



FRANCE

FINANCIAL SECTOR ASSESSMENT PROGRAM

October 2019

TECHNICAL NOTE—ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM REGIME IN FRANCE

This Technical Note on Anti-Money Laundering and Combating the Financing of Terrorism Regime in France was prepared by a staff team of the International Monetary Fund as background documentation for the periodic consultation with the member country. It is based on the information available at the time it was completed on October 1, 2019.

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October 1, 2019

TECHNICAL NOTE

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM REGIME IN FRANCE (AML/CFT)

Prepared By
Legal Department

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

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Glossary

ACAM	<i>Autorité de Contrôle des Assurances et des Mutuelles</i>
ACPR	French Prudential Supervision and Resolution Authority
AMF	<i>Autorité des Marchés Financiers</i>
AML	Anti-Money Laundering
AMLD	Anti-Money Laundering Directive
BO	Beneficial Ownership
CDD	Customer Due Diligence
CFT	Combating the Financing of Terrorism
CNB	National Bar Council
CNS	National Sanction Committee
COLB	Anti-Money Laundering and Terrorist Financing Steering Committee
DGCCRF	Directorate General for Competition, Consumer Affairs and Fraud Control
DNFBP	Designated Non-Financial Businesses and Professions
ECB	European Central Bank
EU	European Union
FATF	Financial Action Task Force
FI	Financial Institution
FIU	Financial Intelligence Unit
FSAP	Financial Sector Assessment Program
IEDOM	Institute for Issuing Overseas Departments
JST	Joint Supervisory Team
ML	Money Laundering
MLA	Mutual Legal Assistance
NRA	National Risk Assessment
OCLCIFF	Central Office on Corruption and Financial and Tax Offenses
OCRGDF	Central Office for the Suppression of High Financial Delinquency
OST	Overseas Territories
PEP	Politically Exposed Person
POC	Proceeds of Crime
RBA	Risk-based Approach
SDAT	Counter-Terrorism Sub-Directorate
SSM	Single Supervisory Mechanism
STR	Suspicious Transaction Report
TF	Terrorist Financing

TFS	Targeted Financial Sanctions
TN	Technical Note
UNSCR	United Nations Security Council Resolution

EXECUTIVE SUMMARY

This technical note (TN) sets out the findings and recommendations made in the Financial Sector Assessment Program (FSAP) for France in the areas of anti-money laundering and combating the financing of terrorism (AML/CFT). The TN summarizes the findings of a targeted review of France's AML/CFT framework with respect to measures to prevent and combat terrorist financing (TF), risk-based supervision of banks, real estate agents, company service providers and lawyers, measures to tackle cross-border crimes, and fintech. It provides a factual update on the key measures taken by the authorities since France's previous assessment against the Financial Action Task Force (FATF) standard during 2010–2011. The TN is not, in any way, an evaluation or assessment of France's AML/CFT system. France is scheduled to undergo a comprehensive assessment against the prevailing standard during 2020–2021 by the FATF.

Since the last FSAP, France has made significant progress in aligning its AML/CFT framework with the revised FATF standard and the European AML Directives. France's first national money laundering (ML) and TF risks assessment is being finalized. The French legal framework has been updated to transpose the Fourth and Fifth European Anti-Money Laundering Directive (AMLD) including with respect to the risk-based preventive measures and PEPs and transparency of beneficial ownership (BO). France has also taken steps to strengthen the AML/CFT measures in its overseas territories (OSTs).

Combating Terrorist Financing

Following the 2015 attacks in Paris, emphasis on TF detection and prevention in France has increased. A specialized unit within the Paris prosecutor's office was created in 2015 to exclusively pursue TF cases. A high degree of cooperation exists between C1, police, and intelligence agencies. Financial intelligence from Tracfin is used extensively in TF investigations. Through the combined efforts of France's intelligence and law enforcement community, several networks funding terrorist activities have been identified and are currently under investigation. Moreover, France is one of few countries with an active system of domestic designations in addition to implementing United Nations designations. The private sector is also engaged in the fight against TF. Banks are using increasingly sophisticated systems to detect TF and report suspicions of radicalization to Tracfin, but may still need further guidance. To further France's efforts to combat TF and mitigate the risk of financial exclusion, authorities are recommended to explore ways to provide more systematic guidance on TF-related indicators and more timely feedback on entities' reporting patterns.

Risk-Based Supervision

Banks: The French Prudential Supervision and Resolution Authority (ACPR) is responsible for AML/CFT supervision of banks, including institutions that are part of the large financial groups subject to prudential supervision of the European Central Bank (ECB). It has taken a risk-based approach (RBA) to AML/CFT supervision and has recently been focused on TF risks. Although the ACPR assesses ML/TF risks of individual banks, in practice, its on-site inspections concentrate on large financial groups. These inspections benefit from close collaboration between the ACPR and the

ECB through joint supervisory teams (JSTs) and appear to be of high quality. One priority of the inspections has been group-level AML/CFT controls covering non-bank entities in the group and overseas subsidiaries/branches. For smaller banks that are rated high-risk and not part of a group, on-site inspections are far less frequent and generally not commensurate with their risk profiles. The ACPR has been using a range of sanctions to impact banks' behaviors but it tends to take a long time to issue penalties. The ACPR is recommended to enhance supervision of smaller banks rated as high-risk and explore ways to expedite the process of issuing penalties.

Real estate agents and company domiciliation agents: The Directorate General for Competition, Consumer Affairs and Fraud Control (DGCCRF) appears to have a basic understanding of ML/TF risks faced by the real estate agents and company domiciliation agents which needs to be deepened and enriched to allow effective risk-based supervision. DGCCRF's supervisory activities have been broadly targeting agents associated with certain factors deemed high-risk but only a very small portion of them have been covered. In recent years, sanctions have been imposed by the National Sanction Committee (CNS) for breaches of AML/CFT requirements but the recently introduced "injunction" powers to ensure that the deficiencies identified are remedied have not been used. The DGCCRF is recommended to conduct systematic risk assessment of these sectors. The authorities are also recommended to ensure the sanctions are dissuasive and proportionate to the nature of breaches. The DGCCRF should use its injunction powers to compel corrective measures and follow up in a timely manner. Commercial agents that may be hired by real estate agents to engage in real estate transactions are subject to AML/CFT requirements but are not monitored for compliance.

Lawyers: While the National Bar Council (CNB) understands to some extent the ML/TF risks faced by lawyers, this may not be case for local bar associations. Monitoring of lawyers' implementation of AML/CFT obligations and imposing sanctions remain responsibilities of local bar associations, but not much has been done in practice. The CNB is recommended to promote unified understanding of ML/TF risks among local bar associations including by issuing guidance on risks, developing consistent approaches to risk-based monitoring program, procedures and disciplinary actions in collaboration with local bar associations, and to collect and analyze information on monitoring and disciplinary actions taken by local bar associations.

Mobilizing the AML/CFT Framework to Tackle Cross-Border Risks

France is faced with risks associated with the cross-border movement of illicit flows, both stemming from crimes committed abroad being laundered in France as well as domestically generated criminal proceeds being laundered outside of France. Sectors that are particularly vulnerable to inflows of illicit proceeds include the high-end real estate market and luxury goods. In 2014, France created the position of the National Financial Prosecutor to focus on financial crimes, particularly those with an international dimension. Authorities appear to have a generally good overall understanding of risks associated with cross-border crimes, although it appears that some authorities are more aware of the possibility of flows leaving France than the threats posed by illicit inflows. Further, reporting patterns indicate that there is a low level of appreciation of cross-border risks and weak controls in highly vulnerable sectors. Authorities are recommended to promote stronger AML/CFT controls by enhancing supervision of lawyers and the real estate sector and

providing more guidance on cross-border money laundering threats. To help monitor the effectiveness of enforcement actions, authorities should also consider generating and maintaining more detailed statistics on ML investigations and prosecutions with an international dimension and requests for assistance in cross-border cases.

Fintech

Recent years saw rapid growth of the fintech sector in France. The AML/CFT framework has kept up with some of the developments in particular with regard to payment service providers, crowd-financing and electronic money institutions. The crypto sector is still marginal in scale but has the potential to grow. The authorities are well aware of the potential ML and in particular TF risks associated with crypto assets and have developed mechanisms to facilitate policy discussions. Legislation is currently being discussed to strengthen regulation and supervision of activities involving crypto assets for AML/CFT. The authorities are recommended to continue their efforts to align the legal framework with EU AMLD5 and the recently revised FATF standard in a collaborative and inclusive manner and ensure effective implementation.

Table 1. France: Main Recommendations for AML/CFT	
Recommendations	Timing*
<i>Preventing and Detecting TF</i>	
Tracfin to explore ways to further improve its guidance to obliged entities on TF-related indicators and to give more timely feedback on entities' reporting patterns.	Near term
The DGCCRF and the CNB to assess the implementation of CFT measures and targeted financial sanctions by entities under their purview as a part of their supervision.	Near term
<i>AML/CFT Supervision of Banks, Real Estate Agents, Lawyers, Company Service Providers</i>	
<i>Banks:</i>	
<ul style="list-style-type: none"> • ACPR to increase supervisory activities in smaller banks rated as high-risk and allocate additional resources for on-site inspections as needed. 	Immediate
<ul style="list-style-type: none"> • ACPR to explore ways to shorten the time needed for imposing penalties. 	Near term

Table 1. France: Main Recommendations for AML/CFT (Concluded)

Real estate agents and company domiciliation agents:	
<ul style="list-style-type: none"> • Informed by the NRA findings, DGCCRF to conduct systematic assessments of ML/TF risks of real estate agents and company domiciliation agents and review level of resources accordingly; 	Near term
<ul style="list-style-type: none"> • Ensure commercial agents, when engaging in real estate transactions, are monitored for compliance with AML/CFT requirements. To this effect, consideration may be given to holding real estate agents accountable for breaches of the commercial agents that they work with; 	Medium term
<ul style="list-style-type: none"> • CNS to ensure sanctions are dissuasive and proportionate; DGCCRF to use its injunction powers to direct the agents to take remedial measures and follow up in a timely manner. 	Near term
Lawyers:	
<ul style="list-style-type: none"> • Informed by the NRA, CNB to promote unified understanding of ML/TF risks among local bar associations including by issuing guidance. 	Near term
<ul style="list-style-type: none"> • CNB and local bar associations to develop consistent approaches to risk-based monitoring program, procedures and disciplinary actions. 	Medium term
<ul style="list-style-type: none"> • CNB to collect and analyze information on monitoring and disciplinary actions taken by local bar associations. 	Medium term
Mobilizing the AML/CFT framework tackle cross-border crimes	
Promote better understanding of risks associated with cross-border crimes and mitigation of such risks among DNFBPs by providing more guidance on typologies, risk assessment and risk-based mitigating measures.	Near term
Tracfin and law enforcement to generate and maintain more granular statistics on cross-border cases.	Near term
Fintech	
To continue their efforts to align the legal framework with EU AMLD5 and the recently revised FATF standard in a collaborative and inclusive manner and ensure effective implementation.	Near term
**"Near term" is within six months; "medium term" is within six to 18 months.	

INTRODUCTION¹

1. This TN provides a targeted review of France’s AML/CFT system in the context of the Financial Sector Assessment Program FSAP.² This review is not, in any way, an assessment or evaluation of the French AML/CFT system. A comprehensive assessment against the current FATF standard will be available in 2021 (i.e., after the completion of this FSAP) when the FATF is expected to conclude its mutual evaluation of France’s AML/CFT system.

2. Based on what appear to be areas of higher ML/TF risks, and in light of changes to the FATF standard since France was last assessed, this note seeks to provide an update on the following:

- **Implementation of key changes in the revised FATF standard** — an update on the authorities’ efforts to implement some of the new or strengthened elements of the FATF standard as revised in 2012, in particular with respect to the assessment and understanding of ML/TF risks, as well as the implementation of a risk-based approach to AML/CFT, customer due diligence (CDD) measures related to politically-exposed persons (PEPs), transparency of BO of legal persons and arrangements, and progress made to strengthen AML/CFT measures in the French overseas territories (OSTs);
- **Preventing and detecting TF** — the recent steps taken to strengthen the fight against TF, including to better understand the TF risks and typologies, ensure the effectiveness of targeted financial sanctions, make use of financial intelligence to support investigations into TF activities, leverage on international cooperation, and sanction terrorist financiers;
- **Implementing risk-based AML/CFT supervision for banks, real estate agents, lawyers and trust and company service providers** — the French authorities’ efforts to implement a risk-based supervisory framework and promote the effective implementation of AML/CFT obligations in these sectors;
- **Mobilizing the AML/CFT framework to prevent, detect and sanction cross-border crimes** — the steps taken to strengthen the legislative and regulatory frameworks to prevent and facilitate the detection of cross-border crimes highlighted by the authorities such as tax evasion,

¹ The authors are Ke Chen, Financial Sector Expert, and Kathleen Kao, Counsel (both IMF). The note was prepared the context of the France 2019 FSAP led by Udaibir Das. It contains technical analysis and detailed information underpinning the FSAP’s findings and recommendations on AML/CFT issues. The note has benefited from feedback and suggestions from the French authorities.

² Under FSAP policy, every FSAP should incorporate timely and accurate input on AML/CFT issues. Where possible, this input should be based on a comprehensive AML/CFT assessment conducted against the prevailing standard. In instances where a comprehensive assessment against the prevailing standard is not available at the time of the FSAP, (as is the case with France) staff may derive key findings on the basis of other sources of information, including already available information or information obtained in the context of the FSAP. See the Acting Chair’s Summing Up—Review of the Fund’s Strategy on Anti-Money Laundering and Combating the Financing of Terrorism—Executive Board Meeting 14/22, March 12, 2014 (<http://www.imf.org/external/np/sec/pr/2014/pr14167.htm>).

corruption, and organized crime, including efforts to ensure an effective use of financial intelligence by law enforcement, seek international cooperation, and make use of confiscation mechanisms; and,

- **FinTech** — the initiatives taken by France to foster responsible innovation and mitigate the potential ML/TF risks related to Fintech products and services.

3. Staff’s analysis was based on a range of materials and benefited from discussions with the authorities and some financial institutions (FIs). Staff reviewed available information, including information submitted by France to the FATF on progress since the last assessment, answers provided by the authorities to a questionnaire submitted ahead of the FSAP, and a desk review of available legislation and information gathered before and during the on-site visit in December 2018. A list of the main agencies with which staff met is in Annex I.

PROGRESS SINCE THE LAST ASSESSMENT

A. Background

4. In its last assessment by the FATF, France’s AML/CFT framework was found to be generally satisfactory, although some important deficiencies were identified. Notably, the Mutual Evaluation Report (MER)³, published in 2012, identified deficiencies in France’s legal framework relating to confiscation, preventive measures for politically exposed persons (PEPs), AML/CFT obligations and controls of certain designated non-financial businesses and professionals (DNFBPs), the AML/CFT supervisory regime applicable to such DNFBPs, and targeted financial sanctions (TFS). In total, France was rated Compliant with 9 of the FATF 2003 Recommendations, Largely Compliant with 29 Recommendations, and Partially Compliant with 10 Recommendations, and Non-Compliant with 1 Recommendation.

5. At the time of its 2013 follow-up report, France had taken steps to address some of the issues flagged in the MER. Notably, France strengthened its existing confiscation framework with a new law in 2012 clarifying the system for criminal confiscation and seizures and ensuring that confiscation was available for all offenses. To bolster France’s confiscation efforts, the Agency for Management and Recovery of Criminal Assets became operational in February 2011, and had increased criminal seizures, including of legal persons, by 2012. Steps were also taken in relation to PEPs and the sanction regime for DNFBPs.

6. France has yet to be assessed against the revised FATF standard and assessment methodology. The FATF revised the international standard in 2012 and the assessment methodology in 2013, which notably place a greater emphasis on a risk-based approach to AML/CFT and increasing emphasis on the effectiveness of countries’ AML/CFT regimes. The standard as revised in 2012 now requires that countries identify, assess, and understand their risks of ML and

³ The MER (French) can be accessed at: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20France%20ful.pdf>.

TF. Further, there is an increased focus on the transparency of legal persons and arrangements. France will be assessed under the revised standard and methodology during 2020–2021.

B. Identifying and Understanding ML/TF Risks

7. France’s first national ML/TF risk assessment (NRA) is being finalized. Coordinated by the Anti-Money Laundering and Terrorist Financing Steering Committee (COLB), the exercise started in May 2016 and involves various stakeholders including the private sector. The analyses were conducted by ten working groups, with four on threats and six on vulnerabilities. A questionnaire was disseminated to reporting entities to obtain their perceptions of risks. In addition, the NRA draws from a range of sources of information including, *inter alia*, suspicious transaction reports (STRs), law enforcement information, judicial information, criminal threats assessment conducted by French law enforcement authorities, and relevant regional risk assessment at the European Union (EU) level. The authorities expect to finalize and publish the NRA in 2019, which will be followed by an action plan to mitigate the risks identified.

8. The NRA places an emphasis on TF. The risks of using the French financial system to finance terrorist activities conducted in France or abroad are considered by the authorities to be high. Preliminary findings suggest that these activities are often facilitated using microfinance, associations, networks of funds collectors, non-bank payment service providers, and electronic money (e-money). Preliminary findings also point to main ML threats from drug trafficking, large-scale financial fraud, tax and corporate fraud, and offenses involving breach of integrity (such as corruption), and to some activities that are particularly vulnerable to these threats, namely, *inter alia*, cash-based transactions, crowdfunding activities, e-money transactions, as well as the fintech, luxury and art sectors.

C. Risk-Based Preventive Measures Including for PEPs

9. The French legal framework has been updated to transpose the Fourth European AMLD⁴ including with respect to the risk-based preventive measures. Amendments to the French Monetary and Financial Code that took effect in December 2016 and October 2018 now obligate FIs and designated non-financial businesses and professions (DNFBPs) covered under the French regime⁵ to identify and assess their ML/TF risks⁶ and apply enhanced controls when the risks are higher⁷. In addition, when dealing with PEPs (including when PEPs are beneficial owners), reporting entities are required to ensure that the decision to establish the business relationship is made by a member of the entity’s executive body or an individual authorized by it, and to obtain

⁴ Order No. 2016-1635 of 1 December 2016 and Decree No. 2018-284 of 18 April 2018 reinforcing the French anti-money laundering and terrorist financing system.

⁵ See para 43 in Executive Summary (English) of 2012 MER.

⁶ Art. L-561-4-1, Monetary and Financial Code as amended.

⁷ Art. L-561-10-1, Monetary and Financial Code as amended.

information on the origin of assets and funds.⁸ The definition of PEPs extends to senior officials of France, foreign countries or international organizations as well as their family members and close associates.⁹ These requirements appear to be in line with the revised FATF standard.

D. Transparency of Beneficial Ownership

10. To implement Article 30 of the Fourth European AMLD, France established a central register of beneficial owners, the legal requirements for which took effect as of April 1, 2018¹⁰. The register requires legal persons to identify and submit information on their BOs and indicate the modalities of control exercised. The BO register is accessible to AML/CFT obliged professionals responsible for carrying out CDD, regulatory authorities, and other competent authorities in line with the international standard, and, with judicial authorization, persons able to demonstrate a legitimate interest.

11. France has already begun transposing the Fifth European AMLD, including in relation to transparency of BO information. Measures to strengthen existing BO registers are underway. France intends to introduce an obligation for BOs to provide all necessary information to companies required to obtain and maintain such information. Further, France is working on developing a mechanism to identify discrepancies between the information maintained in the register and information in the possession of other authorities. In the context of transposing the Fifth European AMLD, France will also strengthen its national register of *fiducies* (a civil arrangement akin to trusts) by expanding the list of persons who can have access to the *fiducies register* (notably, legal and natural persons having a legitimate interest). Finally, France aims to make information in the BO register of companies available to the general public by 2020 in line with the Fifth AMLD.

E. AML/CFT Measures in Overseas Territories

12. Steps have been taken to strengthen the implementation of AML/CFT measures in the French overseas territories (OSTs)¹¹ since the 2012 MER. Awareness raising events were held by Tracfin and financial supervisors in various OSTs to sensitize FIs to their AML/CFT obligations. The ACPR increased its supervisory activities in OSTs including through advisors seconded to the Institutes for Issuing Overseas Departments (IEDOM/IEOM) to conduct on-site inspections as well as light-touch on-site visits. Between 2012 and 2016, on-site inspections, on-site visits, and supervisory meetings were conducted covering FIs under the ACPR's oversight in all OSTs (see Table 2). On-site visits encompass in-depth interviews with management and all the departments involved in

⁸ Art. R-561-20-2, Monetary and Financial Code as amended.

⁹ Art. R-561-18, Monetary and Financial Code as amended.

¹⁰ Article 30 of the Directive was transposed into French law by article 8 of the December 1, 2016 order strengthening the French anti-money laundering/terrorist financing (AML/TF) framework.

¹¹ These include (i) overseas regions: Guadeloupe (Caribbean), Martinique (Caribbean), French Guyana (South America), Mayotte (Indian Ocean), Réunion (Indian Ocean); and (ii) overseas collectives: Saint-Barthélemy (Caribbean), Saint-Martin (Caribbean), Saint Pierre and Miquelon (North America), Wallis and Futuna (Pacific), and French Polynesia (Pacific).

AML/CFT, including the compliance unit of the FI, and could also include sample testing. The target institutions of these activities are determined based on discussions between ACPR advisors and the ACPR's unit at the headquarter responsible for off-site monitoring. Some on-site inspections have triggered enforcement actions including orders to discontinue certain operations and corrective measures. Since 2012, the *Autorité des Marchés Financiers* (AMF), which is responsible for AML/CFT supervision of investment firms, has delegated its AML/CFT inspections powers in OSTs to the Institute for Issuing Overseas Departments (IEDOM /IEOM). No information is available at the national level on the oversight of DNFBPs in OSTs. Between 2012 and 2018, Tracfin received a total of 12,800 STRs from reporting entities in OSTs, 89% of which are from banks, payment institutions and money changers.

Table 2. ACPR's AML/CFT On-site Inspections in OSTs: FIs Covered (2012–2016)

FIs	Total ¹	Number of FIs Inspected	Number of FIs not Inspected but Visited
Credit Institutions	48	15	27
Life Insurance Institutions	8	2	3
Intermediaries	376	24	4

¹Only those headquartered in OSTs as of 2016.

COMBATING TF

A. Understanding of TF Risks and Policy Priorities

13. Following recent terrorist attacks on French soil, combating TF has become a heightened priority for France. After the 2015 Paris terrorist attacks, France adopted a strategy to combat TF focusing on the three main pillars of (i) reducing anonymity in the economy, (ii) increasing vigilance and detection, and (iii) strengthening the capacity to freeze terrorist assets. The strategy was supplemented by the action plan against radicalization and terrorism of May 2016 and the anti-terrorism action plan of July 2018.

14. French authorities have a well-developed understanding of emerging and evolving TF risks. French authorities assess the threat of terrorist activity in France to be very high. In a 2015 report, Tracfin identified the terrorist threat (and its financing) as one of the five major threats to the French economy.¹² Analysis of TF via the French financial system highlights the use of the following mechanisms: (i) microfinance; (ii) humanitarian, cultural, or religious associations; (iii) networks of funds collectors operating in the form of branched microfinance networks; (iv) the use of commercial companies to collect funds; and (v) modes of financing that afford anonymity for contributors (e.g., online payment services, reloadable prepaid cash cards, participatory financing)

¹² Money Laundering and Terrorist Financing Risk Trends and Analysis, Tracfin (2015).

are also exploited for terrorist funding purposes. Law enforcement and regulatory authorities share a common understanding of TF risks.

B. Update of Legal and Regulatory Framework

15. France's regulatory framework was strengthened to mitigate risks associated with anonymity of cash payments and other payment methods. E-money media able to be loaded with cash were deemed particularly vulnerable to the risk of TF and specific regulations addressing these risks were adopted¹³ in the context of the March 2015 ministerial action plan to combat terrorist financing. The Monetary and Financial Code has been amended to lower the ceilings on certain types of cash payments and e-money transfers and payments and introduce additional due diligence and reporting requirements.¹⁴

16. Delays in implementation of the European framework for the freezing of terrorist assets have since been addressed through national legislation. France implements designations pursuant to United Nations Security Council Resolution 1373 (UNSCR 1373) relating to the freezing and confiscation of terrorist assets through both national and European mechanisms. While waiting for the applicable European regulation, France will apply domestic law¹⁵ to freeze the assets of persons designated by the United Nations Sanctions Committee. At the time of the MER, French legislation did not clearly stipulate that assets may be frozen where a person was acting on behalf of or at the direction of a designated party. Since the MER, in 2016, new legal provisions¹⁶ were

¹³ See https://www.economie.gouv.fr/files/luttecontrefinancementterrorisme_tableau_synthetiquedef.pdf.

¹⁴ The ceiling on cash payments in connection with commercial transactions has been reduced to EUR 1,000 for French residents and persons acting for the purposes of their profession and EUR 10,000 for non-residents and persons acting for the purposes of their profession. Existing electronic money regulations have been revised to impose a ceiling of EUR 3,000 for French residents and persons acting for the purposes of their profession and EUR 10,000 for foreign residents and persons that do not act for the purposes of their profession on e-money payments where payment is made to an entity not subject to ML/TF obligations and EUR 15,000 where cash or e-money payment is made to an AML/CFT obliged entity. ML/TF due diligence measures are required if e-money is used other than for the purchase of consumer goods or services, if the amount stored or reloadable on electronic media exceeds EUR 250, or if the media can be loaded with anonymous e-money the amount stored exceeds EUR 250 within 30 days and provided that payments are made on the French territory. Due diligence measures are also required for transactions of any amount if the e-money media in question is able to be loaded with cash (with the exception of e-money issued and usable within a limited network of persons offering consumer goods and services) or with anonymous e-money. Moreover, due diligence measures are required if withdrawal and reimbursement operations of e-money exceed EUR 100. Finally, the maximum value that can be stored on prepaid cards (physical medium) has been capped at EUR 10,000 with a monthly limit of EUR 1,000 on loading in cash or e-money, refunds, or withdrawals.

¹⁵ As a "gap filler" during the time the European Council needs to review a UN designation and issue the necessary EU regulation, France applies a temporary implementing order, which is adopted for the French territory pursuant to Article L. 562-3 of the Monetary and Financial Code. The same regulation that acts as the temporary mechanism for France applies permanently to all overseas territories as they are not subject to EU regulations. For a more detailed description of this mechanism, please see pp.115–137 of the MER.

¹⁶ By Order No. 2016-1575 of November 24, 2016 reforming the asset freezing system, Order No. 2016-1635 of December 1, 2016, strengthening the French ML/TF framework, and by Decree No. 2018-264 of April 9, 2018. See also, article L.562-2 of the French Monetary and Financial Code.

introduced to allow the Minister of Economy and the Minister of the Interior to freeze assets owned, held or controlled by entities owned or controlled by persons attempting to commit terrorist acts or acting on behalf of these persons.

17. France has also strengthened the powers of the Financial Intelligence Unit (Tracfin).

Order No. 2016-1635 of December 1, 2016 further reinforced Tracfin's role in national counter-terrorism efforts, by, *inter alia*, expanding the list of agencies to which Tracfin alerts are sent, increasing Tracfin's ability to request additional information from reporting entities, extending the time period for blocking transactions, and authorizing Tracfin to encourage covered entities to perform due diligence measures. Since June 2016¹⁷, Tracfin is also able to further support CFT detection and prevention by selectively communicating operational information to FIs. Tracfin is thus empowered to provide to FIs, at its discretion and on a bilateral basis, confidential information in its possession relating to a specific individual, account, or transaction, or to any schemes or typologies of which Tracfin is aware. Tracfin may also encourage FIs to take specific measures (such as enhanced due diligence) related to the information provided.

C. Prevention and Detection of TF Activities

18. Behavioral signals are used to detect potential instances of radicalization and TF. Due to the nature of TF, often involving micropayments that are difficult to isolate from legitimate transactions and customers presenting no obvious risk, traditional ML risk profiles and indicators have not proven to be effective in TF detection and prevention. As a result, Tracfin crosses strictly financial elements with behavioral criteria. Tracfin's 2016 Report on Trends and Analyses highlights the importance of detecting "weak signals" (individual characteristics that taken alone may not be indicative of any suspicion but taken in the composite could point towards radicalization), with emphasis placed on small transactions. Tracfin has also developed (in collaboration with the ACPR) an ever-evolving set of risk indicators of radicalization in that field.

19. French banks are employing increasingly sophisticated tools, including machine learning, to carry out their due diligence obligations with respect to TF. French banks appear to be aware of their CFT obligations. Banks report feeling tremendous pressure to catch instances of TF and are channeling increasing resources into their CFT efforts. The trend appears to be towards using artificial intelligence to examine patterns of customer behavior. Algorithms are used to detect weak signals, which are reported to Tracfin. Some banks are also developing their own sets of indicators based on patterns discerned in their STRs.

20. Suspicious transaction reports (STRs) from banks related to TF are reportedly of good quality and are increasing as banks improve their understanding of TF risks. Tracfin and the ACPR agree that as banks continue to fine-tune their understanding of TF, their reporting has improved. A reasonable percentage of STRs are leading to disseminations to law enforcement. STRs related to TF submitted by banks have steadily increased in the last three years (see Table 3 below).

¹⁷ With the adoption of « loi n° 2016-731 du 3 juin 2016 renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l'efficacité et les garanties de la procédure pénale.

Tracfin has also received TF-related STRs from non-bank reporting entities, including e-money providers, payment service providers, and notaries.

Table 3. TF-related STRs Received by Tracfin

2015	2016	2017
801	1,177	1,379

21. Outreach to the private sector is considered critical to authorities' CFT efforts. Tracfin and the ACPR work together to provide guidance on CFT controls to the French financial sector. Tracfin and the ACPR have jointly prepared and disseminated typologies on TF (particularly those involving new technologies). In November 2015, the ACPR and Tracfin jointly published guidelines for reporting entities on STRs, which included a section on reporting suspicions related to TF. These guidelines have been revised and updated in November 2018. The ACPR also issued guidelines on the implementation of the asset freezing mechanism in 2016, reminding reporting entities of the broad scope of asset freezes and that TFS measures are not to be carried out on a risk-based approach, which is being updated.

22. Combating TF is one of the ACPR's supervisory priorities, but neither the DGCCRF nor the CNB has included TF or TFS-related obligations in their supervisory programs. The ACPR and Tracfin coordinate closely through an assigned liaison officer. An alert received from Tracfin may trigger an immediate inspection. The ACPR annual questionnaires (see Chapter III) were also modified to include new questions on asset freezing measures. Weaknesses that have been detected in on-site inspections include the completeness and quality of information contained in the IT tools and the frequency with which some tools were updating the list of designated individuals and entities, although no systematic problems have been identified across the industry. An inspection arising from a Tracfin alert in 2017 led to the imposition of the first disciplinary sanction (of EUR 8 million) for failures in a bank's CDD, and reporting systems relating to TF. During the last two years, the ACPR sanctions commission established violations with respect to TFS controls in eight disciplinary proceedings. These include a bank fined EUR 50 million in 2018 for failures including with respect to the systems for detection of persons subject to TFS. AML/CFT supervisors of DNFBPs, on the other hand, have not checked for compliance with CFT obligations.

23. Finally, France has been effectively implementing its system of TFS, including through a system of domestic designations. In December 2017, France established a task force on asset freezing to fight terrorism (GABAT), which is comprised of representatives of all agencies involved in combating TF (intelligence, police, and the ministries of Justice, the Interior, Foreign Affairs, and Finance). In 2018, France's asset freezing mechanism was used 187 times. As of March 2019, 118 freezing orders are in force and 35 are being processed.

24. Tracfin is empowered to provide directed operational information to banks where it deems necessary and has been using a range of mechanisms to provide guidance and feedback to reporting entities on TF activities. Tracfin uses the alert mechanism created by Ordinance ° 2016-1635 very sparingly, due partly to the sensitivity of the information and partly to concerns that this measure could supplant a bank's own due diligence if overused. Tracfin exercised

this power for the first time in 2018 and has used it only in a handful of instances since then under certain circumstances (such as where an investigation exists into an individual willing to join a terrorist organization or facilitate others to join terrorist networks). Tracfin has in place mechanisms to provide feedback on TF-related STRs to reporting entities, in particular, banks and payment institutions, which are considered the most exposed. These mechanisms provide high-level retrospective feedback during annual bilateral meetings with individual reporting entities as well as banking association, specific feedback to individual reporting entities when an STR contributed to a dissemination and sector-level guidance through annual sector-wide meetings (starting from 2017) and its typology annual reports. However, banks do not appear to be receiving feedback on their own independently developed TF indicators and not all banks have received Tracfin's comprehensive TF-related indicators.

25. More systematic guidance on TF-related indicators and timely feedback may help banks' detection of potential of TF and to reduce risks of financial exclusion. Although an extremely high percentage of the French population is currently banked (due to the right to a basic bank account contained in the French Monetary and Financial Code¹⁸), overly stringent TF risk avoidance could potentially result in the financial marginalization of some parts of the populace, a risk that French banks recognize. With respect to TF, French banks are understandably very risk averse and may be applying overly strict risk parameters. At least one French bank has a policy of closing an account within six months upon filing an STR for any reason. The effect of such actions by banks over time may result in a larger segment of the population turning to less regulated financial service providers or even the informal sector. The impact of increased TF vigilance in light of the right to a bank account remains to be seen. More systematic guidance on the TF-related indicators or timely updates on current typologies or schemas from Tracfin to help reporting entities adjust their risk parameters accordingly could help mitigate such risks. Ways to strengthen existing mechanisms to enable more timely feedback from Tracfin to reporting entities in between annual bilateral meetings could be explored.

D. Use of Financial Intelligence

26. Tracfin monitors the TF threats facing France through a synthesis of information received domestically and from its international network. In 2015, a special TF division in Tracfin became fully operational. This unit continuously receives information on terrorist threats and TF activities from domestic and international sources. Domestically, Tracfin receives STRs from reporting entities and information through a network of bilateral and multilateral relationships with other French agencies and public administration (e.g., Directorate General for Domestic Security, Directorate for Customs Intelligence and Investigations). Internationally, Tracfin has close relations with European and other foreign FIUs and draws from its participation in international fora to further its understanding of emerging terrorist and TF risks but no statistics were made available on

¹⁸ Articles L.312-1, D.312-5, & D.312-6.

outbound requests relating to TF or requests for information received from foreign counterparts on TF.

27. Financial intelligence has been successfully used to identify instances of TF and support investigative efforts. Tracfin can make two types of disseminations (or referrals): judicial and non-judicial. Judicial disseminations are in the form of a case file, which entails a comprehensive analysis substantiating the likely offense and is transmitted to the public prosecutor’s office, which ultimately decides on the appropriate charge. Tracfin can also spontaneously disseminate “notes” to law enforcement directly, where an inquiry or investigation is already open or ongoing and Tracfin has received a piece of relevant information that may further the inquiry or investigation. Law enforcement bodies agree that disseminations by Tracfin are of very good quality. Over the past three years, in conjunction with the increase in STRs, Tracfin has steadily increased disseminations relating to TF (see Table 4 below). Procedurally, all judicial disseminations issued by Tracfin must result in the opening of a preliminary investigation or contribute to an existing investigation. As such, the increase in disseminations by Tracfin has had a direct impact on the numbers of TF investigations opened (see Table 5 below) – keeping in mind that TF investigations focus on the terrorist cell and not on the individuals, so multiple Tracfin disseminations may feed into a single investigation. Financial intelligence appears to be used extensively in TF investigations. However, France does not keep statistics on the number of preliminary investigations that ultimately lead to a judicial proceeding. Of the 64 new investigations into TF opened in the last three years, 25 were initiated by Tracfin judicial disseminations.

Table 4. Tracfin Disseminations on TF 2015–2017

Year	Judicial referrals	Non-judicial referrals
2015	11	168
2016	44	352
2017	226	459

Table 5. Preliminary TF Investigations Opened on the Basis of Tracfin Alerts

2015	2016	2017
1	7	13

E. TF Investigations, Prosecutions, and Convictions

28. France’s ability to combat TF is aided by specialized units across agencies. France has a special department within the Paris prosecutor’s office to have exclusive competence over terrorism and TF offenses. Since 2015, Section C1 has been staffed with 15 prosecutors who exclusively handle terrorism and TF cases. Section C1 works with the Counter-Terrorism Sub-Directorate (SDAT) of the Judicial Police to investigate terrorism and TF. The SDAT is the primary law enforcement body responsible for terrorism and TF cases and currently has 180 investigators. The SDAT also works closely with the Central Office for the Suppression of High Financial Delinquency (OCRGDF), particularly on cases with more complex financial issues.

29. Investigations into TF are integral to national counter-terrorism efforts. Cases may originate as either terrorism or TF and lead to the other. Section C1 reports that in a number of cases, investigations into the financing structure has yielded successful leads into the underlying terrorist activity. Tracfin and law enforcement bodies are involved in task forces (such as the Counter-Terrorism Unit) dedicated to fighting terrorism. Moreover, combating the financing of terrorist activities was listed as one of the priority actions in the 2018 National Counter Terrorism Strategy. As part of larger counter-terrorism efforts, Tracfin also disseminates information to other intelligence agencies, such as the Directorate General for Domestic Security (DGSI), the Military Intelligence Directorate, and the Defense Intelligence and Security Directorate.

30. France actively investigates and prosecutes persons who finance terrorism in a manner commensurate with its risk profile. In the last three years (2015–2018), 64 new investigations (including judicial inquiries) into TF were initiated. At present, Section C1 has approximately 140 cases of TF. Although France can prosecute freestanding cases of TF not connected to a charge of terrorism, the offence of conspiracy to commit terrorism is almost always charged along with TF (in almost 90% of cases). Generally, standalone TF cases are those involving support to a foreign terrorist fighter without ideological support (e.g., a parent funding a child). If the financier provided either ideological or material support (e.g., where someone sends funds directly to a terrorist organization or provides a vehicle that is used as the mode of carrying out the attack), then he/she also will be charged with the offence of conspiracy to commit terrorism. SDAT currently has approximately 30 cases of TF actively under investigation. Investigations into TF can be initiated by information received from Tracfin or stem from investigations into the terrorist activity. Similarly, investigations into TF have also generated evidence to support opening investigations into the underlying terrorist activity.

31. France has successfully obtained convictions for TF and has imposed dissuasive, proportionate, and effective sanctions. Twenty-four convictions were handed down in 2015, 2 in 2016, and 18 in 2017. In 11 of the cases between 2015–2017, TF¹⁹ was the principle offense. To date, all convictions have been accompanied with a prison sentence. Generally, these cases of TF were coupled with an offence of conspiracy to commit terrorism. The average prison sentence was 3.7 years. This represents a decrease from imprisonment of 13–20 years in older cases dating back to 2012 and earlier. According to the authorities, the decrease reflects changes in the modalities of financing terrorist activity. Cases of financing schemes to support Al-Qaeda or domestic terrorist activities in the Basque region involved significantly larger amounts of funds (in the tens of thousands of euros). Accordingly, these cases were accompanied with a charge of the crime of conspiracy to commit terrorism, which is much more serious than the *offence* of conspiracy to commit terrorism²⁰. More recent typologies involving ISIS involve micro-financing and individuals

¹⁹ All convictions for TF thus far have been for financing of a terrorist organization. There have yet been no criminal cases for financing of a terrorist act.

²⁰ The French penal system distinguishes between an “offence” and a “crime”. The category of “crime” is for the most serious category of crime, (e.g., murder and most other felonies). Conspiracy to commit terrorism can be either an offence or a crime. As an offence, conspiracy to commit terrorism carries with a term of imprisonment of up to ten years. As a crime, it carries a term of imprisonment of up to 30 years.

with little financial capacity either self-funding attacks or providing financial support to foreign terrorist fighters (usually relatives) abroad, resulting in lower sentences. For example, an individual who was found guilty for sending EUR 480 to a fighter in a war zone was sentenced to three years of imprisonment. By comparison, an individual who was convicted for providing logistical support to a terrorist organization (material support) by disbursing approximately EUR 6,000 through charities was sentenced with 6 years of imprisonment.

F. Recommendations

32. The authorities should consider the following recommendations in furtherance of their efforts to combat TF:

- Tracfin could explore ways to provide banks more systematic guidance on TF indicators, and more timely feedback on their reporting patterns.
- The DGCCRF and the CNB should assess the implementation of CFT measures and targeted financial sanctions by entities under their purview as a part of their supervision.

THE SUPERVISION OF BANKS, REAL ESTATE AGENTS, LAWYERS, AND COMPANY SERVICE PROVIDERS

A. Banks

33. The ACPR is responsible for AML/CFT supervision of banks, including institutions that are part of the large financial groups subject to prudential supervision of the ECB. By virtue of *Ordonnance* 2010-76 of 21 January 2010, Banking Commission (*Commission Bancaire*) and the Insurance Control Authority (*Autorité de contrôle des assurances et des mutuelles* — ACAM) were merged into the new ACPR. Effective March 9, 2010, the ACPR took over the responsibility of AML/CFT supervision of FIs previously under the Banking Commission and the ACAM. These institutions include banks (including banks licensed in France and branches of European Economic Area institutions operating under the freedom of establishment), insurance firms, financing companies, payment institutions, electronic money (“E-money”) institutions and money changers. Significant institutions are supervised by the ECB under the Single Supervisory Mechanism (SSM) for prudential purposes, but their AML/CFT supervision remains the ACPR’s responsibility. As of December 2018, twelve French financial groups are covered by the SSM.²¹

34. **The ACPR has taken an RBA to AML/CFT supervision and has recently been focusing on TF risks.** The ACPR informed the EBA in June 2017 that it complies with the latter’s guidelines on the risk-based approach to AML/CFT supervision. At the sectorial level, although the ACPR still deems banks generally to be relatively high-risk, the emerging risks (especially TF-related) stemming

²¹ See: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.list_of_supervised_entities_201812.en.pdf.

from payment institutions and e-money service providers are gaining greater attention in recent years. The ACPR has also stepped up supervision of insurance institutions the AML/CFT controls of which are generally weaker than banks. In terms of areas of focus, TF has been a priority across the sectors since 2016. Within the ACPR two units are charged with off-site analysis and on-site inspections respectively covering both prudential and AML/CFT aspects. In 2017, nearly 80 full-time equivalents were devoted to AML/CFT supervision and the ACPR is continuing its recruitment efforts.

35. At the entity level, the ACPR’s risk-based supervision of banks starts from assessments of individual banks’ ML/TF risks. Banks’ annual return of a questionnaire is a major source of information that feeds into the ACPR’s risk assessment model. The questionnaire contains detailed questions on controls based on the legal requirements. These are updated as needed to reflect changes in the regulatory framework. On the inherent risks, the questionnaire requests information on the result of the bank’s own risk assessment. It also requests information on PEPs, certain high-risk products or services (e.g., wealth management, correspondent banking relationships). In general, the information collected on inherent risks appears less granular than that solicited for controls. Apart from returns of the questionnaire, the ACPR’s risk assessment also draws information from an annual report on internal controls that each supervised institution as well as each group at the group level has to submit²², prudential supervision, feedback from Tracfin and other sources (e.g., public news sources). As a result of the risk assessment, banks are assigned one of the four risk ratings: very high risk, high risk, moderate risk and low risk. Table 6 below illustrates the number of banks in each risk-category as of 2017. The “very high-risk” is only used for banks identified with the most serious problems that need to be remedied urgently. Beginning in the fall of 2018, the analyses have been facilitated by a new tool (SABRE) which enables more cross-cutting and comparative analyses.

	Very High Risk	High Risk	Moderate Risk	Low Risk
Banks	4	39	136	95

36. The ACPR’s on-site inspections concentrate on large financial groups and appear to be of high quality. AML/CFT inspections are carried out by the on-site unit which covers both prudential (of FIs not subject to ECB’s supervision) and AML/CFT aspects separately (for FIs subject to ECB’s supervision) or in parallel. For large groups that are subject to ECB’s prudential supervision, there has been close collaboration between the ACPR and the ECB through JSTs. Typically, ACPR staff that are part of the JST for a group will also participate in AML/CFT off-site analysis of the group. There are also regular meetings between the ACPR and the ECB to exchange information and findings including on AML/CFT about the groups, facilitated by an agreement signed by the ACPR and ECB in accordance with Article 57a of the 5th EU AMLD. The main French banking groups are

²² Up to 2018, this annual report, based on the [Ministerial Order of 3 November 2018](#) on supervised institutions’ internal controls, covered both prudential and AML/CFT issues. Starting in 2019, the ACPR is now receiving a dedicated annual report on AML/CFT-related internal controls, the content of which was considerably more detailed. In particular, they contain more information on the ML-TF risks and resources dedicated to AML/CFT purposes.

inspected by ACPR for AML/CFT almost every year with different themes often tied to specific lines of products such as wealth management deemed high-risk. The inspections normally last for several months and appear to be thorough and of high quality. During the inspections, special attention is paid to issues previously identified or areas of ACPR's priority. One key priority area is group-level AML/CFT controls, including how groups ensure effective AML/CFT controls are being implemented in non-bank entities in the group (e.g., insurance) and overseas arms, as well as the adequacy of information sharing system within the group for those purposes. Among other areas of priority, many are TF-related such as implementation of TFS related to TF and practices of suspicious transaction filing, in line with the recent national priority on TF.

37. The ACPR's inspections of smaller banks that are not part of a group are far less frequent and primarily triggered by negative feedback from Tracfin. The number of annual on-site inspections in the past three years has varied from 11 to 18 (see Table 7 below). This could suggest that under the current approach many smaller banks rated as very high-risk or high-risk are inspected every four to five years at the best. In practice, inspections of smaller banks rated as high-risk are often triggered by alerts from Tracfin about lack of reporting of suspicious transactions or serious concerns about the quality of STRs. For the banks that are not inspected, the ACPR oversight relies heavily on off-site monitoring. Similar to the on-site inspections, one recent focus of the off-site review has been TF-related TFS. For banks rated high-risk and not inspected, the ACPR identifies areas that need improvements by reviewing their questionnaire returns and holds a meeting with each of them annually to convey ACPR's expectations. The ACPR can also obtain information about a bank through its internal audit reports, but this is not a systematic practice.

38. The ACPR has been using a range of sanctions to impact banks' behaviors but the process for issuing penalties is lengthy. A wide range of sanctions are available when the ACPR detects a breach of AML/CFT obligations. These include cease and desist orders, financial penalties, reprimand, and action letters. In the past four years, the ACPR has applied these sanctions (see Table 7 below). The amount of fines ranges from EUR 70,000 to 50 million. Common deficiencies found are with regards to customer risk classification, business relationship monitoring, STR filing, and internal controls. The cease and desist orders and action letters are at the ACPR executive committee's discretion while for financial penalties and reprimand, the case must be referred to the Sanctions Committee, which is a body independent from the executive committee, for rulings. While the cease and desist orders and action letters are often issued shortly after the inspections to enable prompt corrective actions, the process for penalties takes at least one to two years to finalize. In one recent case, the Sanctions Commission issued the penalty two years and five months after the on-site inspection ended.²³ This extended lag between the on-site inspection and the issuance of penalties may give rise to misalignment of the inspection findings (based on which sanctions are imposed) and the bank's AML/CFT measures in place when the penalty is issued. Issuance of penalties within a

²³ See: <https://acpr.banque-france.fr/communiqué-de-presse/la-commission-des-sanctions-de-l'autorité-de-contrôle-prudentiel-et-de-résolution-sanctionne-cnp>.

shorter period of time following the inspections would also enable more timely impact of sanctions on banks' behavior at the sectorial level.

Number of Banks...	Inspected	Cease and Desist Orders Issued	Penalized	Action Letters Issued
2015	12	0	1	9
2016	18	1	2	5
2017	11	8	4	9
2018	13	7	4	7

B. Real Estate Agents and Company Service Providers

39. The DGCCRF is responsible for monitoring compliance of real estate agents and company domiciliation agents with AML/CFT requirements but commercial agents involved in real estate transactions are not overseen for AML/CFT purposes. There are currently 20,000-25,000 real estate agents, 30,000-35,000 commercial agents and around 3,000 company domiciliation agents. In real estate transactions, the use of agents is optional while a notarized instrument must be drawn up by a notary for the transaction to be effective. Real estate agents may hire commercial agents typically to help with negotiation. A commercial agent is prohibited from holding clients' assets²⁴ but may engage in real estate transactions as mandated by the real estate agent. Company domiciliation agents are not involved in company formation. Rather they provide addresses for clients and sometimes simple management services such as mail forwarding. Real estate agents are required to obtain a license from the chambers of commerce and industry (chambres de commerce et d'industrie)²⁵. If they wish to work with a commercial agent, they must obtain a certificate for the latter from the chambers of commerce and industry. Company domiciliation agents are subject to an approval issued by the prefectures²⁶. Real estate agents, commercial agents (when they engage in real estate transactions), as well as company domiciliation agents are all subject to AML/CFT requirements. However commercial agents are not monitored for compliance with such requirements.

40. The DGCCRF appears to have a basic understanding of ML/TF risks faced by real estate and company domiciliation agents which needs to be deepened and enriched to allow for effective risk-based supervision. The DGCCRF considers the NRA to be the main source of its understanding of ML/TF risks. It recognizes the significant risks faced by real estate agents, including the threats from abroad while it considers company domiciliation agents to be less risky given the narrow scope of their activities. There are certain factors that DGCCRF deems as high-risk. For real estate agents, such factors include serving corporate clients, dealing in high-end properties, operating in certain geographic (border, touristic, etc.) regions, susceptible to underground economy, and not being part of a franchise network. For company domiciliation agents, the risk

²⁴ Per article 4 of law #70-9.

²⁵ Per law # 70-9.

²⁶ Per Article L. 123-11-3 of the Commercial Code.

factors are primarily geographic (i.e., bordering regions and large cities). The DGCCRF indicates that it applies an RBA to AML/CFT supervision by developing instructions to inspection teams based on the aforementioned high-risk factors, it has not developed a model to assess the risks systematically, nor does it collect data for such purposes.

41. Only a very small portion of real estate agents and company domiciliation agents have been covered in DGCCRF's supervisory activities. For real estate agents, DGCCRF discharge its AML/CFT oversight responsibilities through on-site inspections conducted by teams at its regional offices, while for the company domiciliation agents inspections are conducted by the National Service of Investigations. The teams are dedicated to specific sectors to some extent but there are no specialized teams on AML/CFT. AML/CFT supervision is conducted by around 120 staff nationwide (including OSTs), but as they have other assignments the level of resources devoted to AML/CFT is unknown. DGCCRF's annual on-site inspection program typically covers 150–200 real estate agents, and 30–40 company domiciliation agents. These inspections broadly target the agents deemed high-risk as discussed above as well as agents previously found deficient in their AML/CFT controls and sanctioned. DGCCRF indicated that it is also possible for an inspection to be triggered by feedback from Tracfin but to date this has not taken place because of the low level of reporting by the sectors as a whole. No special attention appears to have been paid to real estate agents that hire commercial agents. The DGCCRF therefore has been focused on education, including through issuance of guidance and mobilizing associations of real estate agents to promote compliance²⁷.

Table 8. Real estate agents and company domiciliation agencies AML/CFT On-site Inspections and Reports transmitted to CNS for Sanctions				
	Real estate agents¹		Company domiciliation agents	
	Inspected	Reports transmitted to CNS for sanctions	Inspected	Reports transmitted to CNS for sanctions
2015	14	6	21	7
2016	162	57	31	7
2017	-	-	41	10
2018 (partial)	201	41	39	16

¹Inspections of real estate agents from the national investigation service and local investigation departments are programmed every 2 years. In 2015, the national investigation service was mobilized to inspect prime estate property agencies only.

42. In recent years, sanctions have been imposed on real estate agents and company domiciliation agents for breaches of AML/CFT requirements. Except for the injunction powers granted recently (see below), the DGCCRF does not have sanctioning powers and refers breaches of compliance to the National Sanctions Commission (CNS) for sanctions. The CNS was established in 2009 to impose sanctions on DNFBS not otherwise subject to another sanctioning authority.²⁸ It can issue the following administrative sanctions: warning, reprimand, temporary suspension of

²⁷ A reinforced communication plan has been carried out by the DGCCRF and TRACFIN since the publication of the new AML/CFT guidelines for estate property professionals in November 2018, which is still on. The business chambers have been mobilized to strengthen information of estate agencies, with a view to reaching independent companies.

²⁸ Art. L. 561-37 to L. 561-44 of the Monetary and Financial Code.

carrying out the activity for a period not exceeding five years, withdrawal of the approval or professional license, and a pecuniary penalty up to EUR 5 million. In the past few years, the CNS handled about 20–30 cases per year. In each case that had been concluded as of December 2018, some type of sanction was issued, either pecuniary or disciplinary. For pecuniary sanctions, the amount ranges from 500 € to 200,000 €, and the median amount is between 2,000 € to 3,000 €. Among these cases, totaling more than 300, real estate agents and company domiciliation agents constitute the first and second largest share and the two combined represent about 97 percent of all cases. Type and amount (in the case of pecuniary ones) of sanctions are determined based on the number of obligations breached (such as CDD, STR filing) taking into account financial situation of the agents. It is unclear whether and how the severity (as opposed to number) of breaches was considered when determining the sanctions. Similar to that for the banking sector, the process of finalizing the rulings is fairly lengthy and generally takes more than one year to conclude. Although not required by law, the CNS publishes most of its rulings and expects to continue to do so.

43. Although there appear to be mechanisms to ensure that the deficiencies identified are remedied in a timely manner, such mechanisms have not been used. Although the DGCCRF targets agents found deficient previously in its inspections, the lag between identification of deficiencies and imposition of sanctions by CNS means that follow-up inspections will be carried out more than one year after the original inspection. Since October 2018,²⁹ the DGCCRF has been empowered to issue injunctions to require corrective measures to be taken without prejudice to sanctions issued by the CNS but such powers have not been used. As such, deficiencies can remain unaddressed for an extended period.

C. Lawyers

44. Monitoring of lawyers' implementation of AML/CFT obligations and imposing sanctions remains responsibilities of local bar associations. A French lawyer must be registered with a local bar association, which is responsible for overseeing the lawyer including for implementation of AML/CFT requirements. These requirements, however, are subject to exemptions further to their duty of confidentiality ("*secret professionnel*") and judicial proceedings, which remain unchanged since the 2012 MER. The CNB acts as the profession's liaison with public authorities representing all lawyers practicing in France and does not have oversight functions.

45. While the CNB understands to some extent the ML/TF risks faced by lawyers, this may not be case for local bar associations. The CNB considers certain activities to be susceptible to abuse by ML. These include advising on company formation and management and assisting clients in real estate transactions.³⁰ The CNB's understanding of the main sources of proceeds of crime to be laundered by abusing lawyers' services could be further developed. Moreover, it is unclear the

²⁹ By virtue of Art. R.561-40 and L561-36-2-VII of the CMF.

³⁰ Lawyers are permitted to engage in such activities since 2012.

extent to which local bar associations understand the ML/TF risks faced by their members. This is a concern given their central role in monitoring lawyers' activities (see below).

46. The oversight of lawyers' implementation of AML/CFT requirements appears to be very scarce. According to the CNB, the approach taken by local bar associations to "check" lawyers may vary, but a common feature is that checks are often triggered by complaints of clients or issues flagged by Funds for Lawyers Financial Payments (*Caisse des Règlements Pécuniaires des Avocats* — CARPA), many of which may not be AML/CFT related. CARPAs are self-regulatory bodies that operate under the authority of bar associations. Pursuant to French law, lawyers are prohibited from handling client funds themselves. Funds that lawyers hold or manage on behalf of their clients must be handled through a CARPA. According to the Paris CARPA,³¹ when the financial operations requested by a lawyer do not match the legal or judicial action associated with the case, it may reject the request to open an account or carry out the transaction. Among the 307 such instances Paris CARPA came across in 2018, none was associated with suspicion of ML. Furthermore, CARPA Paris does not flag these cases to the Bar association for follow-up action on the lawyers involved. This suggests AML/CFT related "checks" triggered by issues flagged by CARPAs to local bar associations are likely to be few, if any. The CNB is not involved in these activities and currently does not collect information in this regard. It is not aware of any disciplinary actions taken by local bar associations. Having recognized the need to monitor local bar associations' oversight activities, in July 2018, the CNB established a committee on AML/CFT to facilitate monitoring of checks and imposition of sanctions by local bar associations and promote consistency among them. The committee became operational in January 2019.

Recommendations

47. The authorities should consider the following recommendations to improve risk-based supervision of banks, real estate agents, company domiciliation agents, and lawyers:

- **Banks:** ACPR to
 - Increase supervisory activities in smaller banks rated as high-risk, and allocate additional resources for on-site inspections as needed;
 - Explore ways to shorten the time needed for imposing penalties.
- **Real estate agents and company domiciliation agents:**
 - Informed by the NRA findings, DGCCRF to conduct systematic assessments of ML/TF risks of real estate agents and company domiciliation agents and review level of resources accordingly;

³¹ Paris Bar Association represents around 50% of all lawyers in France.

- Ensure commercial agents, when engaging in real estate transactions, are monitored for compliance with AML/CFT requirements. To this effect, consideration should be given to holding real estate agents accountable for breaches by the commercial agents that they work with;
- CNS to ensure sanctions imposed are dissuasive and proportionate; DGCCRF to use its injunction powers to direct the agents to take remedial measures and follow up in a timely manner.
- **Lawyers:**
 - Informed by the NRA, CNB to promote unified understanding of ML/TF risks among local bar associations including by issuing guidance;
 - CNB and local bar associations to develop consistent approaches to risk-based monitoring program, procedures and disciplinary actions;
 - CNB to collect and analyze information on monitoring and disciplinary actions taken by local bar associations.

MOBILIZING AML/CFT FRAMEWORK TO TACKLE CROSS-BORDER CRIMES

A. Understanding of Risks

48. France faces ML threats arising from corruption and other offenses committed in foreign jurisdictions. The main foreign offenses generating proceeds that are laundered in France are reported by law enforcement to be foreign corruption, swindling, tax fraud, and drug trafficking. Sectors that are particularly vulnerable to flows of such illicit proceeds from these types of crime include the high-end real estate market and luxury goods. Tracfin also identified illegal import/export businesses and other trade-based ML schemes specific to the Asia Pacific region as significant ML threats.³² Tracfin's latest Report on Trends and Analyses further identifies corrupt acts occurring in the international energy and commodities market as yielding illicit flows that transit through France.

49. France's NRA exercise entails an examination of the types of international criminal threats facing France. As part of the NRA, the COLB sought information on cross-border ML cases from law enforcement and Tracfin. Typologies prepared by Tracfin and provided to the COLB in the context of the NRA exercise confirm the threats posed by foreign corruption (and foreign PEPs), as well as the susceptibility of France's luxury real estate sector to being misused for channeling illicit

³² Money Laundering and Terrorist Financing Risk Trends and Analysis, Tracfin (2015).

flows. Another common pattern identified was the use of corporate vehicles, particularly those established in low tax jurisdictions, to conceal ownership.

50. In general, authorities appear to have a good understanding of ML risks associated with cross-border crimes. Law enforcement agencies, being directly involved in cross-border cases, are the most attuned to the types of scenarios in which foreign criminal proceeds are laundered in France or where the proceeds of domestic crimes are channeled out of France, as well as the frequency with which these scenarios occur. Beyond law enforcement, it appears authorities are more aware of the possibility of flows (arising from domestic crimes) leaving France and less aware of the threats posed by illicit inflows (generated from foreign crimes). The publication of the NRA may serve to improve the overall understanding of such threats.

B. Prevention and Detection

51. Some supervisors and banks seem to understand risks arising from cross-border crimes to an extent and have taken measures to mitigate them, although there is room for improvement. One focus of the ACPR's AML/CFT supervision has been on group-level AML/CFT program to ensure effective controls are implemented in the group's operations overseas. The DGCCRF's supervisory activities target geographical regions that are likely to be exposed to higher risks from cross-border crimes. However, the low level of oversight over lawyers is not commensurate with their risk profile (including their exposure to cross-border threats, more details are discussed under Chapter 3). Banks that the mission met seem to be aware of the cross-border risks and have taken them into account in their AML/CFT program. Similar to Tracfin and law enforcement, they see cross-border risks primarily stemming from foreign corruption, tax crimes in particular those associated with tax havens, trade-based ML, and wire transfers involving high-risk jurisdictions. These considerations often translate into heightened attention to certain types of customers (such as PEPs) and geographic regions. However, the very low level of STRs filed³³ by DNFBPs exposed to risks arising from cross-border crimes, in particular real estate agents, company domiciliation agents, and lawyers, suggest that the understanding and mitigation of such risks among these businesses/professions is insufficient. The authorities are of the view that the current level of STR reporting by these sectors is not commensurate with their risk profile. Although the mandatory involvement of notaries in real estate transactions may mitigate these risks to some extent, Tracfin's latest Report on Trends and Analyses reports that the numbers of STRs filed by notaries still remains low compared to the number of real estate transactions being carried out.³⁴

C. Investigation and Prosecution

52. France has been steadily strengthening efforts to combat economic and financial crime. To supplement existing bodies formed to fight economic and financial crime, France established a new dedicated agency within the judicial police—a Central Office on Corruption and

³³ 178 by real estate agents, 31 by company domiciliation agents, and none by lawyers in 2017. See Tracfin Annual Report 2017: <https://www.economie.gouv.fr/files/ra-2017-ang-tracfin.pdf>.

³⁴ Money Laundering and Terrorist Financing Risk Trends and Analysis, Tracfin (2017–2018).

Financial and Tax Offenses (OCLCIFF) in 2013. The OCLCIFF was established to complement the long-standing OCRGDF, which focuses on financial crimes (including ML) other than those involving tax offenses and historically has been the main body coordinating law enforcement activities relating to financial and economic offenses. Although both the OCRGDF and the OCLCIFF are specialized departments in the police, they also include members of the gendarmerie. Both bodies have national jurisdiction over offenses falling within their mandate.

53. France has redoubled prosecution efforts and resources towards ML. In 2013, France established a national financial prosecutor (PNF) with national jurisdiction for ML, tax fraud, corruption and economic and financial crimes. The office of the PNF began its activities in March 2014 and is currently staffed with 18 prosecutors. Although the PNF shares competence over some types of financial crimes with the inter-regional specialized courts (*jirs*), by nature of its specialization, the PNF handles the majority of cases involving financial offenses other than those having an element of organized crime or high-level tax fraud or involving financial markets. As investigations in France are led by prosecutors or investigating magistrates, the PNF drives the majority of complex ML investigations.

54. Crimes occurring in France often also have a cross-border element as flows from domestic crimes tend to be laundered abroad. Many of the offenses within the purview of the OCRGDF and the OCLCIFF (e.g., tax crimes, fraud) occur domestically, but generate proceeds that are laundered abroad. In 2016, Tracfin sent 350 alerts to the tax authority. Eighty-five percent of these alerts dealt with individuals' private assets and the remaining fifteen percent involved tax offenses by legal entities, primarily in the area of VAT fraud.³⁵ STRs frequently related to foreign bank accounts in countries bordering France or in tax havens, undeclared professional activities, and undeclared foreign assets. The PNF reports that most of its cases concern domestic predicate offenses; however, an estimated 80 percent of the PNF's cases have an international dimension, including many that involve foreign bank accounts or corporate structures. The PNF does not keep statistics distinguishing between cross-border cases based on domestic crimes resulting in illicit outflows and cases where foreign criminal activity generates proceeds that are subsequently laundered in France.

55. Financial intelligence is used to tackle cross-border ML threats. Prosecutors involved in financial cases affirm that disseminations by Tracfin are of good quality and support their operational needs. In its 2016 report on Trends and Analyses, Tracfin reported having handled approximately fifty money laundering cases per year related to corruption.³⁶ Such cases included proceeds arising from bribery of foreign public officials by French actors in international markets, and corruption by foreign PEPs. The individual domestic and cross-border cases handled in 2015 involved amounts ranging from a few tens of thousands of euros to more than ten million euros.³⁷

³⁵ See: <https://www.economie.gouv.fr/files/webra-ang-analyse-tracfin-2016.pdf>

³⁶ <https://www.economie.gouv.fr/files/webra-ang-analyse-tracfin-2016.pdf>

³⁷ <https://www.economie.gouv.fr/files/tracfin-bro-analyse-2016-en.pdf>

56. Both competition and complementarity appear to exist in investigative bodies that share competence for investigating financial crime. Beginning in 2015, the PNF began including the gendarmerie, which has jurisdiction for all parts of France falling outside of the major cities, in the fight against financial crime. Previously, the PNF and the financial crimes section of the Paris district attorney's offices worked mostly with the Paris judicial police due to historical and geographic ties. Since 2015, the gendarmerie has become increasingly engaged in combating ML and other financial offenses. New recruits in the gendarmerie are now required to undergo a ten-week training program on financial crime. However, despite the little information shared between agencies, the national gendarmerie and police both separately have good collaboration with the PNF and with other authorities (e.g., the *jirs*, economic and financial sections of the district attorney's offices etc.).

D. International Cooperation

57. Information from foreign intelligence agencies is an important source of information on cross-border ML. Tracfin cooperates closely with foreign FIUs, particularly European ones. In the past several years, France has routinely exchanged information with neighboring countries, such as Luxembourg, Belgium, Switzerland, and the United Kingdom on tax and other financial crimes. France also regularly receives spontaneous transmissions from Jersey and Guernsey relating to assets of French citizens and residents, although France does not systematically collect and use statistics on how exchanges of information have contributed to domestic cases.

58. Although France has successfully obtained mutual legal assistance and other forms of international assistance, challenges still exist. The main challenge posed by cases with an international dimension is that frequently the evidence required is located abroad. French law enforcement agencies also cooperate with their counterparts abroad both on a bilateral and multilateral basis (e.g., Interpol, Europol, and Eurojust). Although these relationships have resulted in effective collaboration in many instances (e.g., in the establishment of joint investigative teams and information sharing), French law enforcement do not enjoy the same level of cooperation from all counterparts worldwide. In particular, French law enforcement report difficulties obtaining information in cases of foreign corruption. However, in such cases, law enforcement agencies have been able to leverage financial information from other countries with whom they have good relations (e.g., the United States, through which 90 percent of global financial flows will pass).

E. Recommendations

59. The authorities should consider the following recommendations in furtherance of their efforts to tackle cross-border ML flows:

- Apart from the recommendations under Chapter 3 for the ACPR, the DGCCRF, and the CNB, the authorities are recommended to promote better understanding of risks associated with cross-border crimes and mitigation of such risks among DNFBPs by providing more guidance on typologies, risk assessment and risk-based mitigating measures.

- Tracfin and law enforcement and prosecutorial bodies are recommended to generate and maintain more granular statistics on cross-border cases to help monitor the effectiveness of the AML/CFT measures in tackling cross-border flow of criminal proceeds.

FINTECH

A. Landscape

60. Recent years saw rapid growth of the fintech market in France. In France, the broad notion of Fintech encompasses transfer and payment services without using a bank account, crowd-lending, crowd-financing, E-money, and activities involving crypto assets. There was a large increase in the number of payment service providers and crowd-financing companies and, more recently, the development of new startups in the Insure-tech sector often in association with existing insurers. According to a study by the MEF, there are around 300 Fintech firms, in the strict sense of the term (financial aspects outweigh technological aspects) and around 200 Techfin businesses (for which technological aspects outweigh the financial aspects) engaged in finance sector activities but using more sophisticated technologies such as artificial intelligence, machine learning, or block chains. The ACPR estimates that payment services and E-money services constitute around half of the French Fintech (in the strict sense) market while crowd-funding intermediaries constitute about a quarter. Overall, the authorities consider the French Fintech landscape to be comparable to that of other European countries.

61. The crypto sector is still marginal in scale but has the potential to grow. As of November 14, 2018, the AMF has known of 83 initial coin offerings (ICOs), of which 15 were completed, three in progress, and 65 planned. A recent AMF study³⁸ found that ICOs represented 4% of financing in equities over the same first three quarters of 2018, and future ICOs will aim to raise greater amounts of funds and be used by companies that have access to traditional methods of financing but opt to raise funds through ICOs.

B. Potential ML/TF Risks and Strategies to Mitigate

62. The AML/CFT framework has kept up with some of the developments. The scope of persons and entities subject to AML/TF obligations was expanded to e-money institutions in 2013,³⁹

³⁸ See: https://www.amf-france.org/en_US/Publications/Lettres-et-cahiers/Risques-et-tendances/Archives?xtcr=1&isSearch=true&docId=workspace%3A%2F%2FSpacesStore%2F27604d2f-6f2b-4877-98d4-6b1cf0a1914b&lastSearchPage=https%3A%2F%2Fwww.amf-france.org%2FmagnoliaPublic%2Famf%2FResultat-de-recherche%3FTEXT%3DICO%26LANGUAGE%3Dfr%26isSearch%3Dtrue%26simpleSearch%3Dtrue%26valid_recherche%3DValider&xtmc=ICO&docVersion=1.0&langSwitch=true

³⁹ Article 13 of Law No. 2013-100 of January 28, 2013 on various adaptations of legislation to European Union laws in the area of economics and finance.

crowd-financing advisors and intermediaries in 2014,⁴⁰ and platforms that convert crypto assets to fiat currencies in 2016.⁴¹ Payment service providers and E-money institutions are licensed⁴² and supervised by ACPR. Crowd-funding advisors and intermediaries are registered with *L'Organisme pour le registre unique des intermédiaires en assurance, banque et finance* (ORIAS) and have been subject to supervision of AMF and ACPR respectively for consumer protection and AML/CFT since 2014.

63. The authorities are well aware of the potential vulnerabilities associated with crypto assets to ML and in particular TF and have developed mechanisms to facilitate policy discussions. The ACPR set up Fintech Innovation Unit in 2016, the tasks of which include: (i) answering questions of the private sector related to the regulation of Fintech; (ii) assessing the impact of the new Fintech activities on the banking and insurance sectors in collaboration with supervisory units; (iii) engaging in policy discussions with national and international stakeholders; and (iv) exploring opportunities to make ACPR more innovative. A similar unit was also set up under the AMF. A forum on Fintech was established in 2016 to facilitate dialogue among stakeholders in the public and private sectors including in the context of transposing the Fifth European AMLD. This Forum is co-chaired by the Fintech units of ACPR and AMF. Its members include representatives of MEF, French data protection authority (*Commission nationale de l'informatique et des libertés – CNIL*), Tracfin, competent authority responsible for cyber security (*Agence nationale de la sécurité des systèmes d'information – ANSSI*), and the private sector, including traditional FIs and Fintech firms. At the time of the mission, platforms that convert crypto assets to fiat currencies are subject to AML/CFT obligations⁴³ but not licensed/registered or supervised.

64. Legislation is currently being discussed to further align the French regime with the Fifth AMLD and the FATF standard as revised in October 2018 with respect to crypto assets.

The PACTE bill⁴⁴ proposes:

- Mandatory registration with the AMF (after consultation of the ACPR) of services providers related to (i) the custody of digital assets or keys on behalf of third parties, and (ii) the purchase or sale of digital assets against fiat currencies. This registration is subject to ACPR review and will only be accepted after the assurance that the provider has implemented the internal control procedures required to comply with basic AML/CFT obligations;
- An optional label offered by the AMF entailing a fuller range of AML/CFT obligations for providers of the following services: the exchange of digital assets against other digital assets,

⁴⁰ Article 24 of Order No. 2014-559 of May 30, 2014 on crowd-financing.

⁴¹ Article 2 of Order No. 2016-1635 of December 1, 2016 strengthening the French anti-money laundering and terrorist financing framework.

⁴² Article L. 522-6 ff of the Monetary and Financial Code for payment service institutions and Article L. 526-7 ff for E-money institutions.

⁴³ Art. L. 561-2, Monetary and Financial Code.

⁴⁴ The bill was adopted by the parliament on April 11, 2019.

crypto exchanges organized as trading venues with a central book order, and other types of services such as the receipt and transmission of orders for digital assets, execution of orders, dealing on own account, third-party management of digital asset portfolios, placing crypto assets, with or without a firm commitment basis;

- An optional label (“visa”) offered by the AMF to initial coin issuers that meet qualitative criteria (including on AML/CFT measures) and provide guarantees; and
- AMF’s and ACPR’s powers to supervise and sanction labelled providers
- ACPR’s powers to supervise and sanction registered but not labelled providers.

C. Recommendations

65. The authorities are recommended to continue their efforts to align the legal framework with EU AMLD5 and the recently revised FATF standard in a collaborative and inclusive manner and ensure effective implementation.

Annex–Main Meetings Held During Visit

Public Sector

Department of Justice

Ministry of Economy and Finance

French Prudential Supervision and Resolution Authority (ACPR)

Direction Générale de la Concurrence, de la Consommation (DGCCRF)

National Sanctions Commission (CNS)

Gendarmerie Nationale

Police Judiciaire:

- Counter-Terrorism Directorate (SDAT)
- Office against financial delinquency (OCRGDF)
- Central office against corruption and finance crime (OCLCIF)

Financial Prosecutor's Office (PNF)

Paris Prosecutors' Office, Section C1

Tracfin

Private Sector

National Bar Association (CNB)

Caisse Régionales des Règlements Pécuniaires des Avocats (CARPA) of Paris

Two commercial banks