupled with certain prohibitions on services relating to, for example, bookkeeping and valuations. The relevant French authorities have established additional rules and guidance with respect to services provided by an accounting firm to an audit client through the *Comité de Déontologie de l'Indépendance des commissaires aux comptes des sociétés faisant appel public a l'épargne* (CDI), in cooperation with the AMF. The CDI became operational in 1999 and has been replaced by the newly established HCCC, which became operational in December 2003. The AMF has been pro-active in alerting auditors to issues with respect to consolidated financial statements, including confirmation of balances and transactions; considering additional procedures where affiliated entities are located in offshore jurisdictions; and auditing directly significant subsidiaries where significant amounts or risks are involved.
Assessment	Partly implemented
Comments	The AMF has been at the forefront of the international dialogue on improving accounting and auditing standards and the new Act contains provision for there to be a domestic audit oversight board. IOSCO does not specify a particular accounting standard. The European accounting standard dates from 1976 and the new standard requires implementation of IFRS for domestic listed companies filing consolidated returns on a going concern basis as of January 2005. France currently uses a converging set of accounting standards (see above discussion). There remain some significant differences between French GAAP and the IFRS related to depreciation, valuation of investment assets, statements of changes in equity, and transactions with related parties. The powers of public authorities to oversee audits should be augmented and this is in process. The execution of oversight by the new authority should be kept under robust review with adequate communication with the appropriate regulatory authorities. The AMF appears to be associated for listed companies only. The ultimate outcome of the work of the *Haut Conseil* should provide for a sufficient relationship with the AMF with respect to the audit of any public company. In this regard the French securities regulator should be commended for its support of improvements in this area.
Principles for Collective Investment Schemes	
Principle 17.	The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.
Description	In France, the scheme for regulation of CIS covers the product, the manager or operator, the depository or custodian, and the "eligibility" to operate and to market such schemes. Public offerings require authorization from the AMF of the offering (*Agrément* or pre-approval, see L.214-1 et seq. ; see also Principle 19) and also authorization (*Agrément*) of the asset manager (see also Principle 21). The AMF is the competent authority (L.621-6). Generally, under the LSF, there are three types of funds of CIS : (1) CIS under the UCITS Directive, which encompass two main types (open-ended investment companies and unincorporated investment funds), (2) a second level of registered funds, for qualified investors (venture capital funds and private equity, future funds and employee investment funds); and (3) a third level of contractual funds (debt securitization funds and unlisted real estate investment funds) (See Principle 18). Asset management companies also are of three types: (1) *Sociétés de gestion de portefeuille* (SGP), whose activities encompass both

	individual portfolio management and management of Collective Investment Schemes; (2) *Sociétés de gestion d'OPCVM* (SGO), whose activities are limited to the management of collective investment schemes (although as of adoption of the new UCITS Directive and the LSF this distinction between (1) and (2) will be removed); and (3) investment services providers who offer asset management services (Licensing of these intermediaries is addressed in Principle 21). In this regard, more than 2/3 of all CIS offered in France are UCITS of various types. All CIS marketed in France, whether domestic or foreign, must be offered through persons authorized by the AMF (or otherwise qualified—such as through banks); although certain qualified investors may purchase offshore funds. Marketing may be done by asset managers, investment services providers with customer accounts, and through the bank network. Direct solicitation is subject to the particular rules for *démarchage (*direct marketing or unsolicited selling), but neither these, nor the conduct of business rules, except for certain requirements with respect to information disclosure generally apply to sales within the retail banking network through which most CIS are distributed. Depositories (L.214-3) must also be licensed, meet specific capital requirements, and must be constituted as a separate entity from that of the asset management company itself (L.214-17; 214-29). In the case of asset management companies, authorization requirements pertain to financial capacity, management competence and integrity, an appropriate operational program, and the existence of specified personnel responsible for segregation of duties and adequacy of internal procedures, a *déontologue* to address conflicts of interests, and someone accountable for risk management (which could be the same person). (See, also Principle 21 re: compliance personnel in investment services providers that perform asset management functions). The authorization process requires the program of operations to be tested taking into account management strategies and the types of clients targeted. The process of authorization requires completion of a specified Authorization dossier, based on the types of CIS being offered and the types of investments to be held by the CIS. More stringent operational requirements could be applied to asset managers offering more complex products than those offering plain vanilla UCITS. Changes relevant to the conditions of authorization must be notified to the AMF. As of November, 2003 there were 525 approved SGPs; 45 approved for real estate funds, and 6 for securitized offerings listed on the AMF website, plus 170 investment services providers and credit institutions permitted to offer asset management services, 87 depositories, and more than 8000 funds not including private equity, real estate and employee savings. As in the case of other investment services providers, the AMF has authority to undertake investigations, inspections and to bring appropriate enforcement actions (L.621-9 pt. 2,3,7&9). The regulatory authority is responsible for continuing compliance, but this authority is shared with (1) external auditors (whose appointment is subject to approval of the AMF), who prepare annual reports and semi-annual reviews (in the case of funds with more than EUR 150,000,000 in assets or which have so-opted, quarterly reviews) of diversification, investment type and eligibility, and which report exceptions in compliance to the AMF, and (2) depositories, which monitor the management activities and compliance with rules and investor's interests and which undertake the role of custodian of the assets of the funds. The AMF engages in on-site inspections of managers and visited 80 management companies and investment services providers in 2002, and 71 in 2003. Target coverage is all managers within a five- year period, although currently the staff designated to conduct on-site inspections is very small (7) and more attention could be paid to oversight of depositories. (See also Principles 18 and 20) The AMF has a program for prioritizing the firms that it designates for on-site inspection, and conducts theme inspections of emergent issues. However, it does not have an inspection manual. It does have a manual for its offsite oversight activities. The AMF also issues general guidance based on the results of its inspection program. For example, it recently underlined

	the need to ensure strict adhesion to the principles of equal treatment of investors, and commenced a program of reviewing pre-designated allocation provisions for aggregated orders. Theme inspections also have been conducted related to valuation. The focus in 2002 and 2003 was largely directed toward the use and risks of complex derivatives and illiquid assets. The AMF demands clarifications on the use of asset swaps and the valuation in fixed income funds, the use of credit derivatives, valuation procedures and risk management, through the review of a specific program of the asset management companies concerned (around 20). It also reviews procedures for the selection of "third party validators" and valuation in asset management companies using structured swaps in connection with guaranteed and structured funds (around 30). The number of these is fairly limited. The AMF has also been pro-active in addressing potential vulnerabilities. Hence, for example, it has issued guidance on market timing, and the asset management companies visited in this assessment indicated that either proactively, or in consequence of AMF activities, they had performed internal reviews for problematic activities. COB Reg. 96-03, most recently amended in 2003, addresses conduct of business generally and Instruction 15 Dec. 1998, addresses delegation specifically, among other things. If aspects of CIS management are delegated, French law requires that the delegee also be authorized in France or in a jurisdiction under circumstances that will not adversely affect the ability of the AMF appropriately to oversee the CIS. In either case, the delegator remains accountable for compliance and must specify how it will oversee the delegee. In the case of a non-European area country the AMF must either have an MoU or arrangements by comfort letter to permit it to audit the delegee. If more than 30 percent of the activity is delegated, pre-approval also is required. In any event, the participants in the CIS must receive information on any delegation. Basic customer protection rules require fair and equitable treatment of customers, fees that are not inconsistent with best execution, and disclosure and in some instances limits, on fees and charges. Joint guidance was recently provided by the CB and the AMF with respect to soft dollars and payment for order flow. With respect to French products traded on regulated markets, there is currently a concentration rule, therefore no specific guidance is provided on best execution. This may change if derogations from existing law are provided in the future. Net Asset Value (NAV) is reported daily for funds with marketable securities in excess of 150 million Euros, that is 33 percent of all funds and 75 percent of global assets, at least every two weeks for UCITS with fewer assets, and periodically, but not less frequently than semi-annually for funds, like real estate funds, private equity funds and employee funds. Such data is maintained in an electronic database of the AMF. Annual audited reports are available, and the AMF can call for special reports. More particularly, upon request, the AMF may ask at any time in addition to periodic auditors' reports (quarterly and at least semi annual report) of the CIS, for special reports, for instance to describe the valuation procedure of the fund or of the precise portfolio. Accordingly, although the AMF does not routinely review periodic and annual reports, the NAV of each CIS (except real-estate funds, private equity funds, employee funds) is reported permanently on a ongoing basis to the AMF. Such reports permit the AMF through statistical filters to detect abnormal variation in the NAV, which may lead to demand further information (reports for instance) to the fund. The NAV is established on a daily basis for 2300 funds (in a total of 7900 funds). Other funds calculate an NAV at least every 2 weeks. These data (NAV) have been available for any fund offered to the general public (6500/7900 funds) on the web site of the AMF (with the prospectus) since mid-March 2004. The AMF examines whether (i) the management company is independent ("Chinese wall" organization); (ii) the UCITS (and its operator/manager) are organized so as to avoid risks of conflicts of interests and (iii) that the conditions for information disclosure to investors are

	respected. COB regulation 96-02 provides some guidance on these subjects. The code of good conduct of the French professional association of asset managers released in 1997 also provides some guidance. It deals with prevention of conflicts of interest and the provision for a "Chinese Wall." More precisely, it indicates that it is forbidden for the asset manager of the UCITS to buy nonquoted shares of the management company subsidiary or of the promoter group. The UCITS could however invest in quoted securities of the parent company of the management company provided that the investment decision is consistent with its overall investment policies and the Chinese Wall requirements. Where the parent company is not listed, there exists a program for both a priori and ex post review of transactions on a case- by-case basis. Although investment of unit-holders interests in these securities may be refused, this decision would not be taken automatically. The Regulatory authority would investigate any suspicion of misconduct revealed by its ongoing monitoring of the manager's operations before taking a decision.
Assessment	Broadly Implemented.
Comments	The licensing program and the design of the program for monitoring CIS is comprehensive. There are, however, some areas where monitoring should be intensified and more human resources to accomplish such monitoring could be considered. Solicitation through the bank network of customers for asset management products does not receive the same intensity under the powers of the AMF to issue conduct of business rules as do other marketing activities (L.533-4; 621-9). For example, an asset manager subsidiary of an insurance company can market its management and life products through a bank without accountability for the marketing practices of the distributor. For certain products (futures funds) direct solicitation is not permitted. The AMF advises that further work is underway addressing how to deploy regulatory resources to address issues of miss-selling. (See also, Principle 21) To protect investors, the law provides precise rules for marketing funds in the case where investment is not specifically sought by an investor. The legal definition does not, however, cover the distribution of funds by banking networks to customers of banking agencies. The distribution of funds in this area is only covered by general rules like the obligations to assess the financial situation of the client, his experience and objectives; to inform the conditions of subscription; and to counsel. Although certain conflicts are prohibited and asset managers must adhere to a code of conduct approved by the AMF, the structure of business is such that related party transactions that are not strictly prohibited, can occur because of the relationships among the entities doing universal banking or marketing insurance and the banks. For example, while asset managers may not accept funds in their own names, a parent company or company within the same group may act as a depository and custodian of the fund. Asset managers may also purchase securities in their own company for a fund that they manage. Managers are, however, precluded from effecting transactions between a CIS and their own account or between CISs managed by them, and from providing advice to issuers of issues held within the CIS or entrusting management to the depository or a promoter. Permitted related party transactions must be disclosed and must be reviewed internally and by the external auditor. These factors put a premium on sufficient monitoring activities. Some of the more complex products offered may pose special risks. In that regard, risk management and pricing of credit derivatives (or swaps) that are not rated investment grade may be challenging. Within France, the AMF authorization process requires managers to demonstrate additional skills and operational procedures in order to receive authorization to manage such products and in the case of structured derivative products a valuation analysis from an independent third party other than the counterparty. The AMF has new authority to monitor the consistency of the operation of depositories with

	relevant regulations. It advises that it conducted theme inspections of depositories in 2003 but has itself determined that a more active program of inspections is desirable. In this regard, the AMF has conducted a review of the organization and procedures of funds depositories (87) in order to identify risk issues, to assess the situation of the market and to propose a strengthening of the depositories regulation. The assessor suggests promptly carrying forward strengthening of this program. The AMF also advises that changes are being made in these CIS rules, both within France, to take account of the new law, and at the European level and that therefore adherence to standards may be enhanced by new requirements or procedures. The AMF published a modernized text for certain requirements in the JORF on November 22, 2003 and also indicates that work is ongoing with respect to use of the right to vote in CIS, anti-money-laundering, prime brokerage, contractual funds and funds submitted to "light" regulation. Although the AMF believes that appropriate powers and monitoring of related party transactions are in place, it advises that close attention will be paid to detailing the procedures and monitoring arrangements.
Principle 18.	The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.
Description	CIS, under the UCITS directive (OPCVM) (L.214-1) are either structured as open-ended investment companies, with a Board, known as *Sociétés d'investissement à capital variable* (SICAV) (L.214-15 to 19) or as unincorporated common funds, known as dedicated funds or *Fonds communs de placement* (FCP) (L.214-20 to 32). Other categories of CIS include venture and private equity funds, known as *Fonds communs de placements à risques* (FCPR) (L.214-36 to 38), unlisted real estate investment funds, known as *Sociétés civiles de placement immobilier* (L.214-50 to 58); debt securitization funds, known as *Fonds communs de créances* (L.214-43-49); futures funds, known as *Fonds communs d'intervention sur les marchés à terme* (FCIMT) (L.214-42) and employee investment funds, known as *Fonds communs de placement d'entreprise* (L.214-39 to 40), with legal requirements particular to each. The Code also has specific provisions related to feeder funds (*fond nourricier)* (L.214-34), and classes, (*fond* à *compartiments)(*L.214-33). SICAV's are governed by their *Statuts* (By-laws) and FCPs by the *"règlément du fond*." In either case they must obtain the AMF's approval of a full prospectus, that explains the function and characteristics of the CIS, and use a simplified prospectus, that is a *notice d'information* in prescribed form at the time of subscription. At start-up, a SICAV must have assets of at least EUR 8 million and an FCP must have assets of at least 400,000 Euros. An asset manager may itself be incorporated as a SA (public limited company), which is true in most cases, or a SCPA (See COB Reg. 96-02). Under French law, a CIS may not be established without an agreement with a depository and a management company, and the management and the depository must be separate entities (although they can be entities from within the same group.(See also Principle 18). The depository is required by law to act for the sole benefit of the participants in the UCITS. The CIS structure has very specific diversification requirements and restrictions of the level of leverage within the structure, which are subject to review by the AMF and also by the relevant depository. These will be modified by the new UCITS Directive. As an added protection, for those types of products for which there is not a reliable pricing reference, the AMF has special requirements for third party validation of the pricing mechanism. The asset manager must be able to meet regulatory and legislative requirements and must have sufficiently competent staff, technical ability, and internal organization to permit an adequate audit trail of transactions, their appropriate valuation, and appropriate measurement

	of the risks attributable to the type of fund that is being managed. The manager must also keep separate portfolio or discretionary activity and other asset management activity for its clients. Internal audits of the assets of a CIS are required to be made by back office personnel, whose appointment must be notified to and who can be disapproved by the AMF. Investment companies that provide asset management services must have specifically designated compliance officers, and in either case, records must be maintained consistent with a schedule provided by the AMF in accordance with its guidance or otherwise under relevant national law and must to permit the reconciliation of transactions. Absent a specific requirement for retention, under relevant company law, records would be required to be retained for 10 years **(**L.123-22 of the *Code de commerce)*. Liquidation or transfers of more than 30 percent of assets must be reported to the AMF, which may monitor any winding up procedure to assure equitable treatment of customers. Funds must be returned to participants in such a case within a specified time frame. Mergers and suspensions must also be reported to the AMF. The AMF has advised all CIS operators that all investors be individually informed when a major change (such as a merger) happens. This information must be sent by individual letter when the change has an impact on the rights on unit-holders/shareholders. When the impact is neutral for the investor, the information is provided by a press release or a periodic report (*Instruction du* 15 *décembre* 1998).
Assessment	Fully Implemented
Comments	Careful attention should be paid in audit programs, whether on- or off-site, to related party transactions and valuations of products for which there is no market (See Principle 17). The treatment of these issues, in particular with respect to products that would be characterized as senior securities, the existence of which (if not covered) has the potential to dilute the fund, thus adversely affecting participants' interests, should be covered by monitoring programs. In this regard, the AMF has a program for approving the designation of funds auditors and for monitoring on-site audits by the professional body (for example, up to 15 per year.) Further, use of derivative products, especially structured products within retail CIS, has been limited to very few companies and receives additional oversight and heightened disclosure of risks. The AMF can ask for an update on internal controls and did so in 2003 with respect to the controls over valuation for complex derivative products. As mentioned above in Principle 17 additional capacity to perform on-site work may facilitate ongoing oversight.
Principle 19.	Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.
Description	COB Regulation 89-02, as modified by 2000-08 and detailed in Instruction 15 December 1998, relates to the information that must be provided to subscribers to CIS or individuals with managed portfolios. The funds must be registered except for some offered to qualified investors, which are very high net worth individuals; these may instead submit to a "regulation light," or (*procédure allégée*) which only requires a notice of certain specifics to the AMF and no pre-approval of a CIS prospectus. Basic information required in this case is the name of the CIS, its legal nature and type, date of first subscription, asset manager, any delegations, depository, the auditor, the investment policies and risks, whether it invests in other OPCVMs, and the frequency of valuation. Specified documents are also provided to the AMF in this case. The AMF has a two-level requirement for public offers, a full prospectus (*note d'information*

	complète) and a summary, or simplified, prospectus or *notice d'information*, which under EU law is the basic marketing document. Of course, clients must be provided the full prospectus free of charge on request. The *notice* may be offered before subscription, delivered on subscription and made available to the public. The simplified prospectus or marketing document must contain information on: the legal form, management company, the depository and custodian(s) if different, institutions that may accept subscriptions and redemptions, classification (in relation to types of investments), investment focus and strategy, recommended minimum period of investment, guarantee or protection, if any, and related costs, date and frequency and methodology of calculation of net asset value and place of publication, subscription and redemption terms, fees and charges (if performance fees, performance indicator), and tax treatment (recommended). Information on the identity of management and administration of the CIS is in the full prospectus. When the fund is authorized, the application submitted to the AMF must disclose all the mandates and activities undertaken by the persons in charge of management and administration. Guaranteed funds require additional disclosure. The AMF has to approve the offering (except as specified above) if it is initiated in France. If initiated from outside France, then it either must be sold through a French management company or has to be obtained by qualified investors offshore. Material changes must be reflected in updates to the offering documents. There are specific book-keeping rules for accounting for CIS. These rules are established by the CNC and are homologated by the CRC. Mark-to-market valuation is required. The principle is mark-to-market valuation for derivatives when market prices exist (especially in regulated markets). Where market prices are not available, especially for certain over-the-counter products, mark-to-model valuation can be used. In this regard, the AMF requires substantiation of the valuations by third parties. For SICAVs, each shareholder receives an annual audited financial report at the time the annual meeting is called. A semi-annual report is freely available upon request both for SICAVs and FCP.
Assessment	Fully Implemented
Comments	Additional work is ongoing to make the disclosure requirements more specific, especially with respect to the articulation of risk factors, investment policies and the type of fund. As the simplified prospectus is the basic marketing document, consideration should be given to placing information on principals in that document as well as in the full prospectus. UCITS with assets of more than EUR 53.35 million must report their situation to the BdF. These reports account for almost 97 percent of all assets held within CIS in France.
Principle 20.	Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.
Description	In principle interests traded on a regulated market must be marked-to-market daily. The specific requirements for calculation are contained in COB Reg. 89-02, which requires the regular calculation and reporting of net asset value per share and provides procedures for its calculation. As set forth in Principle 17 above, frequency of reporting of NAV ranges from daily for UCITS above a certain size, to semi-annually for unlisted real estate investment funds or funds with other illiquid assets. Futures funds and funds which are traded on an organized market must quote their net asset prices every trading day. The offering documents must specify the means and frequency of calculation of per unit value. With respect to less liquid interests, methods of valuation must be identified by the CIS in its rules of operation, and methods of valuation for particular products (interest rate products)

	have been specified for certain types of products from time to time by the AMF in guidance or instructions. (See e.g., *Bulletin Mensuel*, June 2002, n.39). Where structured products are used valuations must be confirmed by a third party that is not a counter-party to the transaction. There are no specific requirements for correcting pricing errors. There also is no specific requirement that auditors check the net asset value, but NAV is reported to the AMF electronically in accordance with applicable requirements per type of CIS and accordingly monitored (see discussion in Principle 17). The AMF has conducted theme inspections related to the appropriate valuation of pooled offerings based on experience, in response to external auditor exception reports, and also based on changes in NAV reported that exceed tolerance levels and therefore trigger an early warning notice. The AMF can also request further information or conduct an on-site examination where evidence of anomalies in pricing occur. (See also Principle 17). Depositories are required to review sales and redemptions, including the prices at which interests are redeemed. In this regard, there are specific requirements related to the prices paid on redemption of interests and the offering document must specify where redemptions are not daily for certain types of funds, when such redemptions are permitted. The law provides that CIS may suspend redemption and issuance of shares when exceptional circumstances and the interest of shareholders require it based on the by-laws of the CIS. The general regulation of the AMF specifies the other situations in which issuances of shares can be suspended. The AMF must be notified of the suspension of redemptions , and can address breaches of duties by the manager to customers under the *Statuts* of the CIS or its regulations. (Art. L.214-19; Art. L.214-30). It is not clear, however, that the AMF can itself suspend or demand the suspension of redemptions. There are no specific protective provisions for funds submitted to depositories that are within the same group, other than that the management of the CIS cannot be delegated to the depository. AMF Rules state that the asset management company must act solely in the interest of investors and in such a way that equality of treatment among investors is effective. In the case of serious problems of valuation, the lack of suspension could create a breach of these principles (unfair treatment or unequal treatment of unit-holders) and would lead the AMF to investigate in order to know if the asset management company and depositories have fulfilled their duties. In the case of other types of serious problems (ongoing and manifest disorder), the AMF has a power of injunction and the possibility to ask a Judge to appoint a temporary administrator.
Assessment	Broadly implemented.
Comments	It should be noted that CIS regulation is a work in progress in France, that fairly comprehensive changes were added in the LSF and that the rules relative to implementing those changes are in the process of being developed. In particular, the AMF advises that further guidance is being contemplated with respect to suspension of redemptions.
Principles for Market Intermediaries	
Principle 21.	Regulation should provide for minimum entry standards for market intermediaries.
Description	The Code requires French market intermediaries to be licensed, either directly, or in the case of firms taking advantage of free establishment or free offer of services within the European area, to be authorized in their initial home jurisdiction and to provide the required notices under the Investment Services Directive. The new framework replaces the former two-step procedure with a one-step procedure without limiting the elements considered in the authorization process (L.532.1 to L.532-5). The process establishes a time frame for acting on

	the application and for consultations between the CECEI and the AMF where required. The CECEI provided the following statistics as to the *Prestataires de Services d'Investissement (Investment Services Providers- ISP) Habilitées* in France as of 30 April 2004: 923 are licensed in France, of which 357 were credit institutions, (346 were established in France and 11 in a third country), and 141 were investment firms licensed by the CECEI. These are subject to prudential control of the banking authorities and to the AMF for their activity. Sixty-eight ISPs operating in France are branches of foreign ISPs belonging to the EEA. Of these, 45 are credit institutions (21 of which also offer cross border services) and 23 are investment firms (16 of which also offer cross border services). There are in all 1258 firms, which exercise the free right to offer cross border services in the European Economic Area. The large majority of firms using the EU passport are located in London. Asset managers are the remaining 427 (see figures in Principle 17). The licensing requirements are as follows: asset management companies (*sociétés de gestion de portefeuille*) are licensed by the AMF and all asset management activities irrespective of the status of the investment services provider are subject to approval of a program of operations by the AMF (see also CIS Principles); investment firms and credit institutions are licensed by the CECEI (in consultation with the AMF in the case of investment firms); direct marketing activities must be performed by representatives of a licensed entity, and will require a license for *démarchage* if not undertaken with respect to existing customers of or within the premises of a licensed entity (L.341.2-3); independent financial advisers (who cannot have custody of funds) will be required to be licensed by a professional organization accountable to, and meeting the requirements of, the AMF[32]. Persons (legal or natural) performing *démarchage*, depending on the of nature or their employment of mandate, must register with the AMF, the CECEI, or the CEA (L.341-6). A list of persons permitted to conduct *démarchage* will be maintained jointly by the foregoing authorities and will be consultable by the public (L.341.7). Where solicitation is physically at persons' homes or places of business (and not within places designated for performance of financial services), the *démarcheur* must carry and present a *carte de démarchage* according to a model set by the Minister. The LSF sets forth legal disqualifications from being licensed to conduct *démarchage* (L.341-9). Central securities depositories are licensed by the AMF, securities settlement systems are licensed by the AMF, and custodians and clearing activities are licensed through the CECEI in consultation with the AMF. Clearing houses' rules are approved by the AMF (for market undertakings[33] see Principles 25-30). The licensing process requires cooperation (1) between the AMF and the CECEI when the initial authorization is granted, with the AMF approving the operational program in the event that asset management services are provided, and (2) on an ongoing basis between the AMF and the CB, with respect to changes in status. Firms having direct access to regulated exchanges or clearing organizations must separately meet criteria for membership or such access set by exchange rules or contract, which requirements are subject to approval by the AMF. In principle, France requires all such members to be either investment firms or credit institutions, but other firms can be admitted as regulated market members under a number of conditions (L.421-8) (see also MTFs referred to in Principle 25).

[32] This professional association has rules of conduct, but the license is with the relevant authority.

[33] Market undertakings are commercial enterprises which have as their principal activity operating a regulated market in financial instruments (L.441.1).

	The status of licenses and the activities which are permitted under a specific license are found, in the case of asset managers on the AMF web site; and, in the case of investment services providers that are firms, including custodians, on the CECEI website <http:/www.cecei.org/fr/ags.htm> (List of *agréments*). *Démarcheurs,* as described above, are not currently listed, pending a determination on how such information will be made public. Financial advisers will be listed through the professional association, but this has not yet been accomplished. The list of licenses that is published does not specify senior management; that information is not published by the CECEI. However, the identity of senior managers *(représentants légaux*) of all commercial companies is made public by the competent courts *(Tribunaux de commerce* or equivalent courts); this information is notably available via the Internet. The Annual Report of the AMF also details the firms that have requested authorization to provide investment services, free establishment, and provision of cross border services. The licensing process involves a fitness inquiry and a review of the relevant capital requirements (see Principle 22) and internal controls (e.g., L.531-6;L.532-1-3). The NRE Act 2001 (*Loi sur les nouvelles régulations économiques*) permits the CECEI to set additional individual conditions including provisions of letters of comfort from the main shareholders, with respect to financial condition. The applicant must identify each of its direct and indirect, natural or legal person shareholders with a qualifying holding, which is 10 percent (ISD Directive Art. 1 paragraph 10). In the case of nonasset management investment services providers, a compliance manager (RCSI) is designated and must obtain a "professional card" from the AMF within 6 months. Also, the employment of traders, clearers and financial analysts in other investment services providers must be notified to the AMF, which can give a negative opinion as to such appointment. Changes in status, including changes in principal shareholders and management or structure as well as changes in contemplated activities must be reported (CRBF Reg. 96-16)(See also, Principle 17). The applicable criteria and law relating to specific forms of license are readily available on the AMF website. Licenses may be withdrawn, denied or revoked for failure to meet the criteria for licensing on an ongoing basis (see, e.g., L.613-21; L.621-15) The criteria for licenses pertain both to (1) the fitness of the management, whose *honorabilité* is checked through the examination of judicial files and of sanctions, including in appropriate cases, communication with other authorities and to (2) the fitness of the firm, that is its financial and capital condition and internal organization.
Assessment	Broadly implemented.
Comments	IOSCO finds that the publication of license status is a critical public protection, although IOSCO does not necessarily require licensing of all employees in the marketing chain, but only those that manage or control the institution. Currently, the list of *démarcheurs* who are permitted to engage in unsolicited selling is not posted as the decision as to how to make it public has not yet been determined (see AMF website). The LSF clearly recognizes that publication of properly licensed persons assists the public to be accountable on its own behalf to deal only with licensed persons. Changes are currently in process to provide publication of all licensed persons. Licensing information is currently updated monthly on its website, in the case of AMF, and, in the case of CECEI/BdF, the information is also updated on the website. More immediate information as to firms in the course of withdrawing also might be considered. The AMF advises that it is working on elaboration of the list of *démarcheurs* and will take steps toward ensuring the accessibility of such information. A decree of the Prime Minister, to be adopted after consultation with the *Conseil d'Etat*, issues standards/procedures relative to the granting and denial of licenses. It should be

	encouraged that either these requirements for investment services providers or cross-references be identifiable from the AMF website (see Principle 4). The CB and the AMF both have programs for monitoring their respective areas of responsibility. Although various forms of cooperation (for example, a common database, monthly meetings of senior staff) are used in practice, it is suggested that the CB and AMF continue to explore assuring that the potential for conduct of business violations to be evidence of prudential violations or *vice versa* be adequately addressed by these arrangements. The CB also uses preventive analysis based on reporting called *Organisation et Renforcement de l'Action Préventive*, which assess various components of risks associated with the activity of each investment services provider to identify off-site firms that require more attention. Ideally, this information should be available to the AMF on an as needed basis.
Principle 22.	There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.
Description	The French law and regulations that set prudential requirements are in accord with the Capital Adequacy Directives of the European Union in so far as these pertain to investment services providers. Investment services providers (that is any entity providing investment services, as listed in L.321-1 and the connected services of custody and clearing) must meet prudential standards to insure their liquidity, solvency and the equilibrium of their financial structure as specified by the *Comité consultatif de la législation et de la règlementation financières* (CCLRF) and confirmed by the Minister (L.611-3;L.533-1) with regard to firms providing such services. With respect to asset management companies, the minimum capital is a fixed amount of EUR 50,000 or EUR 150,000 if the company holds client funds or 25 percent of overhead if higher. This requirement is about to be augmented based on the amount of funds under management. With respect to other investment services providers, the requirements include an absolute minimum and an adequate amount of own funds. Own funds are calculated on a consolidated basis and funds needed to conduct intermediation activities on an individual basis. The adequacy of the capital structure of a firm in connection with the activities it intends to pursue is considered by the CECEI in determining (in consultation with the AMF) whether or not to authorize the firm to perform those activities (see Principle 21). Changes in status must be reported (CRBF Reg. 96-16) and failure to comply with applicable requirements is subject to applicable interventions and sanctions as set forth at L.613-21 and L.621-15, respectively. The minimum required capital is based on whether the firm is receiving and transmitting orders or providing other investment services. In each case, if customer accounts are held with the firm, the minimum is EUR 150,000 and EUR 1.9 million respectively. If such accounts are not held, the minimum amounts are correspondingly reduced (CRBF Reg. 96-15). Very substantially higher requirements set by the clearing organization apply to individual and general clearing members and these are also adjusted by type and amount of exposure to customers. Firms carrying out securities custody activities currently are subject to a minimum capital requirement of EUR 3.8 million (CMF Regulation 6-2-3); further regulation is expected in 2004 to define prudential requirements for custodians. For all investment firms (L.531-4), except asset management companies, in addition to the minimums specified below, own funds must equal the higher of 25 percent of overhead for the previous year and total client positions divided by 150. These client positions include positions on regulated markets in financial instruments and over-the-counter markets, as well as cash debits and uncovered short positions on the spot market held by the firm in the name

	of the client, and otherwise, the sum of long and short positions, plus any debit balance on settlement accounts (or minus the credit balance on such accounts). Large exposures are defined as exposures in excess of 10 percent of own funds. Exposure to any one client must be less than 15 times own funds and to anyone counterparty less than 25 percent of own funds and total large exposures must be less than 8 times own funds (CRBF Reg. 97-04). CBRF 95-02 on market risk and volume of activities and 93-05 on large exposures limits (and stress tests) also apply. Large exposures also must be reported quarterly. The solvency requirements take into account both on balance sheet and off-balance sheet risks and affiliates that are consolidated. Hence, broadly speaking the capital requirements reflect the amount of risk undertaken. The investment firm must be able to demonstrate at all times that it meets or exceeds the minimum capital requirement. The accounting method and requirements to publish annual accounts in either the BALO or a newspaper authorized to carry legal announcements are set forth in CRBF 97-03, as amended, and require the publication of annual individual accounts within 45 days of their approval by the competent body. The publication must include the statutory auditor's report and explain how the management report is made available to the public. The firm also must report to auditors and the AMF a yearly report on how internal control is assured, where relevant at the group level. Quarterly reports are only required for firms with a balance sheet total in excess of 3 billion francs (a pre-specified conversion rate to euros is provided: EUR 457,347,000), half-year statements of operations are required for listed firms. Investment firms trading financial instruments involving commodity derivatives must file monthly statements showing their positions in the commodities market with the CB. (CRBF 97-04, Art. 9). Investment firms must maintain records that permit them to record transactions and determine positions and profits and losses daily, for maintaining internal limits, for monitoring exposures to clients, and for enforcing compliance with those limits adequate to the nature and volume of the business (CRBF 97-04; CRBF 97-02). The CB is principally responsible for monitoring the prudential (capital) status of investment firms. The AMF is responsible for prudential supervision of asset management companies. The CB attempts to visit each investment services provider, not including asset management companies, at least once per year. The AMF aims to visit every asset management company every five years, but uses a risk based system for assigning inspection visits. This allocates resources to entities of concern more immediately than would a fixed schedule. The CB also has the authority to issue warnings or cautions, to prohibit executions of certain operations, and to impose other limitations on business. The CECEI and CB can also require more stringent capital monitoring and higher ratios than the minimum) when justified by particular risks undertaken by the investment services provider. The AMF can similarly restrict the types of activities undertaken by an asset management company if its program of operations or control environment are inadequate (L.532-4 to L.532-9). The CB and the AMF provided examples of exercise of this authority. The CB indicates that it has monthly meetings with the AMF (and CECEI) to share information on individual cases and also more immediate discussion of actions taken.
Assessment	Partly Implemented.
Comments	Annual reports or even semi-annual reports may not be sufficient oversight of capital compliance unless augmented by risk-based or other measures for assuring appropriate identification of deteriorations of capital (see also Principles 3, 10 and 29). Typically investment services firms have a trading culture, which may warrant more direct and frequent supervision than banking institutions, even if they are part of a banking group

	[for example, Barings]. Currently, there is a practice among brokers permitted by Euronext Paris whereby they offer their customers deferred delivery of securities upon deposit of margin as prescribed by AMF rules, although the broker settles on the security on T+3. The customer will make a net settlement with the broker at month end, and is required to post margin daily to account for changes in the market value of the securities purchased. The AMF and the CB do not regard this as a credit facility, although as in the case of contracts for differences generally there is credit exposure that can be generated as a result of market risk. For this type of activity, for example, monthly reports on deferred settlements—that is settlements between brokers and customers that do not occur within T+3, (taking into consideration the size, as much as EUR 100,000,000 in net exposures at month end—the volatility of securities markets, and the potential for clients to use more than one broker) may not identify problems which are occurring in a timely way. Also, occasional review of margin collections from customers (usually individuals) engaging in such activities may not be sufficient to timely identify significant deteriorations of capital position. Unsystematic perusal of reports required by the CB and available to the mission on SRDs indicated that one customer had large exposures to several investment firms. Further mid-month testing of such exposures might be desirable for determining the highest level of net exposures, as opposed to only taking a monthly average. Broker SRD exposures are only transparent to the broker and not to the clearing system in which it participates—or for that matter, the market. Indeed, there was anecdotal evidence that some accidents have occurred with respect to SRD activity and the AMF just sanctioned a broker engaged in this activity. The accumulation of exposures might also indicate other misconduct. In the case of investment firms, which participate as members on French and other regulated markets, in addition to oversight by the regulatory authorities, there is some oversight through the exchange/clearing surveillance process. The Euronext markets for example (and the related clearing house) have rules, as well as trading limits and price limits intended to control the accumulation of risk, that may permit actions resulting in the reduction of positions, and higher clearing capital requirements for investment services firms with direct access to clearing. Typically, clearing houses request more frequent reports of capital condition. SRDs may only be carried by firms that have sufficient capital to engage in proprietary trading and are limited to the most liquid 260 equities traded on Euronext. The AMF has recently run a test to see how often the 20 percent cash margin deposit had been exceeded in a single day over the past 13 months and the CB includes information on exposures to SRDs in calculating capital ratios. In the case of SRDs, Euronext Paris also requests a monthly report from its members. This report shows the customers' exposures above EUR 1.5 million. These reports are aggregated by Euronext Paris (and, since January 2004, by LCH-Clearnet SA); a summary is transmitted to the AMF. On the basis of this document, which makes it possible to identify risks linked to a particular security or customer, the AMF may decide to carry out further investigations. As stated elsewhere, information from the AMF with respect to conduct of business and information of the CB with respect to prudential compliance should be routinely shared, and shared timely, as problems with respect to conduct of business could affect financial soundness of firms and financial problems can affect conduct of business practices (see Principles 1,8, 21, 23,29). CB inspectors can be (and are) appointed by the AMF to investigate compliance with AMF rules. In the last three years the CB has conducted 31 such inspections, in one year amounting to one-third of those conducted. Reports of inspections are provided to the AMF, if completed by the CB and also to external auditors. The compensation funds (Euros 70,000/account, which exceeds the EU requirement) also provide some buffer to customers in the event of a firm insolvency. A capital requirement and other prudential requirement for custodians is pending with the Minister of Finance and expected to be effective in 2004. Basel II enhancements with respect to operational risk and

	changes to promote customer funds protection and liquidity also are pending. With respect to records, each component of investment services provided supervised on a consolidated basis must maintain necessary records to permit prompt consolidation.
Principle 23.	Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.
Description	The COMOFI requires investment services providers to have appropriate management and internal control systems (Principle 21 and L.611-3; see also L.613-16 and L.613-15), taking into account the size and nature of their activities. Management organization and the existence of an internal control structure is part of the licensing process. Investment services providers other than asset managers are required to have an internal control structure that meets several specific requirements (CRBF Reg. 97-02; 97-04). For example, it must address all risks, including credit, market, interest rate, settlement, liquidity, intermediation (risks to each customer), operational and legal risk, and must have an internal mechanism for supervising risk limits and for assessing exposure to unsettled transactions. 2004 amendments are contemplated to make requirements with respect to contingency planning and to compliance with all applicable law more precise (see Principle 24). Although not directly specified, if these risks are managed and customer protection rules are robust, this should also curtail potential reputational risks. More generally, investment firm internal controls systems are the responsibility of top management and the Board, as a matter of law, and must include a particular organization of accounting and information processing systems, risk and result measurement systems, risk monitoring and control systems, and cash/securities flow monitoring systems and arrangements to address settlement risks. The firm must also have mechanisms acceptable to the CB for valuing financial instruments that do not have an active market. With respect to separation of functions, CRBF Reg. 97-02 in particular requires that units responsible for initiating transactions operate independently of those responsible for validating them at the accounting level and for settling transactions and implementing risk monitoring procedures. Corresponding improvements to liquidity and settlement arrangements for securities are being planned in connection with the relevant settlement system for settling securities on Euronext markets (See related reports). The AMF requires a yearly report on the conditions in which investment services and connected services are provided regardless of where the services are provided. Additionally those investment services providers supervised by the CB must provide an internal control report which includes a list of investigations performed, the shortcomings observed, if any, the follow-up corrective action taken, changes to the control environment, especially related to new activities or risks, measurement and monitoring of risks, and compliance with applicable limits that is presented to the decision-making body of the firm and also to the CB. Independent auditors are not subject to the professional secrecy requirements *vis-à-vis* their investment services provider customers with respect to communications to the AMF, CB and CECEI or other public authorities. Both asset management firms and other investment services providers are required to have a compliance or related supervisory function, which ensures that the firm's operations, procedures and organization comply with legal requirements. General conduct of business requirements for investment services providers are found at L.533-4 et seq.; with L.533-6 providing special requirements for an internal code of conduct relative to conflicts of interest and a suitability/ know your customer rule. As specified by IOSCO, investment services providers must conduct themselves with loyalty and equity in the best interests of their

	customers and of the integrity of the markets; must act with competence, care and diligence; must devote adequate resources and procedures to conduct these activities related to customers and market integrity effectively; must determine the financial situation of their clients and their investment experience; must communicate appropriate information to clients; must avoid conflicts of interests and treat clients equitably if such conflicts cannot be avoided; and must comply with all regulation applicable to the exercise of their activities in a matter that promotes the best interests of their clients and the integrity of the market. More particularly, a *piste d'audit* (audit trail) must be maintained to be able to reconstruct transactions and customers must receive statements of account. General decision 99-06 of the CMF and L.123.22 of the Code of Commerce govern the retention of records. In particular, order tickets must be maintained for five years and trading records at the market must be maintained longer. In general, accounting records must be retained for 10 years. Requirements relative to reconstructing trading activity are in the process of being made more explicit. Requirements for segregation of customer funds are in compliance with European requirements (L.533-7) and considerations for enhancement are in process. Disclosure of risks is provided for derivatives and for other issues, including UCITS, there is prospectus disclosure. The intermediary must be able to declare suspicious activities and also report transactions for which the beneficiaries are unknown. France permits bearer shares, which may affect customer identification and tracing of funds and should be more fully explored in any AML review.
Assessment	Fully Implemented
Comments	With respect to asset management companies, the AMF has procedures to review appropriate internal controls, but the regulations do not currently provide significant guidance as to general expectations, other than avoidance of conflicts of interest (and maintenance of certain ratios) and there is no requirement that the assessment of controls be independent. The AMF also should consider whether more specific requirements are needed for asset managers—with respect to "know your customer" from the perspective of suitability of transactions. Documentation of the planned enhancements to the internal control requirements that are contemplated is also suggested.
Principle 24.	There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.
Description	In the event that the capital, internal control, and provisions for prudential supervision prove insufficient to prevent the deterioration of a firm, the CB can appoint a provisional administrator or a liquidator, or refer the matter to a court as may be appropriate to the situation (L.613-18 and L.613-22 respectively). It can take intermediate steps to direct the amelioration of a financial or internal control position as well—by requiring corrective action in response to an investigation, a response to *lettres de suite* following an on-site inspection, a formal recommendation or otherwise (L.613-16). In a case of urgency the CB can act without a proceeding (L.613-23). If positions are liquidated the funds and collateral held by the broker and by the clearing institution can be used to pay debit balances and such payments cannot be reversed by an administrator or in liquidation (L.442-6; L.431-6). The compensation fund also may be applied. Customer securities and funds are to be identified on the books of the investment firm and on the books of the clearing organization, and liquid balances are to be held in the amount owed to customers. A project is underway to enhance the protection of customer funds. The compensation fund also may be asked to intervene by the CB in cooperation with the

	AMF (CRBF reg. 99-05 to 99-08; 99-14 to 99-17) (L.322-1to4). The individual markets of Euronext have contingency arrangements as well. In this regard, CRBF regulation 97-02, modified by CRBF regulation 2001-01 and 2004-02, addresses required contingency planning. The French authorities do not permit remote clearing members without an appropriate comfort letter from the jurisdiction of establishment, even within the European Economic Area. This comfort letter may establish more specific contacts with the home regulator of such institutions including identifying them to the French regulatory authority for further oversight if necessary. If cooperation arrangements or other regulatory arrangements of third countries (especially non-OECD countries) are not adequate, the AMF has the power to restrict remote membership (L.442-2). The combination of these arrangements may in practice prove sufficient to address failures in light of the structure of most firms in France and the predominance of universal banking. But see comments below.
Assessment	Fully Implemented.
Comments	In addition to the interventions specified above and under Principle 22, there is a compensation fund that can be used to compensate customers, which is EUR 70,000 for all accounts of the same customer held with the same institution anywhere. While actions taken with respect to that fund can be appealed, one question in reviewing this area is the degree to which the compensation arrangement can be drawn on to prevent the consequences of failure. It should also be possible to transfer customer open positions in the event of an insolvency of a firm carrying futures positions. The clearing house is entitled to do so in case of failure of a clearing member (see General Regulations of the CMF, Art. 4-2-23.This is the classic way to isolate the risk of a default (see IOSCO reports and the Windsor Declaration to which the AMF's predecessor is a party.) Nonetheless, with separation of the clearing house from the market it may be necessary to assure that arrangements to handle market events that can have an impact on credit risk are coordinated. Also, to the extent possible, default procedures should be transparent. Cross-border coordination arrangements should be designed to promote ex ante assurance as to application in a crisis. As set forth at Principle 22, there is the possibility that the deferred settlement activities in equities could cause a failure of a broker and then the clearing system would not be available to address the losses, which would be absorbed by the broker itself. If these were significant they might affect the ability of the broker to perform to the clearing institution on other matters. There is a combination of arrangements to deal with firm failures, but it may be useful to keep these under review as to their sufficiency, especially with respect to leveraged positions at brokers that are not subject to clearing arrangements or frequent on-site inspections. Further work is in process pertaining to required contingency planning.
Principles for the Secondary Market	
Principle 25.	The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.
Description	Regulated markets are recognized by the Minister of Finance upon recommendation of the AMF (L.421-1). In most cases, regulated markets' members are investment firms or credit institutions providing investment services ("investment service providers"), being specified that market rules may limit access to such providers in good standing but may not provide for a *numerus clauses* (L.421-10). However, other legal or natural persons (notably locals) may be admitted as market members, subject to prior authorization by the AMF (L.421-8 and

	General Regulations of the COMOFI, art. 4-1-17). (But see discussion of Powernext below.) Admission to the market is conditioned upon respecting the rules of the market (L.421-9). The rules of the market must be submitted to the AMF for approval in connection with its recognition; amendments must be notified to the AMF and the BdF and authorized by the AMF. Financial instruments may be listed subject to objection by the AMF. A prospectus must have been approved by the AMF prior to listing. The COMOFI in the past conducted reviews of the French regulated markets, and these will be continued by the AMF. Under COMOFI General Regulation Art. 2.4.4, operators of multilateral trading facilities (such as Powernext and MTS), must be recognized as investment services providers (see also Principles 21 and 26). In order to be recognized as a regulated market; a market must guarantee regular functioning of trading; must provide the conditions of access to clearing, as well as regulations with respect to the listing and publication of trades. These must include specific rules related to price manipulation, wash trading, volume aberrations, trading ahead, misallocation, disclosure of price sensitive information, congestion and corners, and so forth. The market undertaking also must commit to enforce these rules. The AMF must refer violations of insider trading provisions to the Public Prosecutor (COMOFI General Regulation 4-1-16). The AMF has a system to prevent insider trading and market abuse and rules of the COMOFI (Art. 3-3-1; 3-3-3;3-4-8) require customer priority and best execution; impose disclosure of the modalities of orders and order of execution; and outlaw front-running. Any 10 percent holder of capital or voting rights in a market undertaking must be disclosed. The regulations of the COMOFI regarding recognition also require the applicant to provide information on its legal status; bylaws; market rules; planned human, technical and financial resources; the experience of its senior management; and, when applicable, the rules of its clearing organization (COMOFI General Regulations, Art. 4-1-1). The AMF also licenses the head of compliance, a trading supervisor and a market member supervisor and each reports directly to the AMF. The Euronext rulebook addresses: transparency and access to trading information; imposition of trading halts; and treatment of error trades. The order of execution rules are in the pricing algorithm. In 2002 an audit by Deloitte was undertaken with respect to trading rules and the NSC system. COMOFI also undertook inspections and reported its findings. Market undertakings must archive transaction information, including price, quantity, executing broker, time, electronically for ten years. AMF rules address publication of prices, and the current law addresses the requirement that all trades in listed securities be reported to the market. The law also confers on the AMF Chairman the ability to halt trading in all or a portion of the market and also to halt trading in individual securities to permit the release of information, etcetera (L.421-5). The rules of the COMOFI also require the market operator and market to exercise their activities with diligence, loyalty, neutrality and impartiality in respect to the integrity of the market The rules of the market itself require that the admission agreement signed between the market undertaking and each market member either specifies an arbitration forum where disputes can be resolved or refers to the competent courts (COMOFI Regulation 4-1-8). At the moment, the only market operator in France is Euronext Paris, which manages four regulated markets : *the Bourse de Paris* (comprised of *Premier Marché and Second Marché) and the Nouveau Marché* for cash and the *Matif* and the *Monep* for derivatives. Further consolidation of French regulated markets is expected. Euronext Paris is part of the Euronext, NV group, whose holding company is in the Netherlands. Euronext Paris is also a French credit institution. Some futures trades, notably those in the CAC40 and some commodities take place in France; the market in financial derivatives operated by Euronext, is Euronext-Liffe, largely located in London, using the Liffe-Connect trading system. Euronext's cash market is cleared

	through LCH Clearnet SA and settled through a system operated by Euroclear France. The derivatives markets are cleared through LCH Clearnet, Ltd., established in London, for the LIFFE, and LCH Clearnet SA, established in Paris, for the other derivative markets. Market undertakings will be required to have their own funds to cover at least operational risks, but Euronext is grand-fathered from this provision and has certain systemic protections related to being a special purpose credit institution subject to oversight of the CB. Clearing rules for conduct of business are approved by the AMF, prudential rules and licenses are addressed by the CECEI and oversight by the CB.
Assessment	Fully Implemented.
Comments	This principle is only applicable to the ongoing activities of Euronext. There is no ATS for retail trades, but such systems would be treated as broker dealers except with respect to oversight for market abuse. Such entities must provide information on the proposed rules of such systems to the AMF. The AMF may ask for modifications (see also Principle 28).
Principle 26.	There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.
Description	The AMF approves regulated market rules and their modifications to determine that they are consistent with its authorization and that they are consistent with the proper functioning of the market. The regulated market must ensure that its members comply with the market rules (membership rules, trading rules…). Trading systems can be audited by the AMF at any time. Euronext Paris carries out surveillance in real time for transactions on all Euronext cash markets. The AMF receives information on all trading, clearing, settlement and/or deliveries of products traded on Euronext Paris. The monitoring team for equities at the AMF consists of 14 persons. A sophisticated automated system at the AMF is used to monitor trades on a T+1 basis and the resulting data are analyzed and manipulated by expert professionals. The system combines various forms of information to identify various trading abuses (see Principle 28). This and other surveillance activity identifies as many as 1000 matters for additional review, and has resulted in the referral of 100 cases annually for further investigation resulting in corrective actions and the imposition of 24 sanctions in 2003 (COB and CMF). These cases included instances of insider trading, dissemination of false information to the market and manipulation. The market also monitors trading for violation of trading rules and for market abuses on a real-time basis. The surveillance staff in Paris monitors all trading on the system wherever originating (that is whether originating from Paris, Brussels, Amsterdam, Lisbon, or London). The exchange is required to enforce market rules with respect to trading. The various exchanges participating in Euronext have executed an MoU to assure appropriate exercise of their exchange operational responsibilities and the responsibilities of members to the exchange. This MoU allocates responsibility for enforcement as follows: The market where the member is located addresses issues with respect to members; the market where the product is listed addresses issues with respect to trading. The arrangements between the exchanges under the Euronext umbrella are formalized in an information sharing and cooperation arrangement that is public. The regulatory authorities have a similar information and cooperation arrangement and meet regularly with respect to harmonizing the rule-book and addressing market situations. The harmonized and the unharmonized rules are published and identified on the Euronext website. The LCH.Clearnet SA clearing arrangements for cash and derivatives transactions similarly have resulted in practical arrangements between the relevant markets. The clearing

	organizations and the regulators have a committee, which meets frequently and is specifically devoted to consulting on issues of common concern to the regulatory authorities involved in the clearing and settlement process. The Committee is known as the Coordination Committee on Clearing Euronext , organized by an MoU among the authorities concluded in March, 2001, and it has issued Joint Guidance in June 2002 that represent the common understanding among the parties, which include the CB, as well as the AMF. Because Euronext is also a special purpose credit institution, it is under the oversight of the CB as well as the AMF. Euroclear France, which is a securities settlement system operator and central securities depository is subject to oversight of the CB, the AMF and the BdF. The AMF has access to pre-trade and post-trade prices. Upstairs prices are reported as well as trades on the central order book. The AMF also receives trading information in automated form. The general sanctions available to the AMF may be applied to a market undertaking pursuant to the procedures for imposing administrative sanctions.
Assessment	Fully Implemented.
Comments	COB/CMF or their contractors (Deloitte) have performed oversight of the markets, including onsite reviews, and have issued reports and made recommendations to Euronext Paris (and its predecessor markets). With the changes in structure, Euronext which had a captive clearing arrangement for derivatives, now uses Clearnet which is a separately owned entity in which it has a less than controlling interest. In reviewing the structure of the markets, one question was the extent to which the clearing organization and the exchange coordinate in addressing market events or disruptions (nevertheless, see principles 24, 25 and 29).
Principle 27.	Regulation should promote transparency of trading.
Description	The French system has strict rules for pre-trade and post-trade transparency. Currently, the "concentration rule" requires all trades in listed equities to be concluded in a regulated market of the EEA if executed by an intermediary for a customer established or customarily residing in France and less than EUR 7.5 million in value or of 10 percent of the capitalization Proprietary trades may be concluded over-the-counter. Listed bonds are required to be transacted in on a regulated market if the transaction size is less than EUR 30,000. As this is a professional market, most trades are in fact transacted over the counter. Euronext permits certain trades above a specified size outside the central order book provided that there is a price relationship or link to prices in the order book or to the spread. These trades are designated upstairs trades. For the moment, therefore, an intermediary trading for a French retail customer must trade on a regulated market. There are two markets that are not regulated markets, Powernext, which permits commercial users trading for their own account to have direct access and MTS France where plain vanilla bonds are traded. Regulated markets must publish the best bid and the best ask and related quantities for each financial instrument traded—in fact, Euronext publishes the five best bids and offers, although it permits orders which do not disclose the full quantity on bid or offer. See general regulations of CMF now continued in effect under the new Act until adoption of the *Règlement général* (Title IV, Chapter I, especially Art. 4.1.28). Prices and quantities for every trade executed on the market must be published as follows: Immediately for those products conducted by continuous trading; by the opening of the following trading session for trades settled by auction, and T+1 for over-the-counter trades, although the trades are reported immediately to Euronext (and AMF). Upstairs trades that are executed as an agent must be reported and published immediately and proprietary trades if less than five times the Normal Block Size must be

	published in 60 minutes and if greater than that within 120 minutes. Hidden orders are permitted, but receive a new time priority if their price is hit and they are activated for any portion of the quantity that was not disclosed. These rules provide equitable treatment of users of the market. The requirement that block trades be required to sweep the order book before execution was abandoned because such rules were not in place in other markets, which were considered to meet international standards. The current status is to protect customers and market efficiency through requiring most trades to be executed on the central market.
Assessment	Fully Implemented.
Comments	The implementation of changes in market structure should be evaluated to determine whether, and how, the techniques of the market regulator for monitoring the market should be altered.
Principle 28.	Regulation should be designed to detect and deter manipulation and other unfair trading practices.
Description	Market or price manipulation, misleading information, insider trading, front running and other abuses are prohibited by law and also by the regulated market. A number of mechanisms are used to deter and detect improper practices, including: design of the contracts traded or listed, rules of conduct and related oversight of market intermediaries, data collected on the market and analyzed by the market undertaking and by the AMF, and inspections and investigations. The AMF requires the market authority, whose compliance personnel act under license from the regulatory authority, to monitor the market in real time and the regulator using its electronic system performs surveillance on information received at the end of the day by batch. The regulator identifies conduct for further surveillance and the market authority can also claim against its participants for failure to follow market rules and impose contractual damages, restrictions or suspensions of trading. AMF investigations that identify potential price manipulation or insider trading may give rise to sanctions by the AMF and must be referred to the Public Prosecutor (see Principle 9). The regulator approves market rules, clearing rules, can object to contract terms for derivative contracts and permits listings by nonobjection. Electronic trading permits a complete audit trail of all transactions. The AMF also requires investment service providers to maintain orders for 5 years and telephone tapes, which are required to be obtained, for six months. The market operator must maintain an archive of its trading transaction tapes for ten years. See also discussion above under Principle 26.
Assessment	Fully Implemented.
Comments	See also discussions at Principle 9, Principle 10 and Principle 13.
Principle 29.	Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.
Description	The market itself has contractual rules which are contained in the trading algorithm that effectively halt trading if prices move a specified percentage as a cooling off provision. These price limits apply to individual securities and other products. CRBF, now superseded by CCLRF, through regulation 97-04, extended the large exposure limits of 93-05 and other risk management requirements to investment firms as well as credit institutions. These regulations require risk diversification and define large exposures as 10 percent of “own funds” or maximum of 25 percent exposure of own funds to any one counterparty.

	The Chairman of the AMF has the ability to halt the whole or portions of the market and trading on individual shares in the event of extraordinary events (See Principle 9 above). The market and/or the AMF with respect to regulated markets can ask the member to provide information on size and beneficial ownership of direct customers of intermediaries to better assess exposures; such authority can be particularly important because the market does not know the gross position of its participants. Clearing members of the clearing arrangements for Euronext Paris must reduce positions if there is a risk of a customer default and the clearing organization can request that the market reduce member trading and can request the reduction or transfer of positions. With respect to the various markets of Euronext, NV, cross-market exposures is apparently addressed through communication of the regulatory authorities for the market and the related clearing arrangements. The market effect of the consolidation of the various national markets through a single platform and rulebook together with the consolidation of a separate cross-market clearing entity has reduced the number of cross listings and the number of firms seeking multiple access points to the market place as firms can now reach all equities traded through a single access point. With respect to foreign markets, the *Matif* participates in the Boca Declaration and the LCH and Euronext participate in the companion information sharing arrangements, which arrangements also are mechanisms for sharing information on large cross-market exposures. Otherwise, the AMF and related entities have broad information sharing arrangements directed to surveillance. For example, with respect to LCH.Clearnet SA, all the affected regulatory authorities have formed a clearing coordination committee, which addresses issues related to the operation of the system for all related markets and has issued joint guidance. The LCH.Clearnet SA rules in the common rule book and related jurisdiction-by-jurisdiction rule books define an event of default and explain the various actions that can be taken and the liability of the clearing member in that case. The clearing house has the authority to transfer positions to manage a default and funds under clearing rules free from the possibility of reversal in bankruptcy, thus limiting the scope of a potential default and also to liquidate open derivatives positions or other risk positions under applicable clearing rules without being stayed. The Act (L.442-6) provides that all collateral or margin deposits with an investment services provider are transferred to the investment firm, clearing participant or the clearing organization upon default and liquidation and that no third party creditor has rights in such deposits. The adequacy of clearing resources is addressed by the clearing assessment (see Principle 22 on SRDs).
Assessment	Fully Implemented.
Comments	There are three issues of additional concern, which while not specifically addressed by the IOSCO standard being assessed should nonetheless be reviewed: (1) Euronext Paris only knows net positions in its markets, including derivatives markets. This means that its clearing members may be carrying undisclosed risk in that the market risk and the credit risk of the netted position will not be the same. (2) Euronext offers an SRD (30-day deferred settlement facility) on securities that are specified (about 200 highly liquid securities). These transactions are settled through standard clearing and settlement arrangements between buying and selling brokers on T+3, but the broker assumes the risk *vis-à-vis* its customer on the deferred settlement. The transaction is margined (20 percent down if in cash; 40 percent if in securities) at the broker, but the margin oversight is not at the clearing house. The positions can also be rolled forward. Therefore, the broker is effectively carrying a futures style position on behalf of its customer and is maintaining a net exposure against its customer. The risk to the broker who is a clearing member is not necessarily transparent to the market or to the clearing arrangement for the

	market; the risk to the broker from other brokers doing the same type of transactions for its customers also is not transparent across brokers. The positions are traded within the 30-day settlement period and only the net positions are settled against the broker, which must meet the EUR 1.9 million capital requirement and make monthly per customer position reports to the CB. It appears that this trading occurs in accordance with Euronext rules. Basically it is as if there is a leveraged off-market that is sponsored by the market. The question is whether the monitoring that is in place by the CB and the procedures of the intermediaries that engage in this conduct are sufficient to contain the risks and how big are these risks— i.e., what are the capital positions of the brokers engaged in this business, how does the broker use the securities it has committed to deliver and what are the characteristics of the clients (See Principle 22 rating and discussion). (3) Now that the market and clearing institutions are separate entities is it sufficient that under the rules of the clearing organization all that it can do is request the market to restrict trading, even after a default? (See also Principles 22 and 24 on intermediary oversight.) In that the positions are carried by brokers and settlement has been made within the clearing structure, the rating has been adjusted in the intermediary section. Nonetheless, depending on the size of the brokers that are clearing members, this could equally become a clearing question (see above remarks under Principle 22 in which the regime with respect to SRDs affects the rating). The assessor believes that the matters identified with respect to relationships between the market and clearing might be better addressed in any clearing and settlement assessment.
Principle 30.	Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.
Description	Where there is a specialist assessing securities settlement, clearing and payment systems, as in this case, the IOSCO assessor is to coordinate with the specialist rather than to undertake an independent assessment under Principle 30. The systems for clearing and settlement of securities transactions are subject to regulatory oversight by the AMF and also by the CECEI, the CB and the BdF. Members of such systems (direct participants) who must be investment firms or credit institutions are also subject to oversight in accordance with the competence of each competent authority. The arrangements between the oversight authorities, for the monitoring of these systems, and between the markets are innovative ways to address operational risks that originate on a common system where trades are initiated from various access points.
Assessment	Not Rated.
Comments	Not rated in deference to assessments of the Recommendations for Securities Settlement Systems and for Central Counterparties, adopted jointly by the Committee on Payment and Settlement Systems of the BIS and IOSCO, which will be assessed by a specialist. The specialist may wish to consider any implications to clearing of the SRD facilities provided by brokers, which are also clearing members. See also Principles 29, 26 and 24.

Table 21. Summary Implementation of the IOSCO Objectives and Principles of Securities Regulation

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Fully implemented	18	3,4,5,8,9,11,12,13,14,18,19,23,24,25,26,27,28, and 29.
Broadly implemented	7	1,2,10 15, 17,20, and 21.
Partly implemented	2	16 and 22.
Not implemented	0	--
Not applicable	3	6 and 7 not applicable and 30 not rated.

Recommended actions and authorities' response to the assessment

Recommended Actions

Table 22. Recommended Plan of Actions to Improve Implementation of the IOSCO Objectives and Principles of Securities Regulation

The AMF, together with the other agencies responsible for securities regulation in France, administer a regulatory framework that clearly has been designed with international standards well in mind. The following are some general suggestions to continue pursuing planned improvements and encouragement to make the innovative and well-designed cooperative arrangements for surveillance of its cross border markets effective.

Reference Principle	Recommended Action
Principles Relating to the Regulator (P 1–5);	With respect to *Principle 1*, the current wording of the Act does not specifically require the sharing of information between the CB and the AMF. Information is in fact being shared, but the CB and the AMF should explore whether additional arrangements could assure the timeliness and certainty that information with respect to prudential matters that is important to oversight of conduct of business is readily available to each other as needed. In particular, the limitation of the function of the AMF to conduct of business issues should not prevent it from receiving prudential information as relevant to its oversight of conduct of business or as necessary to its securities counterparts in other jurisdictions engaged in investigations of securities or futures misconduct. With respect to *Principle 2,* independence, the actual effectiveness of the arrangements for protecting the independence of the AMF, in particular the *Commission des Sanctions* should be kept under review, to assure that the presence of the Ministry does not permit political considerations to affect, or there to be the perception that they could affect, the outcome of decisions on individual cases. As to *Principle 3,* the AMF should continue to assess how best to deploy its resources between off-site and on-site oversight activities, assure human

	resources are sufficient to support expanded monitoring powers, and address functions such as review of prospectuses and miss-selling of products through the banking network as well as other investment services providers. *Principle 5,* the AMF should continue to assure that conflicts of interest are appropriately addressed at the Board as well as the staff level.
Principles of Self-Regulation (P 6–7)	Not applicable.
Principles for the Enforcement of Securities Regulation (P 8–10)	The enforcement and cooperation powers of the AMF are exemplary. The timeliness of proceedings using those powers and the effect of the overall program should be evaluated after the new organizational structure has had some time to function. The AMF should aggressively pursue overturning recent judiciary interpretations of the doctrine of impartiality that could undermine its capacity to exercise its monitoring and enforcement functions effectively *(Principle 10)*. The development of readily understandable public statistics to demonstrate enforcement and investigatory performance also would be useful.
Principles for Cooperation in Regulation (P 11–13)	The cooperation powers of the AMF are exemplary. As to *Principle 13*, the assessor believes that the ideal channel for exchange of information and delivery of assistance to foreign securities regulators is through the securities regulatory authority, although direct arrangements should not be prohibited. For example, information on the relationships within groups should be available to a requesting "solo" securities regulator requesting through the AMF. The CB and the AMF should consider working together to articulate further cooperative arrangements with respect to inspections (see also *Principle 21*—ongoing oversight of intermediaries).
Principles for Issuers (P 14–16)	As to *Principle 15,* the AMF should consider a materiality standard for immediate disclosure to the public of large shareholder and management "insider" transactions. Further work on minority shareholder rights should be encouraged—and issues of concern that emerge from experience of oversight operations of the AMF should be referred to the consultative commission in its considerations. On *Principle 16,* the AMF should assist in the development of robust oversight of auditors and auditing standards and the new *Haut Conseil* should take adequate account of the views of the AMF.
Principles for Collective Investment Schemes (P 17–20)	As to *Principle 17*, the AMF should consider more robust guidance on related party transactions in CIS. Regarding *Principle 20,* the AMF should consider using its legal authority to provide more guidance with respect to suspension of redemptions.
Principles for Market Intermediaries (P 21–24)	As to *Principle 21* the AMF and the CECEI should promptly assure that needed licensing information is readily available to the public. As to *Principle 22,* the CB and AMF should assure that adequate provisions exist to detect deteriorating capital situations promptly, so that ameliorations (corrective actions) are possible without systemic impact or adverse effects on customers.

Principles for the Secondary Market (P 25–30)	There are no recommendations other than maintaining vigilance to assure measures to address risk within clearing brokers is not transmitted to the clearing system, assurance cross border cooperation arrangements can be made effective in a market event and markets and clearing organizations coordinate approaches to addressing market disruptions. (*Principles* 28,29 and 30) The SRD issue is addressed in remarks relative to capital monitoring.

Authorities' response to the assessment

107. The AMF contends that within the French system, AMF's structure has been designed explicitly to be as independent as possible. While the AMF disputes that its current structure is in any way susceptible to political interference, the AMF understands that the issues raised with respect to structure are issues that could be of relevance to outside observers and appearances and indicates that it expects to continue its record of assuring that no improper interference in individual cases occurs.

108. The AMF also notes that its enforcement system, which the assessor has found to have appropriate powers and authorities and to have produced significant cases, is currently effective and that the processes for working with the Public Prosecutor with respect to offenses that are both criminal and civil, such as insider trading and market abuse, have proved effective to date. The AMF does not have a history of settlement procedures or a process for administrative restitution, which are not required as a matter of international standards, but which may constitute enhancements. The AMF (and its predecessor authorities) has always kept its programs under review and may consider further enhancing its existing enforcement powers over time. Where the judiciary has potentially put certain powers into question, the AMF has acted aggressively to contest the adverse judicial interpretation.

109. Although the AMF has contested some characterizations of the regulatory structure with respect to independence and transparency, has indicated that despite lack of a specific requirement to cooperate, in all cases domestic regulators do so in fact, and provided substantial comment addressing the detail and fact of application of their regulatory framework, the AMF essentially does not disagree with the specific recommendations and indicates that most recommended areas of enhancement are currently under consideration or in train.

110. In particular it supports assuring human resources are sufficient to execute its expanded powers, among other things, with respect to depositories and having sufficient authority to effect the outcomes with respect to audit oversight of the Haut Conseil.

V. Observance of the CPSS/IOSCO Recommendations for Securities Settlement Systems

General

111. As part of the Financial Sector Assessment Program, an assessment of the observance of the infrastructure for clearing, settlement and custody of securities of the CPSS/IOSCO Recommendations for Securities Settlement Systems was prepared by Jan Woltjer, IMF (MFD). Prior to the mission, the BdF made a thorough self-assessment of the securities settlement systems of Euroclear France, which was used as basis for the assessment.

Scope of the assessment

112. The assessment covers Euroclear France as Central Securities Depository (CSD) for a broad range of securities, such as treasury bills, all other negotiable short-term instruments, public sector and corporate bonds, and equities. Almost all securities in France (99.7 percent) are dematerialized in Euroclear France. The residual securities are immobilized in this CSD.

113. Euroclear France operates two systems for the settlement of the aforementioned securities:

(i) Relit+ ensures delivery versus payments on a gross-net basis (model 2 DvP). The multilateral net positions at the cash side are settled three times a day in *Transferts Banque de France* (TBF), the Real-Time Gross Settlement (RTGS) payment system operated by the BdF. LCH-Clearnet SA settles via Relit+ its positions vis-à-vis its counterparties stemming from the transactions on the stock exchange;

(ii) RGV2 irrevocable channel (further on called RGV2-TFT) clears all transactions on a trade for trade basis with intraday finality (model 1 DvP). The cash leg is settled on dedicated cash accounts opened with the BdF and is directly operated by Euroclear France. A so-called liquidity bridge enables participants to transfer cash between these dedicated cash accounts in RGV2 and their cash account held in TBF and vice versa to optimize liquidity management. RGV2-TFT is, among other things, used for the executions of monetary transactions and the collateralization of intraday credit operations.

Institutional and market structure

114. Capital markets in France are large and sophisticated. In terms of stock market capitalization (in dollar value terms) and debt securities market capitalization, France ranks fourth in the world and the value of all listed securities amounted slightly above 200 percent of GDP at end-2003.

115. The stock exchange in Paris has been managed by Euronext-Paris, which since September 2000 is a wholly owned subsidiary of Euronext NV, a holding company incorporated under Dutch law. Euronext is the result of a merger between the stock exchanges of Belgium, France and the Netherlands. However, to meet regulatory

requirements, the stock exchanges in the different countries retained a separate identity. Euronext Holding also operates the stock exchange in Portugal (Euronext Lisbon) and, since the beginning of 2002, the international futures and options exchange in London (Euronext Liffe).

116. Both securities and derivatives are traded on Euronext Paris platforms. In the secondary market for securities, total turnover amounted to EUR 905 billion in 2003, against EUR 1,045 billion in the previous year (average daily turnover in 2003 amounted to EUR 3.5 billion).

117. All stock exchange transactions are cleared via Clearnet, a central counterparty. Clearnet is the single clearing house of the Euronext group and clears transactions in Belgium, France, the Netherlands and Portugal; it also clears over-the-counter (OTC) transactions in different markets in France and abroad. At the beginning of 2004, an alliance was formed between Clearnet and London Clearing House and Clearnet was renamed LCH-Clearnet SA.

118. The settlement of securities transactions on the French markets takes place via the securities settlement systems of Euroclear France. Euroclear France is fully owned by the Belgian Euroclear Bank, which also possesses CSDs in Belgium, the Netherlands and the U.K.

119. The total value of all trades settled in Euroclear France's securities settlement systems amounted to EUR 52,996 billion in 2002.

Table 23. Trades Settled in Euroclear France's Securities Settlement Systems

Year	1997	1998	1999	2000	2001	2002	2003
Instructions (millions)	18	22	28	41	31	29	28
Value (Euro billions)	22,660	32,046	38,892	36,835	43,635	52,996	52,528

Source: Euroclear France.

Description of regulatory structure and practices

120. In France, the *Autorité des Marchés Financiers* (AMF) and the BdF are the competent authorities for the regulation and oversight of Securities Clearing and Settlement Systems (SCSS). According to Art. 621-7 of the COMOFI, the AMF specifies the general organization and operational principles of securities settlement systems. It also has to approve the operating rules of these systems. Furthermore, the AMF regulates the activities of custodians. Without any prejudice to the competencies of the AMF, the BdF is charged with the oversight of SCSS. There is a close cooperation between the AMF as securities regulator and the BdF as overseer. Representatives of the BdF have consultative roles on the

Board of the AMF and in some committees and the activities with respect to the regulations and oversight of SSS are clearly coordinated.

121. Being a credit institution, LCH-Clearnet SA is not only supervised/overseen by the AMF and BdF but also by the CB.

122. The cross-jurisdictional nature of the Euronext group, LCH-Clearnet and the Euroclear group has led to the implementation of rather innovative cooperative cross-border arrangements between the French authorities and the supervisors/overseers in the other jurisdictions in which these firms are active. These arrangements for cooperative oversight/regulations for the individual institutions are codified in MoUs signed by all relevant authorities in the different countries.

Information and methodology used for the assessment

123. The assessment was based on the self-assessment conducted by the BdF using the CPSS/IOSCO assessment methodology for the Recommendations for Securities Settlement Systems. Discussions were held with the BdF, the AMF, Euroclear France and market participants. Relevant rules and regulations, audit reports, Memoranda of Understanding (MoU), business plans, and discussion papers between Euroclear and market participants on the development of the infrastructure for cross-border clearing and settlement and custody services were made available.

124. Although the self-assessment of the BdF of the systems of Euroclear France contained an assessment of risk management in the context of recommendation 4, in consultation with the authorities, it was decided to postpone the assessment of LCH-Clearnet SA until the new CPSS/IOSCO recommendations for central counterparties are finalized in order to take into account all relevant activities, governance structures, etc. This complete assessment of LCH-Clearnet will be conducted in the framework of an Art. IV Consultation based on a self-assessment carried out by the French authorities.

Assessment against the CPSS/IOSCO recommendations for securities settlement systems

Table 24. Detailed Assessment of Euroclear France as a Central Securities Depository and the RGV2-Irrevocable Trade for Trade Settlement System operated by Euroclear France of CPSS/IOSCO Recommendations for Securities Settlement Systems

Recommendation 1.	Securities settlement systems should have a well-founded, clear, and transparent legal basis in the relevant jurisdiction.
Description	**1. Underlying legal framework and public accessibility** There is a consistent set of laws, regulations and contracts that form the legal foundation for central custody and the clearing and settlement of securities. Not all of these texts are publicly available. Those not published are: (i) the agreements between Euroclear France and the BdF on the settlement in central bank money and

	the outsourcing of the execution of the settlement bank function to Euroclear France for the RGV2-irrevocable trade for trade system (in this assessment called RGV2-TFT); and (ii) the agreements between Euroclear France and Central Depositories in other countries and Euroclear bank Brussels concerning links between the systems involved. **2. Legal assurance of the key aspect for custody and clearing and settlement** *Enforceability of transactions* Laws and contracts are fully enforceable in the French jurisdiction. The courts of the jurisdiction function adequately; property rights are fully defined and respected; and there are proper procedures for legal processes. An individual or firm, which believes its basic rights are violated and not respected in a court of law or the judicial treatment of its case was not ruled correctly, can appeal the decision by submitting its complaints to the Court of Justice in the EU. The access criteria ensure that participants have the legal capacity to do this. The purpose and content of services to be provided by Euroclear France have to be approved by the AMF and within this framework, the AMF will assess whether these services comply with the relevant laws, statutes, and regulations. *Customers asset protection* Euroclear France as the CSD has no legal title to the securities on its books, and customer assets are legally protected against the insolvency of the CSD and/or a custodian or intermediary. The securities owned by the end-investor/client fall outside the bankruptcy estate and cannot be claimed by the creditors of the aforementioned institutions (Art. L.431-6 COMOFI). *Dematerialization of securities* Dematerialization is based on Art. L.211-4 of the COMOFI. This article provides for dematerialization of securities and specifies that transfer of ownership is arranged for by electronic book entry. Almost all securities in France are dematerialized. Only a small segment is represented by paper—often immobilized by way of a global note. *Netting arrangements* In RGV2-TFT, transactions are settled on a trade-for-trade basis and normally no netting of transactions is involved. However, there is an optimization routine in place allowing participants, who have resold immediately the securities they have bought, to settle simultaneously the combined transactions in which they have a flat securities position (back-to-back operation). This form of netting is endorsed by the COMOFI (Art. L.330-1). *Securities lending arrangements* The legal framework supports securities lending by recognizing explicitly securities loans (art L 432-6 to L.432-11) and repurchase agreements (COMOFI, Art. L.432-12 to L432 -19). These provisions define the instrument, the range of securities which can be lent or repurchased and the eligible counterparties. Enforceability of the securities lending and repurchase agreements toward third parties is ensured. Collateral provided in the context of securities loan or repurchase agreements will not expose the lending party to the risk that the transaction can be challenged by a third party or a liquidator by re-characterizing the securities lending or the repo as an improper pledge.

	Irrevocability and finality Orders in the system are irrevocable at the moment they match. Finality in RGV2-TFT is well defined and recognized under French law. Finality occurs at the moment the transaction is settled, i.e. the cash is transferred from the buyer to the seller by crediting and debiting the accounts involved, and the securities are transferred by debiting the securities account of the seller and crediting the securities account of the buyer. The transfers of cash and securities occur simultaneously. Bankruptcy procedures contain a zero hour rule and regulations with respect to a suspect period. However, due to the finality regulations in the COMOFI no retroactive action is possible in the system on the day a bankruptcy procedure is opened against a participant with respect to the payments done by that participant on that day. *Delivery versus payments* According to the BIS connotation, RGV2-TFT is a model 1 delivery-versus-payment (DVP) system (gross/gross). The rules for delivery versus payment are set forth in the RGV2 rules relating to final settlement (Art. 6.35). They specify that the irrevocable and final delivery of the securities takes place simultaneously when the cash account of the buyer in RGV2 is debited. These rules are endorsed by the finality regulation in the COMOFI. In the event of default of a customer, the intermediary or the custodian may avail himself of full title to the securities purchased on the customer's behalf or to the cash received from the counterparty, if the customer fails to fulfill its obligations to pay, or to deliver while the intermediary or custodian is bound to perform its obligation according to the DVP rules in RGV2, or has performed them already (COMOFI, Art. L431-3). *Examination of the legality of rules and regulations* There exists no case law in which the rules and regulations of Euroclear and, especially, the rules with respect to DVP, are challenged or overruled. **3. Enforceability of rules and regulations in the event of a bankruptcy** Due to the finality regulation in the COMOFI all the rules and regulations of the system are enforceable in the event of a bankruptcy and transactions on such a day cannot be unwound or reversed within the system. **4. Conflict of law issues** The admission of foreign participants to Relit+ has not been submitted to a procedure by the AMF of participants from countries outside the European Economic Area (EEA).
Assessment	Broadly observed.
Comments	It is recommended that the conflict of laws issues in the system be evaluated comprehensively and that clear procedures be implemented regarding the acceptance of foreign participants (the requirement of a legal opinion, etc).
Recommendation 2.	Confirmation of trades between market participants should occur as soon as possible after trade execution, but no later than trade date (T+0). Where confirmation of trades by indirect market participants (such as institutional

	investors) is required, it should occur as soon as possible after trade execution, preferably on T+0, but no later than T+1.
Description	All settlement instructions in RGV2-TFT are prior to settlement matched and confirmed on trade date (T+0) or at the latest at 12.00 on T+1. The aforementioned trades are generally confirmed by indirect participants by T+1.
Assessment	Observed.
Comments	
Recommendation 3.	Rolling settlement should be adopted in all securities markets. Final settlement should occur no later than T+3. The benefits and costs of a settlement cycle shorter than T+3 should be assessed.
Description	*Settlement cycles* RGV2-TFT clears transactions and repos done in the primary market, the OTC market, the money market, as well as monetary policy operations on a trade-for-trade basis. These are all large-value transactions. For some transactions, for instance, for monetary repos standardized settlement practices are in place. In situations where there are none, counterparties are free to negotiate other terms for the settlement date. Parties select their counterparties deliberately and the pre-settlement risk is entirely born by the parties involved, who are fully able to manage the risk appropriately. Most transactions, 70 percent and more, are settled within three days and around 35 percent are settled the same day (T+0). *Failed trades and facilities to smooth the settlement process* The number of failed settlements is small and has not exceeded 0.3 percent in the period January 2002 to June 2003. On the cash side, participants can obtain intraday credit from the BdF to facilitate the settlement of pending transactions through an intraday repo, against securities on the tier 1 list of the Eurosystem and deposited in Euroclear France. These intraday repos are executed automatically by the system—providing that there are sufficient eligible securities in the account of the involved participant—the moment a participant has insufficient balances in his RGV2 cash settlement account[34] to settle pending transactions. Also, the securities bought and to be delivered, fulfilling the eligibility criteria set forth by the Eurosystem, can be used as collateral for intraday operations through back-to-back operations (self collateralization). In that case the securities will be automatically delivered to the account of the BdF as collateral for the intraday loan with the seller being paid with the proceeds of the intraday credit granted to the buyer by the BdF. The buyer has to reimburse the intraday credit operation at the end of the day. Euroclear France does not operate a securities lending facility. However, the securities can be borrowed relatively easily in the market, via a repo or a securities lending transaction to be settled on the same day, in real time through RGV2-TFT.

[34] The RGV2-TFT cash settlement account is an account with the Banque de France. Euroclear France is allowed to operate these accounts within the framework of RGV2-TFT.

	Rolling settlement The system has a rolling settlement procedure in place. Failed trades are recycled up to 30 days after the initial settlement date. *Incentives to settle on contractual dates* If a seller is unable to deliver the securities at the end of the contractual settlement date, Euroclear charges this participant a fine of around EUR 40 a day and for each instrument.
Assessment	Observed.
Comments	Although not all transactions on the over-the-counter (OTC) market are settled within three days after the day the transaction has been conducted, this is not seen as a major violation of the recommendation. Longer settlement cycles in the OTC market have not been assessed as exposing parties to unmanageable pre-settlement risk, because (i) only professional parties, fully capable of handling these risks are involved;, (ii) parties have deliberately chosen a longer settlement period and are not forced by market rules, nor do they have to accept the added risks due to long processing times of trades in the back offices of a stock exchange, a clearing house or another involved third party; and (iii) only a very small portion of transactions fail to settle timely in the underlying markets.
Recommendation 4.	The benefits and costs of a central counterparty should be assessed. Where such a mechanism is introduced, the central counterparty should rigorously control the risks it assumes.
Description	Transactions conducted on the Euronext trading platforms in Paris, Amsterdam, Brussels and Lisbon are cleared and settled via LCH-CLearnet SA, which acts as the central counterparty. LCH-Clearnet SA also clears and settles derivatives and commodities contracts and cash and derivatives transactions traded on the OTC market or negotiated through interdealer brokers. LCH-Clearnet SA will be assessed in due time against the newly drafted recommendations for central counterparties, which for the moment are under consultation.
Assessment	Not applicable
Comments	
Recommendation 5.	Securities lending and borrowing (or repurchase agreements and other economically equivalent transactions) should be encouraged as a method for expediting the settlement of securities transactions. Barriers that inhibit the practice of lending securities for this purpose should be removed.
Description	*Institutional framework* Securities lending operations can be conducted through securities loans or repurchase agreements. The law recognizes both instruments, as well as the validity of collateral transfers within the framework of securities lending. The transactions cannot be re-characterized as improper pledges by third parties or a liquidator. Accounting schemes and tax treatment for the aforementioned instruments are detailed in the regulations in the COMOFI (Art. L.432-6 to L.432-19). To prevent tax avoidance, only legal entities are allowed to enter into repurchase

	agreements. For this reason securities yielding interest/dividends submitted to a withholding tax are not allowed to be used in a securities lending transaction or a repo during the period the interest/dividends will fall due. *Automated securities lending facilities* At the moment, no automated securities lending facility is in place for the OTC markets in order to expedite the settlement of securities in RGV2-TFT. Plans to launch such a facility in 1998 were not executed since the business case for such a facility seemed to be insufficient. This does not imply that there is no market for securities lending in this area. Interested participants can easily tailor their needs by directly transacting with institutional investors (insurance companies, mutual funds) or banks willing to increase their custody incomes. Currently, Euroclear France is considering launching a lending and borrowing facility to expedite settlements of trades in government bonds in RGV2-TFT between primary dealers. In this facility, the settlement of an obligation to deliver would be facilitated for these groups, initially by allowing an intraday overdraft on the securities accounts of the primary dealer who is selling the underlying securities. This overdraft should be backed by the general approval of the Ministry of Finance through acceptance of intraday extensions of securities it has issued and a readiness to act as lender of last resort (issue new government securities temporarily) when securities lent by the Ministry cannot be reimbursed by borrowing from a pool of securities made available by the primary dealers. Its compliance with the CPSS/IOSCO Recommendation for Securities Settlement Systems still has to be assessed in due time. *Supervision of the risk involved in securities lending* Especially with respect to securities lending transactions in case of deferred settlement, regulation is in place to ensure that sufficient collateral is made available by the client to his broker, who is its counterparty in this securities lending operations.
Assessment	Observed.
Comments	
Recommendation 6.	Securities should be immobilized or dematerialized and transferred by book entry in CSDs to the greatest extent possible.
Description	*Dematerialization and immobilization* At least 99.7 percent of securities issued in France (representing over 29 000 ISIN codes) are dematerialized and the other securities issues, mostly warrants, euro-bonds and foreign securities (80 issues in total) are immobilized, mostly via a global note. Adequate safety procedures are in place within Euroclear France. *Transfer of title* Transfer of title is only possible by book-entry (Art. 1 of decree 83-359 of May 2, 1983). In France no separate “Registrars of the Issuers” exists. Issuers open an “investors account” directly with Euroclear France in which all securities issued are booked—the amount which represents the total of all outstanding commitments of the issuer (Art. 8 of the decree of August 4, 1949) and which balances the number of securities in the custodian’s accounts in Euroclear France.

Assessment	Observed.
Comments	
Recommendation 7.	Securities settlement systems should eliminate principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.
Description	According to the BIS connotation, RGV2-TFT is a model 1 DVP system (gross/gross). The technical, legal and contractual framework ensures DVP. *Legal framework* The rules for DVP are set forth in the RGV2 rules relating to final settlement (Art. 6.35) and, which specify that the final delivery of the securities takes place at the moment the cash account of the buyer in RGV2 is debited. *Technical framework* While the execution of all transfers of funds related to the securities transactions of the participant's cash-account held with the BdF is outsourced to Euroclear France, the transfer of cash is executed on the same platform as the settlement of the securities leg. Settlement of the cash and securities leg are therefore executed simultaneously on the Euroclear France platform. This means that no exchange of messages between the systems of Euroclear France and the BdF is necessary within the framework of the DVP procedure to ensure blocking of cash and/or securities during the settlement procedure and the final settlement thereof. Within the framework of the DVP procedure: 1) Euroclear France checks that the buyer and the seller respectively have the required amount of cash and securities to settle the trade; and 2) RGV2 debits the seller's securities account and the buyer's cash account, and credits simultaneously the buyer's securities account and the seller's cash account; at this moment, the settlement is final. Pending transactions are held in a queue. *Amount of transactions to be settled on DVP basis* More than 95 percent of securities transactions done are on a delivery versus payment basis. Only a small segment of transactions are free of payment transfers of securities, of which possibly the larger part are internal deliveries between the custodian's own account and its clients' accounts, the transfer of clients securities to another custodian, the transfer of collateral, and so on.
Assessment	Observed.
Comments	
Recommendation 8.	Final settlement on a DVP basis should occur no later than the end of the settlement day. Intra-day or real-time finality should be provided where necessary to reduce risks.
Description	*Intraday finality* Final settlement is done on-line and real-time on a gross basis and allows for intraday finality. Settlement with value day D is possible during 19 hours a day

	(from 20.00 hours D-1 to 17.00 hours on D, with a two hours technical break from 5 to 7 am). During the night, transactions are settled in a batch mode. The cash can be used immediately, as can the received securities, and without risk for the fulfilling of own obligation to deliver or to pay. The timing of finality is clearly defined in the procedures (see Recommendation 7). *No end-of-day settlement of multilateral netting of transactions* No multilateral netting takes place in RGV2 with the exception of triparty back-to-back transactions in which one of the parties has a flat securities position. Such transactions are settled on-line in real time with intraday finality. *Intraday finality and market needs* The gross real-time intraday finality provided by RGV2-TFT is particularly useful to settle a wide range of operations, in particular BdF's monetary policy operations and intraday credit operations, the issue and the redemption of financial instruments (primary market), large-value trades (typically OTC transactions) and repo operations executed on the interbank money market. Intraday finality endorses risk management in these markets and reduces liquidity and settlement risks. In addition, it makes the smooth operation of large-value payment systems possible by enabling participants to transfer collateral during the day within the context of intraday credit operations. The monthly average value of repos reached EUR 2,940 billion during the first half of 2003. In addition, the real-time trade for trade facility is used to settle deposits, (intraday) margins calls, and contributions to clearing funds for participants of Clearnet, while also enabling this central counterparty to manage its risks effectively. *Intraday finality in cross border links* Most transactions via links with other CSDs are done on an FOP basis. *Unilateral revocation of instructions* As soon as they are matched, instructions cannot be unilaterally revoked by counterparties. Cancellation or modification requests must be bilateral (i.e., both counterparties should explicitly provide their agreement) if the instruction has already been matched. In addition, penalties can be applied to counterparties that do not settle matched trades on the contractual date.
Assessment	Observed.
Comments	
Recommendation 9.	Deferred net settlement systems should institute risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest obligation is unable to settle. In any system in which a CSD extends credit or arranges securities loans to facilitate settlement, best practice is for the resulting credit exposures to be fully collateralized.
Description	*Need for safeguards in case of multilateral netting* RGV2-TFT is a trade-for-trade settlement system that settles on line in real time with intraday finality. No multilateral netting with settlement late during the day takes place.

	Granting of intraday credit Participants can borrow intraday funds to settle their payment obligations. The intraday credit is granted by the BdF as principal and the operation is executed by Euroclear France on behalf of the BdF (operating agent). Within this context, Euroclear France is not exposed to credit risk. Also, the credit risk of the BdF is limited since all the borrowers have to provide adequate collateral and margin requirements (adequate haircuts set by the Eurosystem) are in place. Intraday credit is granted automatically when a participant has not enough balances in his cash account to settle a securities transaction. The following procedure is used: 1) the securities are transferred to the BdF and are dedicated to guarantee the credit being granted by the BdF to the buyer; 2) the buyer subsequently receives the corresponding intraday credit on its cash account; 3) the cash amount corresponding to the price of the securities is transferred from the buyer's cash position to the seller's position; and 4) finally, the intraday credit operation is automatically squared as soon as there is a sufficient amount of cash on the buyer's cash position. If the participant is unable to reimburse the intraday credit operation, the BdF can decide to roll the intraday loan over in an overnight credit transaction under the Lombard facility. Pursuant to TARGET rules, investment firms are also allowed to get intraday credit from the BdF in RGV2-TFT to settle their transactions. However, investment firms are not eligible counterparties for monetary policy operations. Therefore, in order to prevent spillover to overnight credit, investment firms that want to obtain intraday credit with the BdF, either have to obtain the financial backing of a credit institution, or be subject to credit limits defined by the BdF. If an investment firm is unable to square its intraday credit at the end of the day, the BdF will extend an overnight repo either with the credit institution of the investment firm or with the investment firm itself (if a limit has been fixed by the BdF). In the latter case, the BdF would apply penalties to the defaulting investment firm or even modify the conditions under which this investment firm can obtain intraday credit. *Automated securities lending schemes* No automatic securities lending takes place within RGV2-TFT (see Recommendation 5). *Overdraft on securities accounts* Overdrafts or debit balances in securities are strictly forbidden by Euroclear France. *Multiple settlement failures* While the RGV2-TFT channel is a model 1 DVP system with intraday finality of settlements, the effects of multiple defaults are isolated. The liquidity effects are further reduced while counterparties, in the case of failures, have the possibility to borrow the missing securities through a securities lending transaction or a repo in a relatively liquid market and settle this transaction on line in real time on the same day (see Recommendation 5). Counterparties on the cash side can automatically borrow intraday funds from the BdF.
Assessment	Not applicable.

Comments	
Recommendation 10.	Assets used to settle the cash leg of securities transactions between CSD members should carry little or no credit risk. If central bank money is not used, steps must be taken to protect CSD members from potential losses and liquidity pressures arising from the failure of a settlement bank.
Description	*Use of central bank money* Participants that have the status of a bank or an investment firm can open a cash settlement account with the BdF that is operated by Euroclear France. Euroclear France itself does not act as a settlement agent and participants have a direct claim on the BdF and not on Euroclear France. The cash settlement services offered by the BdF and operated by Euroclear are fully integrated in the RGV2-TFT settlement system and fully dedicated for the settlement of securities and to securities related payments (such as reimbursements, interest etc*).* Cash in these accounts is immediately available for the fulfillment of the account holders' own securities settlement obligations. If the participant wishes to use the money in the account for other purposes, the balances have to be transferred via the liquidity bridge between TBF and RGV2-TFT to TBF. *Use of private settlement bank assets* Participants not fulfilling the access criteria for opening of a cash account with the BdF according to the TARGET guidelines, or not willing to open a cash settlement account in the system, have to use another participant/cash position holder as their settlement bank. Fourteen out of 188 participants do so. No explicit rules and requirements regarding the financial soundness of settlement banks have been set by the operator, regulator or overseer. However, settlement banks are subject to prudential supervision whether by the CB (for French institutions) or by banking supervisors of their home countries. Information on concentration and settlement flows on behalf of their customers is monitored by the BdF as overseer. Noncash account holders can reuse the amounts of cash received during the day in the system via their settlement bank. Whether the amounts received can be transferred to their account in TBF, if any, or to another bank the same day for general payment purposes is not known. Probably it is the case.
Assessment	Observed.
Comments	
Recommendation 11.	Sources of operational risk arising in the clearing and settlement process should be identified and minimized through the development of appropriate systems, controls, and procedures. Systems should be reliable and secure and have adequate, scalable capacity. Contingency plans and back-up facilities should be established to allow for timely recovery of operations and completion of the settlement process.
Description	*Identification and managing of operational risk* An independent risk management function was created in 2001 that directly reports to the management committee and the board of Directors of Euroclear France. The Management committee and the board have to validate all measures taken. The objectives of the risk management function are:

	to identify and prioritize the operational risks; to evaluate these risks; and to define the general principles allowing risk protection by using either standard control and management measures or by transferring the risk (either insurance or outsourcing). To achieve these objectives, a bi-annual self-assessment should be conducted of all executives and departments. Moreover, all new products and services should be assessed and approved. At the time of the inspection conducted in mid-2002 by the CMF (now AMF) relating to the means put in place to operate the RGV2 system, the focus of the risk management function appeared to be more reactive than proactive in identifying the operational risk. The main outcomes of the inspection were notably that: (i) the internal Audit department did not have all the capabilities needed to conduct its own IT audits; (ii) a service level agreement between Euroclear France and Clearnet (now LCH.Clearnet SA) was not signed; (iii) the unwinding risk was not tackled; (iv) the files of the participants were not always updated; (v) the capacity of the RGV2 systems in terms of volumes was only partly known; and (vi) there was no proactive overall analysis of the operational risks. Since the inspection, the AMF received confirmation that important progress has been made: (i) Euroclear France decided to hire specialists for its IT department (*Etudes informatiques*) in order to conduct its own IT audits; (ii) a service level agreement between Euroclear France and Clearnet will be signed during the second half of 2004; (iii) the unwinding issue should be solved shortly; (iv) participants' files have been updated; (v) the decision has been taken to implement a tool permitting regular measures and conducting volume tests of the system to handle increased volumes; and (vi) Euroclear France decided that the Risk Management department is now responsible for the review of operational incidents and for the follow-up actions plan. In addition, a new committee was created in April 2003 (the Conformity Action Committee) to verify once a month the complete achievements of the external audit recommendations. Concerning this last issue, the Executive Committee and the Audit Committee are now regularly informed of management actions. The Audit Committee confirmed the procedures and that tools put in place are now satisfactory. *Contingency plans and back up facilities* A contingency plan has been developed to cope with a wide range of technological problems ranging from unavailability of the computer host due to minor virus problems to major computer problems. There are two production sites and data is available between the two sites in real time synchronously. Both sites are equipped with back-up power generators. A back-up facility is available on the primary side in a hot stand-by mode. However, wide area disaster scenarios are not addressed in the current contingency plans as the two production sites are not on an adequate distance from each other. Within the framework of the foreseen centralization of settlement processing functions in the Euroclear group a third site- permanently staffed and on a distance of 300 km from the primary it is envisaged. The contingency plans are tested regularly. However, in a full-fall back situation the recovery time might be too long to resume operations to be processed normally (in the latest full fall-back test it took seven hours, whereas the objective would be

	about four hours). However, users do not participate in these test. *Protection of data communication* Adequate measures are taken to ensure integrity, authentication, confidentiality, and nonrepudiability of data flows and data storage, and effective firewalls are in place to protect the systems from intrusion attempts. *Availability and scalability* Euroclear France has sufficient and qualified staff at its disposal. Although there were no major failures in the period July 2002-July 2003 numerous medium and minor incidents occurred. All operations could however be resumed within two hours, which is in line with Euroclear France's business continuity objectives. Capacity test are carried out for each key system individually, but there have been no complete capacity tests to ensure availability under stressful circumstances, which means that the maximum capacity levels are not known exactly. *Development and procurement* Special procedures are in place for development, procurement and testing. For development, as well as for testing, dedicated IT environments are used that are strictly separated from the operational environment. *Audits* The internal audit department performs internal audits according to the results of risk analysis and on special request from senior management. These audits are carried out with a three-year plan. Separate external audits were performed by the AMF, the supervisor of Euroclear France, and by the Belgian *Commission Bancaire et Financière* (CBFA), the supervisor of Euroclear Bank (the owner of the Euroclear France). Within this context an audit was performed on the operations of RGV2. Further on the CBFA carried out bi-annual audits of the internal control procedures. No formal procedures exist regarding when an external audit should be conducted nor with respect to specific audits nor with respect to periodical routine audits.
Assessment	Broadly observed.
Comments	It is recommended: -to implement adequate tools for complete stress tests; -to take adequate measures to be able to resume operations in case a full back up is necessary on a timely basis and in line with the objectives set within Euroclears business continuity policy (within two hours); and -to conclude appropriate service level agreements in case of outsourcing of tasks, such as with respect to the operation of ISB, an inter-dealer broker facility operated by LCH-Clearnet SA. Further on, in line with the AMF/KPMG recommendation, Euroclear France may wish to consider the strengthening of their operational risk policy by putting in place a proactive risk analysis methodology to conducting an overall analysis of operational risks (threats) in the systems and organization of Euroclear France, and that adequate measures are taken to contain the indicated risks or to transfer or

	outsource them through insurance or other means.
Recommendation 12.	Entities holding securities in custody should employ accounting practices and safekeeping procedures that fully protect customers' securities. It is essential that customers' securities be protected against the claims of a custodian's creditors.
Description	*Legal protection of customers assets* Ownerships rights on securities are evidenced by the records of the authorized custodian of the beneficial owner (Art. 1 of the executive order no 83-359 of May 2, 1983). Customer assets are legally protected against the insolvency of Euroclear France, a custodian or a intermediary. They fall outside the bankruptcy estate and cannot be claimed by the creditors of the aforementioned institutions (COMOFI, Art. L.431-6). In case of insolvency of a custodian, there is a clear restitution procedure. Within this framework the administrators or liquidators appointed by the court and the temporary administrator appointed by the CB, verify, financial instrument, by instrument, whether all the securities in the accounts held by the custodian with the CSD or with another intermediary, meet its obligation to the end investors/owners of the securities. If there are enough securities in the relevant account(s), their owners can instruct the aforementioned administrators to transfer their securities to another custodian. If there is a shortage of securities, the securities are apportioned pro rata between the end-investors/owners. Investors can be compensated for the loss of their securities or for the loss of cash in unfinished settlement procedures under the securities guarantee scheme established under Art. L.312-4 of the COMOFI and managed by the DGF. *Segregation of customers assets and own investment* Custodians are obliged to segregate the assets of end investors from their own assets at the CSD level. Segregation at the level of Euroclear France is possible under two different options: the custodian can open different securities accounts for each (category of) customer(s) or establish a specific subaccount to its main securities account. The custodian has the possibility to separate assets for a category of owners (mutual funds for instance) or for individual owners, depending on customer needs and the range of custodial services provided. *Appropriate procedures and internal organization of custodians* The general regulations of the AMF contain provisions regarding the duties of custodians. In particular, the custodian may not make any use of the financial instruments in its custody without the holder's express consent. The custodian shall organize its internal procedures to ensure that any movement affecting the financial instruments it holds in custody on behalf of customers is justified by a properly recorded transaction. The custodian has an obligation to return any financial instruments entrusted to it. The custodian shall describe the organization of its accounting in an appropriate document. For the purpose of ascertaining and monitoring the rights of account holders, financial instrument accounts shall be maintained according to the rules of double-entry bookkeeping. The general regulations of the AMF are supplemented by a specific range of requirements applicable to custodians (“Performance requirements for custody account keepers,” Decision No. 2001-01 of the CMF). These very detailed and stringent harmonized standards encompass transparency requirements (publicity of

	the organizational chart), requirements related to human and IT resources, accounting procedures, categories of services and customer protection, relations with other providers of services (brokers), and control and monitoring procedures. Previously mentioned regulations require custodians to reconcile their records daily and maintain audit trails of all cash and securities transfers. *Supervision* The general regulations of the AMF require custodians to be credit institutions, investment firms, public bodies or full subsidiaries of credit institutions and investment firms. Credit institutions and investment firms are subject to prudential supervision of the CB. The AMF is in charge of the ongoing control of the observance of the rules and regulations it has set forth for custody and clearing and settlement activities through off-site and on-site inspections of custodians and Euroclear France (COMOFI, L.622-9).
Assessment	Observed.
Comments	
Recommendation 13.	Governance arrangements for CSDs and central counterparties should be designed to fulfill public interest requirements and to promote the objectives of owners and users.
Description	Euroclear France is a private sector entity fully owned by Euroclear Bank SA/NV and is organized on a for-profit basis (*société anonyme de forme commerciale*). *Internal governance arrangements* Clear internal governance arrangements are in place that give the decision makers the incentives and the skills needed to achieve the system's objectives, ensuring the accountability of management. Management has appropriate tools for management control and monitoring. There is an independent internal audit department that reports directly to management. Several committees are in place to discuss relevant issues, such as a risk committee, an audit committee, and a compliance committee. Board members attend the meetings of these various committees. In addition, the chief operations officer, although not a member of the Board, attends the Boards' meetings in order to provide its expertise on operational issues. The composition of the Board is determined by Euroclear Bank, the parent company of Euroclear France. Public information is available on the main activities and projects of the Euroclear group and Euroclear Bank with published annual reports and account information. *Users participation* A clear structure for consultation of the users/participants has been implemented. In 2001, a Market Advisory Committee (MAC) was established, composed of representatives of participants in Euroclear France (around 20). The MAC is chaired by a representative of the participants. Euroclear France management participates in the meetings. The MAC, which has a consultative role, is in charge of three missions: • formulating proposals and recommendations regarding guidelines and

	evolutions of Euroclear France; • considering the maintenance of efficient tools for the users; and • observing the policy of fees of Euroclear France. Since November 2002, the MAC directly reports to the Board of Euroclear Bank, which is in charge of approving the nomination of its members. The MAC also reports to the Board of Euroclear France. The work of the MAC, which meets at least quarterly, is prepared by a users group and, if needed, by "ad hoc" working groups, which may be launched on specific topics and projects (i.e., avoiding duplication with the working groups of the French securities association). In addition, the chairman of the MAC was appointed as "censor" (*censeur*) of Euroclear France and participates in the Board Meetings with a consultative role. He is in charge of ensuring that the users' points of views are communicated to the Board. The mission of censor(s) is defined in Euroclear France's by-laws.
Assessment	Observed.
Comments	Although the governance structure of Euroclear France has substantially improved after the take-over by Euroclear Bank Brussels (EBB), and—although, it has still to be assessed—the governance arrangement of Euroclear Bank Brussels seems not to have had adverse affects on its effectiveness. However, things might change rapidly in the near future when the operational activities of local CSD's and Euroclear Bank Brussels will be integrated within the context of centralization of settlement processing functions. Key questions within these developments might be whether the present governance structure is effective to deal with potential conflicts of interest that could arise between the owner/operator and the users, who are competitors in the market for clearing and settlement and custodial services. Another key issue that has to be dealt with in this new operational context seems to be how to define and serve the public interest of the new cross-border infrastructure. A blueprint for an ideal governance structure in this situation is not easy to design, but should get adequate attention of the overseers/regulators and it should be ensured that all relevant market participant are involved in the discussion and are able to express their opinion. At present, there exist distinct fears in the market, that future developments might harm their interest will negatively influence their competitive position.
Recommendation 14.	CSDs and central counterparties should have objective and publicly disclosed criteria for participation that permit fair and open access.
Description	*Access criteria* The following entities are allowed to become participants in RGV2, pursuant to the general access criteria: • credit institutions and investment firms incorporated in France; • clearnet Clearing Members having the status of specialized firm; • French public entities (Treasury, BdF, financial services of the Post office); • legal entities incorporated within the EEA and allowed to provide investment services pursuant to the free provision of services and free establishment principles as organized by the European Directives; • custodians duly authorized by the AMF to hold securities accounts on behalf

	of customers; • French CSDs authorized by the AMF and foreign CSDs; and • other legal entities incorporated within or outside the EEA and performing activities comparable to the other categories of entities allowed to become RGV2 participants. Foreign entities incorporated in the EEA but not established in France are allowed to become participants in RGV2 under the same conditions as French entities. If they participate in the RGV channel, and provided they have a credit institution or investment firm status, they are also allowed to become a cash settlement agent and to open a "cash position" on the books of the BdF (see RSSS 7). The only difference with the entities established in France is the prohibition to access intraday credit with the BdF. Due to the Eurosystem rules, the BdF is not allowed to provide credit to remote participants. Therefore, they are not allowed to access intraday credit (see assessment of Recommendations 8 and 9). This restriction is justified by public interest related to the conduct of the Eurosystems monetary policy. Regarding foreign entities incorporated outside the EEA, pursuant to the RGV2 operating rules (Art. 2.4), the AMF has the right to oppose their access to RGV2 within one month following the notification of the decision of the Board of Euroclear France to admit the applicant (the criteria to oppose an applicant are not published). *Exit criteria* The general conditions under which participants can terminate their membership are stated in the operating rules of Euroclear France: • on the request of the participant; • on the requirement of the AMF following a withdrawal of a necessary authorization by the AMF; and • by Euroclear France, in case of breach of the operating rules by the participant if it threatens the integrity of the system. Euroclear France considers that the insolvency of a participant as such is not a cause to terminate its participation. However, the situation would be specifically monitored and may lead to a rapid exit, notably in case of unpaid fees. The RGV channel agreement (Art. 13) specifies that: • when the termination of membership takes place on the request of the participant, the minimum time lag is 2 months and 15 days in case the termination is justified by a fault of Euroclear France; • when the termination of membership is at the initiative of Euroclear France, because of the behavior of the participant, it can take place without delay; and • Euroclear France also has the right to terminate membership when the participant has still not paid fees 15 days after being required to do so, or becomes insolvent before having paid all fees. For participants who are cash settlement agents of the RGV channel, the BdF has the right to terminate their membership, pursuant to Art. 12.3.2. of the "cash

	position agreement," for four reasons: payment incident; abnormal functioning of the cash position; opening of an insolvency procedure against the participant; and its financial soundness may endanger the smooth operating of RGV or TBF (the French RTGS system part of TARGET).
Assessment	Observed.
Comments	It is recommended: • to develop and make public the criteria on which the AMF can oppose an applicant from outside the EEA and the procedure followed. In addition to the requirement that an applicant has to be adequately overseen or supervised, it might be worthwhile to consider whether a legal opinion should be made available that determines whether there might be a conflict of laws that could threaten the smooth and secure functioning of custody and settlement of securities in France. • to specify in the rules and regulations the consequences of a termination of an RGV2 cash position of a settlement participant.
Recommendation 15.	While maintaining safe and secure operations, securities settlement systems should be cost-effective in meeting the requirements of users.
Description	*Budgetary process* Euroclear France manages its costs on an annual budget system. The new budget is based an a bottom-up approach. Sales are estimated and the strategic plan is taken into account is the evolution of wages and overhead. During the year, the budget is monitored. *Price structure* Prices are set in agreement with the users. Owing to the absence of a comprehensive analytical accounting method, the present price structure is not directly related to the cost of each of the services. Introduction of such an accounting framework might be difficult due to the large amount of services provided (over 155). The prices charged by Euroclear allow it to make a profit. Cross subsidization between product or services cannot be ruled out in the present structure. Euroclear France indicates that it plans to implement a comprehensive analytical accounting of its operations, which is only partly available at present. Such a project would clearly improve the degree of observance of Recommendation 15. However, no clear planning has been disclosed so far on the following steps that would enable the extension of analytical accounting to the entire cost structure of Euroclear France. *Benchmarking* Euroclear does not benchmark its costs, prices and service levels against those of other CSDs. However the integration and harmonization of prices of the Euroclear group's CSDs will be a key component of the group's operational integration.

	Reviewing service levels There is no explicit review of the service level and consultation of users, although users have the possibilities to suggest processing or procedural changes and might propose new services. The MAC is involved in evaluating such a request and has also consulted on changes and new services proposed by Euroclear France itself. *Operational reliability and capacity levels* Different operational reliability indicators are developed and the smooth functioning of the processes has the attention of management. Euroclear does not know exactly its maximum capacity levels (see Recommendation 11).
Assessment	Broadly observed.
Comments	It is recommended that a comprehensive analytical accounting framework be implemented in order to monitor costs and benefits more closely so as to have an appropriate tool for price determination.
Recommendation 16.	Securities settlement systems should use or accommodate the relevant international communication procedures and standards in order to facilitate efficient settlement of cross-border transactions.
Description	The system's main communication channel is the Radianz network. However, after the implementation of the Euroclear Application Access in December 2003 participants are also enabled to communicate with the system via the Swift network. The system uses international standard message types and procedures for the securities identification process, but the securities messages in the Radianz network are based on a proprietary format and the counterparty identification is not based on internationally recognized identifiers. Both can be converted into relevant international procedures and standards with some difficulty.
Assessment	Broadly observed.
Comments	It is recommended that the accommodation of international standards, particularly in the area of procedures for participant identification.
Recommendation 17.	CSDs and central counterparties should provide market participants with sufficient information for them to accurately identify the risks and costs associated with using the CSD or central counterparty services.
Description	*Availability of rules, regulations etc.* Market participants are provided with a full and clear description of their rights and obligations; the cost of participating in the system; the rules, regulations and laws governing the system; its governance procedure, any risk arising either to participants or to the operator; and any steps taken to mitigate those risks. Information is generally available in a language commonly used in financial markets and/or the domestic language (French) and operating rules are published on the websites of the AMF and Euroclear France. *CPSS/IOSCO Disclosure Framework* The CPSS/IOSCO Disclosure Framework has been completed and disclosed. The

	last updated version was made available in March 2002, and contains changes on some issues (e.g., the oversight /supervision of Euroclear France).
Assessment	Broadly observed.
Comments	It is recommended that the Disclosure framework be updated. Alternatively, Euroclear France could also publish the assessed answers to "key questions."
Recommendation 18.	Securities settlement systems should be subject to regulation and oversight. The responsibilities and objectives of the securities regulator and the central bank with respect to SSSs should be clearly defined, and their roles and major policies should be publicly disclosed. They should have the ability and resources to perform their responsibilities, including assessing and promoting implementation of these recommendations. They should cooperate with each other and with other relevant authorities.
Description	*Entities involved in the oversight/supervision* The RGV2 system is subject to both regulations by the AMF and oversight by the BdF. Since Euroclear France is a corporate company which does not have either the status of a credit institution or of an investment firm, the French banking supervisor (CB) is not involved in its supervision. The regulatory competences of the AMF toward SSSs are organized by French law. Under the terms of Art. L.622-7 of the COMOFI, the AMF "shall authorize central depositories according to the procedures established in its General Regulations and approve their operating rules; shall set in its general regulations the general principles for organizing and operating securities settlement systems and approve the operating rules for such systems, without prejudice to the powers granted to the BdF under Art. L.141-4." The oversight competence of BdF also relies on a legal provision, in Art. L.141-4 of the COMOFI, which states that: "As part of the duties of the European System of Central Banks and without prejudice of the competences of the Financial Markets Council [Authority] and of the Banking Commission, the Banque de France is in charge of monitoring the safety of securities clearing and settlement systems." Moreover, the Belgian CBFA has an interest in Euroclear France, which is the French subsidiary of Euroclear Bank. This interest stems from the prudential supervision of the consolidated and nonconsolidated situation of the Euroclear Group according to the concept of "close link" between Euroclear France and Euroclear Bank. *Roles, responsibilities and resources* The regulatory and oversight framework for SSS is based on a statute-based approach. The respective roles of the AMF and the BdF are clearly defined and legally enforceable. Their roles and major policies are publicly disclosed. The oversight mission of the BdF is published on its website. Within the framework of oversight, regular meeting takes place between the overseers and Euroclear France, information is gathered based on public reports as well as on special requests by the overseer. The AMF can carry out on-site inspections if deemed necessary. The AMF can conduct external audits on the systems, internal controls and organization of Euroclear France. The BdF could also carry out such audits based on the agreement it has concluded

	with Euroclear France. Both regulators have sufficient qualified staff. *Cooperation between securities regulators and central banks in the oversight of the Euroclear group* There is close cooperation between the AMF as securities regulator and the BdF as overseer. Representatives of the BdF have consultative roles on the Board of the AMF and in some committees. In practice, the fulfillment of the missions of both authorities for the regulation and the oversight of RGV2 is closely coordinated. Meetings and consultations are regularly organized, as is the exchange of relevant information between the AMF and the BdF for the monitoring of RGV2. For example, the electronic data processing audit report on Euroclear France including all detailed annexes, written on behalf of the AMF in the second half of 2002, was transmitted to the BdF. Euroclear France has been a subsidiary of Euroclear Bank since January 2001. Therefore, two MoUs (Memoranda of Understanding) were signed with foreign authorities in order to take into account the new context in which Euroclear France operates: – an MoU was signed on October 22, 2001 between the BdF, the CMF (currently AMF), the *Banque Nationale de Belgique/Nationale Bank van België* (BNB), and the CBFA. This Memorandum sets out the principles for cooperation between the BNB and the BdF/CMF (currently AMF) for the oversight and regulation of securities settlement systems operated by the Euroclear Group (understood for the purpose of this MoU as Euroclear Bank and its subsidiary Euroclear France), and between the BdF/CMF (currently AMF) and the CBFA as part of the latter authority's prudential supervision of the Euroclear Group; – another MoU was signed on July 9, 2002 between the same parties and also De Nederlandsche Bank and the Netherlands Authority for Financial Markets in order to organize cooperation between authorities for the regulation and the oversight of the settlement services provided by the Euroclear group for the settlement of transactions executed on the Euronext stock exchanges. Regular meetings and exchanges of information between the signatory authorities of both MoUs and representatives of the Euroclear Group are held in order to foster cooperation and coordinate the assessments made by the competent authorities of the related systems. Relevant information is exchanged within the framework of cooperation between the two local authorities and between the local and foreign regulators.
Assessment	Observed.
Comments	The procedures could be formalized to work out the cooperation and division of tasks between the AMF and the BdF in an MoU to be published so as to enhance transparency for all parties involved.
Recommendation 19.	CSDs that establish links to settle cross-border trades should design and operate such links to reduce effectively the risks associated with cross-border settlement.
Description	*Types of links* Between Euroclear France and national and international CSDs there exist: – 13 Direct links;

	– 1 Indirect link; and – 14 Relayed links in which Euroclear Bank Brussels is used as the intermediary CSD. *Risk analysis* Risk analysis is conducted with respect to the financial and operational integrity of the linked CSD, although the legal risk involved in depositing, clearing, and settlement of foreign securities in Euroclear France might not be fully assessed. *Delivery versus Payment* All of the links are only used for Free-of-Payment transfers except the direct and indirect link with Euroclear Bank Brussels and the direct link with Clearstream Banking Luxembourg which allow for Delivery versus Payments in commercial bank money. In principle, provisional transfers are prohibited in both directions (inward and outward links). Credits and debits of the omnibus securities accounts of foreign CSDs open on the books of Euroclear France, which reflect either holdings of their participants in French securities or holdings of Euroclear France participants in foreign securities, can be made only when final (in RGV2 and/or in the foreign SSS). *Credit extensions* Euroclear France does not extend credit to its participants, nor is it involved in securities lending schemes.
Assessment	Observed.
Comments	

Table 25. Summary Observance of Euroclear France as a Central Securities Depository and of the RGV2 irrevocable Trade for Trade channel operated by Euroclear France of the CPSS/IOSCO recommendation for Securities Settlement Systems

Assessment Grade	Recommendation Grouped by Assessment Grade	
	Count	List
Observed	12	Rec. 2, 3, 5, 6, 7, 8, 10, 12, 13, 14, 18 and 19
Broadly observed	5	Rec. 1, 11, 15, 16 and 17
Partly observed	0	--
Non-observed	0	--
Not applicable	2	Rec. 4, 9

Recommended actions

Table 26. Recommended Actions to Improve Observance of Euroclear France and the RGV2 of CPSS/IOSCO Recommendations for Securities Settlement Systems

Reference Recommendation	Recommended Action
Rec. 1 Sound legal basis	- evaluate comprehensively the conflict of law issues in the system and implement clear procedures regarding the acceptance of foreign participants.
Rec. 11 Operational reliability	- implement adequate tools to conduct complete stress tests; - take adequate measures to be able to resume operations in a timely manner in case of a full fall back to the second site; - conduct appropriate service level agreements in case of outsourcing of tasks: - consider putting in place a proactive risk analysis methodology and conducting within this framework an overall analysis of potential operational risks. Ensure that adequate measures will be taken to contain the indicated risks or transfer or outsource them through insurance or other means.
Rec. 13 Governance arrangements	- the overseer/regulator should pay attention whether the present governance structure will still be adequate when the operational activities of local CSD's and Euroclear Bank Brussels will be integrated in the near future.
Rec. 14 Access criteria	- develop and publish the criteria on the basis of which the AMF can oppose an applicant from outside the EEA and the procedures followed. Consider in this context whether a legal opinion on possible conflicts of laws should be made available by the applicant; - specify in the rules and regulations the consequences of a termination of an RGV2 cash position of a settlement participant.
Rec. 15 Cost-effectiveness	- implement a comprehensive analytical accounting methodology in order to monitor more closely costs and benefits in order to facilitate price determination of the different services offered.
Rec. 16 International communication standards	- facilitate the adoption of international standards in all communication channels used, particularly in the area of procedures for participants identification.
Rec. 17 Disclosure of risks and costs	- update the Disclosure framework or alternatively publish the assessed answers to key questions.
Rec. 18 Oversight	- consider to work out the cooperation and the division of tasks between the AMF and the Banque de France in a Memorandum of Understanding that could be made available to all parties concerned and to the public.

Table 27. Detailed Assessment of Relit+, the Multilateral Netting Scheme for the Clearing and Settlement of Stock Exchange and OTC Securities Transactions of the CPSS/IOSCO Recommendations for Securities Settlement Systems

Recommendation 1.	Securities settlement systems should have a well-founded, clear, and transparent legal basis in the relevant jurisdiction.
Description	**1. Underlying legal framework and public accessibility** There is a consistent set of laws, regulations and contracts that form the legal foundation for central custody and the clearing and settlement of securities. **2. Legal assurance of the key aspect for custody and clearing and settlement** *Enforceability of transactions* ▪ Laws and contracts are fully enforceable under French jurisdiction. The courts of the jurisdiction function adequately; property rights are fully defined and respected; and there are proper procedures for legal processes. An individual or firm, of the opinion its basic rights are violated and not respected in court or the judicial treatment of their case was incorrect, can appeal a decision by submitting its complaints to the Court of Justice in the European Union. ▪ The access criteria ensure that participants have legal capacity. ▪ The purpose and content of services to be provided by Euroclear France have to be approved by the *Autorité des Marches Financiers* (AMF) and within this framework the AMF will assess whether these services comply with the relevant laws, statutes, and regulations. *Customer assets protection* Euroclear France as the Central Securities Depository (CSD) has no legal title to the securities on its books and customer assets are legally protected against the insolvency of a CSD of a custodian or intermediary. The securities owned by end-investors/clients fall outside the bankruptcy estate and cannot be claimed by the creditors of the aforementioned institutions (COMOFI Art. L.431-6). *Dematerialization of securities* Dematerialization is based on Art. L.211-4 of the COMOFI. This article provides for dematerialization of securities and specifies that transfer of ownership is arranged for by book-entry. Almost all securities in France are dematerialized. Only a small part is represented by paper; all immobilized, often via a global note. *Netting arrangements* Netting (including close out netting) is endorsed by the COMOFI (Art. L.330-1). However, the RGV2 Rules do not describe how multilateral netting takes place. Netting is mentioned in Art. 6.30, §2, but in this case it concerns (bilateral) netting between settlement participants and indirect participants and not multilateral netting between settlement participants just before settlement of the revocable channel in TBF. Only the mention of cash balances in Art. 6.28 suggests the idea of netting prior to settlement in TBF, though the article does not specify what is meant by multilateral netting. The reference to authorized limits also argues in favor of the netting idea, but

	in all events it is not clear from a reading of the RGV2 Rules whether the limits are bilateral or multilateral. In addition, the fact that netting is mentioned in the rules of the irrevocable channel (RGV2-TFT), in Art. 6.44, §1, despite the fact that in principle no netting occurs in this channel (except for back-to-back transactions), may be confusing. *Securities lending arrangements* The legal framework supports securities lending by recognizing explicitly securities loans (Art. L.432-6 to L.432-11) and repurchase agreements COMOFI (Art. L.432-12 to L.432-19). These provisions define the instrument, the range of securities which can be lent or repurchased and the eligible counterparties. Enforceability of the securities lending and repurchase agreements towards third parties is ensured. Collateral provided in the context of securities loan or repurchase agreements will not expose the lending party to the risk that the transaction can be challenged by a third party or a liquidator by re-characterizing the securities lending or the repo as an improper pledge. *Irrevocability and finality* ▪ Orders in the system are irrevocable at the moment they match. However, there are some exemptions. No matching takes place for certain types of transactions; in this case they are irrevocable once they are entered in the system. ▪ Finality in Relit+ is well defined and recognized under French law. The preliminary transfers of securities become final as soon as the settlement of the netted cash positions takes place in TBF, and the BdF has informed Euroclear France on the final settlement of the cash position. ▪ Bankruptcy procedures contain a zero hour rule and regulations with respect to a suspect period. However, due to the finality regulations in the COMOFI, no retroactive action or unwinding by the liquidator is possible in the system on the day a bankruptcy procedure is opened against a participant with respect to the payments done by that participant on that day. *Delivery versus payments* ▪ According to the BIS connotation, Relit+ is a model 2 DVP system (gross/net). The legal and contractual basis of the Relit+ DVP settlement procedure is based on Articles 6.32 and 6.33 of the RGV2 Rules. These articles state that the settlement of the securities leg, which is processed on a gross basis, does not become final as long as the cash leg, which is operated on a net basis, is not settled in TBF. These rules are endorsed by the finality regulation in the COMOFI. ▪ In the event of a default of a customer, the intermediary or the custodian may avail himself of full title to the securities purchased on his customer's behalf or to the cash received from the counterparty; the custodian may also avail himself of full title to the securities purchased or cash received from the counterparty if the customer does not fulfill its obligations to pay or to deliver while the intermediary or custodian is bound to perform its obligation according to the DVP rules in RGV2 or has performed them already (COMOFI Art. L.431-3). *Examination of the legality of rules and regulations* There exists no case law in which the rules and regulation of Euroclear and,

	especially, the rules with respect to DVP, are challenged or overruled in court. **3 Enforceability of rules and regulations in the event of a bankruptcy** Due to the finality regulation in the COMOFI all the rules and regulations of the system are enforceable in the event of a bankruptcy and transactions on such a day cannot be unwound or reversed within the system. **4 Conflict of law issues** The admission of foreign participants to Relit+ has not been submitted to procedures analyzing conflict of law issues. Nor is a legal opinion to be provided within the context of the approval procedure by the AMF of participants from countries outside the European Economic Area (EEA).
Assessment	Broadly observed.
Comments	It is recommended that conflict of laws issues in the system be evaluated comprehensively and that clear procedures be implemented regarding the acceptance of foreign participants (the requirement of a legal opinion etc).
Recommendation 2.	Confirmation of trades between market participants should occur as soon as possible after trade execution, but no later than trade date (T+0). Where confirmation of trades by indirect market participants (such as institutional investors) is required, it should occur as soon as possible after trade execution, preferably on T+0, but no later than T+1.
Description	All settlement instructions in Relit+ are prior to settlement matched and confirmed on trade date (T+0) or at the latest at 12.00 on T+1. The aforementioned trades are generally confirmed by indirect participants by T+1.
Assessment	Observed.
Comments	
Recommendation 3.	Rolling settlement should be adopted in all securities markets. Final settlement should occur no later than T+3. The benefits and costs of a settlement cycle shorter than T+3 should be assessed.
Description	*Settlement cycles* Ninety-five percent of the outright trades, 100 percent of the issuance of debt instruments, 84 percent of repos and above 75 percent of subscription and repurchase transactions of mutual funds are cleared and settled on T+3 or a shorter settlement cycle in Relit+. *Failed trades and facilities to smooth the settlement process* In Relit+, the monthly value of unsettled trades, which amounted to 1.76 percent on average during the period January 2002 to June 2003, has never exceeded 2.65 percent. It remained below 2 percent during 13 of the 18 months in this period. The average duration of end-of-day fails never exceeds two working days, that is, on average, trades remaining unsettled at the end of the contractual settlement day, are settled at the latest within the two following working days. The cash leg is settled three times a day in TBF. The timely settlement of Relit+

	operations requires settlement institutions to fund their accounts with sufficient cash to cover their Relit+ debit balances. If not, timely settlement of Relit+ operations may not be ensured. Participants or their settlement agents can borrow intraday funds from the BdF to cover their settlement obligations. Euroclear France does not operate a securities lending facility. However, the lacking securities can be borrowed relatively easily in the market via a repo or a securities lending transaction to be settled the same day, and on line in real time in RGV2- TFT. *Rolling settlement* A rolling settlement procedure is in place. Failed trades are recycled up to 30 days after the initial settlement date. *Incentives to settle in due time* In order to persuade participants to meet their payment obligations on time, severe to defaulting participants penalties are applied by Euroclear France and the CRI. Both institutions require a penalty of EUR 2,500 for the first default and EUR 5,000 for each following default in the same calendar year, from each participant that is unable to settle its cash obligations on time. If a participant is unable to deliver securities due at the end of the contractual settlement date, Euroclear charges this participant a fine of EUR 41.92 per day and per instrument. *Closing of open positions* No procedure is in place with respect to the closing of open positions. Euroclear France does not require its participants to collateralize market or pre-settlement risks. *Monitoring of fails* The operational department of Euroclear is in charge of monitorin settlement failure immediately when it occurs. *Analysis of shorter it settlement cycles* Euroclear France has conducted analysis of the impact of shorter settlement cycles in 2002 in the framework of the French Securities Association. From a technical point of view, shortening the settlement cycle is possible for Euroclear. It would not only influence the settlement cycle trades in the OTC market but also the settlement cycle for stock exchange transactions, since all stock exchange transactions in French securities are cleared via LCH-Clearnet SA and settled in Relit+. Thus, a decision to shorten the settlement cycle cannot unilaterally be assumed by Euroclear France but has to be coordinated with Euronext. The incentive for Euronext to shorten the present settlement cycle of T+3 is not that great since a shorter cycle might undermine its competitive position in the European market. In addition, there are no settlement risks for traders on the stock exchange because all stock exchange transactions are guaranteed by LCH-Clearnet SA.
Assessment	Observed.
Comments	

Recommendation 4.	The benefits and costs of a central counterparty should be assessed. Where such a mechanism is introduced, the central counterparty should rigorously control the risks it assumes.
Description	Transactions conducted on the Euronext trading platforms in Paris, Amsterdam, Brussels, and Lisbon are cleared and settled via LCH-Clearnet SA, which acts as the central counterparty. LCH-Clearnet SA also clears and settles derivatives and commodities contracts and cash and derivatives transactions traded on the OTC market or negotiated through interdealer brokers. LCH-Clearnet SA will be assessed in due time against the newly drafted recommendations for central counterparties that at present are under consultation.
Assessment	Not applicable
Comments	
Recommendation 5.	Securities lending and borrowing (or repurchase agreements and other economically equivalent transactions) should be encouraged as a method for expediting the settlement of securities transactions. Barriers that inhibit the practice of lending securities for this purpose should be removed.
Description	*Institutional framework* Securities lending operations can be conducted through securities loans or repurchase agreements. The law recognizes both instruments, as well as the validity of collateral transfers within the framework of securities lending. The transactions cannot be re-characterized as improper pledges by third parties or a liquidator. Accounting schemes and tax treatment for the aforementioned instruments are detailed in the regulations in the COMOFI (Art. L.432-6 to L.432-19). To prevent tax avoidance, only legal entities are allowed to enter into repurchase agreements. For this reason, securities yielding interest/dividends submitted to a withholding tax are not allowed to be used in a securities lending transaction or a repo during the period the interest/dividends will fall due. *Automated securities lending facilities* At the moment, no automated securities lending facility is in place for the OTC markets in order to expedite the settlement of securities in RGV2-TFT. Plans to launch such a facility in 1998 were not executed since the business case for such a facility seemed to be insufficient. This does not imply that there is no market for securities lending in this area. Interested participants can easily tailor their needs by doing transactions directly with institutional investors (insurance companies, mutual funds) or banks willing to increase their custody incomes. *Supervision of the risk involved in securities lending* Especially with respect to securities lending transactions in case of deferred settlement, regulations are in place to ensure that sufficient collateral is made available by the client to his broker who is its counterparty in this securities lending operation.

Assessment	Observed.
Comments	
Recommendation 6.	Securities should be immobilized or dematerialized and transferred by book entry in CSDs to the greatest extent possible.
Description	*Dematerialization and immobilization* At least 99.7 percent of securities issued in France (representing over 29 000 ISIN codes) are dematerialized and the other securities issues, mostly warrants, euro-bonds and foreign securities (80 issues in total) are immobilized, mostly via a global note. Adequate safe procedures are in place within Euroclear France. *Transfer of title* Transfer of title is only possible by book-entry (Art. 1 of decree 83-359 of May 2, 1983). In France, no separate "Registrars of the Issuers" exists. Issuers open an "investors account" directly in Euroclear France, in which the amount of securities issued is booked—the amount which represents the total of all outstanding commitments of the issuer (see Art. 8 of the decree of August 4, 1949) and which balances the number of securities in the custodian's accounts in Euroclear France.
Assessment	Observed.
Comments	
Recommendation 7.	Securities settlement systems should eliminate principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.
Description	*Legal framework* The legal and contractual basis of the Relit+ DVP settlement procedure is based on Articles 6.32 and 6.33 of the RGV2 Rules. These articles state that the securities leg's settlement, which is processed on a gross basis, does not become final as long as the cash leg, which is operated on a net basis, is not settled in TBF. *Technical framework* Participants' cash legs are settled on the basis of their net technical cash balances, which are computed on a real-time basis by Euroclear France according to the securities transfers posted on their securities accounts. The securities transfers occur once Euroclear France has checked that the securities are available on the seller's account. If they are available, Euroclear France transfers the securities from the seller's to the buyer's account, and simultaneously effects the counterparties' technical cash balances. If securities are not available, the settlement is recycled. Cash net settlement occurs three times a day—once in the morning and twice in the afternoon, after Euroclear France has communicated to the BdF the cash balances that participants' settlement banks have to settle in TBF. Once cash balances are communicated to BdF, participants' settlement banks benefit from a time lag called "the checking period" to verify the accuracy of the amounts communicated and fund their TBF accounts. Finally, they settle the Relit+ cash balances on their TBF accounts during the settlement periods. If the cash leg can be settled in due time, Euroclear France performs the procedure to

	ensure the final posting of securities' deliveries. This procedure takes place two minutes after receiving the confirmation that the cash leg has been properly settled, and can last from one to six minutes (according to the number of trades processed during the chaining). Securities transfers become final within a short time lag (between three and eight minutes) after the cash leg settlement, thus reducing the length of participants' exposure to the operational risks that may arise during the settlement. In addition, in case of technical failure, Euroclear France's secondary site would be able to properly register the final delivery of securities and consequently ensure the technical DVP link between the settlement of the cash and securities legs. If the cash settlement cannot be completed in time because one (or several) Relit+ participant(s) is (are) not able to meet its (their) payment obligation(s), Euroclear France has to implement one of the procedures described in Art. 6.33 of its rules. These procedures include the possibility to partially (or even totally) unwind the securities transfers validated during the related chaining. In such a situation, having excluded all or part of the defaulting participant's operations, Euroclear France recalculates new securities transfers and new net cash balances. The excluded securities will not be part of the final posting but be transferred back to the account of the seller.
Assessment	Observed.
Comments	
Recommendation 8.	Final settlement on a DVP basis should occur no later than the end of the settlement day. Intra-day or real-time finality should be provided where necessary to reduce risks.
Description	*Intraday finality* Relit+ settles three times a day. Finality is clearly defined in the rules of RGV2 (see Recommendation 7). The received securities and cash can be used immediately afterwards by the seller or the buyer. *Need for intraday real time finality* The settled transactions in Relit+ are for the larger part retail transactions done on the stock exchange. Relit+ is not used for the settlement of monetary transactions; participants who require on line, real-time finality can use RGV2-TFT. Securities delivered through a link are normally settled on a Free-of-Payment basis. However, transactions of participants in Euroclear bank in French securities conducted on Euronext are within the framework of the *Flux Bourse* project settled via Relit+, with al the risk involved for this participants or Euroclear Bank in case of an unwinding of the transaction in Relit+.
Assessment	Observed.
Comments	
Recommendation 9.	Deferred net settlement systems should institute risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest obligation is unable to settle. In any system in which a CSD extends credit or arranges securities loans to facilitate settlement, best practice is for the resulting credit exposures to be fully collateralized.

Description	Although Relit+ can be classified as a deferred net settlement system, at present, there are no measures taken to ensure timely settlement in the event the participant with the largest payment obligation is unable to settle this debit position in the multilateral clearing scheme. In such an event, Euroclear France partially or totally unwinds the defaulting participant's operations. Then, new net cash balances are recalculated. The unwinding procedure and recalculation of positions can take several hours to deliver to Euroclear France. Consequently, such a procedure can create significant delays in the settlement time schedule, by postponing the settlement of obligations until the late afternoon or even the following settlement day. This procedure would also generate liquidity pressures or shortfalls of securities for nondefaulting participants that may be difficult to cover. The BdF and the AMF, as overseers, in 2002 required Euroclear France to define and implement, in cooperation with all interested parties, adequate measures to ensure the timely settlement in case of a default. Recently the implementation was launched of measures to ensure timely settlement even in the event the participant with the largest obligation to pay is not able to fulfill his obligation. The heart of these measures is formed by a mutual guarantee fund, supplemented by a set of limits applied to the net cash positions. The full implementation is foreseen before the end of 2004. The measures will not cover multiple failures.
Assessment	Non-observed.
Comments	It is recommended that adequate measures be implemented ASAP to ensure the timely settlement in the event the participant with the largest position to pay is not able to settle its payment obligation.
Recommendation 10.	Assets used to settle the cash leg of securities transactions between CSD members should carry little or no credit risk. If central bank money is not used, steps must be taken to protect CSD members from potential losses and liquidity pressures arising from the failure of a settlement bank.
Description	*Multi-tiered structure* Cash settlement in Relit+ is based on a multi-tiered structure. The first level of this architecture relies on the participants that own a Relit+ technical cash balance, and which are called "cash clearers." These technical balances enable one to compute the cash clearers' net payment obligations in accordance with the securities movements posted on their securities accounts. In addition, cash clearers have the possibility to offer settlement services by posting the operations of other Relit+ participants on their technical cash balances, as well as aggregating these operations with their own trades into a net cash balance. There are no clear criteria in the rules and regulations of Euroclear France regarding which institutions can act as cash clearers. While all cash positions are in euro and cleared in TBF, the French RTGS system operated by the BdF, the second level of the Relit+ settlement architecture relies on those participants in Euroclear France who have opened an account in TBF. This TBF account holders can act as Relit+ settlement participants. The settlement participants, which can settle their own Relit+ operations in TBF, also have the possibility to settle other Relit+ cash clearers' balances in TBF. Participation in TBF is open to credit institutions and investment firms established in France as well as from other parts of the European Economic Area (EEA), when they are authorized to carry on activities in France under a European passport. Also, credit and investment firms incorporated outside the EEA are allowed to participate,

	provided they have a European passport. TBF is a systemically important payment system that largely complies with the BIS core principles for payment systems. *Settlement bank risk* Although in principle the settlement of cash obligations takes place in central bank money, a large amount of participants make direct or indirect use of private settlement agents to settle their obligations or receive their funds. This category is exposed to deposit or settlement bank risk. There are no explicit rules or requirements set by the operator and/or by the regulators or overseer of the system for settlement agents regarding financial soundness etc. However, settlement agents are subject to prudential supervision whether by the *Commission Bancaire* (for French institutions) or by banking supervisors in their home countries. Information on concentration and settlement flows on behalf of their customers is monitored by the BdF as overseer. Payment flows stemming from Relit+ settlements are rather concentrated with some settlement banks. During the first three quarters of 2003, nearly 20 percent of the Relit+ payment flows were settled via the largest settlement bank/TBF account holder. Three groups of accounts have concentrated more than 50 percent in average of payment flows (in value) stemming from the Relit+ settlements, whereas the first 10 groups of accounts have concentrated slightly above 80 percent of payment flows on average in the same period. *Same day funds* It is not known whether institutions could transfer the money received on the account with their settlement bank on the same day as their own account in TBF, if any, or to an account of another bank, for instance for general payments purposes or within the framework of money market transactions.
Assessment	Observed.
Comments	It is recommended that adequate criteria be established in the rules and regulations of Euroclear France for the access to Relit+ technical cash balances (definition of cash clearers).
Recommendation 11.	Sources of operational risk arising in the clearing and settlement process should be identified and minimized through the development of appropriate systems, controls, and procedures. Systems should be reliable and secure and have adequate, scalable capacity. Contingency plans and back-up facilities should be established to allow for timely recovery of operations and completion of the settlement process.
Description	*Identification and managing of operational risk* An independent risk management function was created in 2001 that directly reports to the management committee and the board of Directors of Euroclear France. The management committee and the board have to validate all measures taken. The objectives of the risk management function are: • to identify and prioritize the operational risks; • to evaluate these risks; and • to define the general principles allowing risk protection by using either standard control and management measures or by transferring the risk (either

	insurance or outsourcing). To achieve these objectives, a bi-annual self-assessment should be conducted of all executives and departments. Moreover, all new products and services should be assessed and approved. At the time of the inspection conducted in mid-2002 by the CMF (now AMF) regarding to the means put in place to operate the RGV2 system, the focus of the risk management function appeared to be more reactive than proactive in identifying the operational risk. The main outcomes of the inspection were notably that (i) the internal Audit department did not have all the capabilities needed to conduct its own IT audits; (ii) a service level agreement between Euroclear France and Clearnet (now LCH.Clearnet SA) was not signed; (iii) the unwinding risk was not tackled; (iv) the files of the participants were not always updated; (v) the capacity of the RGV2 systems in terms of volumes was only partly known; and (vi) there was no proactive overall analysis of the operational risks. Since the inspection, the AMF received confirmation that important progress has been made: (i) Euroclear France decided to hire competences in its IT department (*Etudes informatiques*) in order to conduct its own IT audits; (ii) a service level agreement between Euroclear France and LCH-Clearnet SA will be signed during the second half of 2004; (iii) the unwinding issue should be resolved shortly and measures to ensure timely settlement in case of a default shall be implemented before the end of 2004; (iv) participants' files have been updated; (v) the decision has been taken to implement a tool permitting regular measures and conducting volumes tests of the system to handle increased volumes; and (vi) Euroclear France decided that the Risk Management department is now responsible for the review of the operational incidents and for follow-up action plans. In addition, a new committee was sat up in April 2003 (the Conformity Action Committee) to verify once a month the complete achievements of the externals audit recommendations. Concerning this last issue the Executive Committee and the Audit Committee are now regularly informed of management actions. The Audit Committee confirmed that procedures and tools put in place are now satisfactory. *Contingency plans and back-up facilities* A contingency plan has been developed to cope with a wide range of technological problems ranging from unavailability of the computer host due to minor virus problems to major computer downtime. There are two production sites and data is available between the two sites in real time synchronously. Both sites are equipped with back-up power generators. A back-up facility is available on the primary site in a hot stand bye mode. However, wide area disaster scenarios are not addressed in the current contingency plans since the two production sides are not an adequate distance of each other. Within the foreseen centralization of settlement processing functions in the Euroclear group, a third site, permanently staffed and at a distance of 300 km from the primary site, is envisaged. The contingency plans are tested regularly. However, in a full fall-back situation (switch to the second site) the recovery time might be too long to resume operations (in the latest test it took seven hours, whereas the objective would be more like four hours). Thus for, users have not participated in these test. *Protection of data communication* Adequate measures are taken to ensure integrity, authentication, confidentiality, and

	nonrepudiability of data flows and data storage and effective firewalls are in place to protect the systems from intrusion attempts. *Availability and scalability* Euroclear France has sufficient and qualified staff at its disposal. Although there were no major failures in the period July 2002–July 2003, numerous small and medium incidents occur. All operations could, however, be resumed within two hours, which is in line with Euroclear France's business continuity objectives. Capacity test are carried out for each key system individually, but there have been no complete capacity tests to ensure availability under stressful circumstances. As a result, the maximum capacity levels are not exactly known. *Development and procurement* Special procedures are in place for development, procurement and testing. For development and for testing, dedicated IT environments are used that are strictly separated from the operational environment. *Audits* The internal audit department performs internal audits according to the results of risk analysis and on special request from senior management. These audits are carried out with a three-year plan. Separate external audits have been conducted on behalf of the AMF, supervisors of Euroclear France and on behalf of the Belgian CBFA, the supervisor of Euroclear Bank (owner of the Euroclear France). Within this context, an audit was performed on the operations of RGV2. The CBFA also carries out bi-annual audits on the internal control procedures. No formal procedures exist covering when an external audit should be conducted, neither with respect to specific audits, nor with respect to periodical routine audits.
Assessment	Broadly observed.
Comments	It is recommended: ▪ to implement adequate tools for complete stress tests; ▪ to take adequate measures to be able to resume operations in case a full fall back to the second site is necessary on a timely basis and in line with the objectives set within Euroclear's business continuity policy (within two hours); ▪ to conduct appropriate service level agreements in case of outsourcing of tasks, such as with respect to the operation of ISB, an inter-dealer broker facility operated by LCH-Clearnet SA; ▪ that in line with the AMF/KPMG recommendation: the authorities consider the strengthening of their operational risk policy by putting in place a proactive risk analysis methodology; ▪ conduct an overall analysis of operational risks (threats) in the systems and organization of Euroclear France; and ▪ to ensure that adequate measures be taken to contain the indicated risks or to transfer or outsource them through insurance or other means.

Recommendation 12.	Entities holding securities in custody should employ accounting practices and safekeeping procedures that fully protect customers' securities. It is essential that customers' securities be protected against the claims of a custodian's creditors.
Description	*Legal protection of customer assets* The ownership rights for securities are evidenced by the records of the authorized custodian of the beneficial owner (Art. 1 of the executive order No. 83-359 of May 2, 1983). Customer assets are legally protected against the insolvency of Euroclear France, a custodian or an intermediary. They fall outside the bankruptcy estate and cannot be claimed by the creditors of the aforementioned institutions (COMOFI Art. L.431-6). In case of insolvency of a custodian there is a clear restitution procedure. Within this framework the administrators or liquidators appointed by the court and the temporary administrator appointed by the Commission Bancaire verify, instrument by instrument, whether all the securities in the accounts held by the custodian with the central securities depository (CSD) or with another intermediaries, meet its obligation to the end investors/owners of the securities. If there are enough securities in the relevant accounts, their owners can instruct the aforementioned administrators to transfer their securities to another custodian. If there is a shortage of securities the securities are apportioned pro rata between the end-investors/owners. Investors can be compensated for the loss of their securities or for the loss of cash in unfinished settlement procedures under the securities guarantee scheme and managed by FGD established under Art. L.312-4 of the COMOFI. *Segregation of customers assets and own investment* Custodians are obliged to segregate the assets of end investors from their own assets at the CSD level. Segregation at the level of Euroclear France is possible under two different options: the custodian can open different securities accounts for each (category of) customer(s) or establish a specific subaccount to its main securities account. The custodian has the possibility to separate assets for a category of owners (mutual funds for instance) or for individual owners, depending on customers' needs and the range of custodial services provided. *Appropriate procedures and internal organization of custodians* The general regulations of the AMF contain provisions regarding the duties of custodians. In particular, the custodian may not make any use of the financial instruments in its custody without the holder's express consent. The custodian shall organize its internal procedures to ensure that any movement affecting the financial instruments it holds in custody on behalf of customers is justified by a properly recorded transaction. The custodian has an obligation to return any financial instruments entrusted to it. The custodian shall describe the organization of its accounting in an appropriate document. For the purpose of ascertaining and monitoring the rights of account holders, financial instrument accounts shall be maintained according to the rules of double-entry bookkeeping. The general regulation of the AMF is supplemented by a specific range of requirements applicable to custodians ("Performance requirements for custody account keepers," Decision No. 2001-01). These very detailed and stringent harmonized standards encompass transparency requirements (publicity of the organizational chart), requirements related to human and IT resources, accounting procedures, categories of services and customer protection, relations with other

	providers of services (brokers), and control and monitoring procedures. Previously mentioned regulations require custodians to reconcile their records daily and maintain audit trails of all cash and securities transfers. *Supervision* The general regulation of the AMF requires custodians to be credit institutions, investment firms, public bodies or full subsidiaries of credit institutions and investment firms. Credit institutions and investment firms are subject to prudential supervision of the *Commission Bancaire*. The AMF is in charge of the ongoing control of the observance of the rules and regulations it has set forth for custody and clearing and settlement activities through off-site and on-site inspections of custodians and Euroclear France (COMOFI, Art. L.622-9).
Assessment	Observed.
Comments	
Recommendation 13.	Governance arrangements for CSDs and central counterparties should be designed to fulfill public interest requirements and to promote the objectives of owners and users.
Description	Euroclear France is a private sector entity fully owned by Euroclear Bank SA/NV and is organized on a for profit basis (*société anonyme de forme commerciale*). *Internal governance arrangements* Clear internal governance arrangements are in place that give the decision makers the incentives and the skills needed to achieve the system's objectives, ensuring the accountability of management. Management has appropriate tools for management control and monitoring. There is an independent internal audit department that reports directly to management. Several committees are in place to discuss relevant issues, such as a risk committee, an audit committee, and a compliance committee. Board members attend the meetings of these various committees. In addition, the chief operations officer, although not a member of the Board, attends the Boards meetings in order to provide its expertise on operational issues. The composition of the Board is determined by Euroclear Bank, the parent company of Euroclear France. Public information is available on the main activities and projects of the Euroclear group and Euroclear Bank including in published annual reports and accounting information. *Users participation* A clear structure for consultations of the users/participants has been implemented. In 2001 a Market Advisory Committee (MAC) was established, composed of representatives of Euroclear France participants (around 20). The MAC is chaired by a representative of the participants. Euroclear France management participates in the meetings. The MAC, which has a consultative role, is in charge of three missions: • formulating proposals and recommendations regarding guidelines and evolutions of Euroclear France;

	• considering the maintenance of efficient tools for the users; and • observing the policy of fees of Euroclear France. Since November 2002, the MAC directly reports to the Board of Euroclear Bank, which is in charge of approving the nomination of its members. The MAC also reports to the Board of Euroclear France. The work of the MAC, which meets at least quarterly, is prepared by a users group and if needed by "ad hoc" working groups, which may be launched on specific topics and projects (i.e., avoiding duplication with the working groups of the French securities association). In addition, the chairman of the MAC was appointed as "censor" (*censeur*) of Euroclear France and participates in the Board Meetings, in a consultative role. He is in charge of ensuring that the users' points of views are communicated to the Board. The mission of censor(s) is defined in Euroclear France by-laws.
Assessment	Observed.
Comments	Although the governance structure of Euroclear France has substantially improved after the take over by Euroclear Bank Brussels (EBB), and—although it has still to be assessed—the governance arrangements of Euroclear Bank Brussels seem not to have had adverse affects on its effectiveness, things might rapidly change in the near future when the operational activities of local CSD's and Euroclear Bank Brussels will be integrated within the context of centralization of settlement processing functions. Key questions within these developments might be whether the present governance structure is effective in that case to deal with potential conflicts of interest that could arise between the owner/operator and the users, who are competitors in the market for clearing and settlement and custodial services. Another aspect that has to be dealt with in this new operational context seems to be how to define and serve the public interest in the new infrastructure. A blueprint for an ideal governance structure in this situation is not easy to design but should get adequate attention of the overseers/regulators and involvement of relevant market participating the discussion should be ensured. In the market, there exist distinct fears that future developments might harm their interest and will negatively influence their competitive position.
Recommendation 14.	CSDs and central counterparties should have objective and publicly disclosed criteria for participation that permit fair and open access.
Description	*Access criteria* The following entities are allowed to become participants in RGV2, pursuant to the general access criteria: credit institutions and investment firms incorporated in France; LCH-Clearnet SA Clearing Members having the status of specialized firm; French public entities (Treasury, BdF, financial services of the Post office); legal entities incorporated within the EEA and allowed to provide investment services pursuant to the free provision of services and free establishment principles as organized by the European Directives; custodians duly authorized by the AMF to hold securities accounts on behalf of customers; French CSDs authorized by the AMF and foreign CSDs; and

	other legal entities incorporated within or outside the EEA and performing activities comparable to the other categories of entities allowed to become RGV2 participants. Foreign entities incorporated in the EEA but not established in France are allowed to become participants in RGV2 under the same conditions as French entities. If they participate to the RGV channel, and provided they have a credit institution or investment firm status, they can also open a cash account in TBF and settle their own Relit+ operations as well as the operations of other Relit+ participants (see RSSS 7). The only difference with entities established in France is the prohibition of access to intraday credit with the BdF. Due to the Eurosystem rules, the BdF is not allowed to provide credit to remote participants. Therefore, they are not allowed to access intraday credit (see assessment of Recommendations 8 and 9). This restriction is justified by public interest related to the conduct of the Eurosystem's monetary policy. Regarding foreign entities incorporated outside the EEA, pursuant to the RGV2 operating rules (Art. 2.4), the AMF has the right to oppose their access to RGV2 within one month following the notification of the decision of the Board of Euroclear France to admit the applicant (the criteria to oppose an applicant are not published). *Exit criteria* The general conditions under which participants can terminate their membership are stated in the operating rules of Euroclear France: the request of the participant; on the requirement of the AMF following a withdrawal of a necessary authorization by the AMF; or by Euroclear France, in case of breach of the operating rules by the participant that threatens the integrity of the system. Euroclear France considers that the insolvency of a participant as such is not a cause to terminate its participation. However, the situation would be specifically monitored and may lead to a rapid exit, notably in case of unpaid fees.
Assessment	Observed.
Comments	It is recommended: ▪ to develop and make public the criteria on that basis of which the AMF can oppose an applicant from outside the EEA and the procedure followed. In addition to the requirement that an applicant has to be adequately overseen or supervised, it might be worthwhile to consider whether a legal opinion should made available that determines whether there might be a conflict of laws that could threaten the smooth and secure functioning of custody and settlement of securities in France; and ▪ to determine whether the status of indirect participant could be introduced in the rules and regulations for RGV2, in line with the finality regulations in the COMOFI and whether this could apply to noncash position holders using a settlement bank to settle their cash obligations.
Recommendation 15.	While maintaining safe and secure operations, securities settlement systems should be cost-effective in meeting the requirements of users.

Description	*Budgetary process* Euroclear France manages its costs using an annual budget system. The new budget is based an a bottom-up approach. Sales are estimated and the strategic plan is taken into account, as is the evolution of wages and overhead. During the year the budget is monitored. *Price structure* Prices are set in agreement with the users. Owing to the absence of a comprehensive analytical accounting method, the present price structure is not directly related to the cost of each services. Introduction of such an accounting measure might be difficult due to the large amount of services provided (over 155). The prices charged by Euroclear allow the latter to make a profit. Cross subsidization between product or services cannot be ruled out in the present structure. Euroclear France indicates that it plans to implement a comprehensive analytical accounting of its operations, which is at present only partly available. Such a project would clearly improve the degree of observance of Recommendation 15. However, no clear planning has been disclosed so far on the following steps that would enable the extension of analytical accounting to the entire cost structure of Euroclear France. *Benchmarking* Euroclear does not benchmark its costs, prices and service levels against those of other CSDs. However the integration and harmonization of prices of the Euroclear group's CSD will be a key component of the group's operational integration. *Reviewing service levels* There is no explicit review of the service level and consultation of users, although users have the possibility to suggest processing or procedural changes and might propose new services. The MAC is involved in evaluating such a request and has also consulted on changes and new services proposed by Euroclear France itself. *Operational reliability and capacity levels* Different operational reliability indicators are developed and the smooth functioning of the processes has the attention of management. Euroclear does not know exactly its maximum capacity levels (see Recommendation 11).
Assessment	Broadly observed.
Comments	It is recommended that a comprehensive analytical accounting system be implemented in order to monitor costs and benefits more closely, so as to have an appropriate tool for price determination.
Recommendation 16.	Securities settlement systems should use or accommodate the relevant international communication procedures and standards in order to facilitate efficient settlement of cross-border transactions.
Description	The system's main communication channel is the Radianz network. However, after the implementation of the Euroclear Application Access in December 2003, participants are also enabled to communicate with the system via the Swift network. The system uses international standard message types and procedures for the securities identification process, but the securities messages in the Radianz network are based on a proprietary format and the counterparty identification is not based on

	internationally recognized identifiers. Both can be converted into relevant international procedures and standards with some difficulty.
Assessment	Broadly observed.
Comments	It is recommended that the implementation of international standards be facilitated, particularly in the area of participant identification procedures.
Recommendation 17.	CSDs and central counterparties should provide market participants with sufficient information for them to accurately identify the risks and costs associated with using the CSD or central counterparty services.
Description	*Availability of rules, regulations etc.* Market participants are provided with a full and clear description of their rights and obligations, the cost of participating in the system, the rules, regulations and laws governing the system, its governance procedure, any risk arising either to participants or to the operator, and any steps taken to mitigate those risks. Information is generally available in a language commonly used in financial markets and/or the domestic language (French) and operating rules are published on the websites of the AMF and Euroclear France. *CPSS/IOSCO Disclosure Framework* The CPSS/IOSCO Disclosure Framework has been completed and disclosed. The last update version was made available in March 2002 and is updated on some issues (e.g., the oversight /supervision of Euroclear France).
Assessment	Broadly observed.
Comments	It is recommended that the Disclosure framework be updated. Alternatively, Euroclear France could publish the assessed answers to "key questions."
Recommendation 18.	Securities settlement systems should be subject to regulation and oversight. The responsibilities and objectives of the securities regulator and the central bank with respect to SSSs should be clearly defined, and their roles and major policies should be publicly disclosed. They should have the ability and resources to perform their responsibilities, including assessing and promoting implementation of these recommendations. They should cooperate with each other and with other relevant authorities.
Description	*Entities involved in oversight/supervision* The RGV2 system is subject to both regulations by AMF and oversight by the BdF. Since Euroclear France is a corporate company, which does not have the status of a credit institution or of an investment firm, the French banking supervisor (*Commission Bancaire*) is not involved in its supervision. The regulatory competences of the AMF towards securities settlement systems (SSSs) are organized by French law. Under the terms of Art. L.622-7 of the COMOFI, the AMF "shall authorize central depositories according to the procedures established in its General Regulations and approve their operating rules; shall set in its general regulations the general principles for organizing and operating securities settlement systems and approve the operating rules for such systems, without

	prejudice to the powers granted to the BdF under Art. L.141-4." The oversight competence of the BdF also relies on a legal provision, Art. L.141-4 of the COMOFI, which states that: "As part of the duties of the European System of Central Banks and without prejudice to the competences of the Financial Markets Council Authority and of the Banking Commission, the BdF is in charge of monitoring the safety of securities clearing and settlement systems." Moreover, the Belgian CBFA has an interest in Euroclear France, which is the French subsidiary of Euroclear Bank. This interest stems from the prudential supervision of the consolidated and nonconsolidated situation, of the Euroclear Group according to the concept of "close link" between Euroclear France and Euroclear Bank. *Roles, responsibilities and resources* The regulatory and oversight frameworks for SSSs are based on a statute-based approach. The respective roles of the AMF and the BdF are clearly defined and legally enforceable. Their roles and major policies are publicly disclosed. The oversight mission of BdF is published on its website. Within the framework of oversight regular meetings take place between the overseers and Euroclear France, information is gathered based on public reports as well as on special request by ignore the overseer. The AMF can carry out on-site inspections if deemed necessary. The AMF can conduct external audits of the systems, internal controls and organization of Euroclear France. Also the BdF could carry out such audits based on the agreement it has conducted with Euroclear France. Both regulators have sufficient qualified staff. *Cooperation between securities regulators and central banks in the oversight of the Euroclear group* There is a close cooperation between the AMF as securities regulator and the BdF as overseer. Representatives of the BdF have consultative roles on the Board of the AMF and in some committees. In practice, the fulfillment of the missions of both authorities for the regulation and the oversight of RGV2 is closely coordinated. Meetings and consultations are regularly organized, as well as exchange of relevant information between the AMF and the BdF for the monitoring of RGV2. For example, the electronic data processing audit report on Euroclear France, including all detailed annexes, written on behalf of the AMF in the second half of 2002, was transmitted to the BdF. Euroclear France has been a subsidiary of Euroclear Bank since January 2001. Therefore, two MoUs (Memoranda of Understanding) were signed with foreign authorities in order to take into account the new context in which Euroclear France operates: - an MoU was signed on October 22, 2001 between the BdF, the CMF (currently AMF), the *Banque Nationale de Belgique* (BNB), and the Belgian CBFA. This Memorandum sets out the principles for cooperation between the BNB and the BdF/CMF (currently AMF) for the oversight and regulation of securities settlement systems operated by the Euroclear Group (understood for the purpose of this MoU as Euroclear Bank and its subsidiary Euroclear France), and between the BdF/CMF (currently AMF) and the Belgian CBFA as part of the latter authority's prudential supervision of the Euroclear Group; - another MoU was signed on July 9, 2002 between the same parties and also De Nederlandsche Bank and the Netherlands Authority for Financial Markets in order to organize cooperation between authorities for the regulation and the oversight of the

	settlement services provided by the Euroclear group for the settlement of transactions executed on the Euronext stock exchanges. Regular meetings and exchanges of information between the signatory authorities of both MoUs and representatives of the Euroclear Group are held in order to foster cooperation and coordinate the assessments made by the competent authorities of the related systems. Relevant information is exchanged within the framework of cooperation between the two local authorities and between the local and foreign regulators.
Assessment	Observed.
Comments	The procedures could be formalized to work out the cooperation and division of tasks between the AMF and the BdF in an MoU to be published so as to enhance transparency for all parties involved.
Recommendation 19.	CSDs that establish links to settle cross-border trades should design and operate such links to reduce effectively the risks associated with cross-border settlement.
Description	*Types of links* Between Euroclear France and national and international CSDs there exist: - 13 Direct links; - 1 Indirect link; and - 14 Relayed links in which Euroclear Bank Brussels is used as the intermediary CSD. *Risk analysis* Risk analysis is conducted with respect to the financial and operational integrity of the linked CSD, although the legal risk involved in depositing, clearing, and settlement of foreign securities in Euroclear France might not be fully assessed. *Delivery versus Payment* Most of the links are used only for Free-of-Payment transfers. All transfers are normally final and irrevocable and no provisional transfer occurs. The only exception is related to the outward link with Euroclear Bank in French securities through its direct participation in Relit+, which allows provisional transfers to the benefit of Euroclear Bank participants, the night before the final settlement of the cash balances stemming from Relit. This link was implemented in July 2002 following the so-called *Flux Bourse* Project, which aimed at permitting LCH-Clearnet SA Clearing Members to choose the settlement location for transactions executed on Euronext Paris, between Euroclear France and Euroclear Bank. Provisional transfers are only allowed for securities settled in the Relit channel and not in the RGV2-TFT channel. The provisional transfer may raise risks for Euroclear Bank participants in case of unwinding of Relit operations following a cash default (see assessment against RSSS 9). In addition, in case of the unwinding of Relit+ processes leading to a negative securities balance of LCH-Clearnet SA in Euroclear Bank, an undue creation of French securities may result, at least temporarily (i.e. before the LCH-Clearnet SA "buy-in procedure" and the loss-sharing procedure of Euroclear Bank are performed), from these provisional transfers in Euroclear Bank.

Assessment	Non-observed.
Comments	

Table 28. Summary Observance of Relit+ of the CPSS/IOSCO Recommendations for Securities Settlement Systems

Assessment Grade	Recommendations Grouped by Assessment Grade	
	Count	List
Observed	11	Rec. 2, 3, 5, 6, 7, 8, 10, 12, 13, 14 and 18.
Broadly observed	5	Rec. 1, 11, 15, 16 and 17.
Partly observed	0	--
Non-observed	2	Rec. 9 and 19.
Not applicable	1	Rec. 4

Recommended action plan and authorities' response to the assessment

Recommended action plan

Table 29. Recommended Actions to Improve Observance of Relit+ of the CPSS/IOSCO Recommendations for Securities Settlement Systems

Reference Recommendation	Recommended Action
Rec. 1 Sound legal basis	- see the recommendation for the RGV2—Trade for Trade channel.
Rec. 9 Risk controls in deferred net settlement systems	- implement as soon as possible adequate measures to ensure timely settlement in the event the participant with the largest position to pay is not able to settle its obligations.
Rec. 10 Settlement assets	- establish adequate criteria in the rules and regulations of Euroclear France for the access to Relit+ technical cash balances.
Rec. 11 Operational reliability	- see the recommendations for RGV2—Trade for Trade channel
Rec. 13 Governance arrangements	- see the recommendation for RGV2—Trade for Trade channel
Rec. 14 Access criteria	- develop and publish the criteria on the basis of which the AMF can oppose an applicant from outside the EEA and the procedures to be followed. Consider in this context whether a legal opinion on possible conflicts of laws should be made available by the applicant; - determine whether the status of indirect participant could be introduced.

Reference Recommendation	Recommended Action
Rec. 15 Cost-effectiveness	- see the recommendation for RGV2—Trade for Trade channel
Rec. 16 International communication standards	- see the recommendation for RGV2—Trade for Trade channel
Rec. 17 Disclosure of risks and costs	- see the recommendation for RGV2—Trade for Trade channel
Rec. 18 Oversight	- see the recommendation for RGV2—Trade for Trade channel

Authorities' response to the assessment

125. The recommendations of the IMF are in line with the findings of the BdF and the AMF, the relevant overseers/regulators of Euroclear France.

VI. Observance of the IMF Code of Good Practices on Transparency in Monetary and Financial Policies

A. Introduction

126. This assessment of observance of the IMF's Code of Good Practices on Transparency in Monetary and Financial Policies (MFP) assesses the transparency of France's policies and practices in the areas of (i) banking regulation and supervision; (ii) deposit insurance; (iii) insurance regulation and supervision; (iv) payment and settlement systems oversight; and (v) securities regulation. Being a member of the euro area, France's monetary policy is covered by the assessment of transparency in monetary policy of the European System of Central Banks (see IMF Country Report No. 01/195). The assessments were carried out by Mr. Wim Fonteyne (IMF/MFD), with Ms. Andrea Corcoran (US Commodity Futures Trading Commission) and Mr. Toni Gravelle (IMF/ICM) for securities regulation and supervision, Mr. Jan-Willem van der Vossen (IMF/MFD) for banking supervision and deposit insurance, Ms. Andrea Maechler (IMF/MFD) and Mr. Helmut Müller (formerly German *Bundesaufsichtsamt für das Versicherungswesen*) for insurance regulation and supervision, and Messrs. Jan Woltjer (IMF/MFD) and Daniel Heller (Swiss National Bank) for payment and settlement systems oversight.

127. The assessments are based on discussions held during the FSAP missions of January-February and May 2004, with representatives of the relevant regulatory and supervisory agencies as well as representatives of major banks, rating agencies and the accounting and auditing profession. It was further based on pre-mission self-assessments prepared by the authorities; study of the relevant laws and regulations; a review of the annual reports, other publications and websites of the relevant agencies; and earlier assessments made by an IMF team in the context of the 2000 Art. IV consultation (see www.imf.org).

B. Transparency of Banking Supervision

128. The legal framework for banking regulation and supervision in France is defined by the *Code Monétaire et Financier* (Monetary and Financial Code, COMOFI). This code allocates different responsibilities to three main players: the CB for supervision, the CECEI for licensing, and the Minister in charge of the economy for regulation. In the current government set-up, the MINEFI handles regulation. Until earlier this year, this last function was performed by the CRBF. The CRBF has now been transformed in an advisory body, the CCLRF, advising the MoE in drawing up bank legislation and regulations. The CB, CECEI, and CCLRF are set up as specialized agencies within the group. They draw on the BdF for their staff and other resources and the Governor of the BdF is also president of the CB and the CECEI.

Practice-by-practice assessment

Table 30. Detailed Assessment of Observance of IMF's MFP Transparency Code—Banking Supervision

V. Clarity of Roles, Responsibilities and Objectives of Financial Agencies Responsible for Financial Policies	
5.1	**The broad objective(s) and institutional framework of financial agencies should be clearly defined, preferably in relevant legislation or regulation.**
Practice	The COMOFI outlines the legal and institutional framework governing banking regulation and supervision in France. Articles L.611-1, L.612-1 through L.612-5 and L.613-1 of that code identify the three agencies involved, responsible respectively for regulation (formerly the *Comité de la Réglementation Bancaire et Financière*—CRBF, now the MoE assisted by the *Comité Consultatif de la Législation et de la Réglementation Financières*—CCLRF), licensing (*Comité des Etablissements de Crédit et des Entreprises d'Investissement*—CECEI) and supervision (*Commission Bancaire*—CB). In addition, Art. L.614-1 establishes a consultative body, the *Comité Consultatif du Secteur Financier (*CCSF), charged with analyzing issues and presenting proposals regarding the relationships between, on the one hand, credit institutions, investment firms, and insurance companies and, on the other hand, their clients.
Assessment	Observed.
5.1.1	**The broad objective(s) of financial agencies should be publicly disclosed and explained.**
Practice	The broad objectives of the agencies responsible for banking supervision are laid down in Articles L.611-1, L.612-1 and L.613-1 of the COMOFI and cover in particular (i) building a system of prudential regulations addressing bank soundness and the maintenance of fair and competitive markets; (ii) client asset protection; (iii) enforcement of applicable laws and regulations; and (iv) maintenance of market and systemic liquidity. These objectives are further disclosed and explained in official publications, such as the *Journal Officiel de la République Française* (JORF), the semi-annual *Bulletin de la Commission Bancaire*, the monthly *Bulletin de la Banque de France*), and the Annual Reports of the CRBF/CCLRF, CECEI, CB, and BdF, as well as on the websites of these bodies.

Assessment	Observed.
5.1.2	**The responsibilities of the financial agencies and the authority to conduct financial policies should be publicly disclosed.**
Practice	The agencies' responsibilities are set out in the COMOFI, Art. L.611-1 through L.611-9, L.612-1 (licensing by the CECEI), and Art. L.613-1 and L.613-2 (supervision by the CB). The agencies' authority to conduct financial policies is set out in many provisions of the COMOFI, e.g. Art. L.611 through L.613-20. This authority and the respective responsibilities are publicly disclosed through official publications (see 5.1.1, above). In addition, a compendium of all laws, regulations, and directives applicable to the banking and financial sectors (the *Recueil des Textes Relatifs à l'Exercice des Activités Bancaires et Financières*) is published annually by the CRBF/CCLRF and the BdF.
Assessment	Observed.
5.1.3	**Where applicable, the broad modalities of accountability for financial agencies should be publicly disclosed.**
Practice	The broad modalities of accountability for the agencies in charge of banking supervision and regulation are provided in law. Art. L.143-1 of the COMOFI requires the Governor of the BdF, who is also chairman of the CECEI and the CB, to issue an annual report to the President of the Republic and to Parliament. The same article also prescribes that the Governor must appear before the Finance Commissions of the National Assembly or the senate if so requested, or if he wishes to be heard by these bodies. Further, Art. 20 of the Constitution of October 4, 1958 makes the minister in charge of economic affairs collectively responsible with other members of the government to parliament for the design and implementation of public policies.
Assessment	Observed.
5.1.4	**Where applicable, the procedures for appointment, terms of office, and any general criteria for removal of the heads and members of the governing bodies of financial agencies should be publicly disclosed.**
Practice	The procedures for appointments to the Chair of the CB and CECEI are specified in Art. 13 of the Constitution of 1958 and Art. L.142-8 of the COMOFI, which states that the Governor of the BdF, who is also the Chairman of the CECEI and the CB for the duration of his six-year term of office, is appointed by decree of the Council of Ministers. The Director of the Treasury, who is also a member of the CB and the CECEI, is also appointed by the latter. Pursuant to the COMOFI, the remaining appointments to the agencies take place by decree of the Minister in charge of economic affairs, and are irrevocable, The COMOFI also specifies the terms of office, at 5 years, renewable once, for the CB (Art. L.613-3) and at 3 years for the CECEI (Art. L.612-3). Appointments are irrevocable. However, civil service appointees, among which the Governor of the BdF and the Director of the Treasury, may be removed for high treason or serious professional misconduct, while other appointees may be removed for cause by virtue of the provisions of the Penal Code applicable to holders of public office. Public disclosure of appointment procedures, terms of office, and criteria for removal are found in the JORF and on the latter's website.
Assessment	Observed.

5.2	**The relationship between financial agencies should be publicly disclosed.**
Practice	The relationships between the supervisory bodies can first of all be determined by their respective terms of reference (see above). Furthermore, Art. L.631-2 of the COMOFI establishes a Board of Supervisory Authorities of Financial Sector Enterprises (*Collège des Autorités de Contrôle des Entreprises du Secteur Financier*–CACESF), comprising the chairs of the CB, , the governor of the BdF, the *Commission de Contrôle des Assurances, des Mutuelles et des Institutions de Prévoyance* (CCAMIP), the *Autorité des Marchés Financiers* (AMF), as well as a representative of the MINEFI, in order to facilitate the exchange of information and to address topics of interest among all three sectors. Art. 631-1 authorizes the exchange of information between these bodies. The COMOFI also defines the relationships among the CB, CECEI, MoE and CCLRF for banking regulation and supervision on the one hand, and among the AMF, CECEI and CB for the regulation and supervision of investment business. The agencies generally meet monthly, while the Board of the CACESF meets at least three times a year. The COMOFI also specifies that the president of the CCAMIP sits on the CB. More in general, the CB and the CCAMIP have developed close links and stepped up their cooperation in recent years, as formalized in a 2001 charter between them, disclosed through official publications and on the websites of both institutions.
Assessment	Observed.
5.3	**The role of oversight agencies with regard to payment systems should be publicly disclosed.**
Practice	
Assessment	Not applicable.
Comments	The agencies in charge of banking regulation and supervision have no oversight responsibilities over payment systems. Payment systems oversight is a responsibility of the BdF's payment systems department.
5.3.1	**The agencies overseeing the payment system should promote the timely public disclosure of general policy principles (including risk management policies) that affect the robustness of systemically important payment systems.**
Practice	
Assessment	Not applicable.
Comments	The agencies in charge of banking regulation and supervision have no oversight responsibilities over payment systems. Payment systems oversight is a responsibility of the BdF's payment systems department.
5.4	**Where financial agencies have oversight responsibilities for self-regulatory organizations (e.g., payment systems), the relationship between them should be publicly disclosed.**
Practice	
Assessment	Not applicable.

Comments	The agencies in charge of banking regulation and supervision have no oversight responsibility for self-regulatory organizations.
5.5	**Where self-regulatory organizations are authorized to perform part of the regulatory and supervisory process, they should be guided by the same good transparency practices specified for financial agencies.**
Practice	
Assessment	Not applicable.
Comments	The agencies in charge of banking regulation and supervision have no oversight responsibility for self-regulatory organizations.
VI. OPEN PROCESS FOR FORMULATING AND REPORTING OF FINANCIAL POLICIES	
6.1	**The conduct of policies by financial agencies should be transparent, compatible with confidentiality considerations and the need to preserve the effectiveness of actions by regulatory and oversight agencies.**
Practice	Through its publications and website, the CB provides extensive information on its policies and actions. However, all data and decisions with regard to individual institutions remain confidential, except in cases when an institution is closed. The latter cases are described in the CB's annual report. CB/CECEI members and staff are subject to professional secrecy requirements (Art. L.613-20 of the COMOFI). The CECEI's decisions are published in the JORF (see Art. L.511-14 and L.612-2 of the COMOFI).
Assessment	Observed.
6.1.1	**The regulatory framework and operating procedures governing the conduct of financial policies should be publicly disclosed and explained.**
Practice	The regulatory framework is set out in legislation and regulations, and disclosed/explained through official publications. Operating procedures for the conduct of banking supervision are disclosed and explained through regulations, descriptive documentation, notices and technical guides, as well as official publications (see also 5.1.1, above).
Assessment	Observed.

6.1.2	**The regulations for financial reporting by financial institutions to financial agencies should be publicly disclosed.**
Practice	The COMOFI L.613-8 authorizes the CB to obtain all information it needs for the exercise of its banking supervision role, and to set reporting requirements (content, format and reporting deadlines) for the institutions under its supervision. Regulations on prudential standards, internal controls and accounting, which specify the reporting requirements of banks, are publicly disclosed through the JORF, the annual compendium and the websites of the different supervisory and regulatory bodies. The CB also issues instructions that specify reporting requirements in greater detail. These instructions are publicly disclosed in its publications and on its website.
Assessment	Observed.
6.1.3	**The regulations for the operation of organized financial markets (including those for issuers of traded financial instruments) should be publicly disclosed.**
Practice	
Assessment	Not applicable.
Comments	The agencies in charge of banking regulation and supervision are not responsible for the regulation of organized financial markets, which is the domain of the AMF.
6.1.4	**Where financial agencies charge fees to financial institutions, the structure of such fees should be publicly disclosed.**
Practice	
Assessment	Not applicable.
Comments	The agencies responsible for bank regulation and supervision in France do not charge fees.
6.1.5	**Where applicable, formal procedures for information sharing and consultation between financial agencies (including central banks), domestic and international, should be publicly disclosed.**
Practice	The framework for information sharing and consultation between the agencies responsible for banking supervision and regulation and other domestic financial agencies is defined in the COMOFI (see 5.2, above). In the case of the relationship between the CCA/CCAMIP and the CB, a formal charter was agreed in 2001 that specified the cooperation procedures and modalities in greater detail. This charter is published on the websites of both agencies. No such detailed agreements exist governing the other domestic relationships. A more generalized use of such bilateral and publicly disclosed agreements would further enhance transparency. In the area of international cooperation, Art. L.613-12 of the COMOFI empowers the CB to enter into bilateral agreements for the exchange of information with its European counterparts and Art. L.613-13 of the COMOFI authorizes the same for non-European Economic Area (EEA) countries. Art. L.612-6 of the COMOFI authorizes the CECEI to enter into bilateral agreements for the exchange of information with its counterparts in other countries. Such bilateral agreements are publicly disclosed in the Bulletin of the BdF and other official publications (see 5.1.1, above). See, for example, the June 2004 issue of the Bulletin of the

	BdF, which contains an agreement between the CB and its US counterparts.
Assessment	Observed.
6.2	**Significant changes in financial policies should be publicly announced and explained in a timely manner.**
Practice	New legislation is subject to the transparent consultation and disclosure practices applicable to all French legislation. New regulations are subject to an extensive consultation process (see 6.4) and typically do not enter into effect until three months or more after the consultation process ends. Once approved, they are widely disseminated and clarified at press conferences and public presentations. More in general, all jurisdictional decisions of the CB are published. The annual reports of the bodies responsible for bank regulation and supervision (BdF, CECEI and the CB) discuss financial policies in their annual reports and periodic bulletins. Officials of these bodies are available to discuss these issues with Parliament and the media.
Assessment	Observed.
6.3	**Financial agencies should issue periodic public reports on how their overall policy objectives are being pursued.**
Practice	Annual reports are published separately by the BdF, CB, and CECEI. In addition, the CB publishes a biannual Bulletin (*Bulletin de la Commission Bancaire*), as well as occasional reports on selected topics and its jurisdictional decisions. In addition to its annual report, the BdF published a biannual Financial Stability Review (FSR), to which the CB contributes. The FSR discusses issues related to financial markets, financial regulation and the banking sector, and publishes studies on selected issues.
Assessment	Observed.
6.4	**For proposed substantive technical changes to the structure of financial regulations, there should be a presumption in favor of public consultations, within an appropriate period.**
Practice	In the event of substantive amendments to regulations, the general public is informed and industry closely involved in the amendment process. With regard to regulations, the drafting/amendment process involves: • Formulation by the MoE of the general principles and disclosure to the industry; • Discussion of preliminary drafts with industry experts; • Periodic consultations of the banks when new regulations are in the preparatory stage, with the consultation period typically exceeding three months; • Formal consultation of the banking and financial services sectors by the Secretary General of the CCLRF. Typically, this involves sending drafts to the banking associations for their comments. The broadest based of these is the *Association Française des Etablissements de Crédit et des Entreprises d'Investissement*, membership of which is mandatory. This association works through study groups with experts and does not routinely distribute drafts to all members. • For each legal or regulatory project, as well as any proposition of regulation or EU directive, the CCLRF (Art. L.614-2 of the COMOFI) advises the MoE if the draft directive has a bearing on the insurance or banking sector or investment firms. The CCLRF does not advise on texts

	within the field of competence of the AMF; • Sometimes, other bodies, such as the AMF or the *Commission Nationale de l'Informatique et de la Liberté* (the French Data Protection Authority), are also consulted; • The final draft is sent to the members of the CCLRF for their approval; • If the Committee produces a negative legal opinion and the MoE wants to ignore that opinion, the MoE needs to request a second reading before it can proceed. An additional stage is sometimes added, in which the European Central Bank (ECB) is consulted. The ECB needs to see any draft legislation relating to financial institutions (except in the case of measures implementing EU Directives), if the regulations in question might affect the stability of these institutions and the financial markets. The consultation process is helped by the fact that the banking industry has direct representation on the CCLRF, and by the role played by the new *Comité Consultatif du Secteur Financier* (CCSF) (see 5.1). This CCSF comprises two categories of members : on the one hand, in majority, and in equal numbers, representatives of credit institutions, investment firms, insurance companies, insurance agents and brokers; and, on the other hand, client representatives. The composition of the Committee, the conditions of nomination of its members and its president are decided by Decree. The consultation process is transparent and comprehensive. Compulsory membership of all licensed banks and investment firms in a professional organization allows for comprehensive distribution of drafts to all market participants. However, by not distributing all drafts routinely to all members, the *Association Française des Etablissements de Credit et des Entreprises d'Investissement* may not always fully reflect market views. The new CCLRF will give a more broad-based consultation process that will enhance the process as it would allow potential market entrants to participate as well.
Assessment	Observed.
VII. PUBLIC AVAILABILITY OF INFORMATION ON FINANCIAL POLICIES	
7.1	**Financial agencies should issue a periodic public report on the major developments of the sector(s) of the financial system for which they carry designated responsibility.**
Practice	Each year, the CB publishes (i) its annual report, which describes major developments in the banking and financial sectors in addition to providing information on the CB's supervisory policy and actions and (ii) its two-volume comparative analysis (*Analyses Comparatives*), which contains comprehensive aggregate data on the activities and performance of credit institutions. The CB also publishes a bi-annual Bulletin with information on new regulations and studies on developments in the banking sector. The CECEI publishes an annual report and maintains the current list of credit and investment institutions published in the JORF. The BdF provides reports on a quarterly and annual basis and a biannual financial stability report. All publications are available online on the website of the BdF.
Assessment	Observed.
7.2	**Financial agencies should seek to ensure that, consistent with confidentiality requirements, there is public reporting of aggregate data related to their jurisdictional responsibilities on a timely and regular basis.**
Practice	The CB's annual report, *Analyses Comparatives* and Bulletin provide aggregate data for the

	banking and financial sectors. The CECEI's annual report provides data on the number of institutions by category, as does the BdF's annual report.
Assessment	Observed.
7.3	**Where applicable, financial agencies should publicly disclose their balance sheets on a pre-announced schedule and, after a predetermined interval, publicly disclose information on aggregate market transactions.**
Practice	
Assessment	Not applicable.
Comments	The three financial agencies engaged in banking supervision and regulation (CB, CECEI, and CCLRF) do not have separate balance sheets. Their staff and financial resources are provided by the BdF by formal agreement. The BdF's annual report includes information on staff seconded to supervisory functions. Transparency could be helped by the creation and publication of pro forma balance sheets of the different agencies within the BdF group. Such pro forma balance sheets could be published in the BdF's annual report.
7.3.1	**Consistent with confidentiality and privacy of information on individual firms, aggregate information on emergency financial support by financial agencies should be publicly disclosed through an appropriate statement when such disclosure will not be disruptive to financial stability.**
Practice	
Assessment	Not applicable.
Comments	None of the three financial agencies engaged in banking supervision and regulation provide emergency financial support to supervised institutions, although support operations can be undertaken by the BdF (see COMOFI Art. L.141-3). In such cases this would be disclosed after the fact, through the periodic publications of the BdF. Furthermore, the Deposit Guarantee Fund (FGD) has the option, at the request of the CB, to provide support to an ailing institution.
7.4	**Financial agencies should establish and maintain public information services.**
Practice	The CB, CECEI, and CCLRF all use the BdF's Communications Division to provide public information services. The CB and the CECEI also have public websites. The services provided by the BdF's Communications Division include the dissemination of information on: (i) policy decisions and announcements; (ii) the operation of the financial agencies and their objectives; (iii) speeches by senior officials; (iv) quantitative data; (v) staff research; and (vi) jurisdictional decisions. They also include contact with news media representatives.
Assessment	Observed.
7.4.1	**Financial agencies should have a publications program, including a periodic public report on their principal activities issued at least annually.**
Practice	See 7.1, above. The CB's program includes (i) an annual report; (ii) bi-annual bulletins;

	(iii) research studies; (iv) speeches by senior or top officials; and (v) a brief description of its role and functions. The CRBF/CCLRF's program comprises its annual report and its Recueil (see 5.1.2, above). The CECEI publishes its annual report and makes public any changes in its list of credit institutions and investment firms. Annual reports, bulletins of the CB, and the Recueil are available online on the website of the BdF, and on the individual websites of the different agencies.
Assessment	Observed.
7.4.2	**Senior financial agency officials should be ready to explain their institution's objective(s) and performance to the public, and have a presumption in favor of releasing the text of their statements to the public.**
Practice	The Governor of the BdF (who also chairs the CB and the CECEI) and senior officials of the CB's General Secretariat explain their agencies' objectives and performance at parliamentary/senate hearings (for the Governor of the BdF/Chairman of the CB and the CECEI), as well as through speeches in public fora and before members of the industry and articles in the news media. Texts of such statements are generally released to the public, including through the websites of the BdF.
Assessment	Observed.
7.5	**Texts of regulations and any other generally applicable directives and guidelines issued by financial agencies should be readily available to the public.**
Practice	Texts of regulations and any other generally applicable directives and guidelines issued by the agencies responsible for banking regulation and supervision in France are made readily available through different channels, including the website of the BdF; the official bulletin of the BdF; the Bulletin of the CB; the JORF; the *Recueil des Textes Relatifs à l'Exercice des Activités Bancaires et Financières*, an annual publication that lists all official texts applicable to the banking sector; and www.legifrance.gouv.fr , a public website that gives convenient access to all French laws, decrees and regulations.
Assessment	Observed.
7.6	**Where there are deposit insurance guarantees, policy-holder guarantees, and any other client asset protection schemes, information on the nature and form of such protections, on the operating procedures, on how the guarantee is financed, and on the performance of the arrangement, should be publicly disclosed.**
Practice	
Assessment	Not applicable.
Comments	None of the agencies responsible for banking regulation and supervision is responsible for operating a client asset protection scheme. The transparency of the FGD is subject of a separate assessment.

7.7	**Where financial agencies oversee consumer protection arrangements (such as dispute settlement processes), information on such arrangements should be publicly disclosed.**
Practice	
Assessment	Not applicable.
Comments	The banking regulatory and supervisory agencies have no oversight responsibilities for consumer protection arrangements. However, the new *Comité Consultatif du Secteur Financier* (CCSF) –which replaced the *Comité Consultatif* of the CNCT (Art. L.614-1 of the COMOFI)- will be in charge of the relations between credit institutions, investment firms, insurance companies and their clients. The Governor of the BdF leads the *Comité de la Médiation Bancaire* created at the end of 2002 which, in particular, surveys the activities of each mediator or ombudsman designated by credit institutions in application of Art. L.312-1-3 of the COMOFI.
VIII. ACCOUNTABILITY AND ASSURANCES OF INTEGRITY BY FINANCIAL AGENCIES	
8.1	**Officials of financial agencies should be available to appear before a designated public authority to report on the conduct of financial policies, explain the policy objective(s) of their institution, describe their performance in pursuing their objective(s), and, as appropriate, exchange views on the state of the financial system.**
Practice	For these purposes, Art. L.143-1 of the COMOFI specifies that the Governor of the BdF may be heard by the Finance Commissions of the National Assembly or the Senate and may request to be heard by them.
Assessment	Observed.
8.2	**Where applicable, financial agencies should publicly disclose audited financial statements of their operations on a pre-announced schedule.**
Practice	
Assessment	Not applicable.
Comments	The CB and CECEI do not have balance sheets separate from that of the BdF (see 7.3 above). The audited financial statements of the BdF are published in the JORF and form part of the BdF's annual report.
8.2.1	**Financial statements, if any, should be audited by an independent auditor. Information on accounting policies and any qualification to the statements should be an integral part of the publicly disclosed financial statements.**
Practice	
Assessment	Not applicable.
Comments	The CB and CECEI do not have balance sheets separate from that of the BdF (see 7.3 and 8.2 above). Financial statements of the BdF are audited by two private sector firms of chartered accountants. Information on auditing and accounting policies as well as qualifications to the

	financial statements, are disclosed in the published statements.
8.2.2	**Internal governance procedures necessary to ensure the integrity of operations, including internal audit arrangements, should be publicly disclosed.**
Practice	The BdF provides the CB, CECEI and CCLRF all material support and staff they need for the performance of their functions (Art. L 613-6 and L 613-7 of the COMOFI). Insurance of the integrity of operations rests with the internal audit office of the BdF (*l'Inspection Générale*). This internal office, together with the risk management unit, falls under the authority of the *Contrôleur Général*, and is responsible for the systematic monitoring of the BdF's management procedures and internal control systems. The existence (and mission) of the internal audit office is publicly disclosed in the BdF's annual report and its organization chart. Developments in the area of internal audit are also discussed in the BdF's annual report (for example, section 8.2.8 of the 2002 Annual Report). Transparency could be further enhanced by posting an extensive description of the internal audit unit and other internal governance procedures on the website of the BdF, and on the website of the other agencies that are covered by the same system.
Assessment	Observed.
8.3	**Where applicable, information on the operating expenses and revenues of financial agencies should be publicly disclosed annually.**
Practice	
Assessment	Not applicable.
Comments	Since the resources of the CB, CECEI and CCLRF are provided by the BdF, these agencies do not have their own separately identified operating expenses and revenues.
8.4	**Standards for the conduct of personal financial affairs of officials and staff of financial agencies and rules to prevent exploitation of conflicts of interest, including any general fiduciary obligation, should be publicly disclosed.**
Practice	Internal standards for the conduct of personal financial affairs are set out in the BdF's *Code de déontologie financière*, which is published in the Official Bulletin of the BdF. A recent internal rule (also published) relating to the implementation of the *Code de déontologie financière* focuses more specifically on good practices to be applied by officials and staff when they are offered gifts in the conduct of their official duties.
Assessment	Observed.
8.4.1	**Information about legal protections for officials and staff of financial agencies in the conduct of their official duties should be publicly disclosed.**
Practice	The CB enjoys a suitable level of protection within the framework of the general principles of administrative law, laid down in case law in administrative courts in France. With regard to the CB's performance of its administrative duties, current *Conseil d'État* jurisprudence indicates that the State may incur liability on the CB's account mainly for gross negligence. The trend in case law seems to be moving toward the possibility of the State incurring liability for simple negligence. If this shift were to be confirmed, the legal protection afforded to the CB would be

	diminished. With respect to employee liability, CB staff is protected by the general principles of administrative law applicable to persons in charge of a public function. Where civil liability is concerned, a distinction should be made between administrative error and personal fault. A civil servant does not incur personal liability for an administrative error, which—by its nature—cannot be separated from the exercise of a public office. A civil servant may incur personal liability for personal fault, such as malevolence or abusive behavior, which can be separated from the exercise of a public office. In criminal matters, liability is personal. CB staff may therefore incur criminal liability for their acts. Since these legal protections stem from administrative case law in France, they are public by nature. The essential relevant judicial rulings are widely publicized and discussed in the legal press and literature. While legal journals and literature publicly disclose and discuss jurisprudence on the legal responsibility of civil servants, these sources are not easily accessible and comprehensible to the general public. Therefore, transparency would benefit from the publication in a more accessible medium of the specific legal status and liability limitations applicable to the BdF, CB, CECEI and CCLRF and their staff members and officials. While the content of the rule of administrative law, as well as established jurisprudence, are not at issue, the public, the agencies concerned and their staff would benefit from a clear overview of the legal issues and confirmation of the protection of civil servants, which is particularly relevant in the area of bank supervision.
Assessment	Observed.

Table 31. Summary Observance of IMF's MFP Transparency Code—Banking Supervision

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Observed	23	5.1, 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.2, 6.1, 6.1.1, 6.1.2, 6.1.5, 6.2, 6.3, 6.4, 7.1, 7.2, 7.4, 7.4.1, 7.4.2, 7.5, 8.1, 8.2.2, 8.4, 8.4.1.
Largely observed	0	--
Partly observed	0	--
Not observed	0	--
Not applicable	13	5.3, 5.3.1, 5.4, 5.5, 6.1.3, 6.1.4, 7.3, 7.3.1, 7.6, 7.7, 8.2, 8.2.1, 8.3.

Recommended action plan and authorities' response to the assessment

Recommended action plan

Table 32. Recommended Action Plan to Improve Observance of IMF's MFP Transparency Code Practices—Banking Supervision

Reference Practice	Recommended Action
None.	

Authorities' response to the assessment

129. The authorities are in broad agreement with the assessment.

C. Transparency of Deposit Insurance

130. The FGD was established by the Savings and Financial Security Act of June 25, 1999, which was subsequently transposed into the COMOFI. This basic legal framework is complemented by two decrees, as well as by a series of regulations issued by the CRBF. The FGD is set up as a special purpose legal entity under private law, of which all credit institutions licensed in France must be members. It is overseen by a supervisory council composed of representatives of the member credit institutions. On a day-to-day basis, the FGD is managed by a board consisting of three directors, one of which is designated President. The directors and President are nominated by the supervisory council, but the nomination of the President is subject to approbation by the MoE. The FGD covers bank deposits, certain securities, and a specific type of bank guarantees (*cautions*) that some professions in France must obtain. The limit of its coverage is set at EUR 70,000 per individual per bank. In addition, it can preventatively intervene in a financial institution at the request of the CB.

Practice-by-practice assessment

Table 33. Detailed Assessment of Observance of IMF's MFP Transparency Code—Deposit Insurance Supervision

V. Clarity of Roles, Responsibilities and Objectives of Financial Agencies Responsible for Financial Policies—Protection of deposits, securities and beneficiaries of "cautions"	
5.1	**The broad objective(s) and institutional framework of financial agencies should be clearly defined, preferably in relevant legislation or regulation.**
Practice	The *Fonds de Garantie des Dépôts* was established by the Savings and Financial Security Act of June 25, 1999, replacing the previously existing separate guarantee funds. The text of the 1999 Law is now transposed into the COMOFI of December 14, 2000, Articles L.312-4

	through 18, Articles L.313-50 and 51, Articles L.322-1 through 4, and Art. L.352-1. The COMOFI states that the FGD guarantees deposits, investments, and "*caution.*" The latter are specified in Decree 99-776 as referring to mandatory guarantees, which certain professions in France (e.g, contractors in the construction sector) must obtain from a credit institution to provide their clients protection concerning the completion of certain contracts. Rights of insurance policy holders are not protected by the FGD but by other entities, governed by the *Code des Assurances* (namely, the *Fonds de Garantie des Assurances Obligatoires de Dommages* and the *Fonds de Garantie des Assurés Contre la Défaillance des Sociétés d'Assurance*). The FGD's legal personality, activation, scope, governance, funding, intervention powers, its right to sue managers of a financial institution, as well as an enabling clause for the MoE to issue more detailed regulations, are also clearly set out in the COMOFI. Regulation 99-05 of the CRBF provides more detail on the functioning of the FGD, including information on the extent of cover it provides, the pay-out modalities, and the procedures to notify depositors. Regulation 99-06 regulates the FGD's financial resources, including the methodology for the calculation of the contributions of covered financial institutions. Regulation 99-07 regulates how claims on branches in France of institutions outside the EEA are covered. It also gives the FGD the authority to conclude agreements with deposit protection schemes in other countries, regarding foreign banks with subsidiaries in France.
Assessment	Observed.
5.1.1	**The broad objective(s) of financial agencies should be publicly disclosed and explained.**
Practice	The broad objectives of the FGD are clearly specified in the COMOFI, as being: (i) to reimburse depositors in cases of unavailability (*indisponibilité*) of deposits (Art. L.312) or (ii) securities instruments (Art. L.322-2); and (iii) to honor *cautions* in case a credit institution becomes insolvent (Art. L.313-50). Preventive action against an institution is another broad objective stated in Art. L.312-5 of the COMOFI: the CB may request the FGD to intervene in a preventive capacity when a member's situation gives rise to concerns that the deposits or financial instruments may become unavailable at some point in the future, taking into consideration any support from which the distressed institution may otherwise benefit. These objectives are further explained on the FGD's informative website (www.garantiedesdepots.fr).
Assessment	Observed.
5.1.2	**The responsibilities of the financial agencies and the authority to conduct financial policies should be publicly disclosed.**
Practice	The responsibilities and authority of the FGD are laid out in the COMOFI and associated regulations as cited above (see 5.1 and 5.1.1).
Assessment	Observed.
5.1.3	**Where applicable, the broad modalities of accountability for financial agencies should be publicly disclosed.**
Practice	COMOFI, Art. L.312-10 stipulates that the FGD submits an annual financial statement to the MoE every year, after external audit and the approval of the statement by the supervisory council of the FGD. Art. L.312-13 provides the possibility for the Minister in charge of economic affairs, the Governor of the BdF, and the President of the Commission Bancaire and

	the President of the AMF to be heard by the FGD at their request. Art. L.312-10 prescribes that decisions by the FGD on the management and use of the guarantee fund need to be ratified by the Minister in charge of economic affairs. Art. L.312-5 of the COMOFI stipulates that decisions taken by the FGD are subject to administrative review by the administrative judicial authorities. The decisions of the administrative judicial authorities are publicly disclosed. Transparency could be further improved by putting in place provisions for the FGD to regularly report on its activities to the public and to a designated public body.
Assessment	Observed.
5.1.4	**Where applicable, the procedures for appointment, terms of office, and any general criteria for removal of the heads and members of the governing bodies of financial agencies should be publicly disclosed.**
Practice	Articles L.312-9, L.312-10, L.312-11 and 12 of the COMOFI specify that the FGD is governed by a supervisory council consisting of 12 members (plus 2 members for the Securities Guarantee mechanism) and is managed on a day-to-day basis by a directorate of three members, nominated by the supervisory council. Additional rules on the governance of the FGD are disclosed in Regulation 99-06, Articles 10-14. The members of the supervisory council appoint one of the members of the directorate as president of the FGD. The members of the supervisory council are appointed by the members for a period of four years. The four largest contributors each have one voting representative on the supervisory Council; banks that are members of a central body (as defined in the COMOFI) together provide two voting representatives, and other credit institutions together supply six. Investment firms that are not credit institutions provide 2 representatives. The latter eight (plus 2) representatives are not "ex officio" members of the supervisory council. Voting rights reflect financial contributions. The president of the directorate must be confirmed by the Minister of Economics, Finance and Industry. The procedures for appointment, terms of office and general criteria for removal of members of the supervisory council are further specified in CRBF regulation 99-06. This regulation sets the terms of office of council members at 4 years. It also puts the responsibility for particular supervisory council seats at the level of qualifying member institutions. Those institutions are reponsible for replacing a council member who is no longer able to fulfill his or her mandate. The procedures for electing and removing the president of the supervisory council are outlined in the internal rules (*Règlement intérieur*) of the CDG, which are posted on its website. These rules also specify the procedures for the nomination by the supervisory council of the members of the board of directors, their terms of office, and the procedures for revoking their mandate.
Assessment	Observed.
5.2	**The relationship between financial agencies should be publicly disclosed.**
Practice	The FGD has relations with the CB, the AMF, the CECEI and the MINEFI. In particular, the relationship between the CB and the FGD is regulated in COMOFI Articles L.312-5, L.313-50, and L.322-1, on the activation of the FGD by the CB with regard to the insurance of deposits, "*cautions*" and claims on investment companies. Art. L.312-5 contains provisions on the authority of the CB to request intervention by the FGD, as well as the authority of the FGD to refuse intervention, respectively to set the conditions for its intervention. Other rules on the relation between the CB and the FGD are disclosed to the public in a range of regulations and instructions. Exchange of information with the relevant supervisory bodies is regulated in COMOFI Art. L.631-1.

Assessment	Observed.
5.3	**The role of oversight agencies with regard to payment systems should be publicly disclosed.**
Practice	
Assessment	Not applicable.
Comments	The FGD has no responsibility in the area of payment systems oversight.
5.3.1	**The agencies overseeing the payment system should promote the timely public disclosure of general policy principles (including risk management policies) that affect the robustness of systemically important payment systems.**
Practice	
Assessment	Not applicable.
Comments	The FGD has no responsibility in the area of payment systems oversight.
5.4	**Where financial agencies have oversight responsibilities for self-regulatory organizations (e.g., payment systems), the relationship between them should be publicly disclosed.**
Practice	
Assessment	Not applicable.
Comments	The FGD has no oversight responsibilities for self-regulatory organizations.
5.5	**Where self-regulatory organizations are authorized to perform part of the regulatory and supervisory process, they should be guided by the same good transparency practices specified for financial agencies.**
Practice	
Assessment	Not applicable.
Comment	The FGD has no oversight responsibilities for self-regulatory organizations.
VI. OPEN PROCESS FOR FORMULATING AND REPORTING OF FINANCIAL POLICIES	
6.1	**The conduct of policies by financial agencies should be transparent, compatible with confidentiality considerations and the need to preserve the effectiveness of actions by regulatory and oversight agencies.**
Practice	The FGD only reports on its financial condition, in an annual report issued to the MoE. Information on its actions and policies are not disclosed through specific publications or other forms of disclosure.

Assessment	Not observed.
6.1.1	**The regulatory framework and operating procedures governing the conduct of financial policies should be publicly disclosed and explained.**
Practice	The FGD's regulatory framework and operating procedures are laid down in the COMOFI, as well as in associated regulations and instructions, all of which are publicly disclosed. Also, the FGD maintains a public website in which this information is provided in a very clear way. The website also lists useful links, references and applicable regulations.
Assessment	Partly observed.
Comments	There is no transparency toward depositors on the fact that branches and subsidiaries of foreign banks in France may not have the same level of coverage (EUR 70,000) as domestic institutions. The EU Directive on deposit insurance requires a minimum coverage of only EUR 20,000.
6.1.2	**The regulations for financial reporting by financial institutions to financial agencies should be publicly disclosed.**
Practice	
Assessment	Not applicable.
Comments	The FGD does not itself receive reports from its member institutions, which report instead to the relevant supervisory agencies.
6.1.3	**The regulations for the operation of organized financial markets (including those for issuers of traded financial instruments) should be publicly disclosed.**
Practice	
Assessment	Not applicable.
Comments	The FGD is not responsible for the operation of organized financial markets.
6.1.4	**Where financial agencies charge fees to financial institutions, the structure of such fees should be publicly disclosed.**
Practice	Art. L.312-7 of the COMOFI authorizes the FGD to levy contributions from covered credit institutions. The overall amount of the member banks' annual contributions is set in Regulation 2002-11. Individual banks' contributions toward this overall amount are calculated by the CB according to the rules outlined in Regulation 99-06 and its Annex C. The calculation is done twice a year, based on information reported to the CB concerning the levels of deposits and credits, and on the risks of each member institution calculated as a composite indicator. The formula of risk calculation is disclosed but the amounts levied upon individual banks are not. Once determined, the CB informs the individual members of the FGD of the amount of their contributions to be paid to the FGD. A similar arrangement for the funding of the guarantee for securities is outlined in CRBF regulation 99-15 and its annex, while CRBF regulation 2000-06 outlines the mechanism for the

	funding of the guarantee for "*cautions*."
Assessment	Observed.
6.1.5	**Where applicable, formal procedures for information sharing and consultation between financial agencies (including central banks), domestic and international, should be publicly disclosed.**
Practice	COMOFI Art. L.631-1 authorizes information sharing between the FGD and the relevant financial sector supervisory authorities, the BdF, the CECEI, the CB, the CCAMIP, the CCA, the CEA, the AMF, the *Fonds de Garantie des Assurances Obligatoires de Dommages* and the *Fonds de Garantie des Assurés Contre la Défaillance des Sociétés d'Assurance*. Information sharing is subject to mutual application of professional secrecy to the exchanged information. Art. L.312-13 provides the possibility for the Minister in charge of economic affairs, the Governor of the BdF, and the President of the Commission Bancaire and the President of the AMF to be heard by the FGD at their request. COMOFI Art. L.631-2 stipulates the creation of the *Collège des Autorités de Contrôle des Entreprises du Secteur Financier* (CACESF). Although the FGD is not represented on this body, its functioning enhances the effective circulation among the different agencies of any information received from the FGD. Other than these general provisions, there is no public disclosure of the detailed procedures for information sharing and consultation among domestic financial authorities. CRBF regulation 99-07 allows the FGD to cooperate with foreign deposit insurance agencies, but it does not provide any guidance on the handling of information exchanges that could be part of such cooperation. According to the FGD, no cooperation agreements have been agreed with foreign agencies, but negotiations are ongoing with a number of European counterparts. These agreements will cover the exchange of information on changes in applicable regulations and in cases of interventions in insured financial institutions with cross-border activities. It is not clear at this stage whether such agreements will be published.
Assessment	Broadly observed.
Comments	Disclosure in greater detail of the formal procedures for information sharing and consultation between the FGD and other financial agencies and a policy of publicly disclosing international cooperation agreements are required for an "observed" rating.
6.2	**Significant changes in financial policies should be publicly announced and explained in a timely manner.**
Practice	The system for the protection of deposits, claims on securities forms and beneficiaries of cautions is well explained and disclosed in the relevant laws and regulations and on the FGD's website. Changes in these laws and regulations are subject to the same information and consultation procedures as other laws and regulations (see also 6.4).
Assessment	Observed.
6.3	**Financial agencies should issue periodic public reports on how their overall policy objectives are being pursued.**
Practice	The FGD does not publicly disclose its financial statements, nor does it prepare or disclose other reports on its policies and activities. In case the FGD is activated, the interested parties, i.e., claim holders and institutions, would be informed as outlined in the relevant regulations. In

	case of activation of the FGD and/or its interventions at the request of the CB, it is to be assumed that the CB would mention this in its report.
Assessment	Not observed.
Comment	For an "observed" rating, the FGD needs to issue a periodic public report that provides an update on how its policy objectives are being pursued.
6.4	**For proposed substantive technical changes to the structure of financial regulations, there should be a presumption in favor of public consultations, within an appropriate period.**
Practice	Involved parties, i.e., the members of the CECEI, are consulted before each change to the regulations regarding the FGD. COMOFI Art. L.614-1 has created a new consultative body, the CCLRF, which will henceforth be consulted on any change in the regulations with regard to the FGD. Representatives of financial firms and depositors will be part of the membership of the CCLRF.
Assessment	Observed.
VII. PUBLIC AVAILABILITY OF INFORMATION ON FINANCIAL POLICIES	
7.1	**Financial agencies should issue a periodic public report on the major developments of the sector(s) of the financial system for which they carry designated responsibility.**
Practice	
Assessment	Not applicable.
Comments	The distribution of tasks and responsibilities between the FGD, the CB and the CECEI is such that the mandate of the FGD does not include following developments in the sectors relevant to its activities. The BdF, CB and the CECEI, however, follow the developments in the banking sector in detail and publish periodic reports and bulletins on these developments.
7.2	**Financial agencies should seek to ensure that, consistent with confidentiality requirements, there is public reporting of aggregate data related to their jurisdictional responsibilities on a timely and regular basis.**
Practice	The FGD does not disclose aggregate data on areas related to its jurisdictional responsibilities. In particular, it does not publicly disclose data on its financial operations, i.e., collected contributions, investments and other forms of finance, nor on pay-outs. The BdF, CB and the CECEI publish aggregate data on the banking sector.
Assessment	Partly observed.
Comment	For an observed rating, the FGD should periodically publish aggregate data on its operations.
7.3	**Where applicable, financial agencies should publicly disclose their balance sheets on a pre-announced schedule and, after a predetermined interval, publicly disclose information on aggregate market transactions.**
Practice	The FGD prepares audited annual financial statements, which are presented to the MoE. Public

	disclosure does not take place. There is an internal reporting system on its investments and market transactions, but no public disclosure takes place.
Assessment	Not observed.
Comment	For an "observed" rating, the FGD would need to publicly disclose its balance sheet on a pre-announced schedule, and report on its aggregate market transactions.
7.3.1	**Consistent with confidentiality and privacy of information on individual firms, aggregate information on emergency financial support by financial agencies should be publicly disclosed through an appropriate statement when such disclosure will not be disruptive to financial stability.**
Practice	There is no established practice of disclosure of this type of information by the FGD.
Assessment	Not observed.
Comments	For an "observed" rating, aggregate information on any emergency financial support by the FGD to a credit institution should be publicly disclosed through an appropriate statement, after a sufficient delay to ensure that this disclosure will not be disruptive to financial markets.
7.4	**Financial agencies should establish and maintain public information services.**
Practice	The FGD has built a website on the structure and functioning of the FGD, easily accessed by consumers: www.garantiedesdepots.fr. The website provides information on the functioning and coverage of the different guarantee mechanisms, institutional information on the FGD, updates on recent developments (e.g., the election of the president and vice-president of the supervisory council), and lists the applicable laws and regulations. No other public information services or publications program exists.
Assessment	Partly observed.
Comments	For an observed rating, the FGD should establish a publications program and a more proactive policy for public communication by its senior officials.
7.4.1	**Financial agencies should have a publications program, including a periodic public report on their principal activities issued at least annually.**
Practice	The FGD has no publications program, other than the periodic update of the website.
Assessment	Partly observed.
Comments	For an "observed" rating, the FGD should establish a publications program that, as a minimum, includes a periodic report on its principal activities that is issued at least once a year.
7.4.2	**Senior financial agency officials should be ready to explain their institution's objective(s) and performance to the public, and have a presumption in favor of releasing the text of their statements to the public.**
Practice	Senior officials of the FGD have the authority to explain their policies, objectives and performance to the public. This has not occurred in practice, however, other than through the

	website, because no perceived need for doing so has arisen. There have been no public statements of high FGD officials and publication has therefore not been an issue.
Assessment	Partly observed.
Comments	A more proactive approach to informing the public, a formal policy on public communications by senior FGD officials and on the release of the texts of public statements, as well as a track record in this area would contribute to an "observed" rating.
7.5	**Texts of regulations and any other generally applicable directives and guidelines issued by financial agencies should be readily available to the public.**
Practice	All legal provisions, regulations and instructions relative to the functioning of the FGD are readily available to the public, through publication in the *Recueil de Textes Réglementaires* of the CRBF, the JORF, the websites of the FGD and the BdF (www.banque-france.fr), and a general public website that offers easy access to all French laws, decrees and regulations (www.legifrance.gouv.fr).
Assessment	Observed.
7.6	**Where there are deposit insurance guarantees, policy-holder guarantees, and any other client asset protection schemes, information on the nature and form of such protections, on the operating procedures, on how the guarantee is financed, and on the performance of the arrangement, should be publicly disclosed.**
Practice	The website and the publications mentioned under 7.5, which are readily accessible to the public, provide all the necessary information. The law and the various regulations state that insured deposits will be paid out promptly, two months after a request by the CB. Depositors are notified by mail. The ceiling of coverage is set at EUR 70,000 per depositor. The funding mechanisms are disclosed in the COMOFI, Art. L.312-7, and in Regulations 99-06 and 99-07 (for depositors), 99-15 and 99-17 (for securities) and 99-12 (cautions). If necessary, contributors to the FGD have to provide additional funds to meet all of the FGD's obligations.
Assessment	Observed.
7.7	**Where financial agencies oversee consumer protection arrangements (such as dispute settlement processes), information on such arrangements should be publicly disclosed.**
Practice	
Assessment	Not applicable.
Comments	The FGD does not oversee any consumer protection arrangements.
VIII. ACCOUNTABILITY AND ASSURANCES OF INTEGRITY BY FINANCIAL AGENCIES	
8.1	**Officials of financial agencies should be available to appear before a designated public authority to report on the conduct of financial policies, explain the policy objective(s) of their institution, describe their performance in pursuing their objective(s), and, as appropriate, exchange views on the state of the financial system.**

Practice	Art. L.312-10 of the COMOFI states that the Conseil de Surveillance oversees the management of the FGD, and that an annual financial report is issued to the MoE. Although no specific rule provides for appearance of FGD officials before designated authorities to publicly report on the FGD's activities, objectives and performance, and to exchange views on the state of the financial system, there are no rules that prohibit this. Thus far, no occasions have arisen that created a perceived need for doing so, primarily because the FGD has little room for discretion in its objectives and policies, in view of its very limited mandate, except for instance when it is asked by the CB to intervene in a bank. Decisions of the FGD can be challenged before an administrative judicial authority. The BdF, CB and the CECEI disclose information on the state of the financial system and are available for debate on these issues.
Assessment	Partly observed.
Comments	For an "observed" rating, a stated policy and/or track record regarding the appearance of FGD officials before a designated public authority, presumably parliament or a parliamentary commission, is needed. Such an arrangement would be especially relevant in case of an intervention by the FGD or in case of differences of opinion between the FGD and the CB on (the need for) an intervention.
8.2	**Where applicable, financial agencies should publicly disclose audited financial statements of their operations on a pre-announced schedule.**
Practice	COMOFI Art. L.312-10 states that the FGD prepares an audited annual financial report, which is sent to the MoE. Furthermore, based on COMOFI Art. L.312-10 the FGD is subject to controls by the *Inspection Générale des Finances* (General Inspection of Finances). The FGD has not yet published audited statements.
Assessment	Not observed.
Comments	For an "observed" rating, the FGD's audited accounts should be publicly disclosed on a pre-announced schedule.
8.2.1	**Financial statements, if any, should be audited by an independent auditor. Information on accounting policies and any qualification to the statements should be an integral part of the publicly disclosed financial statements.**
Practice	The FGD's annual financial statements must be audited by virtue of the FGD's status as a commercial firm. The auditor is appointed by the Conseil de Surveillance. The report is not published but transmitted to the MoE. Based on the regular rules on the annual accounts of legal entities, the information on accounting policies and any qualifications on the accounts would be disclosed in the annual financial statement if the latter were published.
Assessment	Observed.
8.2.2	**Internal governance procedures necessary to ensure the integrity of operations, including internal audit arrangements, should be publicly disclosed.**
Practice	COMOFI Art. L.312-10 determines that the *Conseil de Surveillance* exercises oversight over the FGD's management, and sets the internal rules of the FGD, after agreement of the MoE.

	These internal rules are published on the FGD's website.
Assessment	Observed.
8.3	**Where applicable, information on the operating expenses and revenues of financial agencies should be publicly disclosed annually.**
Practice	The financial report of the FGD is not publicly disclosed.
Assessment	Not observed.
Comments	For an "observed" rating, the FGD's financial statements should be published annually, and should include the FGD's operating expenses and revenues.
8.4	**Standards for the conduct of personal financial affairs of officials and staff of financial agencies and rules to prevent exploitation of conflicts of interest, including any general fiduciary obligation, should be publicly disclosed.**
Practice	There are no specific rules of conduct on separation of private financial matters from those of the FGD, nor on avoidance of conflict of interest, abuse of insider information and similar rules. Officials of the FGD Conseil de Surveillance, management and staff are bound to professional secrecy rules. Breach of the secrecy rules is a criminal offense. Furthermore, based on COMOFI Art. L.312-19, members of the directorate and of the supervisory board must be fit and proper as defined in the regulations for bank licensing. Members of the directorate cannot receive funds from any contributor to the Fund. All these rules are publicly disclosed.
Assessment	Observed.
8.4.1	**Information about legal protections for officials and staff of financial agencies in the conduct of their official duties should be publicly disclosed.**
Practice	There is no specific legal protection for officials of the FGD personally. However, under French administrative law, suits must be brought against the legal entity, not against individual managers or officials. Standard jurisprudence on the liability of public bodies and their officials is routinely published in legal journals. Nevertheless, the applicability of this administrative legislation and jurisprudence to the officials of the FGD is not disclosed in a readily accessible way.
Assessment	Partly observed.
Comment	For an "observed" rating, the existing legal arrangements governing the protection of officials and staff of the FGD need to be clarified and publicly disclosed.

Table 34. Summary Observance of IMF's MFP Transparency Code—Deposit Insurance Supervision

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Observed	14	5.1, 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.2, 6.1.4, 6.2, 6.4, 7.5, 7.6, 8.2.1, 8.2.2, 8.4.
Broadly observed	1	6.1.5.
Partly observed	7	6.1.1, 7.2, 7.4, 7.4.1, 7.4.2, 8.1, 8.4.1.
Not observed	6	6.1, 6.3, 7.3, 7.3.1, 8.2, 8.3.
Not applicable	8	5.3, 5.3.1, 5.4, 5.5, 6.1.2, 6.1.3, 7.1, 7.7.

Recommended action plan and authorities' response to the assessment

Recommended action plan

Table 35. Recommended Action Plan to Improve Observance of IMF's MFP Transparency Code Practices—Deposit Insurance Supervision

Reference Principle	Recommended Action
VI. Open Process for Formulating and Reporting of Financial Policies	
6.1.1	Increase transparency on the fact that deposits in branches and subsidiaries of foreign banks in France may not have the same level of coverage as domestic institutions.
6.1.5	Disclose the formal procedures for information sharing between the FGD and domestic and international financial agencies in greater detail.
6.3	The FGD should issue a periodic public report that provides an update on how its policy objectives are being pursued.
VII. Public Availability of Information on Financial Policies	
7.2	Periodically publish aggregate data on the FGD's operations.
7.3 and 7.3.1	Publicly disclose the FGD's balance sheet on a pre-announced schedule, as well as a report on its market operations and, after an appropriate delay, aggregate information on any emergency financial support by the FGD to financial institutions.
7.4, 7.4.1 and 7.4.2	The FGD should establish a publications program and a more proactive policy for public communication by its senior officials.
VIII. Accountability and Assurance of Integrity by Financial Agencies	

Reference Principle	Recommended Action
8.1	Establish a policy or practice on the appearance of FGD officials before a designated public authority to report on the conduct of the FGD's policies, explain its policy objectives and describe its performance.
8.2 and 8.3	Publicly disclose the FGD's audited accounts, including its operating expenses and revenues, on a pre-announced schedule and at least annually.
8.4.1	Clarify and publicly disclose the existing legal arrangements governing the protection of officials and staff of the FGD.

Authorities' response to the assessment

131. The authorities are broadly in agreement with the assessment.

D. Transparency of Insurance Supervision

132. Insurance regulation and supervision in France was significantly reformed by the August 2003 Financial Security Law (*Loi de sécurité financière*–LSF). Formerly, insurance supervision was divided between two agencies—the CCAMIP for insurers governed by the *Code des Assurances* (Insurance Code), and the *Commission de Contrôle des Mutuelles et des Institutions de Prévoyance* (CCMIP) for mutual and provident insurers, dependent respectively from the Ministry of Finance and the Ministry of Social Affairs. The LSF merged those two agencies into a single autonomous insurance supervisor, the CCAMIP. Insurance regulation remains the responsibility of the Ministry of Finance.

133. Insurance regulation and supervision in France is governed by the Insurance Code, the Mutuality Code (*Code de la Mutualité*) and the Social Security Code (*Code de la Sécurité Sociale*), as amended by the Financial Security Law, and by accompanying regulations. These three codes contain the same provisions on prudential matters, applied to different types of institutions.

Practice-by-practice assessment

Table 36. Detailed Assessment of Observance of IMF's MFP Transparency Code—Insurance Supervision

V. Clarity of Roles, Responsibilities and Objectives of Financial Agencies Responsible for Financial Policies	
5.1	**The broad objective(s) and institutional framework of financial agencies should be clearly defined, preferably in relevant legislation or regulation.**
Description	The broad objectives and institutional framework of the insurance supervisory agency are set in a specific code, *le Code des Assurances*. Book III of this code, in *Titre I-Dispositions générales et contrôle de l'Etat* (Section II) sets out the activities of the *Commission de Contrôle des Assurances, des mutuelles et des institutions de prévoyance* (CCAMIP), the independent public authority (*autorité publique indépendante*) responsible for supervision of insurance firms authorized and regulated in France and their compliance with legislation and regulations Public access to legislation, regulations and arrests (*arrêtés*) is provided through a variety of means, including written publications, such as the JORF, and public websites (in particular, www.legifrance.gouv.fr).
Assessment	Observed.
5.1.1	**The broad objective(s) of financial agencies should be publicly disclosed and explained.**
Description	The broad objectives of the supervisory authority are (i) the protection of policy holders (each insurance contract clearly displays the address of the information cell, inviting each policy holder to contact it for any information or assistance need); and (ii) the enforcement of relevant laws and regulations. These objectives are set out in the *Code des Assurances*. A simple presentation is available on the websites of the CCAMIP, the MINEFI at www.minefi.gouv.fr/minefi/ministere/dossiers/index.htm and several other administrations.
Assessment	Observed.
5.1.2	**The responsibilities of the financial agencies and the authority to conduct financial policies should be publicly disclosed.**
Description	The responsibilities of the supervisory authority are set out in Art. L.310–12 of the *Code des Assurances*, and its enforcement powers are set out in Articles L.310–12 through L.310–25, and in Articles L.321–1 of this Code. The CCAMIP is not in charge of producing regulation. This competence falls within the scope of the MoE. The MINEFI prepares draft legislation in close and informal cooperation with the CCAMIP staff. The drafts are examined by an integrated consultative body at the MINEFI, the CCLRF. The same role, be it limited to the insurance sector, was fulfilled until recently by the *Commission de la Réglementation des Assurances* (CRA). The CCLRF issues an opinion on any draft legislation relating to financial matters including insurance. For that purpose, it brings together finance professionals, consumers, and

	representatives of the employees from the various sectors. The terms and conditions for appointing the committee's members and chairman and the rules for its organization and operations are established by decree. As compared to the CRA, the CCLRF has a wider field of jurisdiction in two respects: - it is competent for banking as well as insurance; and - it reviews decrees and issue opinions regarding all regulations, draft legislation and EU legislation. The new committee has enhanced powers to make recommendations with respect to draft orders and decrees. In these fields, the Minister has the option of requesting another deliberation if he of she does not wish to follow the first one the CCLRF expressed.
Assessment	Observed.
5.1.3	**Where applicable, the broad modalities of accountability for financial agencies should be publicly disclosed.**
Description	The broad modalities of accountability for the CCAMIP are set out in the legislative and regulatory parts of the *Code des Assurances*. Art. L.310-12-1 of that code provides a form of accountability through the presence of a nonvoting representative of the Treasury in the CCAMIP. This representative can request, under certain conditions and except in matters of sanctions, that the CCAMIP reconsider a decision (once). Art. L.310-12-1 also empowers the CCAMIP's president to act in its name before any court, while Articles L.310-18 and L.310-18-1 provide the possibility for sanctions imposed by the CCAMIP to be appealed before the *Conseil d'Etat*. Art. R.310-12 establishes the obligation and modalities for the CCAMIP to establish a budget, maintain financial accounts, and report on its finances to the *Cour des comptes* and to the responsible ministries. French general administrative law also stipulates that any civil servant can be called to appear before parliament or a parliamentary commission, and this rule applies also to the board members and staff of the CCAMIP. Although not required to do so by law, the CCAMIP publishes an annual report, which discloses nonconfidential material. The practice of publishing an annual report is publicly disclosed on the CCAMIP's website.
Assessment	Observed.

5.1.4	**Where applicable, the procedures for appointment, terms of office, and any general criteria for removal of the heads and members of the governing bodies of financial agencies should be publicly disclosed.**
Description	Art. L.310–12–1 of the *Code des Assurances* sets the procedures for appointment of the nine members of the CCAMIP–the Treasury and the social security directorate, both sitting on the board of the Commission as representatives of the government without right to vote: - the Commission's chairperson, appointed by a decree of the President of the Republic, - the Governor of the BdF, chairman of the Banking Commission, - three members of supreme jurisdictions (the *Conseil d'État*, the *Cour de Cassation*, and the *Cour des Comptes*), appointed by those jurisdictions, - four persons selected on the basis of their particular expertise in matters relating to insurance, mutual world, and provident institutions are appointed by both the ministers of Finance and social affairs. The chairman, the three members of the supreme jurisdictions and the persons with particular experience are appointed for five years. The appointment of the governor of the BdF, his term of office and the criteria for his removal are governed by the section on the BdF of the COMOFI. Members (and their alternates) cannot be revoked, unless they are convicted of penal offences, as specified in the penal provisions applicable to holders of public office. Public disclosure of appointment procedures and terms of office proceeds through official publications (see 5.1 and 5.1.1, above).
Assessment	Observed.
5.2	**The relationship between financial agencies should be publicly disclosed.**
Description	The relationships between the CCAMIP and other financial agencies are publicly disclosed in relevant laws, the CCAMIP's annual report, and other official publications and websites. Articles L.310–20, L.310-20-1, and L.310-21 of the *Code des Assurances* allow information sharing between the CCAMIP and respectively other domestic supervisors, the National Statistics Institute, and foreign financial agencies, subject to applicable confidentiality protocols. Art. 60 of the Savings and Financial Security Act of June, 25 1999 establishes a committee comprising the Chairpersons of the CCAMIP, the CB (i.e., governor of the BdF), the AMF, together with a representative of the MINEFI to facilitate exchange of information and to address topics of interest among all three sectors. Art. 45 of Act no. 92–665, "*loi portant adaptation au marché unique européen de la législation applicable en matière d'assurance et de crédit*," allows the CCAMIP, the CECEI, BdF, CB, and the AMF to share information when it is helpful for achievement of their respective objectives. Until now, the supervisors have generally met monthly on an informal basis. The CCAMIP's 2000-01 report discussed its relationship with the CB (p. 54) and with foreign counterparts (p. 59–67). The relationship between the CCAMIP and the CB is also discussed in detail on the former website (www.cca.gouv.fr).
Assessment	Observed.
5.3	**The role of oversight agencies with regard to payment systems should be publicly disclosed.**
Description	
Assessment	Not applicable.

Comments	The CCAMIP has no responsibility for payment systems oversight.
5.3.1	**The agencies overseeing the payment system should promote the timely public disclosure of general policy principles (including risk management policies) that affect the robustness of systemically important payment systems.**
Description	
Assessment	Not applicable.
Comments	The CCAMIP has no responsibility for payment systems oversight.
5.4	**Where financial agencies have oversight responsibilities for self-regulatory organizations (e.g., payment systems), the relationship between them should be publicly disclosed.**
Description	
Assessment	Not applicable.
Comments	There are no self-regulatory organizations in the French insurance market.
5.5	**Where self-regulatory organizations are authorized to perform part of the regulatory and supervisory process, they should be guided by the same good transparency practices specified for financial agencies.**
Description	
Assessment	Not applicable.
Comments	There are no self-regulatory organizations in the French insurance market.
VI. OPEN PROCESS FOR FORMULATING AND REPORTING OF FINANCIAL POLICIES	
6.1	**The conduct of policies by financial agencies should be transparent, compatible with confidentiality considerations and the need to preserve the effectiveness of actions by regulatory and oversight agencies.**
Description	The supervisory procedures of the CCAMIP are transparent. The agency publishes an annual report informing the public about the French insurance market, supervision of the insurance companies (important decisions, new laws and regulations, cooperation with other agencies at home and abroad, involvement in the international standard setting, discussions with the consumer protection associations, etc.). The CCAMIP also issues reports and publishes (mostly) aggregated economic figures of the French insurance market (*Tableaux de synthèse*). Board members and staff of the CCAMIP are subject to strict confidentiality obligations on- and off duty.
Assessment	Observed.

6.1.1	**The regulatory framework and operating procedures governing the conduct of financial policies should be publicly disclosed and explained.**
Description	The regulatory framework and operating procedures governing the conduct of insurance supervision are set out in the legislation and regulations, see *Code des Assurances* (*Partie Législative*) and its regulations (*Partie réglementaire - Décrets en Conseil d'Etat* and *Partie Arrêtés*) and disclosed/explained through official publications (see 5.1 and 5.1.1, above). The framework and procedures are addressed in the CCAMIP's annual report (see 6.1, above).
Assessment	Observed.
6.1.2	**The regulations for financial reporting by financial institutions to financial agencies should be publicly disclosed.**
Description	The *Code des Assurances* authorizes the CCAMIP (and the MoE) to impose reporting requirements on insurance companies (e.g. Articles L.310-14, L.322-2-4 and L.341 and subsequent). The reporting requirements are further specified in detail in regulations and arrests (e.g., Art. R 341-1 and A.341-1 *Code des Assurances*), all of which are publicly disclosed (see 5.1).
Assessment	Observed.
6.1.3	**The regulations for the operation of organized financial markets (including those for issuers of traded financial instruments) should be publicly disclosed.**
Description	
Assessment	Not applicable.
Comments	The CCAMIP has no responsibility for the oversight of organized financial markets.
6.1.4	**Where financial agencies charge fees to financial institutions, the structure of such fees should be publicly disclosed.**
Description	The CCAMIP is financed through a specific contribution it levies. The contribution regime is detailed in Art. L.310-12-4 of the *Code des Assurances*.
Assessment	Observed.
6.1.5	**Where applicable, formal procedures for information sharing and consultation between financial agencies (including central banks), domestic and international should be publicly disclosed.**
Description	As discussed under 5.2, the law permits the CCAMIP to share information and consult with various domestic and foreign counterparts, subject to respect of confidentiality requirements. Information on the formal procedures through which some of these exchanges take place is publicly available on the CCAMIP's website. For example, the agreement between the CCA and the CB is available under www.ccamip.fr/info/Charte_entre_la_CCA_et_la_Commission_Bancaire/040202. However, while summary information is available on the website regarding the international

	cooperation of the CCAMIP, no detailed information on the formal procedures is published.
Assessment	Partly observed.
6.2	**Significant changes in financial policies should be publicly announced and explained in a timely manner.**
Description	The MINEFI and the CCAMIP publicly announce and explain significant changes in regulations and supervisory policies in the annual report, on the authorities' website(s) and through circulars to the supervised companies. These circulars are also published on the website and mentioned in the annual report.
Assessment	Observed.
6.3	**Financial agencies should issue periodic public reports on how their overall policy objectives are being pursued.**
Description	The CCAMIP issues an annual report, which sets out how its overall policy objectives are being pursued (see also 6.1).
Assessment	Broadly observed.
Comments	The annual report should be published every year, on schedule.
6.4	**For proposed substantive technical changes to the structure of financial regulations, there should be a presumption in favor of public consultations, within an appropriate period.**
Description	Proposed substantive technical changes to the structure of insurance regulations are always subjected to two main rounds of consultations. In a first—informal—round, the MINEFI consults with professional organizations. In a second—more formal—round, consultations are held through the CCLRF (see 5.1.2 , above), which reunites all interested parties, including consumer organizations as representatives of the general public. Insurance companies and other relevant parties are always consulted prior to any significant change in insurance policies.
Assessment	Observed.
VII. PUBLIC AVAILABILITY OF INFORMATION ON FINANCIAL POLICIES	
7.1	**Financial agencies should issue a periodic public report on the major developments of the sector(s) of the financial system for which they carry designated responsibility.**
Description	The CCAMIP reports major developments in the insurance business in its annual report. This report is widely disseminated and publicized in the economic press. The CCAMIP also makes a summary of its annual report available and posts the annual report on its website. While the annual report is in principle published within six months of the end of each year, the CCAMIP issued only two reports during the last four years, covering two years each (2000–2001 and 2002–2003). Transition problems are blamed for this, and the CCAMIP expects to be able to publish its annual report annually in the future.
Assessment	Broadly observed.

Comments	The annual report should be published each year, on schedule.
7.2	**Financial agencies should seek to ensure that, consistent with confidentiality requirements, there is public reporting of aggregate data related to their jurisdictional responsibilities on a timely and regular basis.**
Description	The CCAMIP provides aggregate data from the accounts of the economically significant insurers in quarterly and annual reports (see *Tableau de Synthèse des entreprises d'assurance et de réassurance*).
Assessment	Observed.
7.3	**Where applicable, financial agencies should publicly disclose their balance sheets on a pre-announced schedule and, after a predetermined interval, publicly disclose information on aggregate market transactions.**
Description	The CCAMIP is endowed with budgetary autonomy. It establishes its own budget under its sole responsibility. This budget is transmitted to and reviewed by the *Cour des comptes*, the supreme body in charge of the auditing all public accounts. In case of shortcomings in financial management or noncompliance with budgetary rules, the *Cour des comptes* does have the possibility to mention observations in its annual report. This report is public and is extensively covered in the press. The new insurance law requires the CCAMIP to publish its accounts. However, the decrees that specify the practical modalities, including the publication schedule (if any), have not yet been issued. The CCAMIP does not conduct market transactions.
Assessment	Broadly observed.
Comments	For an "observed" rating, the publication of the CCAMIP's accounts will need to happen on a pre-announced schedule.
7.3.1	**Consistent with confidentiality and privacy of information on individual firms, aggregate information on emergency financial support by financial agencies should be publicly disclosed through an appropriate statement when such disclosure will not be disruptive to financial stability.**
Description	
Assessment	Not applicable.
Comments	The CCAMIP does not provide emergency financial support.
7.4	**Financial agencies should establish and maintain public information services.**
Description	The CCAMIP has its own public information service. This service disseminates (i) policy decisions and announcements; (ii) information on the operating framework, targets and objectives of the CCAMIP; (iii) quantitative data; and (iv) staff public research. A web access to some basic information is provided by a dedicated locus on the MINEFI site.
Assessment	Observed.

7.4.1	**Financial agencies should have a publications program, including a periodic public report on their principal activities issued at least annually.**
Description	The CCAMIP's publications program comprises: (i) the annual report; (ii) occasional research publications; and (iii) statistical publications. Most of these items are available free or at nominal charge. However, the annual reports are currently issued with considerable delays due to a lack of staff and transition issues. Over the last four years, the CCAMIP has only issued two reports, covering two years each (2000-2001 and 2002-2003). The reforms of the supervisory framework that are currently being implemented are expected to allow the CCAMIP to obtain the necessary financial and human resources to issue the annual report within six months of the end of each year, which is its objective.
Assessment	Broadly observed.
Comments	For an observed rating, the publications program, in particular the schedule for the publication of the annual report, should be implemented strictly.
7.4.2	**Senior financial agency officials should be ready to explain their institution's objective(s) and performance to the public, and have a presumption in favor of releasing the text of their statements to the public.**
Description	Senior officials of the CCAMIP stand ready to explain the institution's objectives and performance to the public, and do so through a range of channels: (i) public hearings before parliamentary committees; (ii) formal or informal speeches in various public and professional forums; (iii) interviews with the media; (iv) articles issued in business publications, and (v) official publications like the annual report. Texts of public statements are systematically released to the media.
Assessment	Observed.
7.5	**Texts of regulations and any other generally applicable directives and guidelines issued by financial agencies should be readily available to the public.**
Description	Texts of regulations and generally applicable directives and guidelines are available to the public through official publications, the CCAMIP annual report and the *Code des Assurances*. The latter is published in updated form by private sector publishers several times annually, and is easily accessible in its currently applicable state through a public website (www.legifrance.gouv.fr).
Assessment	Observed.
7.6	**Where there are deposit insurance guarantees, policy-holder guarantees, and any other client asset protection schemes, information on the nature and form of such protections, on the operating procedures, on how the guarantee is financed, and on the performance of the arrangement, should be publicly disclosed.**
Description	Two guarantee schemes exist. The first one (*Fonds de garantie des assurances obligatoires de dommages*–FGAO) protects policyholders and beneficiaries from the consequences of the winding up of companies involved in compulsory insurance. The second one (*Fonds de garantie des assurés contre la défaillance des sociétés d'assurance de personnes*) protects policyholders and beneficiaries from the consequences of the winding up of companies involved in life, provident and medical insurance. The information on these guarantee schemes is disseminated through mention on contracts, by the MINEFI and/or by the CCAMIP (*Bureau des relations*

	avec le public) on request. Disclosure proceeds through official publications by the MINEFI and the CCAMIP.
Assessment	Observed.
7.7	**Where financial agencies oversee consumer protection arrangements (such as dispute settlement processes), information on such arrangements should be publicly disclosed.**
Description	Each insurance contract informs the policyholder of the possibility to transmit information requests or claims to the CCAMIP (*Bureau des relations avec le public*) (see also 5.1.1., above). Further information on consumer's rights is available on the CCAMIP's website.
Assessment	Observed.
VIII. ACCOUNTABILITY AND ASSURANCES OF INTEGRITY BY FINANCIAL AGENCIES	
8.1	**Officials of financial agencies should be available to appear before a designated public authority to report on the conduct of financial policies, explain the policy objective(s) of their institution, describe their performance in pursuing their objective(s), and, as appropriate, exchange views on the state of the financial system.**
Description	As required under French administrative law, senior officials of the CCAMIP stand ready to appear before parliament—on an "as required" basis—to: (i) report on the conduct of the CCAMIP's supervisory policies; (ii) explain the CCAMIP's policy objectives; (iii) describe the CCAMIP's performance in pursuing its objectives; and (iv) exchange views on the state of the financial system (see also 7.4.2).
Assessment	Observed.
8.2	**Where applicable, financial agencies should publicly disclose audited financial statements of their operations on a pre-announced schedule.**
Description	Since the CCAMIP did not have financial autonomy, there is no established track record of financial reporting. Nevertheless, although not required by law, the CCAMIP intends to publish its accounts and is preparing to do so. The accounting and financial reporting framework for the CCAMIP are specified in Art. R. 310-12 of the *Code des Assurance*, which came into effect in July 2004. The new text specifies that the CCAMIP's financial accounts are to be established according to general accounting rules, by an accounting agent who is independent from the CCAMIP itself. These financial accounts are verified by the *Cour des Comptes*, at the latter's discretion and according to the rules that are applicable to all French administrative institutions. Art. R.310-12 does not prescribe a publication schedule. While this arrangement will likely provide high-quality financial statements and a high degree of transparency and integrity, it would still be useful to have a second independent party audit the work of the accountant on a regular basis.
Assessment	Partly observed.
Comments	For an "observed" rating, the newly established accounting and reporting framework will need to be implemented, the CCAMIP's financial statements will need to be published on a pre-announced schedule and the statements will need to be audited on a regular basis by an auditor independent from the accountant.

8.2.1	**Financial statements, if any, should be audited by an independent auditor. Information on accounting policies and any qualification to the statements should be an integral part of the publicly disclosed financial statements.**
Description	Art. R. 310-12 of the *Code des Assurances* specifies that the CCAMIP's accounts are to be audited by the *Cour des Comptes* which is an independent government agency. Full audits will happen at the discretion of the *Cour des comptes*, and therefore, not necessarily every year. The CCAMIP intends to publish its financial statements, but the practical modalities, including the contents of the disclosed statements, remain to be determined.
Assessment	Partly observed.
Comments	For an "observed" rating, the financial statements to be published by the CCAMIP will have to be audited on a regular basis, and will need to include information on accounting policies as well as any qualification of the statements.
8.2.2	**Internal governance procedures necessary to ensure the integrity of operations, including internal audit arrangements, should be publicly disclosed.**
Description	There is no such disclosure.
Assessment	Not observed.
Comments	For an observed rating, the CCAMIP's internal governance procedures and its internal audit arrangements should be publicly disclosed.
8.3	**Where applicable, information on the operating expenses and revenues of financial agencies should be publicly disclosed annually.**
Description	The CCAMIP intends to publish its operating expenses and revenues as part of its financial statements. However, as for the latter, the modalities remain to be determined.
Assessment	Partly observed.
Comments	Publication of the operating expenses and revenues of the CCAMIP on an annual basis, as part of the financial statements, will warrant an "observed" rating.
8.4	**Standards for the conduct of personal financial affairs of officials and staff of financial agencies and rules to prevent exploitation of conflicts of interest, including any general fiduciary obligation, should be publicly disclosed.**
Description	The CCAMIP's staff and board members are civil servants or staff under a public law contract, and hence submitted to the general rules of ethics that are part of the general status of the French civil service, which is publicly available information. In addition, Art. L.310-12-1 of the *Code des Assurances* gives the CCAMIP the task of setting specific rules of conduct for its staff. A Code of Conduct (*Code de Déontologie*) was already prepared and informally in force for some time, and was approved by the new Commission in July 2004. The Code of Conduct is publicly disclosed on the CCAMIP's website.
Assessment	Observed.

8.4.1	**Information about legal protections for officials and staff of financial agencies in the conduct of their official duties should be publicly disclosed.**
Description	By law, the board members and staff of the CCAMIP do not incur any liability for the consequences of their professional activity, with the exception of personal faulty behavior (*faute détachable*), which is by nature separated from the performance of normal duty. The law also specifies that, in criminal matters, liability is personal.
Assessment	Observed.

Table 37. Summary Observance of IMF's MFP Transparency Code—Insurance Supervision

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Observed	21	5.1, 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.2, 6.1, 6.1.1, 6.1.2, 6.1.4, 6.2, 6.4, 7.2, 7.4, 7.4.2, 7.5, 7.6, 7.7, 8.1, 8.4, 8.4.1.
Broadly observed	4	6.3, 7.1, 7.3, 7.4.1.
Partly observed	4	6.1.5, 8.2, 8.2.1, 8.3.
Not observed	1	8.2.2.
Not applicable	6	5.3, 5.3.1, 5.4, 5.5, 6.1.3, 7.3.1.

Recommended action plan and authorities' response to the assessment

Recommended action plan

Table 38. Recommended Action Plan to Improve Observance of IMF's MFP Transparency Code Practices—Insurance Supervision

Reference Practice	Recommended Action
VI. Open Process for Formulating and Reporting of Financial Policies	
6.3	The annual report should be published every year, on schedule.
VII. Public Availability of Information on Financial Policies	
7.1 and 7.4.1	The publications program, in particular the schedule for the publication of the annual report, should be strictly implemented.
7.3	The publication of the CCAMIP's accounts should happen on a pre-announced

Reference Practice	Recommended Action
	schedule.
VIII. Accountability and Assurance of Integrity by Financial Agencies	
8.2	Publication of the CCAMIP's financial statements will need to occur on a pre-announced schedule and the statements will need to be audited on a regular basis by an auditor independent from the accountant.
8.2.1	The financial statements to be published by the CCAMIP should be audited on a regular basis, and should include information on accounting policies as well as any qualification of the statements.
8.2.2	The CCAMIP's internal governance procedures and its internal audit arrangements should be publicly disclosed.
8.3	The operating expenses and revenues of the CCAMIP should be published on an annual basis, preferably as part of the financial statements.

Authorities' response to the assessment

134. The CCAMIP's report for the years 2002 and 2003 has been endorsed by the board, and is to be published.

135. 8.2.2. The respective roles of the board and the Secretary General are defined by the law (L.310-12-1). More detailed rules will be specified in the decrees establishing the CCAMIP, to be published soon.

136. The CCAMIP's financial accounts will be established according to general accounting rules, by an accounting agent, who will not have any hierarchical link with the CCAMIP staff and cannot be given any order by the CCAMIP management. These financial accounts will be verified by the Cour des Comptes according to rules that are applicable to all administrative institutions.

E. Transparency of Payment and Settlement Systems Oversight

137. Payment systems oversight and the oversight of securities settlement systems in France are based on a legal and regulatory framework established at the European level, by the European Central Bank (ECB) and the European System of Central Banks (ESCB), as well as on the French Monetary and Financial Code. It encompasses France's contribution to the oversight of pan-European systems such as the Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET), Clearnet and the Euroclear group, as well as the oversight of purely domestic systems such as Paris Net Settlement System (PNS) and *Système Interbancaire de Télécommunications* (SIT), for which the BdF bears sole responsibility.

Practice-by-practice assessment

Table 39. Detailed assessment of Observance of IMF's MFP Transparency Code Practices—Payment and Settlement Systems (November 2003 update)

V. Clarity of Roles, Responsibilities and Objectives of Financial Agencies Responsible for Financial Policies—Payment and Settlement Systems (November 2003 update)	
5.1	**The broad objective(s) and institutional framework of financial agencies should be clearly defined, preferably in relevant legislation or regulation.**
Practice	The institutional framework of the ECB and the ESCB (the latter comprising the ECB and the National Central Banks of all 15 European Union Member States) is defined by the Treaty establishing the European Community, as amended, and by the Protocol (No. 18) on the Statute of the ESCB and of the ECB ("the Statute") (notably Articles 3 and 22) which form part of the Treaty. With respect to payment systems, the Statute's Art. 22, "Clearing and Payment Systems" provides that; "the ECB and the national central banks may provide facilities, and the ECB may make regulations to ensure efficient and sound clearing and payment systems within the Community and with other countries." The principles stated in the Statute have been implemented at the national level, i.e., all NCBs that are part of the ESCB, including the BdF, have had their governing statutes amended accordingly. For the BdF, Art. L.141-4 of the COMOFI states that the BdF shall "ensure the smooth operation and security of payment systems, within the framework of the task of the ESCB relating to the promotion of the smooth operation of payment systems." In 2001 (Law no. 2001-1062 of November 15, 2001) the oversight role of the BdF in matters of security of means of payment was further specified by adding: "The BdF shall ensure the security of means of payment, other than banknotes and coins, as defined in Art. L.311-3, and the relevance of the standards applicable thereto. If it deems that such means of payment are insufficiently secure, it may invite the issuer to take steps to remedy the situation." With respect to securities clearing and settlement systems (SCSS), a further amendment to art. L.141-4 (Law 2001-1168 of December 11, 2001) stipulated that "As part of the duties of the ESCB and without prejudice to the powers of the Financial Markets Council and the CB, the BdF shall ensure the security of securities clearing, payment and settlement systems." The applicable legislation is publicly available on the website of the BdF (see *Information Bancaires & Financières*) and at www.legifrance.gouv.fr.
Assessment	Observed.
5.1.1	**The broad objective(s) of financial agencies should be publicly disclosed and explained.**
Practice	The BdF's broad objectives are: (i) financial stability; (ii) market and systemic stability; and (iii) competitive and fair markets. These objectives are set out in legislation (i.e., Art. 4 and 105 (2) of the Treaty; Art. 3 of the Statute of the ESCB and the ECB; Art. L.141 of the COMOFI) and disclosed and explained in official publications (e.g., the FSR, Bulletin de la BdF, and the BdF's annual report and website), and in senior officials' written and oral reports to the legislature. Every year, the BdF annual report emphasizes the importance of ensuring the efficiency and security of payment systems as one of the key tasks of central banks, along with the conduct

	of monetary policy and oversight of the financial system. The French Parliament defined the BdF's role with regard to payment systems in Art. L.141-4 of the COMOFI stating that it "shall ensure the smooth operation and security of payment systems." In the BdF 2002 annual report, for the first time, an entire chapter was dedicated to the oversight of payment systems and payment instruments as well as SCSS.
Assessment	Observed.
5.1.2	**The responsibilities of the financial agencies and the authority to conduct financial policies should be publicly disclosed.**
Practice	The BdF's responsibilities and authority for payment systems oversight are defined in Art. 105(2) of the Treaty; Art. 3 of the Statute of the ESCB and ECB; and Art. L.141 of the Financial and Monetary Code, and are disclosed in official publications (e.g., Financial Stability Review, Bulletin de la BdF; and the annual report and website of the BdF), and in senior officials' written and oral reports to the legislature. See also 5.1.1, above.
Assessment	Observed.
5.1.3	**Where applicable, the broad modalities of accountability for financial agencies should be publicly disclosed.**
Practice	The BdF's broad modalities of accountability are set out in Art. L.143-1 of the COMOFI which provides that the Governor is required to appear before the Finance Commission of the National Assembly or the Senate (Finance Commission) if requested. Further, the Governor is obliged to deliver to the President of the Republic and to the Presidents of the National Assembly and the Senate, the annual report on the BdF's operations, monetary policy, and views on economic and financial affairs. The transmittal letter from the Governor to the President of the Republic makes clear that the annual report's delivery is required by law. The BdF's accounts, together with the report of the auditors thereon, are delivered to the Finance Commission. This accountability framework applies to all of the BdF's areas of responsibility, including payment systems oversight.
Assessment	Observed.
5.1.4	**Where applicable, the procedures for appointment, terms of office, and any general criteria for removal of the heads and members of the governing bodies of financial agencies should be publicly disclosed.**
Practice	Procedures for appointment, terms of office, and general criteria for removal of heads and members of the governing bodies of the BdF are found in Articles L.142-3, 142-5 and 142-8 of the COMOFI. These articles specify that the governor and the two Deputy Governors are appointed by decree of the Council of Ministers, and appointments to the Monetary Policy Council are also made by the Council of Ministers. The terms of office are specified in the law. Members of the Monetary Policy Council are appointed for a nonrenewable term of nine years, and Governors and Deputy Governors for a term of six years, once renewable. General criteria for removal are (i) incapacity and (ii) *faute grave*; with a majority vote by the *Conseil de la Politique Monetaire* needed in the case of the latter.
Assessment	Observed.
5.2	**The relationship between financial agencies should be publicly disclosed.**

Practice	Relationships between the BdF and other domestic and foreign agencies are defined and disclosed in legislation, treaties and other publications. Art. L.6321-1 of the Financial and Monetary Code permits the BdF, the CB, the CCAMIP, AMF, CECEI, and the FGD to exchange information for achievement of their respective objectives. By custom, the agencies generally meet monthly. Meetings between the BdF and the AMF are of particular importance for SCSS. In addition, there is a representative from the BdF at the AMF executive board. In January 2001, the relevant authorities of Belgium, France and the Netherlands adopted an MoU relative to the joint implementation of their respective responsibilities in terms of oversight, regulation and supervision of the Euronext Group. The first part of this document, signed for France by the COB–the French Stock Exchange Commission–and the CMF, organizes the coordinated regulation of the securities and derivatives transactions of the Euronext Group. The second part of this MoU, signed by the CMF, the CB and the BdF, addresses the coordination of Euronext's clearing activities oversight, regulation and supervision; these activities are undertaken by the clearing house and central counterparty Clearnet. This MoU was extended to the relevant Portuguese authorities following the merger between the Portuguese stock exchanges and the Euronext group and the extension of Clearnet's activities in Portugal. A MoU was signed on 22 October 2001 by the Belgian and French authorities (the Belgian National Bank and the Financial and Banking Commission for Belgium; the BdF and the CMF for France) in order to organize the prudential supervision of the Euroclear Group's current membership (Euroclear Bank-Euroclear France) and the oversight of its securities settlement systems. In 2002, a new Memorandum of Understanding was signed by the relevant Dutch, Belgian and French authorities, in order to organize the cooperation of the oversight of the settlement services of Euroclear Group used for the trades executed in the Euronext markets. The content of these MoUs is not public, because the legal context in some of the partner countries does not allow publication. However, their existence, objectives and main aspects have been made known to the public (e.g., in the BdF's annual report and on its website). All relevant parties have been informed of the substance of the MoUs that is relevant to their work. As a result, the added value of publishing the MoUs would be limited. The relationship between the national central banks and the ECB can be inferred from Art. 12.1 and Art. 14.3 of the ESCB/ECB statute, which are available to the public. These articles state, respectively, that "The Governing Council shall adopt the guidelines and take the decisions necessary to ensure the performance of the tasks entrusted to the ESCB under this Treaty and this statute […] To the extent deemed possible and appropriate […], the ECB shall have recourse to the national to the national central banks to carry out operations which form part of the tasks of the ESCB" and that "The national central banks are an integral part of the ESCB and shall take the necessary steps to ensure compliance with the Guidelines and instructions of the ECB and shall require that any necessary information be given to it." Further disclosure on all these relationships is done in the BdF's annual report and on the BdF's website.
Assessment	Observed.
5.3	**The role of oversight agencies with regard to payment systems should be publicly disclosed.**
Practice	The role of the BdF with regard to the oversight of payment systems, payment instruments, and SCSS is defined and disclosed in legislation and is also known through the BdF's official

	publications (annual report, monthly bulletin, FSR).
Assessment	Observed.
5.3.1	**The agencies overseeing the payment system should promote the timely public disclosure of general policy principles (including risk management policies) that affect the robustness of systemically important payment systems.**
Practice	The BdF promotes timely public disclosure of general policy principles through published reports in official publications (e.g., the FSR, Bulletin de la BdF; annual report of the BdF, and the latter's website), through promulgation of domestic or international standards, and through its participation in interbank working groups. In the BdF's 2002 annual report, an entire chapter was dedicated to the oversight of payment systems and SCSS. This exercise was repeated in the 2003 annual report. These texts report extensively on the standards that payment systems are required to adhere to, and summarizes their compliance. Pursuant to the Decree n° 2003-195 of 7 March 2003, the BdF is also in charge of disclosing on request to any interested party the list and address of payment systems and Securities Settlement Systems notified to the EU Commission under the Settlement Finality Directive, as well as the list of direct and indirect participants in the systems, following information of their operators. These data are available on the BdF website. The BdF's website also provides an overview of all payment systems and their functioning, through its own texts and through links to the websites of the payment system operators. The information thus provided largely includes the system's risk management policies. The website also contains several papers discussing the safety of systemically important payment systems, as well as the applicable European and international standards. The BdF uses international standards as the basis of its oversight policy and aims to have all systems under its oversight fully observe all relevant standards. These standards include provisions that require payment systems to be transparent about their general policy principles and their risk management policies. Hence, by promoting these standards, the BdF promotes the transparency of those payment systems. Nevertheless, the BdF could more directly and more specifically promote the transparency of the payment systems it oversees.
Assessment	Observed.
5.4	**Where financial agencies have oversight responsibilities for self-regulatory organizations (e.g., payment systems), the relationship between them should be publicly disclosed.**
Practice	
Assessment	Not applicable.
Comments	The payment systems the BdF oversees are not self-regulatory organizations.

5.5	**Where self-regulatory organizations are authorized to perform part of the regulatory and supervisory process, they should be guided by the same good transparency practices specified for financial agencies.**
Practice	
Assessment	Not applicable.
Comments	The payment systems the BdF oversees are not self-regulatory organizations.
	VI. OPEN PROCESS FOR FORMULATING AND REPORTING OF FINANCIAL POLICIES
6.1	**The conduct of policies by financial agencies should be transparent, compatible with confidentiality considerations and the need to preserve the effectiveness of actions by regulatory and oversight agencies.**
Practice	See 6.1.1 to 6.1.5.
Assessment	
6.1.1	**The regulatory framework and operating procedures governing the conduct of financial policies should be publicly disclosed and explained.**
Practice	The regulatory framework for payment systems oversight is based on international standards and mostly set at the European level by the ECB and ESCB. The ECB and ESCB publicly disclose and explain this framework. This European framework is complemented at the French level with legislation, as well as with decrees and ordinances issued by the government. The BdF itself has no regulatory powers in the area of payment systems. The BdF discloses and explains this regulatory framework through published reports in official publications (e.g., the FSR, the BdF Bulletin, and the BdF's annual report, and its website (http://www.banque-france.fr/gb/infobafi/main.htm), and through its participation in interbank working groups. Nevertheless, the BdF's efforts to explain this framework can be significantly improved upon. In particular, there is a need for the BdF to be more proactive in explaining how international standards and European regulations are to be implemented in the French context, and in clarifying those areas in which the international standards are not sufficiently comprehensive or specific. There is also a need for the BdF to explain more clearly and in greater detail how it oversees the implementation of the international standards and European regulations in France. For Securities Settlement Systems, the law entitles the AMF to (i) define in regulations the main principles and requirements which apply to these systems; and (ii) to approve the Rulebook of the systems in regulations. These regulations are published by the AMF. Although the BdF publishes its general approach in implementing its payment systems oversight function on its website and in its annual report (e.g., 2003 annual report, Section 6.1.3, p. 71), at present there is no overall set of operating procedures in place governing the conduct of payment systems oversight. Instead, the operational aspects of the BdF's oversight function are governed by internal BdF documents and bilateral agreements with individual payment systems operators. These documents are not published.

Assessment	Partly observed.
Comments	For an "observed" rating, the BdF should clearly specify, publicly disclose and explain the operating procedures governing the conduct of its payment systems oversight function. In addition, efforts to explain and clarify international standards and the way they should be implemented in the French context by the different payment systems operators, need to be improved.
6.1.2	**The regulations for financial reporting by financial institutions to financial agencies should be publicly disclosed.**
Practice	
Assessment	Not applicable.
Comments	There are no regulations in place governing the financial reporting of payment systems and the SCSS to the BdF, and no special reporting on the systems' financial situation is required. However, in its role as overseer of payment systems and instruments as well as SCSS, the BdF requests some reporting (e.g., statistics) from the operators of the systems, as provided for in the law. The reporting of these data is arranged through specific agreements tailored to each of the payment systems, not through universally applicable regulations. Formalization and disclosure of these reporting requirements would increase transparency.
6.1.3	**The regulations for the operation of organized financial markets (including those for issuers of traded financial instruments) should be publicly disclosed.**
Practice	
Assessment	Not applicable.
Comments	The BdF, in its role as agency responsible for payment systems oversight, is not responsible for regulating the operation of organized financial markets.
6.1.4	**Where financial agencies charge fees to financial institutions, the structure of such fees should be publicly disclosed.**
Practice	
Assessment	Not applicable.
Comments	The BdF does not charge any fees related to its responsibility for payment systems oversight. The fees it charges as operator of the TBF payment system have been publicly disclosed in the TBF procedures.
6.1.5	**Where applicable, formal procedures for information sharing and consultation between financial agencies (including central banks), domestic and international, should be publicly disclosed.**
Practice	Formal procedures for information sharing and consultation between the BdF, in its capacity as payment system overseer, and other financial agencies (the ECB, other Eurozone central

	banks, domestic financial agencies, …) exist. The existence of these procedures, and other general information about international and domestic cooperation arrangements, are publicly disclosed in the BdF's annual report (see, for example, the discussion on coordinated oversight of Euronext and Euroclear in section 6.1.3 of the 2001 Annual Report), its website and in publications and websites of the ECB and ESCB. Substantive summaries of the MoUs between the BdF and its counterparts in other Euronext countries are disclosed by the BdF in a number of paper publications. These MoUs are, however, not fully disclosed because of legal constraints in some of the partner countries. Nevertheless, the BdF examines any request for access to them. Until now, requests have only come from other authorities and disclosure was never refused. The detailed (formal) procedures for information sharing and consultation are only partially disclosed. Unless specified in law, the disclosure is mostly limited to general principles and the identification of counterparties with whom the BdF cooperates.
Assessment	Broadly observed.
Comments	Disclosure in greater detail of the formal procedures for information sharing and consultation is needed for an "observed" rating.
6.2	**Significant changes in financial policies should be publicly announced and explained in a timely manner.**
Practice	Significant changes in policy (e.g., decisions of the Governing Council of the ECB regarding payment systems) are released on the BdF's website and, when applicable, on the website of the ECB, immediately after the decision is made, usually in the form of a press release. These announcements, which usually include an explanation of the decision, can be recirculated by the French Banking Federation or the media. In addition, the BdF communicates and explains such changes directly to the payment system operators it oversees.
Assessment	Observed.
6.3	**Financial agencies should issue periodic public reports on how their overall policy objectives are being pursued.**
Practice	Reports on pursuit of overall policy objectives are issued quarterly and annually (and even more frequently when judged necessary). Typically, reports take the form of written reports to the legislature, the official bulletin and the annual report, as well as postings on the BdF's website. Chapter 6 of the BdF's annual report is dedicated to the oversight of payment and securities settlement systems and is comprehensive. In addition, BdF launched a FSR in June 2002, where it can report on the pursuit of its policy objectives. For example, an article on the Protection of deferred net payment and SSS in France is published in the November 2003 issue.
Assessment	Observed.
6.4	**For proposed substantive technical changes to the structure of financial regulations, there should be a presumption in favor of public consultations, within an appropriate period.**
Practice	The structure of payment systems regulations in France is determined by standards that are defined at the G10 level, at the ESCB level or, for the fields not covered by the latter, at the BdF's level. Whatever the type of standards, a public consultation is systematically organized

	in case of substantive changes. A link to ongoing public consultations regarding payment system issues is provided on the BdF's website.
Assessment	Observed.
VII. PUBLIC AVAILABILITY OF INFORMATION ON FINANCIAL POLICIES	
7.1	**Financial agencies should issue a periodic public report on the major developments of the sector(s) of the financial system for which they carry designated responsibility.**
Practice	The BdF reports on developments in payment and settlement systems in its annual report (e.g., Chapter 6 of the 2002 and 2003 annual reports). Payment system statistics are also published on a continuous on the BdF's website and on a monthly basis in the BdF's bulletin. Occasional articles on important payment systems developments are included in most of the BdF's publications, including the monthly bulletin and the FSR.
Assessment	Observed.
7.2	**Financial agencies should seek to ensure that, consistent with confidentiality requirements, there is public reporting of aggregate data related to their jurisdictional responsibilities on a timely and regular basis.**
Practice	Aggregate data on payment systems are published in the BdF's annual report, its monthly bulletin, and on the BdF's website.
Assessment	Observed.
7.3	**Where applicable, financial agencies should publicly disclose their balance sheets on a pre-announced schedule and, after a predetermined interval, publicly disclose information on aggregate market transactions.**
Practice	
Assessment	Not applicable.
Comments	The payment systems department of the BdF does not have a separate balance sheet. The balance sheet of the BdF is published monthly in the Monthly bulletin, and the BdF's audited financial statements, including its balance sheet, are published in the BdF's annual report. Both bulletin and annual report are available on BdF's website.
7.3.1	**Consistent with confidentiality and privacy of information on individual firms, aggregate information on emergency financial support by financial agencies should be publicly disclosed through an appropriate statement when such disclosure will not be disruptive to financial stability.**
Practice	
Assessment	Not applicable.
Comments	The BdF does not provide emergency financial support to payment systems operators. Emergency liquidity support is only provided to participants in payment systems, and this is

	outside the scope of the BdF's responsibilities for payment systems oversight.
7.4	**Financial agencies should establish and maintain public information services.**
Practice	The BdF's Communications Division provides public information services and disseminates; (i) policy decisions and announcements; (ii) information on the operating framework, targets, and objectives; (iii) texts of speeches by senior officials; (iv) quantitative data and; (v) staff research. It also maintains the website and has major involvement in the production of quarterly and annual publications. The website has a dedicated part on payment system, instruments and SCSS oversight issues.
Assessment	Observed.
7.4.1	**Financial agencies should have a publications program, including a periodic public report on their principal activities issued at least annually.**
Practice	The BdF's publications program includes; (i) the annual report; (ii) the official bulletin; (iii) the Financial Stability Review, (iv) research and statistical publications; and (v) speeches of senior officials; all of which are available free or at nominal cost, and most of which can be downloaded from its website. Reports on the BdF's principal activities are published quarterly and annually (although the monthly bulletin and FSR address aspects of its principal activities on a nonperiodic basis), approximately one quarter after the end of the period to which they refer. The BdF is required by legislation (Art. 113 of the Treaty and Art. 15 of the Statute of the ESCB and the ECB) to issue a periodic report. COMOFI Art. L.143-1 requires that a report be made on the BdF's principal activities, including payment system, instruments and SCSS oversight issues, to the President of the Republic and to Parliament at least once annually.
Assessment	Observed.
7.4.2	**Senior financial agency officials should be ready to explain their institution's objective(s) and performance to the public, and have a presumption in favor of releasing the text of their statements to the public.**
Practice	The Governor of the BdF explains the objectives and performance of the BdF, including regarding its responsibility for payment systems oversight, at parliamentary hearings. The Governor and other officials further explain the objectives and performance of the BdF through speeches in public fora (texts published on the BdF's website), before members of the industry, and through interviews or articles in the news media. Prior internal clearance is required for officials (other than the Governor) to do so.
Assessment	Observed.
7.5	**Texts of regulations and any other generally applicable directives and guidelines issued by financial agencies should be readily available to the public.**
Practice	The texts of regulations and other generally applicable directives and guidelines are made available free or at nominal charge through the JORF, France's official legislative website (www.legifrance.gouv.fr), and on the BdF's website.
Assessment	Observed.

7.6	**Where there are deposit insurance guarantees, policy-holder guarantees, and any other client asset protection schemes, information on the nature and form of such protections, on the operating procedures, on how the guarantee is financed, and on the performance of the arrangement, should be publicly disclosed.**
Practice	
Assessment	Not applicable.
Comments	The BdF does not oversee any client asset protection scheme as part of its responsibilities for payment systems oversight.
7.7	**Where financial agencies oversee consumer protection arrangements (such as dispute settlement processes), information on such arrangements should be publicly disclosed.**
Practice	
Assessment	Not applicable.
Comments	The BdF does not oversee any consumer protection arrangements as part of its responsibilities for payment systems oversight.
VIII. ACCOUNTABILITY AND ASSURANCES OF INTEGRITY BY FINANCIAL AGENCIES	
8.1	**Officials of financial agencies should be available to appear before a designated public authority to report on the conduct of financial policies, explain the policy objective(s) of their institution, describe their performance in pursuing their objective(s), and, as appropriate, exchange views on the state of the financial system.**
Practice	For these purposes, COMOFI Art. L.143-1 provides that the Governor may be heard by the Finance Commission of the National Assembly or the Senate if they so desire, or may request to be heard by them (see also Art. 107 of the EC Treaty and the confidentiality rules of the ECB). These arrangements cover payment systems oversight as well as the other areas of the BdF's responsibilities. There is no possibility for parliament to demand that BdF officials more directly involved in payment systems oversight appear before it, except in the context of a commission of inquiry.
Assessment	Observed.
8.2	**Where applicable, financial agencies should publicly disclose audited financial statements of their operations on a pre-announced schedule.**
Practice	
Assessment	Not applicable.
Comments	The BdF's department responsible for payment systems oversight does not have a separate balance sheet. The BdF's financial statements are of little relevance to the transparency of payment systems oversight, since they are largely determined by the BdF's monetary policy and other functions, while payment systems oversight constitutes only a small part of its operations.

	The audited financial statements of the BdF are published in the JORF and form part of the annual report. Pursuant to the COMOFI, the audited financial statements are to be laid before the Finance Commissions of the two chambers of Parliament.
8.2.1	**Financial statements, if any, should be audited by an independent auditor. Information on accounting policies and any qualification to the statements should be an integral part of the publicly disclosed financial statements.**
Practice	
Assessment	Not applicable.
Comments	The BdF's department responsible for payment systems oversight does not have a separate balance sheet. Two private sector firms, approved by the European Council of Ministers on the recommendation of the ECB's Governing Council and appointed by the General Council of the BdF, audit the BdF's financial statements. Information on accounting policies used and any qualifications to the accountants' opinion appear with the financial statements.
8.2.2	**Internal governance procedures necessary to ensure the integrity of operations, including internal audit arrangements, should be publicly disclosed.**
Practice	Insurance of the integrity of operations rests with the internal audit office of the BdF (*l'Inspection Générale*). This internal office, together with the risk management unit, falls under the authority of the *Contrôleur Générale*, and is responsible for the systematic monitoring of the BdF's management procedures and internal control systems. The existence (and mission) of the internal audit office is publicly disclosed in the annual report and on the organization chart of the BdF. Developments in the area of internal audit are also discussed in the annual report (for example, section 8.2.8 of the 2002 Annual Report). Transparency could be further enhanced by posting an extensive description of the internal audit unit and other internal governance procedures on the website of the BdF.
Assessment	Observed.
8.3	**Where applicable, information on the operating expenses and revenues of financial agencies should be publicly disclosed annually.**
Practice	
Assessment	Not applicable.
Comments	The BdF's department responsible for payment systems does not have its own accounts, and hence, the operating expenses and revenues of the BdF related to its role as overseer of payment and settlement systems cannot be isolated. Disclosure on the BdF's overall operating expenses and revenues are made in the audited financial statements, which are published annually.

8.4	**Standards for the conduct of personal financial affairs of officials and staff of financial agencies and rules to prevent exploitation of conflicts of interest, including any general fiduciary obligation, should be publicly disclosed.**
Practice	Internal standards for the conduct of personal financial affairs are set out in the BdF's *Code de déontologie financière*, which is publicly available in paper form. A recent internal rule (also published) relating to the implementation of the *Code de déontologie financière* focuses more specifically on good practices to be applied by officials and staff when they are offered gifts in the conduct of their official duties.
Assessment	Observed.
8.4.1	**Information about legal protections for officials and staff of financial agencies in the conduct of their official duties should be publicly disclosed.**
Practice	Officials and staff of the BdF benefit from the standard legal protection granted to civil servants in the good faith execution of their duties. This protection is outlined in, and publicly disclosed through, the relevant legislation (see COMOFI Articles L.144-2 and 144-3).
Assessment	Observed.

Table 40. Summary Observance of IMF's MFP Transparency Code Practices—Payment and Settlement Systems

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Observed	21	5.1, 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.2, 5.3, 5.3.1, 6.2, 6.3, 6.4, 7.1, 7.2, 7.4, 7.4.1, 7.4.2, 7.5, 8.1, 8.2.2, 8.4, 8.4.1.
Broadly observed	1	6.1.5.
Partly observed	1	6.1.1.
Not observed	0	--
Not applicable	12	5.4, 5.5, 6.1.2, 6.1.3, 6.1.4, 7.3, 7.3.1, 7.6, 7.7, 8.2, 8.2.1, 8.3.

Recommended action plan and authorities' response to the assessment

Recommended action plan

Table 41. Recommended Actions to Improve Observance of IMF's MFP Transparency Code Practices—Payment and Settlement Systems

Reference Practice	Recommended Action
VI. Open Process for Formulating and Reporting of Financial Policies	
6.1.1	Clearly specify, publicly disclose and explain the operating procedures governing the conduct of the BdF's payment systems oversight function. Improve efforts to explain and clarify international standards and the way they should be implemented in the French context by the different payment systems operators.
6.1.5	Disclose the formal procedures for information sharing and consultation in greater detail.

Authorities' response to the assessment

138. The BdF welcomes the IMF assessment that it reaches a very high level of transparency in its payment systems oversight function and takes note of the IMF recommendations.

F. Transparency of Securities Regulation and Supervision

139. Securities regulation and supervision in France is governed by the Monetary and Financial Code (COMOFI), as modified by the *Loi de Sécurité Financière* (Financial Security Law–LSF) of August 1, 2003. The law gives the *Autorité des Marchés Financiers* (AMF) responsibility for ensuring the protection of public savings invested in financial instruments and gives it the authority to issue regulations and to supervise issuers and markets. The CB, the CECEI, and the BdF are also involved in securities oversight, although to a lesser extent than the AMF. The LSF of August 2003 significantly reformed the framework for securities regulation and supervision in France, in part by merging three existing agencies, the *Commission des Opérations en Bourse* (COB), the *Conseil des Marchés Financiers* (CMF), and the *Conseil de Discipline de la Gestion Financière* (CDGF) into a single new agency, the AMF. The implementation of this merger was still ongoing at the time of the FSAP missions. For this assessment, where there was an insufficiently long track record of practices at the AMF, it was assumed that good transparency practices of the former agencies would be maintained to the extent the changed legal and regulatory framework allowed so.

Practice-by-practice assessment

Table 42. Detailed Assessment of Observance of IMF's MFP Transparency Code Practices—Transparency of Securities Regulation

V. Clarity of Roles, Responsibilities and Objectives of Financial Agencies Responsible for Financial Policies—Securities Regulation and Supervision	
5.1	**The broad objective(s) and institutional framework of financial agencies should be clearly defined, preferably in relevant legislation or regulation.**
Practice	The broad objectives and institutional framework of the *Autorité des Marchés Financiers* (*AMF*) are defined by the LSF No. 2003-706 of 1st August 2003 providing for the merger of the COB, established by the Ordinance (Executive Order) No. 67–833 of September 28, 1967, the CMF instituted by the Act No. 96-597 of July 2, 1996 (Financial Activity Modernization Act) and the CDGF, and integrated in the COMOFI and certain appurtenant Decrees, in particular Decree No. 1109, dated November 21, 2003.
Assessment	Observed.
5.1.1	**The broad objective(s) of financial agencies should be publicly disclosed and explained.**
Practice	The LSF, codified into the COMOFI, describes the broad objectives of the French financial agencies for the banking, insurance and securities sectors. The provisions concerning the AMF are found under its Book VI, Title II " *L'Autorité des marchés financiers*." The general purpose and mission of the AMF is stated clearly in Art. L.621-1 of the COMOFI (as amended by the LSF): the AMF ensures the protection of public savings invested in financial instruments and all other investment leading to a public offering, supervises financial information conveyed to investors and the proper functioning of financial markets. It contributes to the regulation of these markets at the European and international level. The scope of the mission of the AMF is stated under Section 4 "Powers" : Sub section 1 "Regulations and Decisions." This section states that the AMF adopts a General Regulation (*Règlement général*) published in the JORF, which determines, among other things, the provisions applicable to issuers, public offerings, take over bids, conduct of business rules, providers of investment services, market undertakings, regulated markets, clearing houses, portfolio management on behalf of third parties, collective investment schemes, depositaries and financial analysts. The functions of the CB, the CECEI, and the BdF, respectively, pertaining to the oversight of investment services providers, clearing and settlement systems, and custodians also are articulated in the COMOFI.
Assessment	Observed.
5.1.2	**The responsibilities of the financial agencies and the authority to conduct financial policies should be publicly disclosed.**
Practice	The responsibilities of the agencies involved in supervising and regulating financial markets are publicly disclosed through the publication of the relevant laws and regulations in the JORF, on the French public service website www.legifrance.gouv.fr and on the website of relevant financial agencies, such as www.amf-france.org. Summaries and relevant links are also

	available on the websites of the agencies involved.
Assessment	Observed.
5.1.3	**Where applicable, the broad modalities of accountability for financial agencies should be publicly disclosed.**
Practice	Modalities of accountability of the AMF are found in the LSF as codified into the COMOFI. As other public administrations, the AMF is subject to the audit of the *Cour des comptes* which acts as the French Comptroller's office. Annual reports are submitted by the President of the AMF both to the legislature and to the President of the Republic (Art. L.621-19 § 3). In addition, the President of the AMF is heard by the commissions of finance of both assemblies upon their request, and can request to be heard by them (Art. L.621-19 § 4). Decisions of the AMF are subject to a review procedure. Depending on the nature of the decision considered (whether individual or general), an appeal undertaken by the person affected by the decision may be introduced before the Court of Appeal of Paris in the case of nonregulated persons or entities or the *Conseil d'Etat* in the case of regulated entities. Procedures related to the sanctioning process as defined in the LSF are meant to be consistent with the European Convention on Human Rights and relevant national law requirements (L.621-2 IV; 621-3 II). A Decree of the *Conseil d'Etat* fixes the rules applicable to the deliberations of the institutions of the AMF and the AMF determines the modalities of putting these procedures into operation in its General Regulation.
Assessment	Observed.
5.1.4	**Where applicable, the procedures for appointment, terms of office, and any general criteria for removal of the heads and members of the governing bodies of financial agencies should be publicly disclosed.**
Practice	Responsibility for the appointment of the members of the AMF's Board and of its Commission of sanctions (*Commission des Sanctions*) rests with a number of specific agencies and authorities, each of which chooses its own representatives. This arrangement is defined in the LSF and hence publicly disclosed. Book VI, Title II, "The AMF" Section 2 "Composition" specifies the terms of office and rotation of the heads and members of the board and the Commission of sanctions in which there can be no cross-membership except by the *Commissaire du Gouvernement*. The President serves for one term of five years; other Members may serve two terms. The conditions for renewal of the members of the board are defined in a Decree of the *Conseil d'Etat.*. Removal is restricted to a consecutive period of nonattendance or by action of a special investigation committee constituted by Parliament. The procedure for convening a special committee is specified by Art. 6 of the November 17, 1958 ordinance.(i.e., Executive Order).
Assessment	Observed.
5.2	**The relationship between financial agencies should be publicly disclosed.**
Practice	The relationships between financial agencies are publicly disclosed in legislation and in official bulletins and, in the case of clearing and settlement activities, specific protocols. Chief among the main features providing for a close cooperation between national financial agencies is the

	"cross membership rule" according to which one representative of a financial institution sits as a member on another regulatory body so as to constitute a permanent mechanism for exchange of information. Book VI, Title II "Exchange of information," Chapter I, "Exchange of information on the national territory" explicitly provides arrangements for "Cross membership." Art. L.631-1 states the general capacity of national regulators to exchange information free from requirements of professional secrecy. Art. L.631-2. creates a Board of Financial sector supervisory agencies composed of the Governor of the BdF, the president of the CB, the president of the CCAMIP, and of the President of the AMF, or their representatives. It is chaired by the Minister of Finance or his representative. The various functions of each of the financial agencies are clearly spelled out in the Code, and the website of the AMF contains a diagram of the changes in functions effectuated by the LSF.
Assessment	Observed.
5.3	**The role of oversight agencies with regard to payment systems should be publicly disclosed.**
Practice	The role of the AMF as regards to payments and settlements systems is provided for under Art. L.621-7 of the COMOFI which states that "The general regulations of the AMF determine the following: […] 2°) the conditions of activities of the members of the clearing houses mentioned under Art. L.442-2; […] [and] 7°) the conditions in which, in accordance to Art. L.442-1, the AMF approves the rules of the clearing houses, without prejudice to the competences conferred to the BdF under Art. L.141.4.
Assessment	Observed.
5.3.1	**The agencies overseeing the payment system should promote the timely public disclosure of general policy principles (including risk management policies) that affect the robustness of systemically important payment systems.**
Practice	
Assessment	Not applicable.
Comments	This task is a responsibility of the BdF.
5.4	**Where financial agencies have oversight responsibilities for self-regulatory organizations (e.g., payment systems), the relationship between them should be publicly disclosed.**
Practice	
Assessment	Not applicable.
Comments	The French securities regulatory system does not make use of self-regulatory organizations.
5.5	**Where self-regulatory organizations are authorized to perform part of the regulatory and supervisory process, they should be guided by the same good transparency practices specified for financial agencies.**
Practice	

Assessment	Not applicable.
Comments	The French securities regulatory system does not make use of self-regulatory organizations.
VI. Open Process for Formulating and Reporting of Financial Policies	
6.1	**The conduct of policies by financial agencies should be transparent, compatible with confidentiality considerations and the need to preserve the effectiveness of actions by regulatory and oversight agencies.**
Practice	The AMF has to state the grounds for its decisions in writing. Different types of Appeal procedures apply according to the nature of a contested decision. There is regular consultation with the industry, although this is not required by law. The Board of the AMF can make use of specialist advisory and consultative committees of experts. Art. L.621-2III.
Assessment	Observed.
6.1.1	**The regulatory framework and operating procedures governing the conduct of financial policies should be publicly disclosed and explained.**
Practice	The regulatory framework and operating procedures governing the conduct of the AMF's regulatory and supervisory program are disclosed and explained in legislation, existing guidance and regulations, in the monthly reviews of the regulator, and on the AMF's official website. Certain internal procedures are to be updated and included in the general regulations. Written procedures exist for granting *visas,* granting licenses to investment services providers within the competence of the AMF, and for conducting investigations. These procedures are publicly disclosed and explained in the LSF, in decrees, on the AMF website and in publicly available documents and forms. The new Commission of Sanctions is governed by the LSF, the COMOFI, the EUROPEAN Convention on Human Rights, and general law. The Annual Report addresses how regulatory policies are being developed. Nevertheless, it would be helpful if the rules and procedures related to policy-making and the exercise of regulatory and oversight responsibilities in a given area, such as securities, could be brought together in a single (composite) text, which could be published as a whole. Ideally, procedures for conducting sanction proceedings and seeking regulatory relief would be made as accessible as possible to participants and intermediaries in French markets.
Assessment	Observed.
6.1.2	**The regulations for financial reporting by financial institutions to financial agencies should be publicly disclosed.**
Practice	Regulations for reporting are disclosed in the legislation published in the JORF and in the monthly reviews of the regulator, as well as on the AMF's official website and the legal website of the French government (www.legifrance.gouv.fr). Some of the information is available in English as well as in French.
Assessment	Observed.
6.1.3	**The regulations for the operation of organized financial markets (including those for issuers of traded financial instruments) should be publicly disclosed.**

Practice	Regulations are published on the AMF website and as required by law, in official bulletins. The rules of the markets, clearing organizations and information on the interests traded are readily available on the Euronext website and on the websites of its complex of markets (e.g., www.euronext.com). Those rules that are harmonized are particularly identified; as are those that are not.
Assessment	Observed.
6.1.4	**Where financial agencies charge fees to financial institutions, the structure of such fees should be publicly disclosed.**
Practice	The parameters (rates, amounts) for the applicable fees are publicly stated in the COMOFI and specified by a decree (Art L.621-5-3). They are disclosed and publicly available.
Assessment	Observed.
6.1.5	**Where applicable, formal procedures for information sharing and consultation between financial agencies (including central banks), domestic and international, should be publicly disclosed.**
Practice	Formal procedures providing for information sharing mechanisms are publicly disclosed in legislation and published in official bulletins. As stated under 5.2, Art L.631.1 provides for domestic mechanisms for cooperation and information sharing, while Art L.632.1 provides for exchange of information to foreign counterparts under the condition that the competent counterpart to the AMF, the market undertakings, or clearing houses of the regulated markets is submitted to professional secrecy requirements in a legislative framework that provides equivalent guarantees to those applicable in France and that reciprocity can be observed. Memoranda of understanding are public documents and are available on the AMF website.
Assessment	Observed.
6.2	**Significant changes in financial policies should be publicly announced and explained in a timely manner.**
Practice	Significant changes in financial market regulation and supervision are announced and explained through the AMF's monthly review, its annual reports, its website and the media. In order to be applied to market participants and regulated entities, rules must be made public as a matter of law. As a consequence, changes are timely announced and explained to the public.
Assessment	Observed.
6.3	**Financial agencies should issue periodic public reports on how their overall policy objectives are being pursued.**
Practice	The AMF reports on how its overall policy objectives are being pursued on a monthly basis in the AMF Review (Formerly COB and CMF monthly reviews), as well as in its annual reports, in the media, and on an ongoing basis on its website. Announcements are also made on matters of emergent interest—for example, specific guidance was provided on certain issues after the Parmalat crisis.
Assessment	Observed.

6.4	**For proposed substantive technical changes to the structure of financial regulations, there should be a presumption in favor of public consultations, within an appropriate period.**
Practice	For proposed substantive technical changes to the structure of financial regulations, consultations take place with market participants and working groups of experts. Some consultations have included the posting of a draft document on the website with a call for comments from the public. The AMF also works through the Committee of European Securities Regulators (CESR), which has a comprehensive consultation process. The COMOFI also makes specific provision for certain consultative committees: the *Comité Consultatif du Secteur Financier* (CCSF) (Art. L.614-1) is charged with studying questions as to relations between banks, investment firms, and insurance companies on the one hand and their respective clients on the other, and with formulating opinions or recommendations for appropriate measures It may act in response to the Ministry, organizations representing their respective clients or professional organizations to which its members belong, or it can act on its own initiative. The *Comité Consultatif de la Législation et de la Réglementation Financières* (CCLRF) (Art. L.614-2 &3) is a new institution that will be convened with respect to every rule or general directive except for texts within the sole competence of the AMF. These will not be adopted without an opinion of the CCLRF, which is the successor agency to the CRBF. The composition of the CCLRF is set by decree and includes industry representatives. The Ministry (except in the case of the AMF) itself develops all prudential rules. As the CCLRF's deliberations are relevant to rulemaking, they may be public on request. Additionally, the AMF Board can constitute specialist committees from its members presided over by the Chair to consider individual issues and can constitute consultative committees of experts, which the Board names, if the need arises to consider specific issues (Art. L.621-2III). While the AMF states that its policy is to seek consultations on all significant issues whenever possible and appropriate, it has not publicly committed itself to doing so for all substantive technical changes to the structure of its regulations. Such a commitment, formulated in a publicly available policy statement, regulation or law, would further enhance transparency.
Assessment	Observed.
VII. PUBLIC AVAILABILITY OF INFORMATION ON FINANCIAL POLICIES	
7.1	**Financial agencies should issue a periodic public report on the major developments of the sector(s) of the financial system for which they carry designated responsibility.**
Practice	The AMF reports extensively on financial market developments in its annual report. It also publishes a set of quarterly statistical publications on its website, which provide data on developments in different markets and market segments.
Assessment	Observed.
7.2	**Financial agencies should seek to ensure that, consistent with confidentiality requirements, there is public reporting of aggregate data related to their jurisdictional responsibilities on a timely and regular basis.**
Practice	Aggregate data are published on a monthly and annual basis. Information is available on certain sanctions and also on the status of authorized institutions on the official website of either the AMF (which is updated monthly) or the CECEI, with respect to their specific areas of competence.

Assessment	Observed.
7.3	**Where applicable, financial agencies should publicly disclose their balance sheets on a pre-announced schedule and, after a predetermined interval, publicly disclose information on aggregate market transactions.**
Practice	The COB and CMF used to publish their financial statements annually. Specific provisions for the publication of the AMF's annual financial statement are found under Art 32 of the Decree 2003-1119 of 21 November 2003. The balance sheet is disclosed in the Annual Report. Further details on publication arrangements remain to be specified. The AMF does not engage in market transactions.
Assessment	Observed.
7.3.1	**Consistent with confidentiality and privacy of information on individual firms, aggregate information on emergency financial support by financial agencies should be publicly disclosed through an appropriate statement when such disclosure will not be disruptive to financial stability.**
Practice	
Assessment	Not applicable.
Comments	The AMF does not provide emergency financial support.
7.4	**Financial agencies should establish and maintain public information services.**
Practice	The AMF has a regularly updated website: www.amf-france.org , which contains an organization chart, policy announcements, descriptions of its operating framework, data and speeches. Furthermore, the AMF currently posts information on Collective Investment Schemes in an online database known as *GECO* (*Gestion collective*). For example, the AMF makes information on the Net Asset Valuations of Collective Investment Schemes (CIS) available to the public on a daily basis for the majority of funds, and on a required schedule for the remainder. All relevant information on new issues, listed securities and the issuers it supervisors is available in another online database known as "*Décisions et informations financières* (DIF)." Both databases are available on its website. Additional information will be posted on the site in the future.
Assessment	Observed.
7.4.1	**Financial agencies should have a publications program, including a periodic public report on their principal activities issued at least annually.**
Practice	By law, the AMF has to publish an Annual Report. In addition, it publishes an official monthly bulletin, research publications, speeches of officials, nontechnical descriptions of its role and functions, newsletters and pamphlets for educational purposes. Educational pamphlets are free of charge, and the AMF maintains a public document room.
Assessment	Observed.

7.4.2	**Senior financial agency officials should be ready to explain their institution's objective(s) and performance to the public, and have a presumption in favor of releasing the text of their statements to the public.**
Practice	In addition to the requirement to publish an annual public report, the AMF's senior officials are committed to increasing transparency by explaining the AMF's actions, objectives and performance through participation in conferences, speeches, public meetings and media interviews. Texts are released in the review, the media, and on the website.
Assessment	Observed.
7.5	**Texts of regulations and any other generally applicable directives and guidelines issued by financial agencies should be readily available to the public.**
Practice	Regulatory texts are available on the website. The website is well organized and provides information by type (Law, regulation); by theme, and a special search facility. Nonetheless, it is sometimes difficult to retrieve information on old but still applicable law. Other guidance is available in the Monthly Bulletin, and in some cases in the BALO (*Bulletin des annonces légales officiel*).
Assessment	Observed.
7.6	**Where there are deposit insurance guarantees, policy-holder guarantees, and any other client asset protection schemes, information on the nature and form of such protections, on the operating procedures, on how the guarantee is financed, and on the performance of the arrangement, should be publicly disclosed.**
Practice	The *Fonds de Garantie des Titres* (FGT–Securities Guarantee Fund, also called *Fonds de Garantie des dépôts – Mécanisme de Garantie des Titres* or Deposit Guarantee Fund–Securities Guarantee Mechanism) was established by the Act dated 25 June 1999 on savings and financial security. It is managed by the FGD. The latter is a legal entity under private law governing three guarantee mechanisms, for bank deposits, securities, and warranties. It is governed by a Management Board under the control of a Supervisory Board. The guaranteed securities (equity, debt, mutual fund units, and futures) are defined under Art. L.211-1 of the COMOFI. The guarantees are in the process of being consolidated. The amounts collected and managed by each Guarantee Mechanism (Depositors, Securities and Collaterals) are determined by CRBF* Regulations n°99-06 and 99-07 (for depositors), 99-15 and 99-17 (for securities) and 99-12 (warranties). Moreover, if necessary, contributors to the FGD have to provide it enough funds to enable it to meet its obligations. The maximum guarantee per individual is EUR 70,000 per institution (which is more generous than required under the European Directives), irrespective of the number of accounts, the assets contained in the accounts, or the type of currency. Information on the system is publicly available, see www.banque-france.fr/fr/infobafi/regles/11.htm. Also see Art. L.312-2 to 18.

* The CRBF no longer is in existence ; it is succeeded by the Comité consultatif de la législation et de la réglementation financières (CCLRF), Article L.614-1 to 3. The CCLRF will be responsible for developing prudential regulation, subject to the particular competences of the AMF with respect to asset management.

Assessment	Observed.
7.7	**Where financial agencies oversee consumer protection arrangements (such as dispute settlement processes), information on such arrangements should be publicly disclosed.**
Practice	The ombudsman of the AMF assists in the out-of-court settlement of disputes between retail investors and professionals. The AMF also plays a role in the recognition of minority shareholders' rights and in the minority shareholders' association (in accordance with the January 5, 1988 Company Law). This is publicly disclosed, including through an extensive presentation of the mediating role of the AMF on its website. Summaries of types of mediations are reported in the Annual Report.
Assessment	Observed.
VIII. ACCOUNTABILITY AND ASSURANCES OF INTEGRITY BY FINANCIAL AGENCIES	
8.1	**Officials of financial agencies should be available to appear before a designated public authority to report on the conduct of financial policies, explain the policy objective(s) of their institution, describe their performance in pursuing their objective(s), and, as appropriate, exchange views on the state of the financial system.**
Practice	Officials are available to appear before designated public agencies. The main accountability procedures stated above are organized before the President of the Republic and the Commissions of finance of both parliamentary assemblies, and also at the public audit of the *Cour des comptes*, a judicial body responsible for overseeing the accounts of the public sector. The President may request to be heard or may be called at any time.
Assessment	Observed.
8.2	**Where applicable, financial agencies should publicly disclose audited financial statements of their operations on a pre-announced schedule.**
Practice	Financial statements are prepared by an official of the Ministry, the *Agent Comptable*, who is a public accountant, and who serves at the discretion of the Ministry. This accountant is independent from the AMF itself and is personally liable for his work. He prepares the financial statements for approval by the Board of the AMF. Subsequent to this approval, the statements are submitted to the *Cour des comptes*, which has the power to conduct an audit of the accounts. The balance sheet, a statement of operations, and summary information on these statements are published in the Annual Report. Exceptions are also published either in a report of the *Cours des comptes* or in the report of the AMF. However, financial statements of the AMF are not audited on a specified periodic basis, and audited statements are not published on a pre-announced schedule. Articles 33 and 34 of the 2003 Decree establish the accounting rules according to which the AMF's accounts are established and published: The accounts are established and their operations validated by a public civil servant. They are transmitted to the Secretary General of the AMF for presentation to, and approval by, the board. The accounting figures are sent to the *Cour des comptes* (*dépôt sur chiffres)* and all justifying documents are kept at their disposal for ten years by the AMF.

	The accounts are not audited every year (but at random) by the *Cour des comptes*. While the present arrangements do likely provide high-quality financial statements and a high degree of transparency and integrity, it would still be useful to have a second independent party audit the work of the *Agent Comptable* on a regular basis. It is understood that the treatment of financial statements for the new organization of the AMF may evolve in coming years as a result of internal discussions. See also 8.2.2.
Assessment	Partly observed.
Comments	For an "observed" assessment, the AMF's financial statements should be audited on a regular basis, rather than exceptionally, they should be fully publicly disclosed, and the annual report that contains them should be published on a pre-announced schedule.
8.2.1	**Financial statements, if any, should be audited by an independent auditor. Information on accounting policies and any qualification to the statements should be an integral part of the publicly disclosed financial statements.**
Practice	Financial statements are audited, but not on a systematic schedule, by the *Cour des Comptes*, which is an independent government agency (see also 8.2). The *Cour des Comptes* is similar to a Comptroller General's office in other jurisdictions. The AMF is in the process of determining what will be disclosed with respect to accounting policies and qualifications to audited statements under the new regulatory structure.
Assessment	Broadly observed.
Comments	For an "observed" rating, audits should be done annually, and the accounting policies and any qualifications to the statements should be published as an integral part of the AMF's publicly disclosed financial statements.
8.2.2	**Internal governance procedures necessary to ensure the integrity of operations, including internal audit arrangements, should be publicly disclosed.**
Practice	The organigram of the AMF is posted on its website (www.amf-france.org), as are its main governance procedures. The AMF is in the process of creating an internal audit division that reports directly to the Chair. The internal audit division is already marked on the organizational chart and is expected to be led by two staff to be appointed this summer. This division will make a review of operating procedures and propose refinements intended to increase efficiency. Division heads within the AMF are responsible for the oversight of the operations of their Division and report on such operations to the Secretary General. The AMF staff must comply with requirements on securities ownership and on transaction reporting. These requirements are available to the public. Internal by-laws (the *Statut des personnels*) of the AMF related to internal provisions aimed at ensuring that the highest professional standards are observed can be obtained on request. The information provided to the AMF Officer of Ethics (*Déontologue*) is only accessible to the auditors and to the president of the AMF. In cases of investigation, these forms are also available to the judge. In addition, the President, the members of the AMF and the staff are subject to the rules of the Penal Code concerning professional secrecy. Financial controls are audited in connection with the financial statements as set forth above.

Assessment	Broadly observed.
Comments	This practice will be "observed" when the internal governance procedures are fully elaborated, operational, and publicly disclosed. Among other things, this requires the internal audit division to be staffed and operational (which is expected to be during the Summer of 2004). It is suggested that the review of operational efficiencies also encompasses a review of the operational integrity of the structure.
8.3	**Where applicable, information on the operating expenses and revenues of financial agencies should be publicly disclosed annually.**
Practice	The AMF publicly discloses and presents its budget in its annual report.
Assessment	Observed.
8.4	**Standards for the conduct of personal financial affairs of officials and staff of financial agencies and rules to prevent exploitation of conflicts of interest, including any general fiduciary obligation, should be publicly disclosed.**
Practice	Standards for the conduct of personal financial affairs are set by the law. They apply to the President of the AMF, the members of the commission and the staff. In addition, by law the president and members of the AMF are required to disclose to the commission any other financial functions or interests. Art. L.621-4 provides specific rules for preventing conflicts of interests. By AMF regulation adopted in March, Members are also restricted with respect to the holding and trading of securities.
Assessment	Observed.
8.4.1	**Information about legal protections for officials and staff of financial agencies in the conduct of their official duties should be publicly disclosed.**
Practice	Officials, the Members of the Board and staff of the AMF are not personally liable in the *bona fide* discharge of their functions, and those protections are publicly disclosed. The AMF has legal personality and therefore can itself sue and be sued. The scope of liability is established under the law, but the principle does not apply to the regulator itself.
Assessment	Observed.

Table 43. Summary Observance of IMF's MFP Transparency Code—Securities Regulation

Assessment Grade	Practices Grouped by Assessment Grade	
	Count	List
Observed	29	5.1, 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.2, 5.3, 6.1, 6.1.1, 6.1.2, 6.1.3, 6.1.4, 6.1.5, 6.2, 6.3, 6.4, 7.1, 7.2, 7.3, 7.4, 7.4.1, 7.4.2, 7.5, 7.6, 7.7, 8.1, 8.3, 8.4, 8.4.1.
Broadly observed	2	8.2.1, 8.2.2.
Partly observed	1	8.2.
Not observed	0	--
Not applicable	4	5.3.1, 5.4, 5.5, 7.3.1.

Recommended action plan and authorities' response to the assessment

Recommended action plan

Table 44. Recommended Action Plan to Improve Observance of IMF's MFP Transparency Code Practices—Securities Regulation

Reference Principle	Recommended Action
VIII. Accountability and Assurance of Integrity by Financial Agencies	
Public disclosure of audited financial statements (8.2 and 8.2.1)	Have the AMF's financial statements audited at least annually, rather than on an occasional basis. Publish the audited financial statements fully, on a pre-announced schedule. Include the accounting policies and any qualifications to the statements as an integral part of these publicly disclosed financial statements
Disclosure of internal governance procedures (8.2.2)	Elaborate and publicly disclose the AMF's internal governance procedures, and make them operational.

Authorities' response to the assessment

140. The AMF notes that its financial statements are subject to several statutory mechanisms of accountability to the President of the Republic, to the Parliament and its commissions of finance, a special investigative committee that can be convened by the Parliament, and a routine basis accountability to the Cour des Comptes. The transmission of the financial statements to the latter is made yearly and the justifying documents are kept at its disposal for ten years. Those can be audited at any time by the Cour des Comptes and any practice that is not compliant with the principle of good governance shall be made public in its annual report. Moreover, it should be noted that the IOSCO principles and methodology, although defining clear accountability and transparency criteria, do not go as far as to require an external auditor to audit the regulator's account annually and to publish the findings of this audit on a pre-announced schedule.

141. The AMF notes that under this principle relating to internal governance, several interrelating issues seem to have to be taken into consideration. These include provisions on the governance of staff and members of the Board on conflict of interests, but might also encompass questions related to the integrity of the decision making process as a whole and the integrity of the internal procedure mainly of operational areas. In this regard, as noted by the experts in their conclusion, the AMF is in the process of hiring an internal control officer and his deputy and will therefore soon be able to comply with the requirements set forth under this principle, although it is worth noting that this new internal control division will only add an independent level of control on procedures already set up by the management of the AMF accountable to the Secretary General.

VII. COMPLIANCE WITH THE FATF RECOMMENDATIONS FOR ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

A. General

Information and methodology used for the assessment

142. A detailed assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of France was prepared by a team of assessors that included staff of the International Monetary Fund (IMF), and two experts under the supervision of IMF staff. The team reviewed the relevant AML/CFT laws and regulations, and supervisory and regulatory systems in place to deter money laundering (ML) and financing of terrorism (FT) among prudentially regulated financial institutions as well as the regulatory systems in place for non-prudentially regulated sectors that are macro-relevant, specifically funds transfer businesses, currency exchangers, La Poste, insurance brokers, direct marketers of financial services and non-financial businesses and professions. The team staff reviewed the regulatory systems in place for the capacity and implementation of criminal law enforcement systems.

143. The team consisted of Mr. Richard Lalonde (MFD), Mr. Nadim Kyriakos-Saad (LEG), Mr. Philippe Fleury (Switzerland's Autorité de contrôle en matière de lutte contre le blanchiment d'argent), and Mr. Ludovic D'Hoore (Belgium's Cellule de Traitement des Informations Financières).

144. To conduct the assessment, the team visited Paris from April 7 to April 22, 2004. The mission team held extensive discussions with representatives from the Ministry of Economy, Finance and Industry (MINEFI), the Ministry of Justice, the Ministry of Interior, the Commission Bancaire, the Commission de Contrôle des Assurances, the Autorité des Marchés Financiers, the Banque de France, licensing authorities, TRACFIN (Traitement du Renseignement et Action contre les Circuits Financiers Clandestins, France's FIU), Customs, and the Police. The assessment team also met with representatives from individual banks, la Poste, insurance companies, securities firms and financial sector associations.

145. The assessment team is appreciative of the time and cooperation received from all participants and would like to thank in particular the MINEFI for the organization of meetings and the coordination of inputs.

General situation of money laundering and financing of terrorism

146. France's FATF mutual evaluation report of 1996 stated that because of its stable economy and political situation and its strong currency, France was attractive to money launderers. The report also stated that while in France the problem was less one of placement of cash than of secondary laundering (layering) or third degree laundering (integration), traditional laundering techniques were still being used, including the simplest ones, such as foreign exchange transactions via money changers. France's mutual evaluation report noted that most laundering cases involved international networks and foreign nationals and that few such cases were linked to local drug trafficking. This would appear to remain the case today. It is believed that common methods of laundering money include the use of bank deposits, foreign currency and gold bullion transactions, corporate transactions, and purchases of real estate, hotels, and works of art. There are reports that foreign organized crime networks are using the French Riviera to launder assets (or invest those previously laundered) by buying up real estate. There are no statistics and no empirical estimates by which to evaluate the volume of revenues to be laundered. There are no statistics or estimates with regard to terrorist financing activities.

Overview of measures to prevent money laundering and terrorism financing

147. As an active member of the FATF, France has played a leading role in the development and promotion of the FATF 40+8 Recommendations as an international standard. It has been equally and steadily active since 1987, when it first criminalized money laundering, in developing a comprehensive AML/CFT regime. It established TRACFIN in 1990, thus becoming one of the first countries to establish a financial intelligence unit. A law on preventive measures was also enacted in 1990, among other things introducing a requirement to report suspicious transactions. In 1993, the scope of the suspicious transaction

reporting requirement was extended to funds or transactions suspected of being related to organized crime, in addition to drug trafficking. In 1996, the scope of the predicate offences for money laundering was extended to all crimes and misdemeanors. In 1998 and 2001, the sectoral coverage of preventive measures was extended beyond the financial sector to certain non-financial businesses and professions (notably real estate professional, casinos and dealers in high value goods) and additional transaction reporting requirements were introduced. In 2003, sectoral coverage was again broadened to include individual and collective portfolio management firms, direct marketers of financial services and investment advisers, and the authorities of financial sector supervisors were clarified and strengthened. In 2004, the scope of the suspicious transaction reporting requirement was extended to funds or transactions suspected of being related to corruption and fraud against the financial interests of the European Communities. The reform of 2004 also broadened the coverage of requirements to the legal and accountancy professions. It also strengthened customer identification requirements. Following the revision of the FATF 40+8 Recommendations in 2003, work is well underway on the further development of the legal and institutional framework, further evidence of France's longstanding commitment to combating money laundering and terrorist financing.

148. The overall legal and institutional framework currently in place is comprehensive and France maintains a high level of compliance with the FATF 40+8 Recommendations. In many respects its regime has gone beyond the standard, including in the sectoral coverage of preventive measures and in the range of reporting requirements that apply to financial entities. That said, the assessment identified areas where further improvements could be achieved, mainly: the implementation of UN Security Council Special Resolution on terrorism financing, as in other European countries operating within the European Union regulatory framework; the overall quality of STRs; AML/CFT regulation, supervision and enforcement for sectors other than credit institutions and certain investment firms; and requirements for increased diligence and internal controls.

B. Main Findings

Criminal justice measures and international cooperation

149. France has ratified the United Nations Convention on Illicit Drugs and Psychotropic Substances (Vienna Convention), the UN International Convention for the Suppression of the Financing of Terrorism and the UN Convention Against Transnational Organized Crime 2000 (Palermo Convention). France is also a party to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg Convention). Legal provisions for the criminalization of money laundering and terrorist financing are in place. The scope of predicate offences for ML is very extensive and covers all crimes and misdemeanors, including FT and fiscal fraud. FT is criminalized comprehensively.

150. French legislation provides broad possibilities to seize any assets in the course of investigations, either by officers of judicial police or on instruction of the judiciary.

Although, in theory, all assets of a convicted person can be confiscated, in practice, confiscation measures generally apply to the assets seized in the course of the judicial procedure. As an alternative, fines can be increased to half the level of the laundered funds.

151. France implements the United Nations Security Council Resolutions 1267, 1269, 1333, 1373, and 1390 through directly applicable European Union legislation. France is currently unable to comply fully with UN Security Council Resolution 1373 with regard to terrorists or terrorist groups from within the European Union as they are not covered by EU Council Regulations. The Constitutional Treaty established by the European Convention includes provisions that would lift this distinction. Pending its adoption, a draft bill has been prepared to enable the government to impose financial sanctions and administratively freeze assets of terrorists or terrorist groups based within the European Union in compliance with UN Security Council Resolution 1373. The draft bill has to undergo a consultative process and the timeframe for its adoption is uncertain at this stage.

152. TRACFIN, the FIU in France, is an Egmont member and has been operational since 1991. It can issue blocking or freezing instructions which are valid for 12 hours where suspicious transactions are reported prior to their execution. This procedure was used only on seven occasions since TRACFIN became operational and has produced minimal results.

153. The interaction between TRACFIN, the supervisory authorities and law enforcement has improved markedly recently and appears to be reasonably efficient. TRACFIN can cooperate with its foreign counterpart units to share intelligence information and data likely to be linked to ML or FT on the basis of the national legislation that is consistent with the Egmont Group principles and has concluded cooperation agreements with 24 foreign counterparts.

154. The number of STRs has increased rapidly since 2000, but still seems rather low compared to the financial and economic activity on the French market and the recent increase in reporting has not been accompanied by a significant increase in the overall quality of reports. Although it has increased, the number of files forwarded by TRACFIN to the judicial authorities is still relatively limited. TRACFIN indicates that this is mainly due to the poor quality of a large number of STRs.

155. A working group of the Liaison Committee is currently working on establishing an electronic reporting form that should enhance the analytical capabilities of both the reporting parties and TRACFIN, improve the overall quality of STRs and the quantity and quality of transmissions by TRACFIN, and assist in the compilation of more detailed statistics.

156. ML and FT investigations are carried out by law enforcement under supervision of the judiciary. The Judiciary Police, the Préfecture de Police, the Gendarmerie and Customs have established divisions specialized in economic and financial crime, including ML, that also benefit from specific training programs. Depending on the stage of the enquiries, they can use a wide range of investigative techniques but a large number of cases are not pursued due to insufficient financial and human resources. A recent reform by the Law of March 9,

2004 entering into force on October 1, 2004 and introducing specialized jurisdictions is expected to enhance the overall capacity of the judicial system to combat financial crime.

157. The number of convictions for ML is on the increase, although the ML offence does not appear to be used as frequently as it might be due mainly to the difficulty in establishing the illegal origin of the funds. Courts appear to have adopted a pragmatic solution to this difficulty that consists in qualifying the facts differently and pursuing cases under other offences than the ML offence (abus de biens sociaux, association de malfaiteurs, etc.). While a recent case indicates that a conviction for (general) ML can be pronounced without the predicate offence being specifically identified, additional reflection is needed on the obstacles that requiring proof of the predicate offence constitutes for an effective fight against ML.

158. Despite the efforts and determination of the authorities involved in fighting terrorism financing, no significant results in terms of convictions have been obtained so far, mainly due to the recent incrimination of FT and to the complicated and time consuming enquiries, in particular the difficulty of linking suspicious financial movements with terrorist activities. A pragmatic solution is to qualify the facts under investigation as association de malfaiteurs.

159. France pursues a policy of active international cooperation and has an impressive set of bilateral and multilateral treaties for MLA and extradition in ML and FT cases. It provides timely and effective follow-up to mutual legal assistance requests.

160. French law provides that the confiscation of assets on French territory operates as a transfer of property to the state unless otherwise agreed with the requesting state. In addition, the sharing of assets may be provided in a bilateral treaty.

Preventive measures for financial institutions

161. The institutional framework for financial sector regulation, supervision and licensing is organized sectorally. Regulation-making authority rests largely with the Minister of the Economy, as a result of the Law on Financial Security of 2003. The CECEI licenses credit institutions and investment firms other than portfolio management firms ("credit institutions and investment firms"), the CEA licenses insurance companies and the AMF licenses, inter alia, portfolio management firms, direct marketers of financial products ("démarcheurs) and investment advisers. Licensing requirements include "fit and proper" testing of managers and significant shareholders. Other financial entities are subject to registration requirements, notably insurance brokers, currency exchangers, direct marketers and investment advisors, with varying degrees of "fit and proper" testing. In general, AML/CFT internal controls policies and procedures are not taken into account for licensing purposes.

162. The CB supervises credit institutions and investment firms for AML/CFT compliance, the CCA has similar responsibilities for insurance companies and brokers and the AMF for portfolio management firms, direct marketers and investment advisers. The IGF is responsible for AML/CFT supervision of La Poste's financial services.

163. Enforcement and sanction powers of supervisory authorities are generally appropriate. However, AML/CFT supervisory efforts and corresponding resources are relatively low with respect to life insurance companies and brokers, individual and collective portfolio management firms, direct marketers and La Poste. The number of on-site inspections and corresponding staff resources for these sectors is relatively low and there have been few sanctions imposed for failure to comply with AML/CFT requirements. When looked at in the context of historically relatively low rate of reporting of suspicious transactions from these sectors, it is consequently difficult to assess whether AML/CFT requirements are being effectively implemented overall.

164. The legal framework for AML/CFT preventive measures is comprehensive and the regulation and supervision of credit institutions and investment firms other than portfolio management firms is of a high standard. The scope of sectoral application extends well beyond the standard. That said, the regulatory framework remains a work in progress, notably with respect to insurance companies and brokers, individual and collective portfolio management firms, direct marketers and currency exchangers. Regulatory initiatives are underway however, notably in connection with the implementation of the revised FATF standards.

165. The CMF and Decree 91-160 of February 13, 1991 provide an adequate framework for customer identification. Nonetheless, beyond some supervisory and industry recommendations, there is generally insufficient guidance as to what constitutes adequate customer acceptance policies and procedures and, in particular, what are the reasonable steps to be taken to identify beneficial owners of accounts and transactions. The ongoing monitoring of accounts and transactions requirements also need to be broadened.

166. While the Minister of the Economy, Finance and Industry regularly informs financial entities of countries that do not have adequate AML/CFT systems, there is no specific legal requirement for financial entities to give special attention to business relations and transactions with persons in such countries.

167. Financial entities are required to have screening procedures for hiring employees. The requirements focus largely on competency and are silent on the issue of integrity. Employee training appears to be implemented effectively with respect to credit institutions, investment firms, insurance companies and La Poste.

168. The requirement that financial entities report suspicious transactions has evolved/expanded over the past decade. However, the scope of the reporting requirement is not aligned with and is indeed narrower than that of the predicate offences for money laundering, which covers all crimes and misdemeanors, including fiscal fraud. This may be a source of confusion for reporting entities and could potentially reduce the effectiveness of the regime.

169. Additional reporting requirements have been introduced in recent years. However, the benefits of these (notably the one in relation to trusts) are unclear and could potentially draw

away resources (i.e., of financial entities and TRACFIN) that might otherwise be used in the detection of suspicious transactions.

170. The legal framework for AML/CFT internal controls is supplemented by comprehensive regulations for credit institutions and investment firms. In the case of insurance companies and portfolio management firms, there is reliance instead on supervisory and professional recommendations that are not as comprehensive.

171. Financial entities are required to ensure that their branches and subsidiaries that are located abroad comply with the requirement to pay special attention to certain transactions. However, other than for credit institutions and currency exchangers, there appears to be no specific requirements for financial entities to ensure the comprehensive application of AML/CFT requirements to branches and majority owned subsidiaries located abroad.

C. Detailed Assessment

172. The following detailed assessment was conducted using the October 11, 2002 version of Methodology for assessing compliance with the AML/CFT international standard, i.e., criteria issued by the Financial Action Task Force (FATF) 40+8 Recommendations (the Methodology).

Assessing Criminal Justice Measures and International Cooperation

Table 45. Detailed Assessment of Criminal Justice Measures and International Cooperation

I—Criminalization of ML and FT **(compliance with criteria 1-6)**
Description
International Conventions and United Nations Resolutions France ratified the United Nations Convention on Illicit Drugs and Psychotropic Substances (Vienna Convention) on October 31, 1990, the UN International Convention for the Suppression of the Financing of Terrorism on January 7, 2002, and the UN Convention Against Transnational Organized Crime 2000 (Palermo Convention) on February 21, 2002. France is also a party to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg Convention), ratified on October 8, 1996. France has implemented the United Nations Security Council Resolutions 1267, 1269, 1333, 1373, and 1390 mainly through directly applicable European Union legislation, in particular Council Regulation (EC) 2580/2001 of 27 December 2001 on imposing certain specific restrictive measures directed against certain persons and entities in order to combat terrorism, and Council Regulation (EC) No 881/2002 of May 27, 2002 (and subsequent amendments) on imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban. Both Council Regulations imposed directly applicable obligations within the European Union member States to freeze the assets of terrorists or terrorist organizations listed in the UNSCRs. As discussed in more detail later in the report, France is currently unable to comply fully with UN Security Council Resolution 1373 with regard to terrorists or terrorist groups from within the European Union as they are

not covered by EU Council Regulations.

Criminalization of Money Laundering

France has criminalized money laundering through Articles 222-38 and 324-1 of the Criminal Code and Article 415 of the Customs Code. Article 324-1 contains a general incrimination of ML and defines it as (i) the act of facilitating, by any means, the false justification of the source of property or income of the perpetrator of a crime or misdemeanor, from which the latter derived a direct or indirect profit; and (ii) the act of assisting in the investment, concealment, or conversion of the direct or indirect proceeds of a crime or misdemeanor. The constitutive elements of ML of the proceeds of drug trafficking as defined in Article 222-38 of the Criminal Code are identical to those of Article 324-1. Article 415 of the Customs Code criminalizes the act of carrying out or attempting to carry out a financial operation between France and another country involving funds known by the perpetrator to have originated directly or indirectly from an offense referred to in the Customs Code or from a violation of the drug laws. In addition, the offence of non-justification of resources in connection with drug trafficking was created by Article 222-39-1 of the Penal Code in 1996. A similar offence was created in 2001 for resources connected to criminal associations (association de malfaiteurs), trafficking in human beings and terrorism.

The Court of Cassation ruled on January 14, 2004 (Abdellaoui case) that Article 324-1, second paragraph, of the Criminal Code can apply to a person having laundered the proceeds of a predicate offence he committed himself.

French law does not require that a person be convicted of a predicate offence as a precondition for a ML conviction.

The scope of predicate offences for ML is very extensive and covers all crimes and misdemeanors, including FT and fiscal fraud.

The offense of money laundering extends to any type of property that directly or indirectly represents the proceeds of crime.

Although this is not explicitly stated in the Criminal or Criminal Procedures Codes in France, authorities indicate that conduct that occurs in another jurisdiction may constitute a predicate offense, provided it would have been incriminated as an offence had it taken place in France.

Criminalization of FT

FT is criminalized comprehensively in Article 421-2-2 of the Criminal Code, which covers an extensive list of acts (Article 421-1, 421-2, and 421-2-1 of the Criminal Code) and applies under certain conditions of competence when terrorists or terrorist organizations are located in another jurisdiction or when the terrorist acts take place in another jurisdiction.

Scope of the offences of ML and FT

The offences of ML and FT apply to individuals and also to legal entities that knowingly engage in ML (Article 324-9 Criminal Code) or FT activity (Article 422-5). The law of May 13, 1996 has introduced a certain measure of objectivity with regard to the knowledge element of the general ML offence under Article 324-1 of the Criminal Code in that it does not require the establishment that the suspect knew precisely the offence giving rise to the laundered proceeds. However, the knowledge of the predicate offence is still required with regard to the laundering of drug proceeds under Article 222-38 of the Criminal Code and with regard to aggravated laundering pursuant to Article 324-4 of the Criminal Code. Intent and purpose can be inferred from objective factual circumstances.

Sanctions

Laws provide for an adequate range of criminal sanctions for ML and FT. However, sanctions for drug ML are twice as much as those provided for the general offence of ML which does not appear to be justified in view of the large proceeds that can be generated by other forms of serious crimes such as trafficking in human beings, for example. A number of mechanisms compensate the unequal status in principle between the general incrimination of ML and the drug ML offence. For instance, Article 324-4 of the Penal Code provides that the (general) ML offence is punished by the imprisonment sanction provided for the underlying offence if the latter is higher than the 5 or 10 years contemplated at Articles 324-1 and 324-2, respectively. On the other hand, a similar provision in Article 222-38, second paragraph, of the Penal Code still results in much higher sanctions for drug related ML.

Adequacy of Legal Means and Resources

France allocates significant resources to the implementation of ML and FT laws. Law 75-701 of August 6, 1975 established courts specializing in economic and financial matters to handle complex proceedings involving the offenses referred to in Article 704 of the Code of Criminal Procedure. Their jurisdiction in respect of investigation and judgment is concurrent with that of other courts. In 1998, these courts were reinforced with the creation of economic and financial divisions (pôles économiques et financiers) that comprise special assistant positions (Law of July 2, 1998) and specific material resources. To address the limitations of the economic and financial divisions, pertaining to their competence, their field of action, and the spread of organized crime, the law on adapting the administration of justice to the developments of criminality that entered into force in October 2004 creates interregional courts specializing in highly complex cases involving organized crime and economic and financial crime. These courts will work in concert with the economic and financial divisions to take account more effectively of criminal networks in their entirety and of the financing mechanisms they set up to launder the proceeds of their criminal activities.

For anti-terrorism and FT matters, France has established a system whereby proceedings, investigation, and judgment are centralized in the tribunal de grande instance of Paris. This system is based on the principle of concurrent jurisdiction between local courts and the special Paris court. As a result, all French courts are competent under ordinary law and may, in the interest of the proper administration of justice, relinquish jurisdiction to the Paris court.

Investigative agencies include the Central Office for the Suppression of Major Financial Crimes (Office Central pour la Répression de la Grande Délinquance Financière - OCRGDF), the Gendarmerie Nationale, the National Direction of Intelligence and Customs Investigations (Direction Nationale du Renseignement et des Enquêtes Douanières, DNRED) and the National Judicial Customs Service (Service National de la Douane Judiciaire - SNDJ).

Analysis of Effectiveness
The legal framework relating to the criminalization of ML and FT is comprehensive. The main limitation is that France, like a number of other EU member countries, is currently unable to comply fully with UN Security Council Resolution 1373 with regard to terrorists or terrorist groups from within the European Union as they are not covered by EU Council Regulations.
Recommendations and Comments
As mentioned below, the authorities are encouraged to take the necessary measures to ensure full compliance with UNCSR 1373.
Implications for compliance with FATF Recommendations 1, 4, 5, SR I, SR II
R.1, R.4, R.5, SR.I, and SR.II: Compliant.

II—Confiscation of proceeds of crime or property used to finance terrorism

(compliance with criteria 7-16)

Description
French legislation enables the judicial authorities to seize and to confiscate the proceeds from crime involved in

money laundering operations as well as the funds used to finance terrorism. It also provides for a legal basis and powers for law enforcement authorities to identify and trace such property.

Temporary measures

French legislation provides for broad possibilities to seize any assets in the course of investigations, either by officers of judicial police or on instruction of the judiciary. The main provisions governing seizure of assets are contained in the Code of Criminal Procedure (Articles 54, 56, 76, and 97).

Pursuant to Article 706-30 of the Code of Criminal Procedure, the juge des libertés et de la détention, at the request of the prosecutor, may seize any assets of a person against whom a judicial investigation is being carried out, in order to safeguard confiscation orders that would follow. At present, this is restricted to confiscation in drug trafficking or money laundering cases. The same mechanism exists for enquiries regarding trafficking in human beings and exploitation of prostitution on the basis of Article 706-36-1 of the Code of Criminal Procedure and for terrorism on the basis of Article 706-24-2. However, this does not apply for enquiries on the basis of money laundering that might be linked with these predicate offences.

The Act of 9 March 2004, that entered into force on 1 October 2004, repeals these provisions and inserts a new article 706-103 in the Code of Criminal Procedure that provides the same mechanism in terms of extended seizure possibilities in order to safeguard confiscation for the offences listed in Article 706-73 of the same Code. This article contains a broad list of predicate crimes, including drug trafficking, trafficking in human beings, terrorism, kidnapping, forgery as well as the laundering of the proceeds of any of these crimes. Besides, the mechanism of Article 706-103 applies to any other form of organized crime that would not be listed in Article 706-73, on the basis of Article 706-74.

Both movable goods and real estate can be seized.

Article 99-2 of the Code of Criminal Procedure provides for the possibility for the State to put the assets seized in the course of the judicial procedure on public sale, when it becomes clear that they will not be restituted and when they are not needed anymore for establishing the truth. This also applies when maintaining the seizure would result in a depreciation of the assets. In order to avoid management costs, the State Property Administration Office (Administration des Domaines) systematically makes use of this procedure. The resulting funds are then placed with the Public Trustee Office (Caisse des Dépôts et Consignations) pending the outcome of the prosecution.

Customs Authorities also seize assets in the course of their activities. This is effected with regard to offences on customs legislation, including customs money laundering.

Confiscation

According to French law, confiscation is a complementary criminal sanction. Article 131-21 of the Penal Code provides the basic principles of the confiscation regime. The instrumentalities of the crime, its proceeds and its object can be confiscated, except in case of restitution to third parties. Moreover, the law provides for a mandatory confiscation of all objects that are either dangerous or can cause damage. When the confiscated object was not seized or could not be recovered, a value-confiscation is pronounced.

There is no provision that creates a mandatory confiscation of the proceeds of predicate offences or of laundered funds. Confiscation of these funds is always optional.

A confiscation can cover all assets of the offender (with the exception of certain goods that are not subject to confiscation).

As regards the money laundering offence, Article 324-7 of the Penal Code explicitly refers to the confiscation of the instrumentalities of the offence as well as the proceeds.

Article 415 of the Code of Customs provides for a specific confiscation regime as regards money laundering operations between France and a foreign country involving drug trafficking funds. In this case, the funds (or an equivalent amount if they could not be seized) are confiscated. Moreover, the offender is sentenced to imprisonment between two and ten years and to a fine between one and five times the amount of the transactions. Article 459 of the Code of Customs provides for a similar seizure and confiscation regime as regards the financial embargos.

Legal persons

French legislation provides for criminal liability of legal persons. The principles governing the confiscation regime do not distinguish between individuals and legal entities.

Civil forfeiture

Confiscation is a complementary criminal sanction and thus limited to criminal proceedings only.

Power to identify and trace property

The responsibility for searching for proceeds from criminal activity mainly lies with the judiciary police that carries out the investigation under the supervision of the investigating judge. Apart from the temporary measures described above that are supervised by the judicial authorities (prosecutor or investigating judge) any agent with the status of judiciary police can seize relevant goods that can be useful for establishing the truth. Besides, the reporting mechanism described in Articles L. 561-1 and following of the CMF involves all reporting entities and the FIU in particular in the detection of suspected assets. Overall responsibility for seizure and confiscation lies with the judicial authorities.

Identification and freezing of funds and other property of terrorists

The Treasury Department has been assigned with the responsibility to implement the United Nations Security Council Resolutions (UNSCR) that impose the freezing of assets linked to terrorism and its financing. UNSCR 1390 concerning Al Qaeda and the Taliban is transposed into French legislation by the EU Council Regulation 881/2002, whereas EU Council Regulation 2580/2001 transposes UNSCR 1373. The regulations are directly applicable. Whenever the lists of suspected terrorists are updated, the Treasury Department communicates the information to the financial institutions. In case of a hit, the Treasury systematically checks the information with the FIU and other law enforcement agencies. If the information is confirmed the accounts involved are being frozen. The Treasury takes responsibility for the act of freezing rather than the financial institution.

France, like a number of other EU member countries, is currently unable to comply fully with UN Security Council Resolution 1373 with regard to terrorists or terrorist groups from within the European Union as they are not covered by EU Council Regulations.

Freezing orders being an administrative measure, they can be challenged before the Conseil d'Etat. One such case is pending. The Treasury department does not communicate any information to the judiciary.

The main obstacles identified by the financial institutions with the implementation of the UN and EU lists are the lack of identifying data, the difficulty to incorporate the lists into their computer systems and run the checks, and the period of uncertainty pending clarification of possible hits.

Funds

Proceeds from drug trafficking and from drug money laundering are affected to a special fund that was created by the Decree of 17 March 1995. Its purpose is to improve the equipment and general functioning of the authorities in charge of fighting drug trafficking. The French Authorities did not inform the Mission about the

amount that had been transferred to this fund so far. It was noted that this amount does not represent the total amount of recovered funds. According to statistics on the convictions for drug trafficking, between 30 and 40 million FRF were seized every year from 1995 to 2000. A similar fund for assisting the victims of terrorist acts was created by the law of 9 September 1986.

Analysis of Effectiveness

Judicial seizure and confiscation

Though in theory a conviction can result in the confiscation of all the assets of the offender, in practice, the confiscation will almost exclusively apply to the assets that have been previously seized in the course of the judicial procedure. This results mainly from the optional character of confiscation measures. The judge will appreciate these sanctions in view of the available elements of the case, such as the offender's property that can be identified. Several authorities mentioned problems in uncovering these assets. In money laundering cases, it is rather exceptional that all or most of the laundered funds can be recovered in this manner. As an alternative, the fine can be increased to half the level of the laundered funds (Articles 222-38 and 324-3 of the Penal Code).

There are no statistics available on the amounts resulting from the seizure and confiscation orders, neither in general terms, nor as regards ML specifically. In the absence of such information, it is difficult to assess the effectiveness of the provisions governing the asset related aspects of the fight against serious crimes including ML and FT. In order to improve the management of seized and confiscated assets, the French authorities are reflecting on the establishment of a central body that would be in charge of dealing with these specific issues.

From discussions with officials, it appears that the judicial authorities are a bit reluctant to utilize systematically the tools at their disposal. Moreover, in the absence of a mandatory confiscation regime for financial and economic crimes, insufficient use is made of the procedure of Article 706-30 of the Code of Criminal Procedure which holds an important potential for seriously improving the effectiveness of an asset oriented approach to the combat against ML. Since about two years, additional efforts are being made by the Ministry of Justice to raise the awareness of magistrates about this approach, as demonstrated by the circular letter from the Minister of Justice of 15 February 2002. However, to date, these efforts have focused mainly on drug trafficking and drug money laundering.

Administrative freezing of terrorist related funds

The Constitutional Treaty established by the European Convention includes provisions that would lift the distinction currently preventing the authorities from administratively freezing assets of terrorists or terrorist groups based within the European Union. Pending its adoption, a draft bill has been prepared to enable the government to impose financial sanctions and administratively freeze such assets in compliance with UN Security Council Resolution 1373. The draft bill has to undergo a consultative process and the timeframe for its adoption is uncertain at this stage. Taking into account the difficulties encountered in implementing the UNSCR and subsequent EU regulations, four accounts were frozen on the basis of the UN and EU lists at the time of the assessment visit, amounting to about 30.000 EUR. No other assets, such as real estate, have been frozen. This is mainly due to the lack of definition of which assets and of what measures should be targeted and the need of ad hoc instruments to trace them.

Recommendations and Comments

The French authorities may wish to consider establishing some form of mandatory deprivation of the illegal profits of financial and economic criminality, in particular in the context of money laundering and terrorism financing. This could be achieved by means either of a fine or of a confiscation measure.

More efforts should be made to train magistrates and raise their awareness with regard to the available tools and their key role in the asset-oriented approach of the fight against all forms of crime that generate substantial illicit profits.

Particular attention should also be given to the compilation of relevant statistics. Comprehensive statistical data is a necessary tool, not only for outside evaluation but also and more importantly for the internal review of the

performance of the system. The establishment of a central body responsible for managing seized and confiscated assets could remedy this lack of information. The French authorities are therefore encouraged to work further in this direction.

Also, increasing attention should be given to investigating and prosecuting legal entities that have been created to facilitate money laundering operations. In this area as well, the application of confiscation measures should be pursued systematically.

The authorities are encouraged to proceed with their plan to adopt a domestic act that would enable France to comply fully with UNSCR 1373.

Implications for compliance with FATF Recommendations 7, 38, SR III

R.7, R.38: Compliant. SR.III: Materially non-compliant.

III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels

(compliance with criteria 17-24)

Description

Mandate of TRACFIN

The French FIU, TRACFIN (Traitement du Renseignement et Action contre les Circuits Financiers Clandestins) was created by the Act n° 90-614 of 12 July 1990 which was amended on several occasions. TRACFIN is placed within the Ministry of Economy, Finance and Industry. It meets the Egmont Group's definition of an FIU. Its main tasks are to receive, analyze and disseminate reports on suspicious transactions from reporting entities, not only in France, but in its overseas departments and territories as well. It has been a member of Egmont since the creation of the Group in June 1995.

The status of TRACFIN ensures operational independence and the confidentiality of its information is appropriately guaranteed.

In addition to the transmission to the prosecutor of cases of presumed money laundering on the basis of STRs, it is worth mentioning that TRACFIN falls under Article 40 of the Code of Criminal Procedure that requires State employees to report to the prosecutor any fact that they know to constitute an offence.

Reporting to TRACFIN

The scope of application ratione personae of the AML regime has been progressively extended to cover financial enterprises (banks, foreign exchange offices, insurance companies, investment enterprises, etc.) and a number of non-financial professions (real estate intermediaries, casinos, dealers in precious stones, metals, antiques or works of art, auctioneers and most recently accountancy and legal professions including lawyers, as well as gaming houses, lotteries and race gambling companies) (Article L. 562-1 of the Financial and Monetary Code). Reporting obligations apply in metropolitan France as well as in the DOM-TOM. The reporting institutions and individuals are required to disclose all transactions and facts suspected to derive from drug trafficking, organized crime, defrauding the financial interests of the European Communities or corruption, or that might be linked to terrorism financing. The reporting obligation of legal professions only apply when acting as intermediary in financial or real estate transactions. Besides, there is an obligation for reporting parties to communicate to TRACFIN all transactions where some doubts remain as to the client or the beneficiary, transactions involving trusts or similar structures and transactions involving Non-cooperating countries or territories (NCCTs – as defined by the FATF) against whom countermeasures have been decided. The latter applies to all transactions with Nauru and Myanmar amounting to 8.000 EUR or more. All STRs are directed to TRACFIN with the exception of disclosures made by lawyers. Lawyers' disclosures are addressed to the president of the bar association (Article L.562-2-1, §3) who communicates the information to TRACFIN except if he believes that there is no basis for suspicion of money laundering.

Reports can be made orally or in writing. TRACFIN is currently working on an electronic web-based reporting form that is being elaborated within the Liaison Committee. Pilot projects are being run with the Bank of France and the insurance sector.

Opposition to the execution of a transaction

As a general rule and if this is still possible, reports have to be made prior to the execution of a transaction. This enables TRACFIN to oppose the execution of the transaction for 12 hours (Article L. 562-5 of the CMF). In practice, however, the overall majority of reports are made after a transaction takes place. In case of a prior report, TRACFIN consults with the judicial authority that will be in charge of the file to determine whether it will take over the case. The transaction is frozen only when the response is in the affirmative.

Access to additional information

The primary information that feeds TRACFIN's database consists of STRs from reporting entities. TRACFIN also receives a number of reports based on objective criteria. In order to carry out its assignment, TRACFIN can obtain additional information from a wide series of authorities. It can request production of financial and other information held by the reporting parties themselves. The obligation for financial institutions to comply with such requests from TRACFIN has been extended to the non-financial professions as well. Professional secrecy rules do not apply in this regard. Additional information can also be queried from the Judiciary Police (OCRGDF) and from the Gendarmerie, from the supervisory authorities, from the administrative services of the State including the Customs Department as well as from the Social Security Services. TRACFIN also established a number of informal contacts with the above mentioned institutions and authorities. Moreover TRACFIN has access to the Central Register of Bank Accounts (FICOBA) and has a security habilitation that provides access to all classified information.

Dissemination to domestic authorities

Where TRACFIN uncovers facts that are likely to constitute money laundering linked to drug trafficking or organized crime or that might be related to the financing of terrorism, it must refer them to the Public Prosecutor (Article L. 562-4 of the CMF). Forty percent of the transmissions by TRACFIN are made on this basis. The remaining sixty percent of its transmissions are based on Article 40 of the Code of Criminal Procedure which requires every public official to communicate information to the judicial authorities whenever it has knowledge of facts subject to criminal liability.

Resources (human, technological) and training

The Secretary General of TRACFIN is also Director General of the Customs Services. The operational head of the FIU is the Deputy Secretary General. TRACFIN has a staff of forty-eight, with thirty-three working in the operational section. The staff originates from the public administration, mainly from Customs and the different departments of the Ministry of Economy, Finance and Industry and also includes representatives of other authorities (judiciary, financial police (OCRGDF), Gendarmerie). Recently, there has been a trend to have a more diversified staff in order to enhance TRACFIN's capacity with regard to legal, economic and financial matters expertise.

The training system is internal and somewhat ad hoc in the sense that there are no well-defined training modules. On an occasional basis, training may include private sector training,.

Issuance of guidelines and feedback

TRACFIN produces an annual report that contains general feedback in the form of sanitized cases. It also provides typological information for training programs organized by supervisors and professionals, including the FATF and Egmont Group typologies. It contributes actively to the initiatives in both fora. Beside its annual report, TRACFIN is attempting to emphasize direct contact between its agents and the reporting parties.

Pursuant to the new Article L. 562-6 of the CMF, TRACFIN informs the reporting parties of every transmission of their initial suspicions to the judicial authorities. The law is silent with regard to the position that should be adopted by the institutions and individuals concerned with regard to the business relationship when making a report. The authorities report that there is a general tendency to put an end to such relationships. Reporting parties are not informed of the final judicial decisions that intervened on the basis of their initial report. As TRACFIN has been informed of these decisions only in a few number of cases, a recent amendment requires the judicial authorities to inform TRACFIN of the outcome of judicial procedures.

IT and analytical capabilities

All STRs are stored in TRACFIN's database. The objective reports are checked on their relevance and only stored if they are considered useful. TRACFIN has indicated that the overall quality of reports is uneven. As mentioned above, a working group of the recently established Liaison Committee whose purpose is to better inform reporting parties about their obligations under the relevant legislation and to make concrete proposals to improve the AML framework is currently working on establishing an electronic reporting form that should enhance the analytical capabilities of both TRACFIN and the reporting parties, in addition to improving the overall quality of the reports and the quantity and quality of transmissions by TRACFIN.

Sanctions

Sanctions in cases of non-compliance with AML obligations are not taken by TRACFIN but by the competent supervisory authority (Commission Bancaire, Commission de Contrôle des Assurances, Autorité des Marchés Financiers). All available disciplinary sanctions can be used (warning, fine, publication, withdrawal of license…). Moreover, such sanctions do not exclude criminal liability for money laundering or any predicate offence.

However, a number of reporting parties do not have a supervisory authority competent to impose sanctions, such as gaming houses (cercles de jeux), racehorse gambling institutions, and dealers in high value goods. With regard to casinos, while the Ministry of Interior is competent to supervise their compliance with the rules under which they operate, including through the conduct of on-site visits and the imposition of sanctions, it would seem that the AML/CFT focus of such supervision is still underdeveloped at this stage.

Domestic cooperation and interaction with supervisory authorities

The Decree n° 2002-770 of 3 May 2002 created a Liaison Committee on the fight against money laundering. This Committee meets twice a year and is co-chaired by TRACFIN and the Ministry of Justice. Besides, it comprises 30 representatives of the reporting parties, the supervisory authorities and a number of State departments. The purpose of the Committee is to better inform the reporting parties about their obligations under the AML legislation and to make concrete proposals to improve the framework. Topics such as reporting requirements, feedback, security of reporting parties can be discussed in this forum and its sub-groups.

The interaction between TRACFIN and the supervisory authorities, like the Commission Bancaire, the Commission de Contrôle des Assurances, and the Autorité des Marchés Financiers, is based on Article L. 563-5 of the CMF and appears to be efficient, overall. TRACFIN reports deficiencies and cases of non-compliance with the AML requirements to the supervisors to enable them to focus their on-site controls. It also provides typological information for training programs organized by the supervisors.

International cooperation

Article L. 564-2 of the CMF enables TRACFIN to cooperate with its foreign counterpart units to share intelligence information and data likely to be linked to money laundering and drug trafficking on the basis of reciprocity and subject to similar professional secrecy provisions in the foreign unit. TRACFIN concluded cooperation agreements with 24 counterpart units so far.

At the level of the European Union, TRACFIN is one of the FIUs already actively involved in the FIU.Net project and frequently uses this secure channel of communication.

Statistics and implementation

TRACFIN keeps a number of statistics regarding the received STRs and the transmissions to the judicial authorities. They give a general overview of the situation in this respect. TRACFIN received 6.896 STRs in 2002 (3.598 in 2001; 2.537 in 2000). More than half of them originate from the Paris and Île-de-France region. Banks are the main reporting parties (still more than 60 percent in 2002) followed by the Public Financial Institutions (21,06 percent) and the changeurs manuels (9,85 percent). The number of reports from the insurance sector and other intermediaries like investment companies, casinos and dealers in high value goods is still very limited or nonexistent.

Analysis of Effectiveness

TRACFIN has an established a long-standing experience in terms of processing financial intelligence to support law enforcement. TRACFIN provides support to the reporting entities through direct and close contacts with them. It also provides some guidance by means of its annual report.

Access to additional information

TRACFIN has a broad legal basis to collect additional information from a wide range of entities. Direct contacts enable it to carry out its analysis functions more efficiently. However, in the absence of a central contact point with basic data on individuals and legal entities, it can prove difficult to verify the identification data contained in the STRs. The access to registers held by the Social Security services, as provided for by a recent amendment of Article L. 563-6 of the CMF, should improve this process.

International cooperation

As far as cross-border cooperation with counterpart FIUs is concerned, TRACFIN is able to and does provide assistance to comply with foreign requests for information without requiring specific formalities. Moreover, such requests are considered as domestic STRs in the sense that they enable the FIU to query other domestic sources of information. As regards its own analysis, TRACFIN is intensifying the input from other FIUs by sending out requests more frequently than before, though not systematically yet. As a general remark, TRACFIN takes into account the Best Practices of the Egmont Group regarding the exchange of information.

Volume of STRs

The volume of STRs received by TRACFIN is growing steadily. TRACFIN received about 6.900 reports in 2002. Although this is twice as much as the previous year, it would seem that this was not accompanied by a significant increase in the overall quality of reports. The number of reports produced by the reporting parties is still relatively low compared to the importance of the financial and economic activity on the French market. Moreover, as regards the results of the operational action of TRACFIN, only a rather limited number of cases are being forwarded to the Prosecutor's Office (269 in 2003, representing only eight to ten percent of all the STRs received). This may be partially due to a poor quality of STRs or to insufficient verifying information from other authorities.

Apart from a number of difficulties arising with the overseas departments and territories because of their geographical situation, in particular Guyana raises serious concerns as this department did not make a single report after 2000.

Also it appears from statistical data that a number of reporting entities do not comply with their AML/CFT obligations. From the 134 STRs received from the real estate industry in 2002, only 5 originated from the real

estate agents, the remaining 126 being from notaries. No reports were received from dealers in high value goods and commissaires-priseurs (the latter are subject to STR requirements only since February 2004) so far. The country's 189 casinos made 9 reports, 6 of them after the authorities started an important information campaign in July 2003. These deficiencies are mainly due to the absence of a supervisory body for most of the parties concerned and the obvious difficulty to reach out to these professions.
Recommendations and Comments
All parties involved in the AML/CFT area should pursue their efforts in issuing guidelines to help financial institutions and other reporting parties in better implementing the AML/CFT requirements and in improving the detection and reporting of suspicious patterns of transactions. In particular, with regard to the professions and industries that are not adequately supervised yet, the French authorities should consider the establishment of an independent body that would be in charge of supervising the application of the AML/CFT and other legal obligations. TRACFIN as well as other authorities like the Commission Bancaire are already fulfilling a key role in this process and the Liaison Committee could be an ideal forum to work further on this. This should lead to an increase of the number and overall quality of reports to the FIU which still seems on the low side taking into account the economic and financial activity on the French market. In this regard, the establishment of an electronic reporting form should already lead to a better input into the AML/CFT chain. The self-evaluation of the reporting system would benefit from more detailed statistics that would give a better insight on the performance and characteristics of all the components of the AML/CFT efforts. Beside the statistical data already available, TRACFIN may consider keeping more detailed figures on the nature of the reports it receives, the input from the different sectors, the type of transactions involved, the suspected criminal nature of the underlying facts, the reasons that motivate their transmission to the judicial authorities, nationality/country of residence of the individuals involved in the transmitted files, the amounts involved, the number of cases it is processing, etc. Although the law provides for the possibility to oppose execution of a transaction for 12 hours, this procedure has led to very minimal results. This is probably the result of insufficient awareness of this tool with the reporting parties themselves. More important volumes of suspicious funds could be blocked, seized and eventually confiscated, for instance when clients announce the withdrawal of the funds from their bank account. Very few such transactions are being reported to TRACFIN. Another factor is the very short delay the FIU has at its disposal to collect complementary information in order to constitute a solid case for transmission to the judicial authorities. An extension of the delay of 12 hours should therefore be considered. With regard to international cooperation, TRACFIN is encouraged to continue to enhance its efforts in intensifying the query of foreign FIUs to collect additional intelligence in cases with an international dimension. With regard to deficiencies identified in the compliance with AML/CFT obligations in the DOM-TOM, TRACFIN appears to be aware that additional efforts in reaching out to these areas, in particular Guyana, and in monitoring them more closely are required on an urgent basis. TRACFIN, as well as the supervisory authorities, are encouraged to continue their efforts and be more proactive in issuing guidelines and domestic and international typologies to help financial institutions and other reporting parties in better implementing AML/CFT requirements and in improving the detection and reporting of suspicious patterns of transactions. The Liaison Committee could be an ideal forum to work further on this issue and the French authorities may consider the creation of additional working groups within this Committee that could discuss other AML/CFT connected issues of common interest. Also as regards the Liaison Committee, consideration should be given to a more active involvement of the judiciary in this forum. While no urgent need to increase the number of staff was reported to the mission; in view of the increasing volume of STRs and the perceived need for additional outreach efforts by TRACFIN towards a number of sectors, the authorities may wish to consider whether the current level of staffing of TRACFIN is adequate.
Implications for compliance with FATF Recommendations 14, 28, 32
R.14: Largely compliant because the legislative requirements are narrower in scope than the FATF standard.

(See section "III—Ongoing monitoring of accounts and transactions" for analysis of this preventive measure.)
R.28: Largely compliant, as additional efforts are needed to provide guidance to reporting entities, notably outside the banking sector.
R.32: Compliant.

IV—Law enforcement and prosecution authorities, powers and duties

(compliance with criteria 25-33)

Description

ML and FT investigations are carried out by law enforcement under supervision of the judiciary. The Judiciary Police, the Préfecture de Police, the Gendarmerie and Customs have established divisions specialized in economic and financial crime, including ML, that also benefit from specific training programs. Depending on the stage of the enquiries, they can use a wide range of investigative techniques such as surveillance, infiltration, interception of mail, wire-tapping, etc.

Customs

The DGDDI (Direction générale des douanes et des droits indirects) operates at central, interregional and regional level. Its main tool in detecting cross-border circulation of suspicious funds and merchandises is the so-called 'declarative obligation'. Pursuant to Article 464 of the Code of Customs, every transfer of funds by an individual amounting to 7.600 EUR or more across the French national border has to be declared. Non-compliance with this requirement is subject to criminal liability. The DGDDI could also seize funds suspected of being related to FT in a number of cases. The DGDDI has at its disposal all investigative tools provided for by the Code of Customs. By the end of the year, the recently created SNDJ (Service national de douane judiciaire) should be up and running. This new entity will have similar powers and duties as the judiciary police for offences provided in the Code of Customs.

Customs also have a competence to control exchange agents on the basis of Article L. 520-4 of the CMF. An average of 40 on-site visits are scheduled every year

Judiciary Police (OCRGDF)

The OCRGDF has a general competence for carrying out judicial enquiries and investigation under the supervision and by delegation of a magistrate, for cases of money laundering, terrorism financing and defrauding the EU financial interests. It cooperates closely with other authorities like the Gendarmerie, the tax inspection service and TRACFIN with whom it can exchange operational information. The Judiciary Police has 25 investigators specialized in ML and FT, as well as 15 staff to assist them. It cooperates internationally through the police network of contact points.

Gendarmerie

Whereas the Judiciary Police concentrates it action in the cities, the Gendarmerie operates in suburban and rural areas. As its action covers all sorts of offences, any local unit can start investigating money laundering cases. However, specialized sections that work on economic and financial crime and consisting of 25 to 80 people are in place at the level of the Court of Appeal.

Judicial Authorities

ML and FT cases are being dealt with by the Tribunal de Grande Instance. The Paris Prosecutor's Office has two of its five divisions that prosecute ML cases: the financial division (that primarily receives the TRACFIN transmissions) and the division on serious organized crime. The latter is competent for investigating FT. The Prosecutor or the Juge d'Instruction heads the enquiry or investigation that is carried out by the Préfecture de Police de Paris or by the OCRGDF.

Since the late '90s, about 4 so-called "assistants spécialisés" have been working in the financial divisions of Paris, Marseille, Lyon and Bastia, respectively, to support the investigating judges in complex cases. The same function was created for the deciding judges. Moreover, assistants en justice, mainly students, are also involved in coordinating the investigation.

Ministry of Justice

The Ministry of Justice plays an overall part in reaching out to the prosecution services. It establishes training material for, establishes guidelines to and raises the awareness of the relevant authorities when new legislation is being adopted. It also communicates the priorities set by the Government in terms of prosecution.

Analysis of Effectiveness

Despite all the efforts that have been produced to date, a large number of cases could not be dealt with due to insufficient resources and the need to pursue other priorities. In particular, the innovative aspects introduced by the institution of the assistants de justice do not seem to have yet produced the anticipated results. A recent reform by the Law of March 9, 2004 that entered into force on October 1, 2004 and introduces specialized jurisdictions should enhance the overall capacity of the judicial system to combat financial crime, both in terms of human resources and of on-going specialized training.

About seventy percent of the ML cases in Paris originate from TRACFIN and about ten percent from the Customs Department. Almost half of the sixty cases communicated by TRACFIN in 2003 that were dealt with by the financial division of the Paris Prosecutor's Office were new cases, while the remaining ones complemented already existing files. Half of them are being further investigated (preliminary enquiry or judicial investigation) and four of them have been closed.

The number of convictions for money laundering (including non-justification of resources) increased to forty-seven in 2001 against twenty-one in each of the two previous years. However, these results seem quite limited in view of the time the reporting mechanism has been in place and of the volume of reports sent by TRACFIN and other authorities to the judiciary. This is not only due to the time consuming judicial procedures, but also to the difficulties encountered by the prosecution services to establish the money laundering offence. Although jurisprudence does not require the establishment that the money launderer knew the specific origin of the illegal funds, a number of prosecutors still operate on the assumption that they have to prove the existence of the specific underlying offence. However, some case law indicates that a conviction for (general) money laundering can be pronounced without the predicate offence being specifically identified. Additional problems arise when a case has an international dimension and information has to be obtained from other jurisdictions. Therefore, there is a tendency to re-qualify the facts and to prosecute on a different basis.

None of the FT cases under investigation lead to judicial results so far. The main difficulties lie in the linking of suspicious or irregular financial movements with terrorist activities and also in the absence of an investigating body that combines a specialization in both financial and terrorism aspects. Most cases were initiated following terrorist attacks.

Recommendations and Comments

The authorities should continue to monitor closely the challenges posed by serious economic crime and the financial means required at the different stages to combat it effectively.

The creation of specialized sections within the OCRGDF and the brigade de recherche et d'investigation financière de la préfecture de police, within the Gendarmerie and within the judiciary is a commendable step towards more efficient law enforcement in the area of ML. Further consideration appears to be warranted for the pooling of expertise in financial and terrorism issues in one specialized service, in particular for investigating FT related cases.

With regard to ensuring an efficient prosecution of ML cases, the proof of the predicate offence still appears to be a serious challenge, particularly when committed in a foreign country. Re-qualifying the facts does not always provide a way out. In order for the reporting mechanism to produce more significant results, there should be less reliance on the classical approach of making ML depend on the establishment of the underlying crime. At

present, even though the ML offence is incriminated separately, it is not fully autonomous as it should be, though some encouraging case law indicates that a conviction for (general) money laundering can be pronounced without the predicate offence being specifically identified. A change of mentality and openness for new approaches is therefore warranted. Experience can be drawn form jurisprudence in other jurisdictions where the proof of the illegal origin of the funds can be deduced from the circumstances of the case without the specific predicate offence being established.

Implications for compliance with the FATF Recommendation 37

R.37: Compliant.

V—International Co-operation

(compliance with criteria 34-42)

Description

France pursues a policy of active international cooperation and has an impressive set of bilateral and multilateral treaties for MLA and extradition in ML and FT cases. As a matter of principle, France does not condition mutual legal assistance to dual criminality. However, a number of mutual legal assistance treaties include such a condition particularly with regard to coercive measures. This condition is considered to be met when the offence for which the request for assistance is formulated is covered by a multilateral treaty to which the requesting country and France are party. Absent a treaty, assistance is available on a case-by-case basis and is subject to a condition of reciprocity. The Code of Criminal Procedure permits action on requests for mutual assistance from foreign authorities in a manner as close as possible to that provided for in the legislation of the requesting state.

With regard to property seizure and confiscation, the provisions of Articles 10-16 of Law No. 96-392 of May 13, 1996 on money laundering, drug trafficking, and international cooperation in the seizure and confiscation of the proceeds of crime apply to any request submitted pursuant to Chapter III of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime by a State Party to that Convention. Such requests may involve searching for or identifying the proceeds from an offense, items used or intended to be used in the commission of that offense or property whose value corresponds to the proceeds of the offense, the taking of conservation measures in respect of such items or proceeds, or their confiscation.

The grounds on which mutual assistance may be refused are specifically listed.

France provides timely and effective follow-up to mutual legal assistance requests and maintains statistics on all mutual legal assistance and other requests made or received, relating to ML, the predicate offences, and FT, as well as the outcome of such requests. However, the nature of the requests is not reflected in the statistics, which are devoted solely to quantifying flows (the major criteria are: active or inactive cases, country of origin or destination, date of receipt or dispatch, and date of action or rejection). Including details on the nature and result of requests would help in obtaining a clearer picture of France's efforts in this area.

France has a number of arrangements in place for law enforcement authorities to exchange information regarding the subjects of investigations with their international counterparts, based on agreements in force and by other mechanisms for co-operation, including liaison magistrates, and at the European level, participation in the European Judicial Network and Eurojust. However, there have been no efforts to record the number, source, and purpose of requests for information exchange and their resolution.

French law provides that the confiscation of assets on French territory operates a transfer of property to the state unless otherwise agreed with the requesting state. In addition, the sharing of assets may be provided in a bilateral treaty. France has currently one bilateral treaty providing for the transfer or the sharing of assets with another country when confiscation is a result of coordinated law enforcement actions. The authorities are encouraged to consider entering into similar arrangements with additional countries as they constitute useful incentives for an increased coordination and cooperation.

Analysis of Effectiveness

France provides timely and effective follow-up to mutual legal assistance requests and maintains statistics on all mutual legal assistance and other requests made or received, relating to ML, the predicate offences, and FT, as

well as the outcome of such requests. The nature of MLA requests is not reflected in the statistics, which are devoted solely to quantifying flows.
Recommendations and Comments
The authorities are encouraged to consider including details on the nature and results of MLA requests in statistics in order to obtain a better understanding of France's efforts in this area.
Implications for compliance with FATF Recommendations 3, 32, 33, 34, 37, 38, 40, SR I, SR V
R.3, 32, 33, 34, 37, 38, 40, and SRV: Compliant. SR.I: Materially non-compliant.

Assessing Preventive Measures for Financial Institutions

173. The assessment sought to confirm that : (a) the legal and institutional framework are in place and (b) there are effective supervisory/regulatory measures in force that ensure that those criteria are being properly and effectively implemented by all financial institutions. Both aspects are of equal importance.

Table 46. Detailed Assessment of the Legal and Institutional Framework for Financial Institutions and its Effective Implementation

I—General Framework **(compliance with criteria 43 and 44)**
Description
The legal framework for the prevention of money laundering and financing of terrorism in the financial sector. Law No. 90-614 of July 12, 1990 on the participation of financial entities in combating the laundering of the proceeds of drug trafficking, codified in Title VI of Book V of the Code Monétaire et Financier (CMF), and Decree No. 91-160 set out the main AML/CFT preventive measures and their scope of application. The legal framework has evolved in successive waves since 1990: • Law No. 93-122 of January 29, 1993 extended the scope of the suspicious transaction reporting requirement to funds or transactions suspected of being related to organized crime, in addition to drug trafficking. Law No. 96-392 broadened the application of the law to insurance and reinsurance brokers. • Law No. 98-546 of July 2, 1998, extended coverage of the law to certain non-financial businesses and professions, i.e., real estate intermediaries, including brokers and notaries. • Law No. 2001-420 of May 15 2001 ("relative aux nouvelles régulations économiques") refined the reporting suspicious transaction reporting requirement and established additional reporting requirements in relation to transactions involving trusts and non-cooperating countries and territories as identified by the FATF. It also broadened the application of the law to legal representatives and officers of casinos and dealers in certain high-value goods. • Law No. 2003-706 of August 1, 2003 ("relative à la sécurité financière") broadened the application of the law inter alia to individual and collective portfolio management firms, direct marketers of financial services, investment advisers and dealers in miscellaneous goods, as well as clarified and strengthened the powers of financial sector supervisors. • Law No. 2004-130 of February 11, 2004, implementing European Directive 2001/97/CE of December 4, 2001 extended the scope of the suspicious transaction reporting requirement to funds or transactions suspected of being related to corruption and fraud against the financial interests of the European

Communities. It also broadened the coverage of requirements to the legal and accountancy professions. It also strengthened customer identification requirements.

- Law 2004-204 of March 9, 2004 (coming into effect October 1, 2004) amends the scope suspicious transaction reporting requirement to cover explicitly funds or transactions suspected of being related to the financing of terrorism. It also extends the application of the law to other sectors of the gaming industry.

Article L. 562.1 of the CMF sets out the following financial entities to which preventive measures apply:

- La Poste; Caisse des Dépôts et Consignations/Caisses d'Epargne and other entities governed by Title I of Book V of the CMF;
- The Banque de France;
- credit institutions;
- investment firms, individual and collective portfolio management firms, intermediaries in miscellaneous assets, direct marketers and investment advisers;
- insurance companies (including mutual insurance companies), and insurance and reinsurance agents and brokers;
- currency exchangers;
- persons who carry out, monitor, or advise on transactions relating to the purchase, sale, transfer, or rental of real estate;
- the legal representatives and managers of casinos, as well as groups, associations and legal entities engaged in games of chance, lotteries, betting, and sports and horse-racing odds-making;
- persons customarily trading in or organizing the sale of precious metals and stones, antiquities, and works of art;
- accountants and auditors;
- notaries, lawyers and other independent legal professionals when carrying out certain activities; and
- state-appointed liquidators and auction houses.

Few regulations or binding instructions supplementing the legal framework have been issued other than for credit institutions and investment firms other portfolio management firms. Supervisory and professional recommendations complement the framework though they are neither binding nor enforceable. There are no enforceable guidelines issued by financial sector supervisors.

Competent authorities

Licensing and registration authorities

Three different authorities are responsible for authorizing/licensing financial entities:

- the Comité des Établissements de Crédit et des Entreprises d'Investissement (CECEI) is responsible for issuing licenses to credit institutions and investment firms other than portfolio management firms;
- the Comité des Entreprises d'Assurance (CEA) issues licenses to insurance companies;
- the Autorité des Marchés Financiers (AMF) licenses individual and collective portfolio management firms.

Insurance brokers do not require any business authorization, but must register with the Registre du Commerce et des Sociétés. They are also strongly encouraged to register with the French insurance and reinsurance brokers federation (FCA) and a forthcoming EU directive will require EU insurance brokers to register in such a manner. Currency exchangers must also register with the Corporations Register and submit a declaration of activity to the Banque de

France before commencing business. In the securities area, direct marketers ("démarcheurs") are to be registered jointly with the AMF, the CECEI and the CEA, as of January 1, 2005. Financial advisers will be required to join/register with a professional association, which in turn will be authorized by the AMF, as of January 1, 2005. Intermediaries in miscellaneous assets are not subject to any registration requirement.

Supervisory authorities

The Commission Bancaire (CB) is responsible for ensuring AML/CFT compliance by credit institutions, investment firms other than portfolio management firms and currency exchangers with the legislative provisions applicable to them and to sanction the failure to do so. The CB has authority to conduct on-site examinations and off-site surveillance/monitoring, though in the case of currency exchangers this has been partly delegated to Customs authorities in accordance with Article L. 320-3 of the Financial and Monetary Code.

In the insurance sector, the Commission de Contrôle des Assurances (CCA) is responsible for ensuring AML/CFT compliance by insurance companies active in life and non-life, including mutual insurance companies. The CCA also has the discretion to supervise insurance and reinsurance brokers. It has the authority to impose sanctions on brokers for non-compliance.

The Autorité des Marchés Financiers (AMF), created by Law No. 2003-706 of August 1, 2003, is the product of the merging of the Exchange Operations Commission (COB) and the Financial Markets Council (CMF), is the authority responsible for ensuring compliance with the AML/CFT requirements by:

- Individual or collective portfolio management firms;
- Direct marketers ("démarcheurs") that work for or on behalf licensed financial entities;
- Financial investment advisers;
- Intermediaries in miscellaneous assets.

The AMF is also responsible for ensuring the compliance with market conduct rules by these entities and all firms providing investment services.

Although not strictly a financial sector supervisor, the Inspection Générale des Finances (IGF) has broad oversight/audit responsibilities with respect to state entities. In particular, it is responsible for AML/CFT supervision of the Caisse des Dépôts et Consignations and La Poste's financial services. The IGF does not have the authority to impose sanctions for non-compliance, but reports its findings to the Minister of Economy, Finance and Industry.

Professional secrecy

Professional secrecy is a fundamental guarantee provided to French citizens. Article 34 of the Constitution of October 4, 1958, provides the legislative authority to establish the legal arrangements applicable to professional secrecy.

Prosecution and judicial authorities: While the scope of professional secrecy is not defined in law, Article 226-13 of the Criminal Code provides that the disclosure of confidential information by any person entrusted with such information, either because of his position or profession or because of a temporary function or mission, is punishable by imprisonment for one year and a fine of € 15,000. However, Article 226-14 of the Criminal Code provides that Article 226-13 does not apply in cases where the law requires or authorizes disclosure of such information. Professional/banking/financial secrecy poses no obstacle to the conduct of judicial proceedings so long as the law provides the modalities for lifting it. This applies to all professions, though the specific modalities may vary from one profession to another, notably in the case of attorneys.

TRACFIN: Law No. 90-614 of July 12, 1990 , regarding the participation of financial institutions in combating the

laundering of the proceeds of drug trafficking (subsequently incorporated into the CMF—CMF), effectively waives the obligation of professional secrecy by requiring financial institutions to report TRACFIN funds or transactions they know or suspect are related to proceeds of drug trafficking or organized criminal activity.

Supervisory authorities: Financial institutions subject to supervision by the CB, the CCA and the AMF may not invoke professional secrecy vis-à-vis the supervisory authority (Article L.511-33, L.533-2 and L.520-2 of the CMF for the CB; articles L-310-21 and L-310-22 of the Insurance Code for the CCA; and article L-621-9 section 3 for the AMF)

Analysis of Effectiveness

The legal framework for AML/CFT preventive measures is characterized by its comprehensive coverage of financial entities and its broad range of due diligence and reporting requirements that go beyond the FATF standard. The regulatory framework, however, is incomplete and remains a work in progress, notably for sectors other than credit institutions and investment firms other than portfolio management firms, where there is greater reliance on supervisory and professional recommendations rather than on regulation or other enforceable means. Industry associations in the banking, insurance and securities sectors have been proactive in developing guidance for their members. The missions and powers of the competent authorities for AML/CFT supervision are generally clear and appropriate. However, the regulatory and supervisory framework for non-financial businesses and professions is incomplete.

The duty of professional secrecy does not appear to pose any obstacle to the implementation of the FATF standard.

Recommendations and Comments

Authorities should continue in their efforts to develop and implement detailed regulations in support of the underlying laws. They should also review options for the regulation and supervision of non-financial businesses and professions and designate competent supervisory authorities.

Implications for compliance with FATF Recommendation 2

R.2: Compliant

II—Customer identification

(compliance with criteria 45-48 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 68-83 for the banking sector, criteria 101-104 for the insurance sector and criterion 111 for the securities sector)

Description

Recently amended Article L.563-1 of the CMF and Article 3 of Decree No. 91-160 set out the following customer identification requirements: before entering into contractual relations or assisting a customer in the preparation or carrying out of a transaction, financial entities that are subject to transaction reporting requirements must identify their customers and verify their identity via presentation of a reliable document bearing a photograph of the client. Prior to the recent amendment of Article L.563-1, the requirement focused on account rather than contractual relationships, which left some ambiguity as to whether the requirement applied in situations where financial entities had some form of ongoing relationship, though not an account relationship with their customers.

Financial entities must identify and verify the identity of occasional customers with respect to transactions above €8000 (€1500 for casinos and other gaming) or rental of a safe-deposit box in a similar manner.

With respect to legal entities, financial entities are required to ask for the original or certified true copy of any instrument or extract from an official registry verifying the name, legal form, and head office, as well as the powers of the persons acting on behalf of the legal entity.

Financial entities must also obtain information about the true identity of the persons on whose behalf an account is opened or a transaction conducted if there are any doubts as to whether the customer is acting on his or her own behalf. Article 3 of Decree No. 91-160 of February 13, 1991 provides that this obligation does not apply when the person requesting the opening of an account or the conduct of a transaction is itself a financial entity.

Article L.563-1 also requires financial entities to take appropriate measures, in circumstances prescribed by decree, to mitigate the risks associated with entering into contractual relations or in assisting a client in preparing or carrying out a transaction when the customer is not physically present for identification purposes. No decree has been issued.

While French legislation does not forbid use of a numbered accounts, there is no waiver of the identification and control requirements. Capitalization bonds and contracts, distributed by insurance companies, allow the bearer to remain anonymous only vis-à-vis tax authorities, and can only be transferred by physical transmission.

Additional sector-specific measures:

Credit institutions and investment firms other than portfolio management firms

In implementing Article 33 of Decree No. 92-456 of May 22, 1992, a credit institution must, prior to opening an account, verify the domicile of the applicant.

Lines 126-128 of Form QLB 3 (Annex III to CB Instruction No. 2000-09) recommend a number of additional measures for credit institutions and investment firms other than portfolio management firms intended to address the risks associated with non-face-to-face customer identification. Line 132 recommends assessing expected account activity relative to a new customer. Line 136 recommends measures to address possible structuring by occasional customers to avoid identification.

The AFEI professional recommendations provide additional guidance for compliance with the legal requirements.

Insurance companies

Articles A-310-5, A-310-6, and A-310-7 of the Code des Assurances supplement the provisions of the CMF and its implementing Decree No. 91-160. Under these articles, every insurance company must verify the identity of the customer and other persons participating in an insurance or capitalization contract whenever it gives rise to the establishment of a mathematical reserve. In addition, every insurance company must also verify the identity of the beneficiary of a life insurance contract when the benefit is paid, as well as the identity of the person requesting redemption of a capitalization bond or contract.

The CCA Recommendations of June 2001 sent to all members of the profession, and the Professional Recommendations Regarding Anti-Money Laundering and Combating the Financing of Terrorism issued by the Federation of Insurance Companies (FFSA), recommend verifying the identity of all stakeholders in an insurance contract: the insured, the subscriber, the possible principal or originator, the non-revocable beneficiaries and the person paying the premium or seeking a redemption, advance, or repurchase. They also address measures to be taken regarding non-face-to-face transactions.

Portfolio management firms

Article 18 of Commission des Opérations de Bourse (COB) Regulation No. 96-03 requires generally of portfolio management firms that they establish an organization and procedures to comply with AML requirements. The COB has not prescribed the measures that these companies must take in this regard. Article 19 of the same regulation requires that the service provider inquire about the goals, investment experience, and financial situation of the principal.

While not as extensive or detailed as the CCA's recommendations, the industry association (AFG-ASFFI) recommendations provide some suggestions as to what portfolio management firms should do when entering into business relationship with a customer and over the life of the business relationship. In particular, when a portfolio manager enters into a direct business relationship with the principal, it is recommended that the following information be obtained and maintained:

- The identity and nature of the activity carried out;
- Net worth of the client and the origin of the funds entrusted;
- The client's investment objectives and experience; and
- Information pertaining to how relations were initiated.

The AFG-ASFFI further recommends particular vigilance in riskier circumstances. When the portfolio manager is not the account holder, e.g., a collective investment fund whose products are distributed by a third party, the portfolio manager must be satisfied that the third-party distributor has implemented policies and procedures to comply with AML/CFT requirements and set out contractually the third-parties CDD requirements.

Currency exchangers

Further to CRBF Regulation 91-11 of July 1, 1991, currency exchangers must *inter alia* enter customer identification data in a transactions register that they must maintain.

Other sectors

There are no additional regulatory requirements, nor supervisory/industry recommendations that are specifically related to customer identification.

Wire transfers

There are currently no legislative requirements for financial entities to include complete originator information (i.e., name, address and account number or unique reference number if no account number exists) in message or payment forms accompanying wire transfers. There is reliance instead on rules of the Centrale des Règlements Interbancaires, as well as conduct standards issued by the Association Française des Banques requiring that certain originator information (i.e., name, address, and identifying code of the originator where the originator is a business entity) be included in message forms. The rules and standards apply to banks and do not extend to non-bank financial institutions, notably La Poste. It is also unclear as to what is required when the originator is a physical person.

Analysis of Effectiveness

The laws are clear and complete. Questionnaire QLB 3 pursuant to CB Instruction No. 2000-09 provides a detailed checklist of the legal requirements and reminder of the need to have customer acceptance policies and procedures but offers little additional guidance. The CCA recommendations and to a lesser extent the AFG-ASFFI recommendations provide additional useful detailed guidance. However, they are neither binding nor enforceable, nor do they extend to insurance and reinsurance brokers or direct marketers. No further rules or guidance apply to currency exchangers. Financial industry representatives in general indicated strong interest in obtaining additional guidance from the authorities.

Regarding wire transfers there are indications that the CB has exercised its broad authority to ensure compliance with professional rules and standards. Contacts with the profession within the Liaison Committee and random checks carried out during on-site inspections indicate that credit institutions are including the information necessary to identify originators of the transfers they issue. However, it is unclear whether this has been fully implemented with regard to domestic transfers. In addition, these professional rules and standards do not specifically require inclusion of the originator's account number. Finally, the rules and standards apply to banks and do not extend to non-bank financial institutions. As such, the measures in place do not sufficiently implement the relevant FATF standard. However, work is underway at the level of the EU on implementing the relevant FATF standard and the authorities have indicated their intention to set out requirements in legislation.

Recommendations and Comments

The authorities should introduce more detailed requirements through regulation or enforceable guidance as to what constitutes adequate customer acceptance policies and procedures and, in particular, what are the reasonable steps to be taken to identify beneficial owners of accounts and transactions.

The authorities should review the ML/FT risks associated with capitalization bonds/contracts and take corrective measures, as appropriate.

The authorities should proceed with plans to introduce legislation to comply fully with SR VII.

Implications for compliance with FATF Recommendations 10, 11, SR VII

R. 10 & R. 11: Compliant.
SR VII: According to the FATF Interpretive Note to Special Recommendation VII, countries will have up to February 2005 to comply with SR VII and as such France is not rated against this recommendation. Work is proceeding on a EU regulation that will directly apply in member states.

III—Ongoing monitoring of accounts and transactions

(compliance with Criteria 49-51 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 84-87 for the banking sector, and criterion 104 for the insurance sector)

Description

1. Increased diligence of financial entities

Article L. 563-3 of the CMF, together with Article 4 of Decree 91-160 of February 13, 1991, requires financial entities to closely examine any large transaction in single or total amount that exceeds €150,000 (when the customer's transactions are not usually above this amount) and which, without falling into the category of transactions to be reported as a STR to the TRACFIN, are unusually complex and do not appear to have any economic or lawful purpose. In such case, the financial institution must obtain information from the customer regarding the source and destination of the amounts in question, as well as the purpose of the transaction and the identity of the beneficiary. The details of the transaction must be recorded in writing and kept by the financial entity in accordance with the provisions of Article L. 563-4 of the CMF, i.e., for five years from the date of completion of the transaction. TRACFIN and the relevant supervisory authority are authorized to have access to such information. Financial entities are required to take the necessary organizational steps to be able to forward this information to them as expeditiously as possible. Financial entities must also ensure that these requirements are complied with by their foreign branches and subsidiaries, unless the local legislation prohibits it, in which case they must so inform the TRACFIN.

Credit institutions and investment firms other than portfolio management firms

Pursuant to Article 2 of Regulation 91-07 of the CRBF, credit institutions must have written internal rules describing how due diligence should be carried out in order to comply with AML/CFT requirements. Such rules must indicate the amounts and types of transactions that require particular due diligence and *may* also be adapted to the nature of parties with whom they do business.

Article 4 of Regulation 91-07 of the CRBF applicable to credit institutions and the questionnaire referred to in CB Instruction No. 2000-09, applicable to credit institutions and investment firms other than portfolio management firms, list the information that subject entities must collect and record in writing in the event of transactions of this type. CB Instruction 2000-09 also requires firms to have internal procedures for assessing their clientele using customer profiles in order to flag unusual financial transactions.

Insurance companies and brokers

There are no regulations applicable to insurance companies further to Article L. 563-3 of the CMF. However, the Recommendations of the CCA set out a number of measures to be taken by insurance companies for transactions above the €150 000 threshold and examples of unusual circumstances where enhanced vigilance should be exercised. The professional recommendations of the FFSA set out similar procedures. While not specifically targeted to insurance and reinsurance brokers, many of the recommendations would be directly applicable or could be adapted.

2. Measures to cope with the problem of countries with no or insufficient anti-money laundering measures

While there are regulations requiring credit institutions and investment firms other than portfolio management firms to give special attention to business relations and transactions with persons in jurisdictions that do not have adequate AML/CFT systems, there are no laws or regulations that specifically require other financial entities to do so. That said,, the Minister of the Economy, Finance and Industry informs financial entities periodically (via their professional associations) of updates in the FATF's list of NCCTs and the key role of supervisory authorities in ensuring that financial entities exercise enhanced due diligence with respect to transactions of customers residing in NCCTs. Moreover, as indicated above, Article L. 563-3 of the CMF, together with Article 4 of Decree 91-160 of February 13, 1991, requires financial entities to pay special attention to any large transaction that exceeds €150,000 (when the customer's transactions are not usually above this amount) and which, without falling into the category of transactions to be reported as a suspicious transaction to TRACFIN, are unusually complex and do not appear to have any economic or lawful purpose. Moreover, decrees issued pursuant to Article L. 562-2 of the CMF require financial entities to report transactions above €8 000 with respect to Nauru and Myanmar.

Moreover, Articles 8 and 9 of CRBF Regulation 2002-01 of April 18, 2002 require credit institutions to exercise increased scrutiny on checks received from foreign financial institutions located in countries or territories whose laws or practices are considered by the FATF to create obstacles to the fight against money laundering (i.e., NCCTs). The list of NCCTs is annexed to the regulation and updated by the Ministry of Finance following each change in the list of NCCTs.

Pursuant to Article 2 of CRBF Regulation 91-07, credit institutions and currency exchangers must include in their internal procedures a list of transactions subject to enhanced scrutiny, although this requirement does not specifically mention transactions with persons in jurisdictions that do not have adequate AML/CFT systems. However, CB Instruction 2000-09 (QLB 3, lines 110-113) requires credit institutions and investment firms other than portfolio management firms to exercise particular care regarding transactions with NCCTs. CB Instruction 2000-09 also requires credit institutions to report annually to the CB their list of branches or subsidiaries located in countries or territories identified as non-cooperative by the FATF, as well as their total exposures per NCCT.

With respect to portfolio management firms, the AFG-ASFFI recommendations provide guidance on steps that should be taken to mitigate the risks of money laundering when conducting business with offshore financial centers or in NCCTs. The recommendations also set out a number of examples of circumstances where enhanced vigilance should be exercised.

3. Wire transfers

There are no specific provisions that would require financial institutions to adopt appropriate procedures to identify and handle wire transfers that lack complete originator information. That said, pending implementation of the future European regulation on strengthening the scrutiny of transfers, the supervisory authorities have asked representatives of the financial sector, notably within the context of the Money Laundering Liaison Committee established pursuant to Article L562-10 of the CMF, to be especially vigilant when funds transfers are not accompanied by complete information on the originator.

Analysis of Effectiveness

1. Increased diligence of financial entities

Article L. 563-3 of the CMF and Article 4 of Decree 91-160 set out the main legislative requirements with respect to enhanced vigilance. The requirements apply only to transactions above €150 000 when the customer's transactions are not usually above this amount. The transactions must also be unusually complex and have no apparent economic purpose. Formulated as such, this requirement suggests that if a customer's transactions typically exceed this threshold, there would be no obligation to exercise enhanced vigilance, even though such transactions might be complex or display unusual patterns. Moreover, while it may be appropriate to set a threshold for "unusual large transactions", the FATF standard does not contemplate any threshold with respect to "complex" transactions or "unusual patterns of transactions". Rather, the standard calls for special attention to be paid to *all* such transactions.

The authorities have indicated that, based on Article 2 of CRBF Regulation 91-07 and interpretation of Articles L. 562-2 and L. 563-3 of the CMF, financial entities are required to exercise enhanced diligence with respect to any transaction that is complex, unusual and has no apparent economic purpose, regardless of threshold. They have cited a number of decisions of the CB in support of this, some of which have been reviewed and upheld by the Conseil d'Etat. However, Article L. 563-3 of the CMF together with Article 4 of Decree 91-160 of February 13, 1991 remain the clearest expressions of FATF Recommendation 14. Moreover, the decisions of the CB only concern credit institutions and other entities under its supervision. In addition, most of the decisions of the CB concern instances involving inadequate KYC account-opening procedures/records and large transactions. These decisions do not specifically address the requirements of FATF Recommendation 14, notably with regard to the need to examine the background and purpose of such transactions and to establish the findings in writing, irrespective of their amount or the degree of the financial institution's suspicion. The explicit text of L. 563-3, with its threshold, and the broader expectations of the authorities as to what financial entities are required to do in the circumstances described in FATF Recommendation 14 argue for the need to review, clarify and broaden existing legislative requirements.

2. Measures to cope with the problem of countries with no or insufficient anti-money laundering measures

While there are some regulatory provisions requiring financial entities to give special attention to business relations and transactions with persons in jurisdictions that do not have adequate AML/CFT systems, their application is essentially restricted to credit institutions and investment firms other than portfolio management firms. However, authorities indicate that in practice financial entities generally comply with advisories issued by the Minister of the Economy, Finance and Industry. For credit institutions and investment firms other than portfolio management firms, compliance with the above requirements is verified in particular by means of responses to the QLB questionnaire, as well as on-site examinations. Credit institutions and investment firms must also report annually to the CB on the number of intelligence files created in the preceding fiscal year, as well as the largest amount involved. These financial entities are reminded of these obligations by mail and in meetings following up on on-site examinations and off-site surveillance/monitoring. During on-site examinations carried out by the CB, financial transactions with non-cooperative jurisdictions are examined in depth. As a part of ongoing supervision, credit institutions and investment firms other than portfolio management firms have also been asked detailed questions on a systematic and standardized basis concerning the enhanced customer due diligence measures they have taken with respect to transactions with the above-mentioned jurisdictions.

Insurance companies are reminded of the above-requirements as frequently as possible, either through outreach activities or in the context of ongoing relationships between insurance companies and the Audit Department. Compliance is confirmed in on-site examinations and follow-up.

Recommendations and Comments

Authorities should review and broaden requirements to pay special attention to certain transactions.

A requirement should be introduced for financial entities other than credit institutions and investment firms other than portfolio management firms to pay special attention to business relations and transactions with persons and legal entities in jurisdictions that do not have adequate systems in place to prevent and deter ML or FT

Implications for compliance with FATF Recommendations 14, 21, 28, SR VII

R.14: Largely compliant because the legislative requirements are narrower in scope than the FATF standard.
R.21: Largely compliant because there is no specific law, regulation or other enforceable means to ensure compliance by financial entities other than for credit institutions and investment firms other than portfolio management firms. .

R.28: Largely compliant, as additional efforts are needed to provide guidance to reporting entities, notably outside the banking sector. (see also V-- Suspicious Transaction Reporting).

SR VII: According to the FATF Interpretive Note to Special Recommendation VII, countries will have up to February 2005 to comply with SR VII and as such France will not be rated against this recommendation. Work is proceeding on a EU regulation that will directly apply in member states.

IV—Record keeping

(compliance with Criteria 52-54 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criterion 88 for the banking sector, criteria 106 and 107 for the insurance sector, and criterion 112 for the securities sector)

Description

Article L. 563-4 of the CMF requires financial entities to retain for five years, beginning with the closing of accounts or the termination of business relations with them, all documents relating to the identity of their regular and occasional customers. Article 3 of Decree 91-160 states that financial institutions are required to keep the references or a copy of the identification documents that are submitted to them.

Pursuant to Article L. 563-4 of the CMF, financial entities are required to retain documents pertaining to their transactions for five years from the date of completion.

These requirements are supplemented by regulations, instructions, as well as by supervisory and professional recommendations.

TRACFIN and the supervisory authorities may request that documents be submitted to them for the purpose of reconstructing all transactions carried out by a natural or legal person in connection with a suspicious transaction report. Supervisory authorities are also authorized to access any documents necessary for the performance of their duties, as well as for the purpose of informing their counterparts in other countries.

Moreover, the provisions pertaining to the powers of the supervisory authorities entitle them to access any document necessary for the performance of their duties(articles L. 613-8 and L. 520-2 of the CMF for the CB; articles L. 310-14 and L. 310-28 Insurance Code for the CCA; Articles L. 621-9-3 and L. 621-10 of the CMF for the AMF).

Professional secrecy may not be invoked against the CB, the CCA or the AMF, or against a legal authority acting in the context of criminal proceedings (Article L. 511-33 of the CMF).

Analysis of Effectiveness

The legislative and regulatory provisions are comprehensive and appear to be effectively implemented.

Recommendations and Comments

Implications for compliance with FATF Recommendation 12

R.12: Compliant.

V—Suspicious transactions reporting

(compliance with Criteria 55-57 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 101-104 for the insurance sector)

Description

Article L. 562-2 of the CMF requires financial entities to report to TRACFIN funds or transactions they suspect are related to proceeds of drug trafficking, fraud against the financial interests of the European Communities, corruption or organized criminal activity or which they suspect are related to the financing of terrorism. ArticleL-561.1 requires persons, other than those mentioned in L-562.1, who carry out, supervise or advise on transactions resulting in capital movements, are required to report to the Public Prosecutor's Office any transaction involving funds they know to be proceeds of crime mentioned in Article L. 562-2.

Article 562-5, requires that the STR be submitted before the transaction is completed unless it is impossible to delay it or when it becomes apparent only after the transaction that the amounts could have come from drug trafficking or organized criminal activities or related to the financing of terrorism. Likewise, new information that could affect the assessment of the amounts and transactions reported, and information supplementary to that contained in an STR, must be brought to the attention of TRACFIN immediately.

Article L. 562-2-1 requires that the STR be forwarded to TRACFIN, with the exception of lawyers and other legal

professionals who must forward their reports to their law society or bar association. The latter must in turn forward the STR to TRACFIN unless they do not consider the transaction to be suspicious of money laundering, in which case they must so inform the person that made the STR. They must also forward to the Minister of Justice a sanitized case, which is then forwarded to TRACFIN.

Article 6 of Decree 91-160 of February 13, 1991 requires financial entities to adopt written internal rules defining procedures for implementing the legal and regulatory provisions contained in Title VI of the CMF and in Decree 91-160. They must ensure that all staff involved in AML are kept informed and receive training. Regulation 91-07 of the CRBF requires credit institutions, investment firms other than portfolio management firms and currency exchangers to establish internal controls and procedures to ensure compliance with the AML provisions of the CMF and the Décret 91-160, including an audit system to verify compliance with the above-mentioned procedures. There are no similar regulatory requirements for other financial entities.

TRACFIN provides guidance on the detection of suspicious transactions in the form of typologies appended to its annual reports. Additional guidance has been provided by other competent authorities has been limited.

Article L. 562-8 of the CMF protects financial entities from criminal and civil liability for reporting in good faith. Without prejudice to criminal sanctions that may be levied, Article L.574-1 provides for a fine of €22,500 for any executive or employee of a financial entity who informs the owner of sums of money or the originator of a transaction reported pursuant to Article L. 562-2 of the existence of the report or provides information on the follow-up action to be taken.

In addition to suspicious transaction reporting, Article L. 562-2 requires financial entities to report any other transaction, where the identity of the order-giver or beneficiary remains in doubt, notwithstanding performance of the requisite customer due diligence measures. Financial entities are also required to report transactions on their own account or for the account of others with natural or legal persons, operating as or for trusts or similar arrangements where the identities of the settlor, trustee or beneficiaries are not known. Finally, this article provides the authority to issue a decree to require financial entities to report transactions above a certain threshold on their own account or for the account of others with natural or legal persons domiciled, registered or established in countries or territories where the AML laws are recognized as deficient or where practices impede the fight against money laundering. Decree No 2002-145 issued pursuant to this article requires financial entities to report transactions above €8 000 with respect to Nauru and Decree No 2003-1195 was issued in respect of Myanmar.

Analysis of Effectiveness

The scope of the reporting requirements is not aligned and is indeed narrower than that of the predicate offences for money laundering. The scope of predicate offences for money laundering is comprehensive and covers all crimes and misdemeanors, including the financing of terrorism and fiscal fraud. On the other hand, a suspicion funds stem from a fiscal misdemeanor is not required to be reported. This may be a source of confusion for reporting entities regarding whether or not to report particular transactions and could expose them to compliance risks. This could potentially reduce the effectiveness of the regime.

TRACFIN and the supervisory authorities have made some effort to provide guidance for improving the detection and reporting of suspicious patterns of transactions, but more is needed in light of the acknowledged generally poor quality of a large number of STRs. Moreover, greater efforts should be made to improve reporting from the DOM-TOM.

The additional reports, notably the ones in relation to trusts, have raised compliance burden but their benefits are unclear and could potentially draw away resources (i.e., of financial entities and TRACFIN) that might otherwise be used in the detection of suspicious transactions.

Recommendations and Comments

Authorities are currently examining the issue of the misalignment of the scope of the suspicious transaction reporting requirement and that of the predicate offences for money laundering.

In view of the generally lower rates of reporting outside the banking sector, TRACFIN and supervisory authorities should provide further guidance and ML typologies to reporting entities to improve detection and reporting of suspicious transactions, the quality of STRs and overall implementation of AML/CFT requirements.

Authorities should also reach out to the DOM-TOM and monitor their compliance with AML/CFT obligations.

The usefulness of the additional reporting requirements should be reviewed.

Implications for compliance with FATF Recommendations 15, 16, 17, 28 and SR IV

R.15 and SR IV: Compliant.
R.16: Compliant.
R.17: Compliant.
R.28: Largely compliant, as additional efforts are needed to provide guidance to reporting entities, notably outside the banking sector.

VI—Internal controls, Compliance and Audit

(compliance with Criteria 58-61 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 89-92 for the banking sector, criteria 109 and 110 for the insurance sector, and criterion 113 for the securities sector)

Description

Internal Controls

Article 6 of Decree 91-160 of February 13, 1991 requires financial entities to adopt written internal rules defining procedures for implementing the legal and regulatory provisions contained in Title VI of the CMF and in Decree 91-160. They must ensure that all staff involved in AML are kept informed and receive training.

Regulation 91-07 of the CRBF requires credit institutions, investment firms other than portfolio management firms and currency exchangers to establish internal controls and procedures to ensure compliance with the AML provisions of the CMF and the Décret 91-160, including an audit system to verify compliance with the above-mentioned procedures.
More broadly, Regulation 97-02 of the CRBF requires credit institutions and investment firms other than portfolio management firms to establish an internal control mechanism specifically including a system for auditing transactions and internal procedures, as well as a means of monitoring flows of cash and securities. One of the purposes for requiring a system for auditing transactions and internal procedures is to ensure that a financial entity's transactions, as well as its organization and internal procedures, comply with all applicable laws and regulations, including AML/CFT. This system must be organized in such a way as to ensure the proper execution of transactions and observance of internal risk-management policies, as well as an independent internal audit the effectiveness of these controls.

Article 4 of Regulation 2002-01 of the CRBF requires credit institutions establish and carry out an annual control program for checks as part of their due diligence obligations. This program, which includes selection criteria defined by the institution based on its own activities, must take into account changes in ML typologies and incorporate publicly available information, particularly that disseminated by the FATF and the TRACFIN. Finally, CB Instruction 2000-09 of October 18, 2000 provides guidance on the content of the internal procedures of credit institutions and investment firms other than portfolio management firms.

There are no similar comprehensive regulatory requirements for other financial entities. The Insurance Code contains few provisions regarding internal controls and these focus mainly on investment policy and the preparation of a solvency report. With respect to asset management companies, the AMF has procedures to review appropriate internal controls, but the regulations do not currently provide significant guidance as to what is expected and there is no requirement that the assessment of controls be independent. With the exception of COB Regulation 96-03, there are no specific requirements to appoint a AML officer with responsibility for AML compliance. However, the Recommendations of the CCA and of the AFG-ASFFI suggest appointment of AML/CFT compliance officers. The

former also recommend periodic audit and testing. There is no guidance at all with respect to currency exchangers, insurance brokers and direct marketers.

Employee screening

There are few requirements for financial entities to have adequate screening procedures to ensure high standards when hiring employees and these focus largely on competency rather than integrity. The Recommendations of the CCA suggest that insurance companies screen prospective employees for integrity and monitor activities employees in sensitive positions on an ongoing basis.

Training

CB Instruction 2000-09 provides some guidance on employee training for training, one of which is that any new employee of a credit institution or investment enterprise must receive AML training when hired or in the following weeks, and also that all concerned employees should be kept regularly informed on this subject. Credit institutions and investment enterprises must also report annually to the CB the number of employees who received AML training in the preceding fiscal year, the date of the last AML investigation conducted by the internal control department, and the date of the last update of the AML procedures manual. The Fédération Bancaire Française has developed an extensive employee audio-visual training tools customized according to the type of activity.

A decree of October 1, 2002 amended the minimum training programs for insurance company personnel. In particular, a special AML/CFT module was introduced. Modules for ongoing AML/CFT training have been developed by the FFSA and disseminated to its members.

The AFG-ASFFI also recommends that portfolio management firms establish formal employee training programs under the responsibility of the AML/CFT compliance officer. It is also recommended that the compliance officer make available to employees up-to-date copies of applicable laws and regulations, as well as internal policies and procedures.

Application to foreign branches and subsidiaries

Article 5 of Regulation No 91-07 of the CRBF requires credit institutions and currency exchangers headquartered in France to "make all necessary recommendations"[35] to their foreign branches and subsidiaries to protect themselves, by appropriate means, against the risk of being used for ML purposes. These branches and subsidiaries are required inform their headquarters, where necessary, of any local laws that prohibit the implementation of any or all of these recommendations and headquarters must so notify TRACFIN. Moreover, credit institutions and investment firms other than portfolio management firms must report annually to the CB a list of branches and subsidiaries located in countries where laws prohibit the implementation of these recommendations. No similar requirements apply to other financial entities.

Analysis of Effectiveness

The framework, which requires the establishment of internal rules defining procedures for implementing AML/CFT requirements, are supplemented by comprehensive regulations insofar as credit institutions and investment firms other than portfolio management firms are concerned. In the case of insurance companies and portfolio management firms, there is reliance on supervisory and professional recommendations, which while helpful in signaling what financial entities are expected to do, are neither binding nor enforceable. No apparent guidance is provided to other sectors, although representatives of La Poste described to the mission a relatively robust system of internal controls. There are few requirements for financial entities to have adequate screening procedures to ensure high standards when hiring employees and these focus largely on competency rather than integrity.

[35] These "recommendations" are not prescribed in the regulation.

Employee training appears to be effectively implemented with respect to credit institutions, investment firms other than portfolio management firms and insurance companies and La Poste.

Other than for credit institutions and currency exchangers, there are no specific requirements for financial entities to ensure the comprehensive application of AML/CFT requirements to branches and majority owned subsidiaries located abroad.

Recommendations and Comments

The regulatory framework for internal controls needs to be strengthened for all sectors other than credit institutions and investment firms other than portfolio management firms.

Financial entities should also be required to take integrity into account when hiring employees, notably for sensitive positions.

Other than for credit institutions and currency exchangers, a requirement should be established for financial entities to ensure that AML/CFT requirements are applied to branches and majority-owned subsidiaries located abroad.

Authorities should further assist financial entities in developing employee training programs.

Implications for compliance with the FATF Recommendations 19, 20

R.19: Largely compliant, as the regulatory framework for internal controls other than for credit institutions and investment firms other than portfolio management firms is incomplete and there are no requirements for taking into account integrity when hiring employees.
R.20: Largely compliant, owing to the absence of legal requirements other than for credit institutions and currency exchangers.

VII—Integrity standards

(compliance with Criteria 62 and 63 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criterion114 for the securities sector)

Description

Articles L 612-1, L 511-10, L 511-15, and L. 532-2 grant the CECEI the exclusive authority to issue to and withdraw licenses from banking and investment firms other than portfolio management firms. The CECEI may attach conditions to the license. Based on non-compliance with the terms and conditions of the original license, or when the institution requests, the CECEI can withdraw the license. Only the CB is authorized to withdraw the license as a sanction.

The CMF also sets out the conditions that must be met for the issuance of a license, including the program of operations (business plan) of the institution, its proposed technical and financial resources, the suitability (fit and properness) of the managers and shareholders and where applicable their guarantors. Any substantive change in the way a bank meets the condition must receive prior approval of the CECEI, including changes in .ownership and control.

Similar provisions apply to portfolio management firms. Pursuant to Article L.532-4 and L. 532-9 of the CMF and COB Regulation 96-02, the AMF assesses the qualifications of shareholders, partners, and limited partners of portfolio management firms with a view to ensuring their sound and prudent management.

Direct marketers are to be registered jointly with the AMF, the CECEI and the CEA, as of January 1, 2005. Direct marketing activities must be carried out by or on behalf (in the case of independent direct marketers) of a licensed credit institution, investment firm, insurance company or a financial adviser. Article L. 341.9 of the CMF prohibits anyone convicted of a crime from undertaking direct marketing activities. Article L. 341-4-IV will allow a “fit and proper” test to be implemented by decree. Financial advisers will be required to join/register with a professional association, which in turn will be authorized by the AMF, as of January 1, 2005. Article L. 547-7 prohibits anyone convicted of a crime from providing financial advice and L. 541-2 will allow a “fit and proper” test to be implemented by decree.

Article L. 520-1 of the CMF requires currency exchangers to register with the Corporations register and submit a declaration of activity to the Banque de France. While there is no "fit and proper" test as such, currency exchangers must declare to the Banque de France that they do not have prior criminal convictions. and such declarations are examined for completeness by the Banque de France as part of the registration process (Articles 2 and 3 of the Instruction No. 1-97 of February 4, 1997 of the CB). There is no particular requirement concerning the suitability of shareholders.

Article 13 of Law No. 84-46 of January 24, 1984 prohibits persons who have been convicted pursuant to that article (particularly for a felony, theft, fraud, breach of trust, personal bankruptcy) from serving on the executive or supervisory board of a credit institution. Such persons may not operate, direct, or manage a credit institution in any capacity, whether directly or through another, nor may they be given authority to sign on behalf of such an institution. Anyone convicted under Article 13 of Law No. 84-46 is likewise prohibited from engaging in the profession of foreign exchange dealer. Identical prohibitions are specified for investment firms by Article 22 of Law No.96-597 of July 2, 1996.

The Comité des Entreprises d'Assurance (CEA) is responsible for issuing business authorizations to insurance companies. The CCA is responsible for issuing authorizations to companies that are only active in the reinsurance area. Article L. 322-2 of the Insurance Code requires that the board members and senior management of the company be fit and proper in the sense of competency, experience and integrity. No person may establish, direct or manage a firm if they have been convicted of a crime. The Insurance Code also requires insurance companies to notify to the CEA changes in control and whenever changes in shareholding are planned that cross a certain threshold. The CEA has the discretion to refuse a transaction. In all cases, the suitability of the new owners and the consequences of these changes for the business plan are checked, and on this basis the CEA can block a transaction or request commitments to ensure the soundness and stability of the insurance undertaking.

Article L. 511-2 of the Insurance Code similarly stipulates that a person convicted of a crime may not carry on the occupation of general agent or insurance or reinsurance broker. This applies also to insurance or reinsurance transactions conducted by agents and employees of firms, general agents, brokers and brokerage firms.

Analysis of Effectiveness

Measures in place are comprehensive and effectively implemented. There exists good cooperation between supervisory authorities.

Recommendations and Comments

AML/CFT internal controls should be required to be taken into account in the licensing of financial entities.

Authorities should consider introducing an explicit "fit and proper" test for currency exchangers

Implications for compliance with FATF Recommendation 29

R.29: Compliant.

VIII—Enforcement powers and sanctions

(compliance with Criteria 64 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 93-96 for the banking sector and criteria 115-117 for the securities sector)

Description

Commission Bancaire

Pursuant to the provisions of Article L.613-1 of the CMF, the CB is responsible for monitoring the compliance of credit institutions with the legislative and regulatory provisions applicable to them and for sanctioning them when necessary. Article L.613-2 of the CMF provides that the CB also ensures compliance by investment firms other than portfolio management firms with their legal and regulatory obligations. Pursuant to the provisions of Article 520-2 of the CMF, the CB is also the supervisory authority for currency exchangers. Although most of the on-site examinations have been performed by the Customs authorities, the CB imposes sanctions for non-compliance.

The CB has authority for on-site examinations and off-site surveillance/monitoring (Article L.613-6 of the CMF). For off-site audits, the CB determines the list, the form, and the deadlines for submission of the documents and information that must be forwarded to it (QLB-CB Instruction 2000-09 requiring written internal rules, etc.). For on-site audits, it may also extend its audit to the subsidiaries of a credit institution or investment firm, as well as to the legal entities that control, directly or indirectly, a credit institution or investment firm, as well as their subsidiaries.

When a financial entity has neglected its AML/CFT obligations owing to a serious lack of due diligence or a deficiency in its internal control procedures, the CB may institute disciplinary proceedings against it. The disciplinary sanctions that the CB can impose on a credit institution or investment enterprise are: warning; reprimand; disqualification from carrying out certain transactions or other limits on engaging in an activity; temporary suspension of one or more of the responsible officers, possibly including the appointment of a provisional administrator: removal from office of one or more of these same individuals, possibly including the appointment of a provisional administrator or removal of the financial institution from the register. It may also impose, in place or instead, a fine equal at most to the minimum capital of the legal entity. It may also prohibit or limit the distribution of a dividend to shareholders or the remuneration of corporate shares. Finally, the CB may decide that the sanctions imposed will be made public.

The disciplinary sanctions that the CB can impose on foreign exchange dealers are: warning, reprimand, or disqualification from dealing in foreign exchange. The law of August 1, 2003 on financial security extended the scope of the disqualification from dealing in foreign exchange to the officers of legal entities. It may also impose, in place or instead of these sanctions, a fine of no more than €1 million. The CB may decide that the de facto or de jure officers are jointly and severally liable for the payment of this sanction (Law of August 1, 2003).

In 2002, 34 disciplinary decisions were rendered, of which 18 involved breaches relating to AML/CFT requirements. The sanctions ranged from a warning to removal from the register, but the most frequent sanction was a warning plus a fine, amounting to as much as €228,000. In 2003, 28 disciplinary decisions were issued, of which 20 involved breaches relating to AML/CFT requirements. In 2003, a warning plus a fine was the most frequently imposed sanction. Decisions involving the imposition of sanctions mainly for failure to implement AML/CFT requirements were systematically publicized. The CB underscored the positive effect of such publication.

With respect to currency exchangers, the CB imposed 11 sanctions in 2003 for failure to comply with AML/CFT requirements. It also initiated 29 inquiries in 2003. Since 1986, eight currency exchangers have been barred from operating their business. Breaches in compliance ranged from inadequate record-keeping to failure to report suspicious transactions.

Funds transfer businesses are licensed and supervised as credit institutions. While strong enforcement action has been taken against unlicensed funds transfer businesses when they have been discovered, experience with such cases has not been extensive.

Commission de Contrôle des Assurances

The CCA is responsible for monitoring the compliance of insurance companies, and insurance and reinsurance brokers (but not reinsurance companies) with the legislative and regulatory provisions applicable to them and for sanctioning them when necessary.

The CCA carries out a range of on-site examinations and off-site surveillance/monitoring, as well as other compliance related activities. The annual examination program is established on a risk basis, targeting important or sensitive cases. Each team of examiners is assigned to the supervision of the same insurance companies for a number of years, which increases supervisory effectiveness.

The CCA can impose disciplinary sanctions on insurance companies that fail to comply with their legislative and regulatory obligations, ranging from fines, warnings and the withdrawal of the license to operate. It can make public its decisions to impose sanctions. To date, however, only two sanctions have been imposed for failure to comply with

AML/CFT requirements.

In contrast to the system in place for insurance companies' examinations, the CCA must take a formal decision on a case-by-case basis to conduct on-site examinations of insurance brokers. While the CCA has had the authority to impose disciplinary sanctions against insurance brokers since 2003, this authority will be clarified with a legislative amendment to the Insurance Code that is expected to be adopted in the near future.

Autorité des Marchés Financiers

Article L.621-9 of the CMF grants the AMF the power to supervise, investigate, and sanction, both for market conduct and AML/CFT, collective investment schemes, portfolio management firms, direct marketers, financial advisers and intermediaries dealing in miscellaneous goods.

The on-site examination capacity of the AMF is organized in two different departments. The Inspection department is mainly responsible for investigating market abuses such as insider dealing, market manipulation and dissemination of false information; it does not examine specifically the AML/CFT requirements, but whenever a suspicion on money laundering exists, the investigation is carried out to its end. The other department is in charge of the Control of investment firms and market infrastructures, and is also responsible for verifying the compliance with AML/CFT requirements.

The applicable sanctions are: warning; reprimand; temporary or permanent disqualification from engaging in any or all the services provided; the sanctions committee can impose, in place or instead of these sanctions, a fine of up to €1.5 million or five times the amount of any profits realized. These amounts are paid to the guarantee fund with which the sanctioned person is affiliated or, failing that, to the Treasury. [To date, no sanctions have been imposed for non-compliance with AML/CFT requirements.]

Inspection Générale des Finances

Although not strictly a financial sector supervisor, the Inspection Générale des Finances (IGF) has broad oversight/audit responsibilities with respect to the Ministry of Economy, Finance and Industry. It can conduct special inquiries with respect to state entities and evaluate the effectiveness of public policies. It is responsible for AML/CFT supervision of the Caisse des Dépôts et Consignations and La Poste's financial services. The IGF does not have the authority to impose administrative sanctions for non-compliance with AML/CFT requirements and follow-up on their reports is the responsibility of the Minister of Economy and Finance, as well as the Conseil Supérieur des Postes et Télécommunications.

Analysis of Effectiveness

Enforcement and sanction powers of supervisory authorities are generally appropriate. The CB has a good range of enforcement actions that it can take against credit institutions, investment firms other than portfolio management firms and currency exchangers to ensure compliance with AML/CFT requirements. It has taken a broad range of enforcement actions and routinely publishes the results. However, it has had limited experience in taking enforcement action against unlicensed funds transfer businesses. The authorities have indicated that they have neither systematically sought out to identify unlicensed businesses nor have they conducted any outreach/awareness raising activities.

The CCA has a good range of enforcement actions that it can take against insurance companies and brokers to ensure compliance with AML/CFT requirements. However, the number sanctions imposed on insurance companies and brokers is relatively low. The AMF also has a good range of enforcement actions that it can take against portfolio management firms to ensure compliance with AML/CFT requirements. However, it has not imposed any sanctions for non-compliance with AML/CFT requirements.

There is too much reliance on La Poste's not inconsiderable internal control mechanisms and too little on programmed independent examinations by the IGF. It is unclear what, if any sanctions are available or have been

levied for non-compliance.
Recommendations and Comments
The supervisory and enforcement efforts of the CCA, the AMF and with respect to La Poste need to be increased. The authorities should review and monitor the adequacy of enforcement efforts with respect to unlicensed informal funds transfer businesses and develop complementary public outreach /awareness raising activities.
IX—Cooperation between supervisors and other competent authorities **(compliance with Criteria 65-67 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 97-100 for the banking sector and criteria 118-120 for the securities sector)**
Description
Supervision In 2003, the CB conducted 174 general on-site examinations, including for compliance with AML/CFT requirements, as well as 14 special AML/CFT examinations. Some 180 examiners were dedicated to this task. About 40 on-site examinations are conducted annually of currency exchangers by Customs authorities (covering six percent of the registered currency exchangers and about 40 percent of the volume of transactions). The CCA has conducted 28 examinations of life insurance companies in the last four years or about 22 percent of all the licensed life insurance companies. Since 1996, it has conducted two on-site examinations of insurance brokers. It employs about 100 persons, including two persons in the AML/CFT unit and 35 persons in the inspection department. As of 2005, the CCA will become an independent authority and control its own budget. It also plans to increase its supervisory resources. In 2003, the AMF conducted 85 on-site examinations of portfolio management firms, representing 20 percent of regulated entities. The majority of these examinations were delegated to and conducted by other supervisory authorities or auditing firms, under the control of the AMF[36]. The AML/CFT component of this examination is small. For example, there is no review for suspicious transaction reporting. The AMF employs 318 persons, including 30 investigators in its Inspection Department and 17 full-time examiners in its Supervision Department. The IGF conducted two AML examinations of La Poste, leading to two reports issued in 1992 and 1995. These examinations had found some deficiencies that were communicated to La Poste and the Minister of Economy and Finance. In July 2004, the IGF launched a broad inquiry into and audit of France's AML/CFT regime, a component of which will address La Poste's financial services. The audit team consists of 6 persons. The inquiry is ongoing. The IGF employs some 70 inspectors. **Supervisory guidelines** In general, supervisory authorities have not issued guidelines to assist financial institutions in implementing AML/CFT requirements. In particular, the CB has not issued guidelines or guidance, including specific guidance provided by the Customer Due Diligence paper issued by the Basel Committee[37]. It instead relies on regulations and instructions, such as an annual questionnaire to signal what it considers to be the essential components of AML/CFT policies, procedures and internal controls. It also responds to questions of interpretation of and compliance with laws and regulations raised by financial institutions. The CCA has issued professional recommendations, which describe

[36] Whenever an examination is delegated to the CB's inspectors or to external auditors, the AMF retains ownership and control of the examination and for instance writes up the final report.

[37] *Customer due diligence for banks*, the Basel Committee, October 4, 2001.

AML/CFT requirements in a detailed and systematic way and provide practical advice; however, these recommendations are neither binding nor do they extend specifically to insurance intermediaries. The AMF has not issued guidelines. Private sector representatives indicated that it would be very helpful if supervisory authorities were to issue guidelines to assist them in implementing AML/CFT requirements.

Cooperation

Articles L.631-1 and L. 631-2 of the CMF provide for a legal framework for comprehensive cooperation between supervisory and licensing authorities in the financial sector. These bodies have pursuant to Article L. 631-1 explicit legal authority to share specific, as well as general information with each other as necessary and appropriate to fulfill their own missions. The Collège des autorités de contrôle des entreprises du secteur financier, which is comprised of the Heads of the financial sector supervisory bodies, has been assigned, under Article L. 631-2, the task of developing information exchange and coordinating supervisory activities for financial groups that have entities that come under the supervision of different authorities.

Article L. 613-3 of the CMF organizes cross Board membership and joint meetings between CB and CCA. Further to Article L. 612-3, the Presidents of AMF and CB are members of the CECEI and pursuant to Articles L. 621-2 and L. 613-3 the Governor of the Banque de France is the President of the CB and a member of the "Collège" of the AMF. Article L. 532-2 requires the CECEI to consult with the AMF with respect to certain licensing decisions. A common database on financial institutions managers has been developed by CECEI, AMF and CB. Pursuant to Article 11 of Decree 2003-1109 of 21 November 2003 CB conducts on-site examinations on behalf of AMF. Pursuant to Article 11 of Decree 84-708 of 24 July 1984, the CB informs the CECEI and AMF of any decision concerning institutions under their common supervision. A similar procedure applies with respect to the AMF in Article 20 of Decree 2003-1109 of 21 November 2003. In addition, the CB and CCA have developed close links and stepped up their cooperation in 2001, which has been formalized in a charter.

Supervisory authorities and TRACFIN are also authorized to exchange information on suspicious transactions. Supervisory authorities are also required to inform the Public Prosecutor when, through a serious flaw in vigilance oversight or shortcoming in the organization of its internal audit procedures, a financial organization has failed to observe its vigilance obligations. They must also inform the Public Prosecutor whenever they have knowledge of a crime or misdemeanor.

Article L-613-12 of the CMF permits, on the one hand, information exchanges between the CB and its EEA counterparts responsible for the oversight of credit institutions and investment firms, and, on the other hand, responding to requests from counterpart authorities either by directly carrying out the audit requested or by permitting representatives of those authorities to do so. Article L-613-13 also provides that the CB may enter into bilateral agreements with non-EEA counterparts, so long as those authorities are subject to professional secrecy on terms equivalent to those affecting the CB, for purposes of:

- exchanging information; and/or
- extending on-site inspections to the branches or affiliates of a French organization established in that State; and/or
- conducting, at the request of the foreign authority, on-site examinations of establishments located in France that are branches or affiliates of establishments located in the foreign State.

Cooperation between EEA insurance supervisors, including information sharing, is regulated through several directives and multilateral protocols of application. These arrangements allow for the unrestricted exchange of information, including on a cross- sector basis in the case of supervision of insurance groups or financial conglomerates. The French legislative has transferred these arrangements into French law.

As regards non-EEA insurance supervisors, the CCA has the authority to enter into agreements with foreign competent authorities on the exchange of relevant information (provided the foreign supervisor is subject to professional secrecy constraints), although none have been entered into to date; allowing the French supervisor to

carry on on-site inspections in foreign branches of French undertakings; and allowing, under certain conditions, foreign supervisors to participate in the on-site inspections carried on by the CCA in French branches of foreign companies (Art. L.310-21 of the Insurance Code).
Article L-621-21 of the CMF authorizes the AMF to conduct investigations at the request of its counterparts subject to the same conditions, the same procedures, and the same sanctions as provided for the performance of its own mandate (Article L-621-21). It may also share with or obtain information for its foreign counterparts upon request, subject to reciprocity in the case of those outside the EEA, as well as to the condition that the competent foreign authority is subject to professional secrecy requirements that offer the same guarantees as in France (Article L-621-21).
Assistance to a foreign authority may only be refused if it jeopardizes French sovereignty, security, or public order or if criminal proceedings have already been initiated against the same persons for the same acts, or when the persons concerned have already been sanctioned by a final decision relating to the same acts.
Analysis of Effectiveness
Supervision All supervisory authorities are appropriately structured. The CB appears to have a robust program of examinations and sufficient human and financial resources to carry it out. AML/CFT supervisory efforts and corresponding resources are relatively low with respect to life insurance companies and brokers, individual and collective portfolio management firms, direct marketers and La Poste. The number of on-site inspections and corresponding staff resources for these sectors is relatively low and there have been few sanctions imposed for failure to comply with AML/CFT requirements. When looked at in the context of historically relatively low rate of reporting of suspicious transactions from these sectors, it is consequently difficult to assess whether AML/CFT requirements are being effectively implemented overall. **Cooperation** There is a long history of cooperation among domestic supervisory, licensing authorities and TRACFIN. The CB has concluded a number of bilateral agreements with foreign counterparts. In 2001 information provide by foreign authorities led to two AML/CFT sanctions decisions. The COB's cooperation with its foreign counterparts was extensive and of long standing. It had concluded more than thirty bilateral agreements and two multilateral agreements. While the CCA maintains general contact for AML/CFT purposes with foreign supervisory authorities and through the IAIS, the CCA does not routinely exchange case information with its foreign counterparts and no formal agreements exist with foreign counterparts. The reasons for this are not entirely clear.
Recommendations and Comments
The supervisory resources of the CCA and the AMF should be increased and training of supervisory staff formalized. The responsibility for AML/CFT supervision and enforcement of La Poste's financial services should be shifted to the CB or at a minimum the supervisory efforts and resources of the IGF should be increased. Where possible, supervisors should issue enforceable guidelines in support of the legal and regulatory framework
Implications for compliance with FATF Recommendation 26
R. 26: Largely compliant, as a result of the relatively low supervisory efforts and resources other than for the CB.

Description of the Controls and Monitoring of Cash and Cross Border Transactions

Table 47. Description of the Controls and Monitoring of Cash and Cross Border Transactions

FATF Recommendation 22:
Description
The Code des Douanes requires persons to declare all importations and exportations of cash and monetary instruments above a threshold of €7600. Failure to do so can result in the confiscation of the undeclared amounts or a fine that can be as high as the undeclared amount. The objective of this requirement is to combat tax evasion, money laundering and the financing of terrorism, and assist investigations. Moreover, Article L. 152-3 of the CMF requires credit institutions to communicate to fiscal and customs authorities, upon request, the date and amount of funds that are transferred abroad on behalf of persons corresponding to article L 152-2 of the same Code, the identity of both the originator of the transfer and the beneficiary, as well as the account references both in France and abroad. Some 25,000 declarations are made annually, representing some €1 billion. There are some 1,800 cases of failure to declare annually, representing some €150-230 million. About 40 of such cases are forwarded to judicial authorities for prosecution of money laundering offences each year. This mechanism has notably led to the seizure of considerable sums of money suspected of being destined to finance terrorism. Customs authorities are to be commended for their important efforts in this regard. It is recommended that authorities consider the possibility of extending the requirement to declare to importations and exportations effected through the mail and courier companies in order to address the possible displacement of smuggling activities through these means. The mission took note of concerns expressed by authorities regarding an EU initiative to establish an EU-wide declaration requirement vis-à-vis third countries and of the importance of allowing EU members the flexibility to establish or maintain their own regime vis-à-vis EU members.
FATF Recommendation 23:
Description
Article L. 562-2 provides the authority to issue a decree to require financial entities to report transactions above a certain threshold, on their own account or for the account of others with natural or legal persons domiciled, registered or established in countries or territories where the AML laws are recognized as deficient or where practices impede the fight against money laundering. Decree No 2002-145 issued pursuant to this article requires financial entities to report transactions above €8 000 with respect to Nauru and Decree No 2003-1195 was issued in respect of Myanmar.
Interpretative Note to FATF Recommendation 22:
Description
The Code des Douanes requires persons to declare all importations and exportations of cash and monetary instruments above a threshold of €7600.

D. Ratings of Compliance with FATF Recommendations, Summary of Effectiveness of AML/CFT Efforts and Recommended Action Plan

Table 48. Ratings of Compliance with FATF Recommendations Requiring Specific Action

FATF Recommendation	Based on Criteria Rating	Rating
1 – Ratification and implementation of the Vienna Convention	1	Compliant
2 – Secrecy laws consistent with the 40 Recommendations	43	Compliant
3 – Multilateral cooperation and mutual legal assistance in combating ML	34, 36, 38, 40	Compliant
4 – ML a criminal offense (Vienna Convention) based on drug ML and other serious offenses.	2	Compliant
5 – Knowing ML activity a criminal offense (Vienna Convention)	4	Compliant
7 – Legal and administrative conditions for provisional measures, such as freezing, seizing, and confiscation (Vienna Convention)	7, 7.3, 8, 9, 10, 11	Compliant
8 – FATF Recommendations 10 to 29 applied to non-bank financial institutions; (e.g., foreign exchange houses)		See answers to 10 to 29
10 – Prohibition of anonymous accounts and implementation of customer identification policies	45, 46, 46.1	Compliant
11 – Obligation to take reasonable measures to obtain information about customer identity	46.1, 47	Compliant
12 – Comprehensive record keeping for five years of transactions, accounts, correspondence, and customer identification documents	52, 53, 54	Compliant
14 – Detection and analysis of unusual large or otherwise suspicious transactions	17.2, 49	Largely compliant
15 –If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the FIU	55	Compliant
16 – Legal protection for financial institutions, their directors and staff if they report their suspicions in good faith to the FIU	56	Compliant
17 – Directors, officers and employees, should not warn customers when information relating to them is reported to the FIU	57	Compliant
18 – Compliance with instructions for suspicious transactions reporting	57	Compliant
19 – Internal policies, procedures, controls, audit, and training programs	58, 58.1, 59, 60	Largely compliant
20 – AML rules and procedures applied to branches and subsidiaries located abroad	61	Largely compliant
21 – Special attention given to transactions with higher risk countries	50, 50.1	Largely compliant
26 – Adequate AML programs in supervised banks, financial institutions or intermediaries; authority to cooperate with judicial and law enforcement	66	Largely compliant

FATF Recommendation	Based on Criteria Rating	Rating
28 – Guidelines for suspicious transactions' detection	17.2, 50.1, 55.2	Largely compliant
29 – Preventing control of, or significant participation in financial institutions by criminals	62	Compliant
32 – International exchange of information relating to suspicious transactions, and to persons or corporations involved	22, 22.1, 34	Compliant
33 – Bilateral or multilateral agreement on information exchange when legal standards are different should not affect willingness to provide mutual assistance	34.2, 35.1	Compliant
34 – Bilateral and multilateral agreements and arrangements for widest possible range of mutual assistance	34, 34.1, 36, 37	Compliant
37 – Existence of procedures for mutual assistance in criminal matters for production of records, search of persons and premises, seizure and obtaining of evidence for ML investigations and prosecution	27, 34, 34.1, 35.2	Compliant
38 – Authority to take expeditious actions in response to foreign countries' requests to identify, freeze, seize and confiscate proceeds or other property	11, 15, 16, 34, 34.1, 35.2, 39	Compliant
40 – ML an extraditable offense	34, 40	Compliant
SR I – Take steps to ratify and implement relevant United Nations instruments	1, 34	Compliant
SR II – Criminalize the FT and terrorist organizations	2.3, 3, 3.1	Compliant
SR III – Freeze and confiscate terrorist assets	7, 7.3, 8, 13	Materially non-compliant
SR IV – Report suspicious transactions linked to terrorism	55	Compliant
SR V – provide assistance to other countries' FT investigations	34, 34.1, 37, 40, 41	Compliant
SR VI – impose AML requirements on alternative remittance systems	45, 46, 46.1, 47, 49, 50, 50.1, 52, 53, 54, 55, 56, 57, 58, 58.1, 59, 60, 61, 62	Compliant
SR VII – Strengthen customer identification measures for wire transfers	48, 51	Not rated

Table 49. Summary of Effectiveness of AML/CFT Efforts

Heading	Assessment of Effectiveness
Criminal Justice Measures and International Cooperation	
I—Criminalization of ML and FT	The legal framework relating to the criminalization of ML and FT is comprehensive. The main limitation is that France is currently unable to comply fully with UN Security Council Resolution 1373 with regard to terrorists or terrorist groups from within the European Union as they are not covered by EU Council Regulations.
II—Confiscation of proceeds of crime or property used to finance terrorism	**Judicial seizure and confiscation** Though in theory a conviction can result in the

Heading	Assessment of Effectiveness
Criminal Justice Measures and International Cooperation	
	confiscation of all the assets of the offender, in practice, the confiscation will almost exclusively apply to the assets that have been previously seized in the course of the judicial procedure. This results mainly from the optional character of confiscation measures. The judge will appreciate these sanctions in view of the available elements of the case, such as the offender's property that can be identified. Several authorities mentioned problems in uncovering these assets. In money laundering cases, it is rather exceptional that all or most of the laundered funds can be recovered in this manner. As an alternative, the fine can be increased to half the level of the laundered funds (Articles 222-38 and 324-3 of the Penal Code). There are no statistics available on the amounts resulting from the seizure and confiscation orders, neither in general terms, nor as regards ML specifically. In the absence of such information, it is difficult to assess the effectiveness of the provisions governing the asset related aspects of the fight against serious crimes including ML and FT. The judicial authorities appear to be a bit reluctant to utilize systematically the tools at their disposal. Moreover, in the absence of a mandatory confiscation regime for financial and economic crimes, insufficient use is made of the procedure of Article 706-30 of the Code of Criminal Procedure which holds an important potential for seriously improving the effectiveness of an asset oriented approach to the combat against ML. Additional efforts by the Ministry of Justice to raise the awareness of magistrates about this approach continue to focus mainly on drug trafficking and drug money laundering. **Administrative freezing of terrorist related funds** The Constitutional Treaty established by the European Convention includes provisions that would lift the distinction currently preventing the authorities from administratively freezing assets of terrorists or terrorist groups based within the European Union. Pending its adoption, a draft bill has been prepared to enable the government to impose financial sanctions and administratively freeze such assets in compliance with UN Security Council Resolution 1373. The draft bill has to undergo a consultative process and the timeframe for its adoption is uncertain at this stage. Taking into account the difficulties encountered in implementing the

Heading	Assessment of Effectiveness
Criminal Justice Measures and International Cooperation	
	UNSCR and subsequent EU regulations, four accounts were frozen on the basis of the UN and EU lists at the time of the assessment visit, amounting to about 30.000 EUR. No other assets, such as real estate, have been frozen. This is mainly due to the lack of definition of which assets and of what measures should be targeted and the need of ad hoc instruments to trace them.
III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels	**Access to additional information** In the absence of a central contact point with basic data on individuals and legal entities, it can prove difficult for TRACFIN to verify the identification data contained in the STRs. The access to registers held by the Social Security services, as provided for by a recent amendment of Article L. 563-6 of the CMF, should improve this process. **International cooperation** As far as cross-border cooperation with counterpart FIUs is concerned, TRACFIN is able to and does provide assistance to comply with foreign requests for information without requiring specific formalities. Moreover, such requests are considered as domestic STRs in the sense that they enable the FIU to query other domestic sources of information. As regards its own analysis, TRACFIN is intensifying the input from other FIUs by sending out requests more frequently than before, though not systematically yet. As a general remark, TRACFIN takes into account the Best Practices of the Egmont Group regarding the exchange of information. **Volume of STRs** The volume of STRs received by TRACFIN is growing steadily. It would seem however that this is not accompanied by a significant increase in the overall quality of reports. The number of reports produced by the reporting parties is still relatively low compared to the importance of the financial and economic activity on the French market. Moreover, as regards the results of the operational action of TRACFIN, only a rather limited number of cases are being forwarded to the Prosecutor's Office (269 in 2003, representing only eight to ten percent of all the STRs received). This may be partially due to a poor quality of STRs or to insufficient verifying information from other authorities. Apart from a number of difficulties arising with the overseas departments and territories because of their geographical situation, in particular Guyana raises

Heading	Assessment of Effectiveness
Criminal Justice Measures and International Cooperation	
	serious concerns as this department did not make a single report after 2000. Also it appears from statistical data that a number of reporting entities do not comply with their AML/CFT obligations. From the 134 STRs received from the real estate industry in 2002, only 5 originated from the real estate agents, the remaining 126 being from notaries. No reports were received from dealers in high value goods and commissaires-priseurs so far. The country's 189 casinos made 9 reports, 6 of them after the authorities started an important information campaign in July 2003. These deficiencies are mainly due to the absence of a supervisory body for most of the parties concerned and the obvious difficulty to reach out to these professions.
IV—Law enforcement and prosecution authorities, powers and duties	Despite all the efforts that have been produced to date, a large number of cases could not be dealt with due to insufficient resources and the need to pursue other priorities. In particular, the innovative aspects introduced by the institution of the assistants de justice do not seem to have yet produced the anticipated results. A recent reform by the Law of March 9, 2004 that entered into force on October 1, 2004 and introduces specialized jurisdictions should enhance the overall capacity of the judicial system to combat financial crime, both in terms of human resources and of on-going specialized training. About seventy percent of the ML cases in Paris originate from TRACFIN and about ten percent from the Customs Department. Almost half of the sixty cases communicated by TRACFIN in 2003 that were dealt with by the financial division of the Paris Prosecutor's Office were new cases, while the remaining ones complemented already existing files. Half of them are being further investigated (preliminary enquiry or judicial investigation) and four of them have been closed. The number of convictions for money laundering (including non-justification of resources) increased to forty-seven in 2001 against twenty-one in each of the two previous years. However, these results seem quite limited in view of the time the reporting mechanism has been in place and of the volume of reports sent by TRACFIN and other authorities to the judiciary. This is not only due to the time consuming judicial procedures, but also to the difficulties encountered by the prosecution services to establish the money laundering

Heading	Assessment of Effectiveness
Criminal Justice Measures and International Cooperation	
	offence. Although jurisprudence does not require the establishment that the money launderer knew the specific origin of the illegal funds, a number of prosecutors still operate on the assumption that they have to prove the existence of the specific underlying offence. However, some case law indicates that a conviction for (general) money laundering can be pronounced without the predicate offence being specifically identified. Additional problems arise when a case has an international dimension and information has to be obtained from other jurisdictions. Therefore, there is a tendency to re-qualify the facts and to prosecute on a different basis. None of the FT cases under investigation lead to judicial results so far. The main difficulties lie in the linking of suspicious or irregular financial movements with terrorist activities and also in the absence of an investigating body that combines a specialization in both financial and terrorism aspects. Most cases were initiated following terrorist attacks.
V—International cooperation	France provides timely and effective follow-up to mutual legal assistance requests and maintains statistics on all mutual legal assistance and other requests made or received, relating to ML, the predicate offences, and FT, as well as the outcome of such requests. The nature of MLA requests is not reflected in the statistics, which are devoted solely to quantifying flows.
Legal and Institutional Framework for All Financial Institutions	
I—General framework	The legal framework for AML/CFT preventive measures is characterized by its comprehensive coverage of financial entities and its broad range of due diligence and reporting requirements that go beyond the FATF standard. The regulatory framework, however, is incomplete and remains a work in progress, notably for sectors other than credit institutions and investment firms other than portfolio management firms, where there is greater reliance on supervisory and professional recommendations rather than on regulation or other enforceable means. Industry associations in the banking, insurance and securities sectors have been proactive in developing guidance for their members. The missions and powers of the competent authorities for AML/CFT supervision are generally clear and appropriate. However, the regulatory and supervisory framework for non-financial businesses and professions is incomplete.

Heading	Assessment of Effectiveness
Criminal Justice Measures and International Cooperation	
	The duty of professional secrecy does not appear to pose any obstacle to the implementation of the FATF standard.
II—Customer identification	The laws are clear and complete. Questionnaire QLB 3 pursuant to CB Instruction No. 2000-09 provides a detailed checklist of the legal requirements and reminder of the need to have customer acceptance policies and procedures but offers little additional guidance. The CCA recommendations and to a lesser extent the AFG-ASFFI recommendations provide additional useful detailed guidance. However, they are neither binding nor enforceable, nor do they extend to insurance and reinsurance brokers or direct marketers. No further rules or guidance apply to currency exchangers. Financial industry representatives in general indicated strong interest in obtaining additional guidance from the authorities. Regarding wire transfers there are indications that the CB has exercised its broad authority to ensure compliance with professional rules and standards. Contacts with the profession within the Liaison Committee and random checks carried out during on-site inspections indicate that credit institutions are including the information necessary to identify originators of the transfers they issue. However, it is unclear whether this has been fully implemented with regard to domestic transfers. In addition, these professional rules and standards do not specifically require inclusion of the originator's account number. Finally, the rules and standards apply to banks and do not extend to non-bank financial institutions. As such, the measures in place do not sufficiently implement the relevant FATF standard. However, work is underway at the level of the EU on implementing the relevant FATF standard and the authorities have indicated their intention to set out requirements in legislation..
III—Ongoing monitoring of accounts and transactions	1. Increased diligence of financial entities Article L. 563-3 of the CMF and Article 4 of Decree 91-160 set out the main legislative requirements with respect to enhanced vigilance. The requirements apply only to transactions above €150 000 when the customer's transactions are not usually above this amount. The transactions must also be unusually complex and have no apparent economic purpose. Formulated as such, this requirement suggests that if a customer's transactions typically exceed this threshold, there would be no obligation to exercise enhanced

Heading	Assessment of Effectiveness
Criminal Justice Measures and International Cooperation	
	vigilance, even though such transactions might be complex or display unusual patterns. Moreover, while it may be appropriate to set a threshold for "unusual large transactions", the FATF standard does not contemplate any threshold with respect to "complex" transactions or "unusual patterns of transactions". Rather, the standard calls for special attention to be paid to *all* such transactions. The authorities have indicated that, based on Article 2 of CRBF Regulation 91-07 and interpretation of Articles L. 562-2 and L. 563-3 of the CMF, financial entities are required to exercise enhanced diligence with respect to any transaction that is complex, unusual and has no apparent economic purpose, regardless of threshold. They have cited a number of decisions of the CB in support of this, some of which have been reviewed and upheld by the Conseil d'Etat. However, Article L. 563-3 of the CMF together with Article 4 of Decree 91-160 of February 13, 1991 remain the clearest expressions of FATF Recommendation 14. Moreover, the decisions of the CB only concern credit institutions and other entities under its supervision. In addition, most of the decisions of the CB concern instances involving inadequate KYC account-opening procedures/records and large transactions. These decisions do not specifically address the requirements of FATF Recommendation 14, notably with regard to the need to examine the background and purpose of such transactions and to establish the findings in writing, irrespective of their amount or the degree of the financial institution's suspicion. The explicit text of L. 563-3, with its threshold, and the broader expectations of the authorities as to what financial entities are required to do in the circumstances described in FATF Recommendation 14 argue for the need to review, clarify and broaden existing legislative requirements. **2. Measures to cope with the problem of countries with no or insufficient anti-money laundering measures** While there are some regulatory provisions requiring financial entities to give special attention to business relations and transactions with persons in jurisdictions that do not have adequate AML/CFT systems, their application is essentially restricted to credit institutions and investment firms other than portfolio management firms. However, authorities indicate that in practice

Heading	Assessment of Effectiveness
Criminal Justice Measures and International Cooperation	
	financial entities generally comply with advisories issued by the Minister of the Economy, Finance and Industry. For credit institutions and investment firms other than portfolio management firms, compliance with the above requirements is verified in particular by means of responses to the QLB questionnaire, as well as on-site examinations. Credit institutions and investment firms must also report annually to the CB on the number of intelligence files created in the preceding fiscal year, as well as the largest amount involved. These financial entities are reminded of these obligations by mail and in meetings following up on on-site examinations and off-site surveillance/monitoring. During on-site examinations carried out by the CB, financial transactions with non-cooperative jurisdictions are examined in depth. As a part of ongoing supervision, credit institutions and investment firms other than portfolio management firms have also been asked detailed questions on a systematic and standardized basis concerning the enhanced customer due diligence measures they have taken with respect to transactions with the above-mentioned jurisdictions. Insurance companies are reminded of the above-requirements as frequently as possible, either through outreach activities or in the context of ongoing relationships between insurance companies and the Audit Department. Compliance is confirmed in on-site examinations and follow-up.
IV—Record keeping	The legislative and regulatory provisions are comprehensive and appear to be effectively implemented.
V—Suspicious transactions reporting	The scope of the reporting requirements is not aligned and is indeed narrower than that of the predicate offences for money laundering. The scope of predicate offences for money laundering is comprehensive and covers all crimes and misdemeanors, including the financing of terrorism and fiscal fraud. On the other hand, a suspicion funds stem from a fiscal misdemeanor is not required to be reported. This may be a source of confusion for reporting entities regarding whether or not to report particular transactions and could expose them to compliance risks. This could potentially reduce the effectiveness of the regime. TRACFIN and the supervisory authorities have made some effort to provide guidance for improving the detection and reporting of suspicious patterns of transactions, but more is needed in light of the

Heading	Assessment of Effectiveness
Criminal Justice Measures and International Cooperation	
	acknowledged generally poor quality of a large number of STRs. Moreover, greater efforts should be made to improve reporting from the DOM-TOM. The additional reports, notably the ones in relation to trusts, have raised compliance burden but their benefits are unclear and could potentially draw away resources (i.e., of financial entities and TRACFIN) that might otherwise be used in the detection of suspicious transactions.
VI—Internal controls, compliance and audit	The framework, which requires the establishment of internal rules defining procedures for implementing AML/CFT requirements, are supplemented by comprehensive regulations insofar as credit institutions and investment firms other than portfolio management firms are concerned. In the case of insurance companies and portfolio management firms, there is reliance on supervisory and professional recommendations, which while helpful in signaling what financial entities are expected to do, are neither binding nor enforceable. No apparent guidance is provided to other sectors, although representatives of La Poste described to the mission a relatively robust system of internal controls. There are few requirements for financial entities to have adequate screening procedures to ensure high standards when hiring employees and these focus largely on competency rather than integrity. Employee training appears to be effectively implemented with respect to credit institutions, investment firms other than portfolio management firms and insurance companies and La Poste. Other than for credit institutions and currency exchangers, there are no specific requirements for financial entities to ensure the comprehensive application of AML/CFT requirements to branches and majority owned subsidiaries located abroad.
VII—Integrity standards	Measures in place are comprehensive and effectively implemented. There exists good cooperation between supervisory authorities.
VIII—Enforcement powers and sanctions	Enforcement and sanction powers of supervisory authorities are generally appropriate. The CB has a good range of enforcement actions that it can take against credit institutions, investment firms other than portfolio management firms and currency exchangers to ensure compliance with AML/CFT requirements. It has taken a broad range of enforcement actions and routinely

Heading	Assessment of Effectiveness
Criminal Justice Measures and International Cooperation	
	publishes the results. However, it has had limited experience in taking enforcement action against unlicensed funds transfer businesses. The authorities have indicated that they have neither systematically sought out to identify unlicensed businesses nor have they conducted any outreach/awareness raising activities. The CCA has a good range of enforcement actions that it can take against insurance companies and brokers to ensure compliance with AML/CFT requirements. However, the number sanctions imposed on insurance companies and brokers is relatively low. The AMF also has a good range of enforcement actions that it can take against portfolio management firms to ensure compliance with AML/CFT requirements. However, it has not imposed any sanctions for non-compliance with AML/CFT requirements. There is too much reliance on La Poste's not inconsiderable internal control mechanisms and too little on programmed independent examinations by the IGF. It is unclear what, if any sanctions are available or have been levied for non-compliance.
IX—Co-operation between supervisors and other competent authorities	**Supervision** All supervisory authorities are appropriately structured. The CB appears to have a robust program of examinations and sufficient human and financial resources to carry it out. AML/CFT supervisory efforts and corresponding resources are relatively low with respect to life insurance companies and brokers, individual and collective portfolio management firms, direct marketers and La Poste. The number of on-site inspections and corresponding staff resources for these sectors is relatively low and there have been few sanctions imposed for failure to comply with AML/CFT requirements. When looked at in the context of historically relatively low rate of reporting of suspicious transactions from these sectors, it is consequently difficult to assess whether AML/CFT requirements are being effectively implemented overall. **Cooperation** There is a long history of cooperation among domestic supervisory, licensing authorities and TRACFIN. The

Heading	Assessment of Effectiveness
Criminal Justice Measures and International Cooperation	
	CB has concluded a number of bilateral agreements with foreign counterparts. In 2001 information provide by foreign authorities led to two AML/CFT sanctions decisions. The COB's cooperation with its foreign counterparts was extensive and of long standing. It had concluded more than thirty bilateral agreements and two multilateral agreements. While the CCA maintains general contact for AML/CFT purposes with foreign supervisory authorities and through the IAIS, the CCA does not routinely exchange case information with its foreign counterparts and no formal agreements exist with foreign counterparts. The reasons for this are not entirely clear.

Table 50. Recommended Action Plan to Improve the Legal and Institutional Framework and to Strengthen the Implementation of AML/CFT Measures

Criminal Justice Measures and International Cooperation	Recommended Action
I—Criminalization of ML and FT	As mentioned below, the authorities are encouraged to take the necessary measures to ensure full compliance with UNCSR 1373.
II—Confiscation of proceeds of crime or property used to finance terrorism	The French authorities may wish to consider establishing some form of mandatory deprivation of the illegal profits of financial and economic criminality, in particular in the context of money laundering and terrorism financing. This could be achieved by means either of a fine or of a confiscation measure. More efforts should be made to train magistrates and raise their awareness with regard to the available tools and their key role in the asset-oriented approach of the fight against all forms of crime that generate substantial illicit profits. Particular attention should also be given to the compilation of relevant statistics. Comprehensive statistical data is a necessary tool, not only for outside evaluation but also and more importantly for the internal review of the performance of the system. The establishment of a central body responsible for managing seized and confiscated assets could remedy this lack of information. The French authorities are therefore encouraged to work further in this direction. Also, increasing attention should be given to investigating and prosecuting legal entities that have

Criminal Justice Measures and International Cooperation	Recommended Action
	been created to facilitate money laundering operations. In this area as well, the application of confiscation measures should be pursued systematically. The authorities are encouraged to proceed with their plan to adopt a domestic act that would enable France to comply fully with UNSCR 1373.
III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels	All parties involved in the AML/CFT area should pursue their efforts in issuing guidelines to help financial institutions and other reporting parties in better implementing the AML/CFT requirements and in improving the detection and reporting of suspicious patterns of transactions. In particular, with regard to the professions and industries that are not adequately supervised yet, the French authorities should consider the establishment of an independent body that would be in charge of supervising the application of the AML/CFT and other legal obligations. TRACFIN as well as other authorities like the Commission Bancaire are already fulfilling a key role in this process and the Liaison Committee could be an ideal forum to work further on this. This should lead to an increase of the number and overall quality of reports to the FIU which still seems on the low side taking into account the economic and financial activity on the French market. In this regard, the establishment of an electronic reporting form should already lead to a better input into the AML/CFT chain. The self-evaluation of the reporting system would benefit from more detailed statistics that would give a better insight on the performance and characteristics of all the components of the AML/CFT efforts. TRACFIN may consider keeping more detailed figures on the nature of the reports it receives, the input from the different sectors, the type of transactions involved, the suspected criminal nature of the underlying facts, the reasons that motivate their transmission to the judicial authorities, nationality/country of residence of the individuals involved in the transmitted files, the amounts involved, the number of cases it is processing, etc. Although the law provides for the possibility to oppose execution of a transaction for 12 hours, this procedure has led to very minimal results. This is probably the result of insufficient awareness of this tool with the reporting parties themselves. More important volumes of suspicious funds could be

Criminal Justice Measures and International Cooperation	Recommended Action
	blocked, seized and eventually confiscated, for instance when clients announce the withdrawal of the funds from their bank account. Very few such transactions are being reported to TRACFIN. Another factor is the very short delay the FIU has at its disposal to collect complementary information in order to constitute a solid case for transmission to the judicial authorities. An extension of the delay of 12 hours should therefore be considered. TRACFIN is encouraged to continue to enhance its efforts in intensifying the query of foreign FIUs to collect additional intelligence in cases with an international dimension. With regard to deficiencies identified in the compliance with AML/CFT obligations in the DOM-TOM, TRACFIN appears to be aware that additional efforts in reaching out to these areas, in particular Guyana, and in monitoring them more closely are required on an urgent basis. TRACFIN, as well as the supervisory authorities, are encouraged to continue their efforts and be more proactive in issuing guidelines and domestic and international typologies to help financial institutions and other reporting parties in better implementing AML/CFT requirements and in improving the detection and reporting of suspicious patterns of transactions. Consideration should be given to a more active involvement of the judiciary in the Liaison Committee. In view of the increasing volume of STRs and the perceived need for additional outreach efforts by TRACFIN towards a number of sectors, the authorities may wish to consider whether the current level of staffing of TRACFIN is adequate.
IV—Law enforcement and prosecution authorities, powers and duties	The authorities should continue to monitor closely the challenges posed by serious economic crime and the financial means required at the different stages to combat it effectively. Further consideration appears to be warranted for the pooling of expertise in financial and terrorism issues in one specialized service, in particular for investigating FT related cases. In order for the reporting mechanism to produce

Criminal Justice Measures and International Cooperation	Recommended Action
	more significant results, there should be less reliance on the classical approach of making ML depend on the establishment of the underlying crime. A change of mentality and openness for new approaches is therefore warranted.
V—International cooperation	The authorities are encouraged to consider including details on the nature and results of MLA requests in statistics in order to obtain a better understanding of France's efforts in this area.
Legal and Institutional Framework for Financial Institutions	
I—General framework	Authorities should continue in their efforts to develop and implement detailed regulations in support of the underlying laws. They should also review options for the regulation and supervision of non-financial businesses and professions and designate competent supervisory authorities.
II—Customer identification	The authorities should introduce more detailed requirements though regulation or enforceable guidance as to what constitutes adequate customer acceptance policies and procedures and, in particular, what are the reasonable steps to be taken to identify beneficial owners of accounts and transactions. The authorities should review the ML/FT risks associated with capitalization bonds/contracts and take corrective measures, as appropriate. The authorities should proceed with plans to introduce legislation to comply fully with SR VII.
III—Ongoing monitoring of accounts and transactions	Authorities should review and broaden requirements to pay special attention to certain transactions. A requirement should be introduced for financial entities other than credit institutions and investment firms other than portfolio management firms to pay special attention to business relations and transactions with persons and legal entities in jurisdictions that do not have adequate systems in place to prevent and deter ML or FT
IV—Record keeping	
V—Suspicious transactions reporting	The scope of the suspicious transaction reporting requirement should be aligned with that of the predicate offences for money laundering. In view of the generally lower rates of reporting outside the banking sector, TRACFIN and

Criminal Justice Measures and International Cooperation	Recommended Action
	supervisory authorities should provide further guidance and ML typologies to reporting entities to improve detection and reporting of suspicious transactions, the quality of STRs and overall implementation of AML/CFT requirements. Authorities should also reach out to the DOM-TOM and monitor their compliance with AML/CFT obligations. The usefulness of the additional reporting requirements should be reviewed.
VI—Internal controls, compliance and audit	The regulatory framework for internal controls needs to be strengthened for all sectors other than credit institutions and investment firms other than portfolio management firms. Financial entities should also be required to take integrity into account when hiring employees, notably for sensitive positions. Other than for credit institutions and currency exchangers, a requirement should be established for financial entities to ensure that AML/CFT requirements are applied to branches and majority-owned subsidiaries located abroad. Authorities should further assist financial entities in developing employee training programs.
VII—Integrity standards	AML/CFT internal controls should be required to be taken into account in the licensing of financial entities. Authorities should consider introducing an explicit "fit and proper" test for currency exchangers
VIII—Enforcement powers and sanctions	The supervisory and enforcement efforts of the CCA, the AMF and with respect to La Poste need to be increased. The authorities should review and monitor the adequacy of enforcement efforts with respect to unlicensed informal funds transfer businesses and develop complementary public outreach /awareness raising activities.
IX—Co-operation between supervisors and other competent authorities	The supervisory resources of the CCA and the AMF should be increased and training of supervisory staff formalized. The responsibility for AML/CFT supervision and enforcement of La Poste's financial services should be shifted to the CB or at a minimum the

Criminal Justice Measures and International Cooperation	Recommended Action
	supervisory efforts and resources of the IGF should be increased. Where possible, supervisors should issue enforceable guidelines in support of the legal and regulatory framework

E. Authorities' Response to the Assessment

The French authorities wish to thank the members of the IMF assessment team for all the work that had to be done to produce this report. They welcome the assessment that France maintains a high level of compliance with the FATF 40+8 Recommendations. They are pleased with the fact that IMF recognized its regime has gone beyond the standard in many respects.

The authorities note that some of the suggestions in the FSAP for further improvements should be soon implemented, notably by the way of the future decree of transposition of the second European directive AML/CFT.

However, the French authorities do not share the IMF's opinion concerning its rating related to the FATF Special Recommendation III. The IMF team rated France "materially non compliant" with SR III, because France would be currently unable to comply fully with UN Security Council Resolution 1373 with regard to terrorists or terrorist groups from within European Union not linked to Al Qaida and the Talibans, as they are not covered by EU Council Regulations.

Indeed, France does not have in place of a genuine national framework of assets freezing and rely on the Sanctions Committee of the UN Security Council and decisions taken at the UE level. However, our legal framework related to financial relationships with foreign countries allows us, in certain cases, to freeze assets of persons who are not targeted by the Sanctions Committee of the UN Security Council. In a recent decision, the French administrative High Court confirmed the possibility for France to freeze European resident's assets on the base of our legal framework.[38]

Nevertheless, in order to secure and perfect our legal framework, the French government is currently elaborating a specific national framework which would allow freezing assets of all terrorists without any conditions of nationality or residence.

[38] Conseil d'Etat, 2 novembre 2004, SEMONDE