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Technical Note on Crisis Management and Bank Resolution Framework

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FRANCE

CRISIS MANAGEMENT AND BANK RESOLUTION FRAMEWORK

TECHNICAL NOTE

JUNE 2013

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Glossary

ACP	*Autorité de Contrôle Prudentiel*
AMF	*Autorité des Marchés Financiers*
BCBS	Basel Committee on Banking Supervision
BCP	Basel Core Principles for Effective Banking Supervision
BdF	Banque de France
CI	Credit institution
CMF	*Code Monétaire et Financier*
CMG	Crisis management group
COREFRIS	*Conseil de la Regulation Financière et du Risque Systémique*
EBA	European Banking Authority
ECB	European Central Bank
ELA	Emergency liquidity assistance
ESRB	European Systemic Risk Board
EU	European Union
FDIC	Federal Deposit Insurance Corporation
FGD	*Fonds de Garantie de Dépôts* (Deposit Insurance Fund)
FSAP	Financial Sector Assessment Program
FSB	Financial Stability Board
G-SIFIs	Globally systemically important financial institution
IOSCO	International Organization of Securities Commissions
MOF	Ministry of Finance
MOU	Memorandum of Understanding
Non-G-SIB	Nonglobally systemically important bank (which does not qualify as a global systemically important financial institution according to the set criteria)
OBA	Open bank assistance
ORAP	*Organisation et Renforcement d'Action Préventive*
PCA	Prompt Corrective Action
RAS	Risk assessment system
RRP	Recovery and resolution plan
SIB	Systemically important bank
SFEF	*Société de Financement de l'Economie Française*
SPPE	*Société de Prise de Participation de l'Etat*
SREP	Supervisory Review and Evaluation Process

EXECUTIVE SUMMARY

The French banking system weathered the crisis 2007–09 relatively well. As in many other European Union (EU) countries, the French authorities provided capital support and guarantees to banks; and the extension of liquidity from Banque de France (BdF)—being part of the Eurosystem—was significant. Overall, however, there was limited intervention from the authorities in individual banks and the banks were, to a large degree, able to deal themselves with their balance sheet problems through private capital infusions by deleveraging and by reducing dividends.

Already, before the crisis, France had a comprehensive framework for crisis management and bank resolution. Based on developments as of end-January 2012, with some exceptions, the French framework contains the instruments and measures that now constitute international best practices and which (likely) will be recommended in the expected proposal for an EU Directive on a bank resolution framework. However, the legal processes for the liquidation or bankruptcy of financial institutions might not be separate enough to handle the specific issues of bank resolution as distinct from liquidation. Indeed, although the definition of the cessation of payments and the appointment of an administrative liquidator by the *Autorité de Contrôle Prudentiel* (ACP) are distinct features, the rest of the process is the same as those for nonfinancial corporations fit to handle.

The crisis preparation, crisis identification, and crisis management processes in the supervisory authority (ACP) are comprehensive and well structured. Without having a formal U.S.-type "PCA-regulation," the ACP identifies weak banks and requests appropriate remedial measures to be taken (although the FSAP assessment has identified the occurrence of delays in some cases). The ACP also actively uses the Basel II Pillar 2 instrument to require add-ons on an individual-bank basis to the minimum regulatory capital requirements, reflecting the assessed riskiness of a bank.

The ACP has a wide range of remedial and sanctionary powers at its disposal, including the right—under defined circumstances—to appoint an interim administrator in a bank. Ultimately, the ACP may revoke a bank's license, which automatically will start the judicial liquidation process.

The funds of the *Fonds de Garantie de Dépôts* (FGD, the deposit guarantee agency) may be used either for compensation to depositors or for recovery actions in order to prevent the disorderly failure of a bank. The latter function can only be triggered after an invitation from the ACP, and the FGD has the power to accept or to decline such an invitation. In practice, the decision of the FGD will, as a rule, be based on a "least-cost" consideration, e.g., whether the cost of providing financial support is likely to be lower or higher than that of a pay-out to depositors in liquidation.

The specific roles of the Banque de France (BdF) in crisis management lie mainly in the provision of liquidity through standing or extraordinary facilities like the emergency liquidity assistance (ELA), in the analysis of overall financial stability and in its responsibility to ensure the smooth functioning of the payment system infrastructure. All liquidity provision is subject to the rules and restrictions of the Eurosystem.

The main roles of the Ministry of Finance (MOF or *Le Trésor*) in crisis management are in initializing and drafting laws and regulations in the financial field; in negotiating international agreements; and in following developments in the financial sector and in individual banks through its participation in various bodies such as the ACP. During the 2007–09 crisis, the government—through various vehicles—provided significant solvency and liquidity support to banks.

Close cooperation and information sharing among the relevant authorities is ensured mainly through cross-Board-memberships. For instance, the MOF as well as the BdF are represented on the ACP Board, with the BdF governor being the President of the Board. Cooperation on crisis management matters also takes place in a wide range of other domestic and international fora. Furthermore, the ACP is an organizational, although operationally independent, part of the BdF. The president of the FGD is appointed with a specific agreement from the MOF, its by-laws, rules, and financing are also determined by—or with the agreement of—the MOF, whereas the FGD Supervisory Board mainly consists of active bankers, as the FGD is a private organization funded by the contributing institutions.

A recurring conclusion in this assessment note[1] is that—while the close organizational links between the authorities and, indeed, within a limited group of persons provide powerful means for cooperation and information sharing, which is positive not least in a crisis—they could also blur the transparency and accountability for the separate responsibilities of said authorities.

The French authorities had so far no certainty about the adjustments needed to be made to its legislation, as precise proposals on crisis management and resolution framework issues from international bodies were not yet on the table. In particular, an EU Commission proposal on a bank resolution framework is expected to be presented soon. The authorities are mainly positive to the proposals of the EU Commission (as indicated in the French authorities' reply to the Commission's Consultative Paper of 2011), but prefer harmonized EU-wide regulations to taking unilateral steps.

[1] As well as in the standards assessments for France, e.g., the Basel Core Principles (BCP), Insurance Core Principles (ICP), and International Organization of Securities Commissions (IOSCO).