IMF Country Reports 19/328

France: Financial Sector Assessment Program-Technical Note-Select Topics in Financial Supervision and Oversight

INTERNATIONAL MONETARY FUND

INTERNATIONAL MONETARY FUND

IMF Country Report No. 19/328

FRANCE

FINANCIAL SECTOR ASSESSMENT PROGRAM

October 2019

TECHNICAL NOTE—KEY ATTRIBUTES OF EFFECTIVE RESOLUTION REGIMES FOR INSURANCE COMPANIES

This Technical Note on Key Attributes of Effective Resolution Regimes for Insurance Companies on 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.

Copies of this report are available to the public from

International Monetary Fund • Publication Services
PO Box 92780 • Washington, D.C. 20090
Telephone: (202) 623-7430 • Fax: (202) 623-7201
E-mail: publications@imf.org Web: http://www.imf.org
Price: $18.00 per printed copy

International Monetary Fund
Washington, D.C.

INTERNATIONAL MONETARY FUND

FRANCE

FINANCIAL SECTOR ASSESSMENT PROGRAM

October 1, 2019

TECHNICAL NOTE

KEY ATTRIBUTES OF EFFECTIVE RESOLUTION REGIMES FOR INSURANCE COMPANIES

Prepared By

Monetary and Capital Markets and Legal Departments

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

CONTENTS

Glossary

ACPR	Prudential Supervision and Resolution Authority
AMF	Autorité des Marchés Financiers
BdF	Banque de France
CCP	Central Counterparty
CMG	Crisis Management Group
COAG	Institution-specific Cooperation Agreement
EC	Essential Criterion
ECB	European Central Bank
EN	Explanatory Note
EU	European Union
FFA	Fédération Française de l'Assurance
FMI	Financial Market Infrastructure
FSAP	Financial Sector Assessment Program
FSB	Financial Stability Board
G-SII	Global Systemically Important Insurer
G-SIFI	Global Systemically Important Financial Institution
IMF	International Monetary Fund
KA	Key Attributes of Effective Resolution Regimes for Financial Institutions
MFC	Monetary and Financial Code
MoF	Ministry for the Economy and Finance
NCWO	No Creditor Worse Off
PPS	Policyholder Protection Scheme
RAP	Resolvability Assessment Process
RRP	Recovery and Resolution Planning
Solvency II	EU Directive
SIFI	Systemically Important Financial Institution
SRB	Single Resolution Board
TP	Technical Provisions

INTRODUCTION

1. This pilot assessment of the implementation of the Key Attributes of Effective Resolution Regimes for Financial Institutions (KA)[1] in the insurance sector in France has been completed as part of a Financial Sector Assessment Program (FSAP) undertaken by the International Monetary Fund (IMF) during 2018–19. It reflects the regulatory framework and arrangements in place as of the date of the completion of the assessment. The assessment of the effectiveness of the insurance resolution framework involves the review of the legal framework and detailed examination of the policies and practices of the resolution authority in relation to the KAs pursuant to the Key Attributes Assessment Methodology for the Insurance Sector (Methodology).[2]

2. The French authorities recently established a comprehensive resolution framework for insurers and agreed for the assessment to be conducted on the basis of the most recent version of the Methodology, which is still in draft form. Given that the Methodology continues to evolve, the findings of the pilot assessment should be read in this context and may also provide useful inputs to the ongoing discussions in the FSB and other international fora. The team of assessors[3] reviewed the main features of France's insurance resolution framework, drawing also on the authorities' self-assessment. The resolution framework for insurers has been most recently upgraded by Ordinance 1608 of November 2017, and additional detailed regulations. The framework applies to all insurance entities subject to the Solvency II framework, except for the preventive part (recovery and resolution planning (RRP)), which currently applies only to 14 insurance entities (each with assets above €50 billion[4]),[5] which jointly represent about 95 percent and 70 percent of the life and nonlife insurance market's total premiums, respectively.

3. The assessment team met with officials and senior staff of the regulatory, supervisory, and resolution authorities, primarily from the Autorité de Contrôle Prudentiel et de Résolution (ACPR) and the Ministry for the Economy and Finance (MoF), as well as individual insurers and representatives from the French association of insurance companies (FFA), policyholders' guarantee schemes, rating agency, and audit companies, during the mission to Paris in December 2018. The assessors appreciate the many insights provided and are especially thankful to Messrs. David Blache, Deputy Director at ACPR's Resolution Department; and Eric Molina, Head of Division at ACPR's Resolution Department, and their team, for fruitful and extensive discussions over

[1] See FSB Key Attributes of Effective Resolution Regimes for Financial Institutions, 15 October 2014 (http://www.fsb.org/work-of-the-fsb/policy-development/effective-resolution-regimes-and-policies/).

[2] See FSB Key Attributes Assessment Methodology for the Insurance Sector: Consultative Document (http://www.fsb.org/wp-content/uploads/P211217.pdf), 21 December 2017 as updated in August 2018. Also: public responses to the consultative document (http://www.fsb.org/2018/03/public-responses-to-the-consultation-on-key-attributes-assessment-methodology-for-the-insurance-sector/).

[3] The team comprised Mario Mansilla (MCM), Maike B. Luedersen (LEG), and Alfonso Ventoso and Spyridon Zarkos (MCM external experts).

[4] While the framework also applies to reinsurers with headquarters established in France, there are currently no reinsurers exceeding this threshold.

[5] The preventive part should also be implemented by insurance entities which are operating critical functions.

the course of this pilot assessment. A presentation summarizing the assessment was also made to Messrs. B. Peyret (Deputy General Secretary, ACPR); F. Hervo (Director of International Affairs, ACPR); I. Odonnat (Deputy Director General for Financial Stability and Operations, Banque de France); J. Idier (Head of Macroprudential Policy Division, BdF); S. Raspiller (Head of Financial Sector Directorate, MoF); and other senior officials from the French government.

INSTITUTIONAL SETTING AND MARKET STRUCTURE

4. In the institutional setup, the ACPR is tasked with the regulation, supervision, and resolution of banks and insurers. The ACPR's resolution powers were expanded in December 2016 to include the insurance sector, supplementing the arrangements in place since the transposition of the BRRD into French law in 2015.[6] The Monetary and Financial Code (MFC) grants ACPR functional and financial autonomy. However, operationally, the ACPR (which does not have legal personality) is drawing on support by the Banque de France (BdF), which provides it with human, IT, and other resources. The Autorité de Contrôle Prudentiel (ACP) was originally established in 2010 by an Executive Order, and it became the ACPR in 2013, when it was granted the bank resolution function as an added responsibility.

5. The ACPR is the French resolution authority, with the Resolution College ("Collège de Résolution") having exclusive authority to take resolution actions against supervised entities within the ACPR's remit. In addition, the Resolution College executes and implements resolution measures initiated by the SRB regarding entities under its remit. The ACPR has an explicit mandate to preserve France's financial system stability and to protect the customers, insurance policyholders, members, and beneficiaries of entities under its supervision, as well as to lead the fight against money laundering and terrorist financing.

6. The French financial system is sophisticated and complex, with extensive intra-sectoral and cross-jurisdictional linkages. The system's total assets amount to about €13.5 trillion (almost six times the GDP), and, in recent times, its growth has been driven by nonbanks, which grew by 47 percent in the last 10 years, of which the insurance sector is the most dynamic (65 percent growth since 2008, to about 1.2 times the GDP). The securities market is also well developed and integrated into the main hubs in the region.

7. The French insurance industry is one of the largest in the world, comprising more than 700 institutions, of which 236 are life insurers or mixed insurers, and 14 are reinsurers. The system manages €2.8 trillion in total assets. Through recent regulations, the ACPR has designated 14 insurance institutions for purposes of RRP that are deemed sufficiently important, which jointly represent 88 percent of total assets. Penetration (7 percent and 6 percent of GDP for life and nonlife, respectively) and density (€2,362 and €2,000 in premium per capita) indicators reflect the market depth, while average solvency coverage ratios (of 224 percent and 273 percent for life and nonlife entities, respectively) remain comfortable. The French system is mainly owned domestically

[6] Ordinance No 2015-1024 of 20 August 2015.

(86 percent of total assets are owned by domestic institutions), with a minority participation of foreign subsidiaries. One of the systemic insurers is government owned and an important segment of the market is linked to financial conglomerates, especially under the bancassurance structure.

PRECONDITIONS FOR EFFECTIVE RESOLUTION REGIMES

A. A Well-Established Financial Stability Framework

8. France has an institutional approach to financial oversight and crisis management arrangements. While there is no official crisis management plan in France, the legal framework establishes formal coordination mechanisms where the relevant economic and financial policy-making institutions participate in accordance with their respective mandates. The arrangements also ensure that material information is shared among participants' technical teams to support timely decision making. For the purposes of banking and insurance resolution, the ACPR's Resolution College is one of the key decision-making bodies with coordination arrangements in place.

9. The Haut Conseil de Stabilité Financière (High Council for Financial Stability, (HCSF)) is the macroprudential authority. Its main mission is to oversee the financial system, safeguarding its stability and ensuring a sustainable contribution of the financial sector to economic growth,[7] and preventing and mitigating systemic risks. To these ends, the HCSF focuses on the maintenance of balanced credit market growth in terms of speed and composition, supported by incentives that limit moral hazard, including in terms of the resolution framework for systemic institutions and facilitating the cooperation of the institutions that its members represent. The HCSF reports to the parliament.

10. Separately, the Trésor (MoF) and the Banque de France (BdF) each have crucial roles each in crisis prevention and risk mitigation. The MoF is represented at the ACPR's Supervisory College (without voting power), at the Resolution College (full member with voting power), on the Board of the Deposit Guarantee and Resolution Fund (FGDR), as well as involved in SRB decisions on European Union (EU) bank resolution schemes. The BdF supplies emergency liquidity assistance (ELA) to solvent but illiquid institutions, based on advice provided by the ACPR. Regarding ELA under resolution, pursuant to a recent decision by the ECB Governing Council, ELA to a resolved entity is decided by the ECB on a case-by-case basis.[8]

[7] See Article L. 631-2-1 of the MFC.

[8] An internal procedure based on Eurosystem level principles was adopted on May 15, 2017. It specifies the requirements leading to ELA provision, the responsibilities within BdF, including on the solvency assessment and the authorization decision, the technical implementation of the payment and the collateral management/valuation, and the requirements for the borrower (e.g., recapitalization plan, collateral characteristics).

B. An Effective System of Supervision, Regulation, and Oversight of Insurers

11. The regulation and supervision of the insurance industry is led by the ACPR, which has ample powers to conduct its oversight effectively and to enforce the regulations in place. The ACPR's mandate is broad and includes microprudential oversight, but its activities also have a macroprudential approach to the extent they contribute to preserve stability. In addition, the ACPR has resolution powers, supervises the prevention of money laundering and terrorist financing, and is also in charge of consumer protection issues for the banking and insurance sectors. Enforcement is backed by the power to impose administrative measures and sanctions. The agency's organizational structure has the General Secretariat leading the work of operational departments, with three top decision-making bodies: the Supervisory College, the Resolution College, and a Sanctions Committee.

C. Effective Protection Schemes for Insurance Policyholders

12. The safety net in the sector is composed by two policyholder protection schemes (PPSs), which can provide support in liquidation proceedings.[9] The PPSs are specialized by type of insurance and both act under private law (*personne morale de droit prive*), though their creation was by dedicated laws. The Fonds de Garantie des Assurances Obligatoires de dommages (FGAO), focuses on the protection of nonlife policyholders, including for car accidents, skiing, bicycling, hunting insurance, and mining-related housing damages, among others. The FGAO also protects policyholders of compulsory types of nonlife insurance (motor vehicle insurance and construction-related damages) in case of failure of the insurer. The FGAO is an industry-funded private entity governed by a Board of Directors and supervised by the MoF, although its available resources are rather limited.

13. The other PPS is the Fonds de Garantie des Assurances de Personnes (FGAP) specialized in policyholders' protection in the life insurance sector.[10] The FGAP's funding is calculated based on the amount of technical provisions, with an additional committed line of credit from the insurance industry. In the event of a failure, the FGAP provides the liquidator with financial resources to ensure the repayment of the policyholders' claims, up to preestablished limits (€70,000 per policyholder and €90,000 for bodily harm damages), while retaining a claim in the liquidated estate to recover its contributions. Other than the participation of the PPSs in a forced portfolio transfer and in the context of liquidation, there is no privately funded, dedicated resolution fund for the insurance sector. It is expected that the two PPSs will continue to have an active role in the sector's safety net.

[9] The PPSs role in the context of a forced portfolio transfer can be found in Articles L. 421-9-1 and L. 423-2, Article L. 612-33-2 of the MFC.

[10] The FGAP was created in 1999 (Loi 99-532 25, Art. 68 JORF), following the failure of a life insurance company. Specific references to FGAP's role can be found in Articles 423-1 to 423-8.

D. A Well-Established Liquidation Framework

14. The recovery and resolution framework is supplemented by several court-based insolvency proceedings. In principle, all types of company law insolvency proceedings are available to insurance companies, although the use of some (e.g., conciliation and safeguards procedures) appears less likely. The legal redress procedure may be used at the request of the administrator appointed by the Resolution College, in particular to deal with a residual insurance entity following a portfolio transfer. If an insurer's financial position has deteriorated well below the conditions for entry in resolution, resolution will no longer be feasible, and liquidation proceedings will apply. Liquidation proceedings may only be requested by the ACPR or proceedings may be commenced by the courts after having obtained consent from the ACPR. In liquidation, financial support may be sought from the relevant PPS to settle outstanding claims and to facilitate a portfolio transfer (in full or in part).

MAIN FINDINGS

15. France is one of the first jurisdictions of global systemic importance to establish a comprehensive resolution framework for insurers. On the basis of legislation enacted in December 2016 (Sapin II), Ordinance 1608 of November 2017 upgraded the legal framework to increase the ACPR's toolkit and scope for insurers' recovery and resolution. The framework provides for a broad set of new resolution tools, such as transfers of assets and liabilities, and bridge institutions, but does not include a bail-in tool. France has not dealt with systemic insurance resolution cases in the past, and the very few cases of failures of non-systemic insurers have generally been dealt with through absorptions or liquidations. Hence, one of the main challenges of the current framework comes from the operationalization and testing of the new regime and the institutional arrangements to ensure its effectiveness.[11]

16. In substance, there is consensus with the authorities that the new framework reflects many, but not all elements needed for full compliance with the KAs, and the areas where further progress is needed. In particular, the resolution framework would benefit from additional tools, especially bail-in powers and adequate resolution funding arrangements. However, in the absence of a directive at the European level, certain legal and institutional constraints may arise. The authorities consider an EU Directive as essential to further advance the recovery and resolution framework in the context of a level playing field for insurers in the European Union. At this stage, France's insurance resolution framework presents a relatively narrow path to resolve systemically important insurers.

17. The resolution framework is designed to apply to insurers that breach the Solvency Capital Requirement (SCR) and the Minimum Capital Requirement (MCR) coverage ratio,

[11] This should include the preparation of operational manuals, procedural steps, alerts and triggers, escalation process, and simulation exercises at various levels.

while remaining balance sheet solvent in a Solvency II sense (i.e., assets still cover liabilities). This design is based on the authorities' perception that sudden failures are not likely in insurance, partly because liquidity is a risk factor that is less important for insurers compared to the banking industry and, hence, insurers are not expected to fail as abruptly as banks.[12] If an entity becomes balance sheet insolvent, the framework leads to liquidation and resolution would no longer be applicable.

18. This pilot assessment identified a few areas where further work is needed for the framework to be better aligned with the KAs. The main areas that need further development are: funding for resolution, powers for the restructuring of liabilities (i.e., bail-in), safeguards, and legal protection. More specifically, by groups of KAs.

Scope, Responsibilities, Independence, and Accountability (KA 1–2)

- Alignment of the framework with KAs in terms of the institutional organization and infrastructure is high. The scope and responsibilities of the ACPR are clearly established in the law, as well as the cases when those are applicable, and its interaction with other relevant policy-making entities. The definition and thresholds for the institutions covered by the resolution framework are also clearly established and transparent. Overall, the ACPR has a recognized institutional accountability and transparency, its financial autonomy is formally granted in the law, but its full operational independence would require the freedom to determine its resource levels based on expected demands. Moreover, the nonvoting presence of the MoF in the Supervisory and Resolution Colleges suggests the need to streamline the role of the government to avoid the perception of potential conflicts of interest.

- The resolution authority is well identified and mandated in the law for all relevant decision making under the existing framework. However, for an entity to be placed into resolution, this needs to be agreed by the Supervisory College by way of a conforming opinion. To mitigate concerns about the possibility of supervisory forbearance, the resolution authority should have the power to trigger an assessment of the solvency of an entity with a view of taking resolution action. In addition, there are overlaps in the membership between the Supervisory College (in its different compositions) and the Resolution College. The separation between supervisory and resolution responsibilities and decision-making could be clearer to avoid the perception of risks derived from those overlaps.

- The full implementation of the law is still work in progress, with ACPR's Resolution Department actively improving its staff resources. The current staffing of ACPR's Resolution Department to implement the new legal framework, and, more importantly, in the case of a complex resolution of an insurer is still insufficient. This resource limitation could soon become important in the operationalization of resolution preparedness. In mid-2019, the ACPR will start assessing

[12] Resolution procedures do include liquidity-related triggers (L311-18 5°) and liquidity monitoring is requested in recovery plans.

recovery plans and begin preparing resolution plans, develop resolution policies, and continue participating in CMGs for foreign subsidiaries.

- The personal legal protection of the ACPR staff, to the extent they enforce the law, is well recognized and derived from the French administrative law. However, contractors not paid directly by the ACPR (e.g., temporary administrators paid by the entity) would not fall under the scope of this protection. Corresponding enhancements to the legal protection regime are needed.

Powers and Funding (KA 3–6)

- The insurance resolution framework has been designed with some key constraints that could undermine the regime's ability to deal with systemic failures. While timely entry into resolution is outlined in the law, intervention to resolve an insurer is expected to take place only under the premise of balance sheet solvency, otherwise the failing entity would need to be liquidated. This limits the available toolkit and the timeframe for early intervention powers and resolution more generally.

- The legal framework does not provide the authority with the power to restructure liabilities of a failing entity, except in very restricted circumstances of a forced portfolio transfer.[13] While this tool has not been tested in the context of insurance resolution, it could be instrumental in resolving an entity by means of a bridge institution. While the authorities clearly recognize that establishing powers to mandate the bail-in of liabilities (i.e., write-down or conversion) has advantages, a number of considerations need to be weighed, such as concerns about possible legal challenges of constitutional nature, reservations in relation to the structure of the balance sheet (e.g., level of liabilities in case of pure insurers), and no creditor worse off (NCWO) concerns (for policyholders' claims under different business lines, e.g., life vs. nonlife). Although it is understood that there are no legal constraints under the French constitution that would hinder the introduction of bail-in powers, legal uncertainty may emanate from the lack of specific exemptions set out in EU law that could subsequently be exploited by creditors in legal challenges when bail-in powers are applied.

- There are no private funding arrangements that provide for adequate ex ante resources for purposes of resolution or specific provisions for public funding. There are two schemes for the protection of policyholders: the FGAP and the FGAO, for life and nonlife mandatory insurance policyholders, respectively. These two PPS could participate in the context of forced portfolio transfers and provide funding in the context of liquidation; however, they have not been designed to provide resolution funding. As in the case of liability restructuring, the lack of resolution funding would make the capitalization of a bridge institution challenging. Hence, the need to proceed with resolution while the assets are still sufficient to cover liabilities.

[13] For example., forced portfolio transfer to a third party in a bidding process that may propose imposing a haircut on insurance liabilities.

- Asset valuation of the failing insurer's balance sheet under Solvency II is a cornerstone of the new framework. The implementation of Solvency II in France since 2016 has brought strength to the industry's balance sheets. Supervision of the valuation models and overall calculation of the Solvency II parameters are appropriately intrusive and appear adequate. However, in a resolution scenario, the authorities would require proper steps for verification and prudent assessment (for instance, by requiring mandatory external audits) of assets and liabilities for Solvency II purposes, both for market risks and moral hazard considerations. Otherwise, the operational and legal risks could be considerable.

- Finally, safeguards called for under the KA (notably, respecting the hierarchy of creditor claims, pari passu treatment of creditors, and NCWO stipulations) are omitted from the framework due to the notion of resolution only in case of balance sheet solvency (under Solvency II).

Cross-border Cooperation (KA 7–9)

- The resolution framework clearly encourages cross-border cooperation, when necessary, to bring a failing insurer into resolution. This coordination should be timely, with information preceding actions, and apply to resolution cases initiated domestically or in a foreign jurisdiction.[14] The crisis management group requirements, including on cooperation agreements are also in line with the KAs, and are applied in France to the only G-SII under the ACPR's scope. The authorities are currently reviewing arrangements for other insurance groups with significant cross-border activities. Adequate mechanisms should be ensured for the resolution authority to coordinate with foreign judicial proceedings.

Recovery and Resolution Planning (KA 10–12)

- RRP arrangements are compliant with the KAs in all relevant aspects. Content requirements, cross-border preparations, data access powers, information protection safeguards, and appropriate confidentiality arrangements for information are processed by the ACPR and received from other supervisors. IT systems infrastructure, among others, is in place in the legal framework. More importantly, the ACPR has the power to require decisive actions derived from these exercises. With the exception of one globally systemic insurer, the other 13 insurers subject to the new RRP requirements are just starting their cycle of recovery planning, with the first reports due in mid-2019. Therefore, both the ACPR and the supervised entities are still in the process of gaining experience with this key supervisory tool, which can be instrumental in future resolution cases. Resolution planning for the additional 13 insurers is expected to begin in 2020.

[14] Notably, local branches of reinsurers are omitted in the scope of cross-border arrangements.

DETAILED ASSESSMENT

Table 1. France: Detailed Assessment

KA 1. Scope	
1.1 Any financial institution that could be systemically significant or critical if it fails should be subject to a resolution regime that has the attributes set out in this document ("Key Attributes"). The regime should be clear and transparent as to the financial institutions (hereinafter "firms") within its scope. It should extend to: (i) holding companies of a firm; (ii) nonregulated operational entities within a financial group or conglomerate that are significant to the business of the group or conglomerate; and (iii) branches of foreign firms.[1]	
1.3 The resolution regime should require that at least all domestically incorporated global SIFIs (G-SIFIs): (i) have in place a recovery and resolution plan (RRP), including a group resolution plan, containing all elements set out in I-Annex 4 (see KA 11); (ii) are subject to regular resolvability assessments (see KA 10); and (iii) are the subject of institution-specific cross-border cooperation agreements (see KA 9).	
Essential criteria for KA 1	
EC 1.1	The scope of application of the resolution regime and the circumstances in which it applies are clearly defined in the legal framework. The resolution regime covers any insurer that is, or could be, systemically significant or critical in the event of failure.
Description & findings	The comprehensive recovery and resolution framework for systemically important insurers was established by means of Ordinance 1608 of November 27, 2017 (the Ordinance).[2] The Ordinance's objective is to ensure the development and implementation of measures for the prevention and resolution of crises in the insurance sector. By means of the Ordinance, the Monetary and Financial Code (MFC) and the Insurance Code (IC) were amended via the introduction of specific provisions and a chapter dedicated to crisis prevention and management, respectively. The Ordinance was further complemented by more detailed provisions set out in a Decree and an Order issued subsequently in 2018.[3]

[1] This should not apply where jurisdictions are required by the applicable legal framework to recognize resolution of financial institutions under the law of and carried out by the authorities of their home jurisdiction (for example, the EU Directives on the winding up and reorganization of credit institutions and of insurance undertakings).

[2] Legislative changes in late 2016 (Article 47, Title V of Sapinn II) provided the basis for the issuance of Ordinance N°2017-1608 of November 27, 2017, on the creation of a resolution framework for the insurance sector. According to Article 38 of the French Constitution, the government may ask parliament for an authorization, for a limited period, to take measures by ordinance. Ordinances (issued by the president) are adopted by the council of ministers and need to be presented to parliament for ratification.

[3] Decree No. 2018 179 of March 13, 2018, regarding the resolution regime in the insurance sector and Order (Arrêté) of April 10, 2018, specifying the rules applicable to the resolution regime for the insurance sector.

	Specifically, with regard to the scope of the framework: Article L. 311-1[4] of the IC[5] applies to all providers of insurance activities except insurers still subject to Solvency I.[6] Hence, the resolution regime applies to: • French insurers (and reinsurers) headquartered in France subject to Solvency II; • Insurance subsidiaries of banks (e.g., Crédit Agricole Assurances, Natixis Assurance which is majority owned by BPCE, Société Générale Insurance (Sogecap); • Subsidiaries of foreign G-SIIs (e.g., Allianz, Generali,[7]Aviva); • Mutual insurers (e.g., Covéa, Groupama); and • Insurance holding companies, pension institutions, and supplementary professional pension institutions. The resolution regime does **not** apply to: • Insurers identified by their exclusion from Solvency II, because of their non-systemic nature. In the event of failure, these very small firms would be subject to normal liquidation proceedings; and • Branches of reinsurers, although none are currently operating in France. The preventive part of the resolution regime (RRP) does not apply to insurers below the €50 billion (in total assets) floor established by the MoF in 2018.[8] The recovery and resolution framework introduces two criteria to determine whether a group or an insurance undertaking is subject to the new framework's requirements: a balance sheet size (total assets) threshold; and the existence of critical functions or specific risks. It is worth pointing out that criticality is defined in a broad sense, giving consideration to financial stability (as per the usual definition) and also to the real economy, with the aim to avoid or minimize disruptions to economic activity.

[4] https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006073984&idArticle=LEGIARTI000036102122&dateTexte=&categorieLien=cid (in French).

[5] In this document, all references are to Articles of the IC, unless indicated otherwise.

[6] The insurers that are excluded from Solvency II requirements are very small, typically local undertakings with gross premiums not exceeding €5 million.

[7] Generali is no longer a G-SII as per the latest FSB classification. It should also be noted that the Italian home authority continues to hold Crisis Management Groups in support of the insurer's resolution planning, please refer to KA 8 for more details.

[8] This decision in the form of an Arrêté can be modified at any given point in time, with or without a proposal from the relevant decision-making body of ACPR. French law distinguishes three levels of normative arrangements: Loi (law/ordinance), Règlement (decree), Arrêté (order).

	Currently, there is no process to determine the criticality of functions and services, or specific insurer risks. The only operational criterion of the framework is the balance sheet size threshold, which the MoF set at €50 billion of total assets. This results in 14 insurers legally classified as systemic for RRP purposes, comprising the following:[9] • Axa Group. • CNP Group. • Covea Group. • Groupama Group. • AG2R-La Mondiale Group.[10] • Allianz France Group (subgroup of Allianz). • Aviva France Group (subgroup of Aviva). • Generali France Group (subgroup of Generali). • BNP Paribas Assurances Group (subgroup of BNP Paribas). • SOGECAP Group (subgroup of Société Générale). • Crédit Agricole Assurances Group (subgroup of Crédit Agricole). • Natixis Assurances Group (subgroup of BPCE). • GACM (subgroup of Crédit Mutuel—CM11). • Suravenir (subsidiary of Crédit Mutuel—Arkea). These insurers collectively represent[11] over 90 percent of the French insurance industry's technical provisions (TP) in the life insurance segment (TPs, also known as claim reserves) and just under 75 percent of nonlife and health insurance TPs. From a premium perspective, they represent about 95 percent of the life market and just over 68 percent of nonlife and health.
EC 1.2	The scope of the resolution regime covers the following entities located within the jurisdiction: (i) holding companies; (ii) nonregulated operational entities within a financial group or conglomerate that are significant to the business or continuity of the insurer's critical operations; and (iii) domestic branches of foreign insurers.
Description & findings	The resolution regime in France applies to each of these groups as follows, subject to the exceptions noted above in EC 1.1: (i) Holding companies: Article L. 311-1 3° (Les *sociétés de groupe d'assurance*) (ii) Nonregulated entities: Article L. 311-1 4° (provision for significance to the business) (iii) Domestic branches of foreign insurers: Article L-310-2 3° and 4°, which do **not** include local branches of reinsurers.

[9] There are currently no reinsurers with headquarters in France that exceed this threshold.

[10] AG2R La Mondiale Matmut, since January 1, 2019.

[11] Figures in this paragraph are based on financial data at year end-2017.

Assessment of KA 1	The new framework targets all institutions considered systemic, given their size and other relevant features. Its' current implementation is guided solely by the threshold in terms of total assets; any holding company, group, mutual, or foreign subsidiary above this level is subject to RRP requirements.

KA 2 Resolution Authority

2.1 Each jurisdiction should have a designated administrative authority or authorities responsible for exercising the resolution powers over firms within the scope of the resolution regime ("resolution authority"). Where there are multiple resolution authorities within a jurisdiction their respective mandates, roles, and responsibilities should be clearly defined and coordinated.

2.2 Where different resolution authorities are in charge of resolving entities of the same group within a single jurisdiction, the resolution regime of that jurisdiction should identify a lead authority that coordinates the resolution of the legal entities within that jurisdiction.

2.3 As part of its statutory objectives and functions, and where appropriate in coordination with other authorities, the resolution authority should:

(i) Pursue financial stability and ensure continuity of systemically important financial services, payment, clearing, and settlement functions;

(ii) Protect, where applicable and in coordination with the relevant insurance schemes and arrangements, such that depositors, insurance policy holders, and investors are covered by such schemes and arrangements;

(iii) Avoid unnecessary destruction of value and seek to minimize the overall costs of resolution in home and host jurisdictions and losses to creditors, where that is consistent with the other statutory objectives; and

(iv) Duly consider the potential impact of its resolution actions on financial stability in other jurisdictions.

2.4 The resolution authority should have the authority to enter into agreements with resolution authorities of other jurisdictions.

2.5 The resolution authority should have operational independence consistent with its statutory responsibilities, transparent processes, sound governance, and adequate resources and be subject to rigorous evaluation and accountability mechanisms to assess the effectiveness of any resolution measures. It should have the expertise, resources, and the operational capacity to implement resolution measures with respect to large and complex firms.

2.6 The resolution authority and its staff should be protected against liability for actions taken and omissions made while discharging their duties in the exercise of resolution powers in good faith, including actions in support of foreign resolution proceedings.

2.7 The resolution authority should have unimpeded access to firms where that is material for the purposes of resolution planning and preparation and implementation of resolution measures.

Essential criteria for KA 2

EC 2.1	The legal framework clearly identifies one or more resolution authorities and provides it or them with a clear mandate. Where there are multiple resolution authorities or where multiple authorities are involved in a resolution process, the resolution regime provides for the identification of a lead authority that coordinates the resolution of entities within a financial group or conglomerate, or the resolution of a single insurer, within that

	jurisdiction; sets out clear arrangements for the coordination and provides for a clear allocation of objectives, functions, and powers of those authorities.
Description & findings	The legal framework, specifically the MFC, designates the resolution authority and outlines its scope, functions, and powers. Pursuant to Article L. 612-1 II 4°of the MFC, the ACPR (*Autorité de Contrôle Prudentiel et de Résolution*) is the sole agency in charge of implementing the preventive and resolution measures for insurers. The ACPR was created in 2010 (Order 2010-76), originally as ACP (Autorité de Contrôle Prudentiel). It resulted from the merger of three previously existing bodies: (i) Comité des Entreprises d'Assurance (CEA); (ii) Comité des Établissements de Crédit et des Entreprises d'investissement (CECEI); and (iii) Commission Bancaire et Autorité de Contrôle des Assurances et des Mutuelles (ACAM). In 2013 the Law on the Separation and Regulation of Banking Activities entrusted the ACP with the supervision of the preparation and implementation of measures to prevent and resolve banking crises. The ACP thus became the ACPR. The resolution powers were extended to include the insurance sector in December 2016. Within the ACPR, the Resolution College is the decision-making body of the resolution authority. The Resolution College has exclusive authority to take resolution actions against supervised entities within the ACPR's remit. In addition, the Resolution College executes and implements resolution measures initiated by the SRB for credit institutions that are under the SRB's direct remit.
EC 2.2	The statutory objectives and functions of the resolution authority include those set out in KA 2.3, as applicable to the sectoral responsibilities of the resolution authority. Where the exercise of resolution powers requires court involvement, the objectives of that involvement are broadly aligned with the statutory objectives and functions set out in KA 2.3. Administrators appointed by a court are expected to act in accordance with those objectives and functions.
Description & findings	The ACPR's statutory objectives include financial stability and protection of depositors (Article L. 612-1). In addition, the insurance code stipulates as objectives of resolution: (i) financial stability, (ii) protection of depositor, (iii) protection of public funds, (iv) and continuity of critical functions (Article L311-22). The legal framework does not explicitly include the criteria of minimization of resolution costs and losses to creditors, nor the impact of resolution actions on financial stability in other jurisdictions, though those principles underlie other practices (e.g., see EC 8.2). The ACPR's Supervisory College, in its three configurations (see EC 2.3), and the Resolution College are exercising their resolution powers without court involvement. It is necessary for courts to become involved at the stage of liquidation (see EC 2.3).
EC 2.3	The resolution authority is, by law and in practice, operationally independent in the performance of its statutory responsibilities. There are arrangements, procedures, and safeguards against undue political or industry influence, which include: (i) internal governance arrangements which promote sound and independent decision-making; (ii) rules and procedures for the appointment and dismissal of the head of the authority, members of the governing body (where relevant), and senior management; and (iii) rules on conflicts of interest.

Description & findings	The MFC grants ACPR (which does not have a legal personality) formal financial autonomy (Article L. 612-18), but also makes it subject to budgetary caps on its wage bill, and its budget constitutes a subsidiary budget of the BdF. In addition, the composition of the institution's decision-making bodies involve the representation of senior authorities of other public institutions. These features limit the operational independence of the authority. The ACPR has a collegiate organization: The Supervisory and Resolution Colleges are the decision-making bodies in the context of recovery and resolution in insurance (Article L. 612-4 of the MFC).[12] The status of the members of these colleges, including representatives of public authorities, magistrates, competent persons, and professionals, whose rules for appointment and termination are specified in the MFC, ensure their independence. Other rules exist to prevent a conflict of interest for members of the ACPR's collegiate organizations (i.e., the sanctions committee as well, see Art. L. 612-10 of the MFC). All decisions are collegial, and the colleges' members do not have specific functions. The plenary of the Supervisory College consists of 19 members, who may or may not be affiliated with the BdF. Members must be competent on central bank operations, electronic platforms and payment services, investment services, commercial, economic, and financial law, or insurance. The Supervisory College also has restricted compositions for specific areas of surveillance (i.e., banking or insurance). The restricted configuration of the Supervisory College consists of eight members. The banking and restricted compositions are chaired by the Governor of the BdF (who is also the ACPR Chairperson) or by the deputy governor of the BdF. For supervisory purposes, decisions on individual insurers may be either dealt with in the restricted composition of the Supervisory College, chaired by the governor of the BdF or the designated deputy governor of the BdF (Article L. 612-6 of the MFC), or pursuant to Article L. 612-12 III of the MFC in the insurance composition of the Supervisory College, chaired by the vice-chair of the ACPR, the person with the responsibility of the oversight of insurance undertakings. In practice, the deputy governor of the BdF has chaired the restricted composition of the Supervisory College since the inception of the ACPR. The Resolution College consists of a total of seven members and is always chaired by the governor or the deputy governor of the BdF (Article L. 612-8-1 of the MFC). The vice-chair of the ACPR, the president of the AMF (Autorité des Marchés Financiers), the director of the Trésor, and the president (or a representative) of the commercial, economic, and financial chamber of the Court de Cassation (Supreme Court for private law) are also members. It is possible for certain members to designate representatives and, in practice, the Resolution College is mainly comprising senior officials and magistrates. When the Resolution College is deciding on banking groups or financial conglomerates, the president of the FGDR (Fonds de Garantie des Dépôts et de Résolution, deposit guarantee and resolution fund) is also included as a full member. The decision of the Resolution College to place an entity into resolution procedures requires the formal agreement of the Supervisory College by way of a conforming opinion. Since the Resolution College cannot act independently, the supervisory function has a veto power in this area.

[12] In the case of financial conglomerates where the banking activity is an SI, the supervision and, hence, any recovery decisions, including the failing or likely to fail (FOLTF) declaration, are within the remit of the ECB/SSM.

EC 2.4	The resolution authority is accountable through a transparent framework for the discharge of its duties in relation to its statutory responsibilities. This framework includes procedures for reviewing and evaluating actions that the resolution authority takes in carrying out its statutory responsibilities and the periodic publication of reports on its resolution actions and policies, as necessary.
Description & findings	The interaction between the Supervisory College[13] and the Resolution College[14] is central to accountability and transparency. As seen in the context of the discussion for EC 2.3, the Supervisory College is presided by the governor of the BdF (who is also the chair of the ACPR) or by the deputy governor of BdF who replaces the governor, and includes the heads of the AMF (securities regulator), the Trésor, the vice-chair of the ACPR (an expert in insurance matters), as well as experts in customer protection, actuarial matters, and industry expertise. The group meets quarterly in business-as-usual times, and ad hoc other times either in person or via secure conference call. Pursuant to Article L. 612-10 of the MFC, conflicts of interest are managed by the president of the ACPR and the Haute Autorité pour la Transparence de la Vie Publique.[15] The Resolution Directorate of the ACPR prepares the agenda for the meetings of the Resolution College. The Resolution College is chaired by the governor of the BoF and has developed an institutional framework for resolution.[16] Regarding information dissemination and reporting, the ACPR's annual report on the 2018 activities is expected to include a box on insurance resolution. The ACPR typically communicates with the public via publications, conferences, and other events, which include participants from the industry.[17] Also, a conference with FFA (Fédération Française de l'Assurance, the French Insurance Federation) was organised in November 2018, with a view of formally launching the recovery planning biennial cycle: systemically important insurers are required to submit a recovery plan to the ACPR by July 2019. This would be the first recovery plan that insurers prepare and the ACPR's guidance and expectation has been focused on the governance of recovery planning, to ensure management's buy-in, and on the clear description of the timing and size of the impact of the proposed recovery measures. ACPR will subsequently give its experts six months to assess these recovery plans in order to provide insurers with the necessary feedback no later than early 2020. The insurers would have more than one year to reflect on the feedback of the authority and improve their plan before resubmitting by July 2021.

[13] https://acpr.banque-france.fr/lacpr/colleges-et-commissions/college-de-supervision/composition-du-college-de-supervision and https://acpr.banque-france.fr/en/acpr/colleges-and-committees/supervisory-college/composition-acprs-supervisory-college

[14] https://acpr.banque-france.fr/en/acpr/colleges-and-committees/resolution-college

[15] The High Authority controls the integrity of the highest-ranking French public officials, who are required to disclose their assets and interests when taking up their official duties. The High Authority is also in charge of preventing conflicts of interest and monitoring « revolving doors » of certain public officials (https://www.hatvp.fr/en/high-authority/ethics-of-publics-officials/)

[16] https://acpr.banque-france.fr/en/resolution/institutional-framework-resolution

[17] The ACPR's transparency policy is described in "Transparency policy of the Supervisory Authority", which is part of the implementation of European supervisory disclosure rules. See: https://acpr.banque-france.fr/europe-et-international/banques/transparence-du-regulateur.

EC 2.5	The resolution authority has adequate human and budgetary resources, or access to such resources, to enable it to carry out its resolution functions effectively without undermining its independence, both before and during a crisis.
Description & findings	The organization of ACPR's Resolution Directorate mirrors that of supervision, and it benefits from the ACPR workforce for all support functions. Following the adoption of the insurance resolution regime under the Ordinance, the Resolution College opted for integrating the resolution work on insurers into the existing supervisory structures. This means that resolution teams are involved in both insurance and banking resolution matters. Additional staff is expected to join the insurance resolution team, mainly to work on insurance resolution planning (13 resolution plans have to be developed within the next two years). Thus far, the Resolution Directorate has hired one of the five approved full-time positions for insurance resolution (the resolution team for banks has 25 full-time staff). Authorities expect that in a scenario of a systemic insurer failure, human resources from supervision would be quickly deployed to support the resolution teams.
EC 2.6	The legal framework provides legal protection through statutes for the resolution authority, its head, members of the governing body and its staff, and any agents against liability for actions taken, or omissions made while discharging their duties in good faith and acting within the scope of their powers, including: actions taken in support of foreign resolution proceedings and indemnification against any costs of defending any such actions.
Description & findings	There is no explicit provision in law concerning the protection of the ACPR and its staff. However, the ACPR operates under French administrative law. As the ACPR has no legal personality and cannot incur liability in its own right, actions against the acts or omissions of the ACPR need to be brought against the French state. The state may thus incur liability due to the ACPR's acts or omissions, which can be qualified as gross misconduct ("faute lourde") in the performance of its tasks: "Toward the powers allotted to the banking supervisory authority, the responsibility endorsed by the state for the claim damages caused by carelessness or omissions in the exercise of its mission could only be involved in case of gross misconduct" (Conseil d'Etat, November 30, 2001, Ministry of Economy vs. Kechichian). Senior officials, employees, and contract agents of the ACPR are protected by general principles of administrative law, developed in case law ("faute de service"), applicable as if they were public servants in charge of a public function. This includes contract agents engaged directly and paid for by the ACPR (e.g., valuation experts). Under the French legal system of administrative law, case law carries the same weight as a statutory regime. "Faute de service" means misconduct by an individual in the performance of duties, that is, during the service, with the means of the service, and absent any personal interest. The protection is afforded by the ACPR, on behalf of the French state. Where senior officials, employees, and contract agents are pursued for actions taken in the course of their duties, they may not incur personal liability for actions taken and/or omissions made while discharging their duties in good faith. The ACPR (on behalf of the French state) is responsible to assess whether the matter involves personal misconduct, independent of the judicial process. Unless it can be established that the conduct involved an intentional action or is characterized as inexcusable misconduct ("la faute d'une gravité inadmissible"), the ACPR (on behalf of the French state) is required to afford protection. It may be noted that the collegiate nature of the ACPR's

	decision-making provides a further layer of protection against legal action aimed at any individual one of its college members. If legal action is initiated for an action/omission in the performance of duties, reimbursement of the associated costs will be provided. Upon application, an advance for the expense of engaging legal counsel is granted. In the context of insurance resolution, an administrator appointed by the Resolution College for the effective management of the insurance undertaking and whose remuneration, although defined by the Resolution College, is borne by the insurance undertaking, would not fall under the scope of the protection. However, contractual agents engaged directly and paid for by the ACPR (e.g., valuation experts) would be covered by the protection as set out above.
EC 2.7	Under the legal framework, the resolution authority has unimpeded access to the premises of insurers, where necessary, for the purposes of resolution planning and the preparation and implementation of resolution measures.
Description & findings	As with banking, ACPR authorities have full access to insurers' premises and may request any information and conduct onsite inspections. For the case of planned onsite inspections by the resolution authority, they will be conducted by the onsite supervisory inspection teams. Article L. 612-15-1 2° of the MFC provides that the director of resolution of the ACPR may require any insurance company to provide any information necessary for the development and implementation of crisis prevention and resolution measures in the insurance sector. The same article provides that the director of resolution may also request, with the support of the secretary general of the ACPR, such information through onsite inspections carried out by the authority's agents.
Assessment of KA 2	The composition of the Supervisory College and the Resolution College do not appear to ensure full independence between ACPR and the Trésor in the first place, and across the key functions of supervision and resolution in second. The existence of budgetary caps for the headcount and compensation of its staff, can place an important constraint to the development of the new functions under the insurance resolution framework, and also more generally on ACPR response to current and projected demands. While there are mitigating factors, per international best practices, the authorities should revisit these features. The presence of a nonvoting Trésor representative in the Supervisory College and Resolution College could fill a legitimate objective of close coordination of ACPR with fiscal authorities. However, such presence could lead to a perception of a lack of full independence of ACPR. In addition, Supervisory and Resolution Colleges partly have common members, while there are different compositions, the legal framework does not preclude that they be presided over by the same individual. In addition, to mitigate concerns about the possibility of supervisory forbearance, the resolution authority should have the power to trigger an assessment of the solvency of an entity with a view of taking resolution action. In the existing regime, the powers given to the Resolution College by the recovery and resolution framework appear constrained. For an entity to be placed into resolution, this needs to be agreed by the Supervisory College by way of *avis conforme*, a conforming opinion. The Supervisory College may act on its own, but the Resolution College cannot. In other words, the Supervisory College has veto powers over a resolution college assessment.

	Moreover, the composition of the resolution college includes the president (or representative) of the commercial, economic, and financial chamber of the Court de Cassation (Supreme Court for private law), which appears unusual. While it allows the resolution college to draw on highly competent legal expertise, it may be perceived as undermining the separation of powers between administrative bodies and the judiciary. Judicial challenges against decisions by the resolution college will be heard by the Conseil d'Etat (Supreme Court for public law) and not the Court de Cassation, but it is worth noting that the review of commercial matters, such as liquidation proceedings, would be within the remit of the Court de Cassation. This may result in the need for a recusal to maintain impartiality. While the constitutional court monitors compliance with the principle of separation of powers and the French regime on the impartiality of judges is well developed, the presence of a member of the judiciary in the Resolution College creates perception risks. Other solutions could be explored to ensure competent legal expertise is available to the Resolution College. Given the broad mandate of the ACPR, any bank, holding company, insurer, or insurance subsidiary would fall under its scope. With regard to the adequacy and sufficiency of staff resources for resolution functions, the authorities consider that in case of urgent need supervision staff can be deployed to resolution tasks. However, the intense work program of the next three years (i.e., assessing recovery plans for systemic institutions, formulating resolution plans, and developing resolvability assessments) will require increasing commitments by ACPR of its experienced permanent professional resources, who have specific skills that are sought after by the industry. With regard to financial conglomerates (primarily banks with a developed bancassurance model), the authorities are aware of the need to address the resolution of such entities in a comprehensive manner that would bring together banking and insurance insights and expertise. To that end, there is indeed a dedicated decision-making body (restricted composition of the supervisory college). Other processes are currently under different stages of implementation and not yet operational. Finally, the existing resolution framework does not provide for a role of the existing PPSs. There are two PPSs in France: FGAO and FGAP, each with some resources but without a role in support of the resolution process (see EC6.1 for a more granular description of PPSs).
KA 3 Resolution Powers	
3.1	Resolution should be initiated when a firm is no longer viable or likely to be no longer viable and has no reasonable prospect of becoming so. The resolution regime should provide for timely and early entry into resolution before a firm is balance sheet insolvent and before all equity has been fully wiped out. There should be clear standards or suitable indicators of nonviability to help guide decisions on whether firms meet the conditions for entry into resolution.
3.2	Resolution authorities should have at their disposal a broad range of resolution powers, which should include powers to do the following: (i) Remove and replace the senior management and directors, and recover monies from responsible persons, including claw-back of variable remuneration;

(ii) Appoint an administrator to take control of and manage the affected firm with the objective of restoring the firm, or parts of its business, to on-going and sustainable viability;

(iii) Operate and resolve the firm, including powers to terminate contracts, continue or assign contracts, purchase or sell assets, write down debt, and take any other action necessary to restructure or wind down the firm's operations;

(iv) Ensure continuity of essential services and functions by requiring other companies in the same group to continue to provide essential services to the entity in resolution, any successor, or an acquiring entity; ensuring that the residual entity in resolution can temporarily provide such services to a successor or an acquiring entity; or procuring necessary services from unaffiliated third parties;

(v) Override rights of shareholders of the firm in resolution, including requirements for approval by shareholders of particular transactions, in order to permit a merger, acquisition, sale of substantial business operations, recapitalization, or other measures to restructure and dispose of the firm's business or its liabilities and assets;

(vi) Transfer or sell assets and liabilities, legal rights, and obligations, including deposit liabilities and ownership in shares, to a solvent third party, notwithstanding any requirements for consent or novation that would otherwise apply (see KA 3.3);

(vii) Establish a temporary bridge institution to take over and continue operating certain critical functions and viable operations of a failed firm (see KA 3.4);

(viii) Establish a separate asset management vehicle (for example, as a subsidiary of the distressed firm, an entity with a separate charter, or as a trust or asset management company) and transfer to the vehicle for management and run-down nonperforming loans or difficult-to-value assets;

(ix) Carry out bail-in within resolution as a means to achieve or help achieve continuity of essential functions either: (i) by recapitalizing the entity hitherto providing these functions that is no longer viable; or, alternatively, (ii) by capitalizing a newly established entity or bridge institution to which these functions have been transferred following closure of the nonviable firm (the residual business of which would then be wound up and the firm liquidated) (see KA 3.5);

(x) Temporarily stay the exercise of early termination rights that may otherwise be triggered upon entry of a firm into resolution or in connection with the use of resolution powers (see KA 4.3 and Annex IV);

(xi) Impose a moratorium with a suspension of payments to unsecured creditors and customers (except for payments and property transfers to CCPs and those entered into the payment, clearing, and settlements systems) and a stay on creditor actions to attach assets or otherwise collect money or property from the firm, while protecting the enforcement of eligible netting and collateral agreements; and

(xii) Effect the closure and orderly wind-down (liquidation) of the whole or part of a failing firm with timely pay-out or transfer of insured deposits and prompt (for example, within seven days) access to transaction accounts and to segregated client funds.

3.3 Resolution authorities should have the power to transfer selected assets and liabilities of the failed firm to a third-party institution or to a newly established bridge institution. Any transfer of assets or liabilities should not:

(i) Require the consent of any interested party or creditor to be valid; and

(ii) Constitute a default or termination event in relation to any obligation relating to such assets or liabilities or under any contract to which the failed firm is a party (see KA 4.2).

3.4 Resolution authorities should have the power to establish one or more bridge institutions to take over and continue operating certain critical functions and viable operations of a failed firm, including:

(i) The power to enter into legally enforceable agreements by which the authority transfers, and the bridge institution receives, assets and liabilities of the failed firm as selected by the authority;

(ii) The power to establish the terms and conditions under which the bridge institution has the capacity to operate as a going concern, including the manner under which the bridge institution obtains capital or operational financing and other liquidity support; the prudential and other regulatory requirements that apply to the operations of the bridge institution; the selection of management and the manner by which the corporate governance of the bridge institution may be conducted; and the performance by the bridge institution of such other temporary functions as the authority may from time to time prescribe;

(iii) The power to reverse, if necessary, asset and liability transfers to a bridge institution subject to appropriate safeguards, such as time restrictions; and

(iv) The power to arrange the sale or wind-down of the bridge institution, or the sale of some or all of its assets and liabilities to a purchasing institution, so as best to affect the objectives of the resolution authority.

3.5 Powers to carry out bail-in within resolution should enable resolution authorities to:

(i) Write down in a manner that respects the hierarchy of claims in liquidation (see KA 5.1) equity or other instruments of ownership of the firm, unsecured and uninsured creditor claims to the extent necessary to absorb the losses; and to

(ii) Convert into equity or other instruments of ownership of the firm under resolution (or any successor in resolution or the parent company within the same jurisdiction), all or parts of unsecured and uninsured creditor claims in a manner that respects the hierarchy of claims in liquidation;

(iii) Upon entry into resolution, convert or write-down any contingent convertible or contractual bail-in instruments whose terms had not been triggered prior to entry into resolution and treat the resulting instruments in line with (i) or (ii).

3.6 The resolution regime should make it possible to apply bail-in within resolution in conjunction with other resolution powers (for example, removal of problem assets, replacement of senior management and adoption of a new business plan) to ensure the viability of the firm or newly established entity following the implementation of bail-in.

3.7	In the case of insurance firms, resolution authorities should also have powers to: (i) Undertake a portfolio transfer moving all or part of the insurance business to another insurer without the consent of each and every policyholder; and (ii) Discontinue the writing of new business by an insurance firm in resolution while continuing to administer existing contractual policy obligations for in-force business (run-off).
3.8	Resolution authorities should have the legal and operational capacity to: (i) Apply one or a combination of resolution powers, with resolution actions being either combined or applied sequentially; (ii) Apply different types of resolution powers to different parts of the firm's business (for example, retail and commercial banking, trading operations, and insurance); and (iii) Initiate a wind-down for those operations, which in that particular circumstance are judged by the authorities to be not critical to the financial system or the economy (see KA 3.2 xii).
3.9	In applying resolution powers to individual components of a financial group located in its jurisdiction, the resolution authority should take into account the impact on the group as a whole and on financial stability in other affected jurisdictions and undertake best efforts to avoid taking actions that could reasonably be expected to trigger instability elsewhere in the group or in the financial system.
Essential criteria for KA 3	
EC 3.1	The legal framework includes clear criteria that provide for timely and early entry into resolution before an insurer is balance sheet insolvent, when an insurer is no longer viable or when it is likely to be no longer viable and, in either case, has no reasonable prospect of return to viability.
Description & findings	The regulatory framework grants the ACPR powers for early intervention, which under the recovery and resolution framework have been enhanced through RRP requirements and resolvability assessments. The implementation of the latter is currently underway. Article L. 311-18 establishes that an insurer may be declared failing or likely to fail if one of the following conditions is met: • The insurer is no longer compliant with the conditions set for its licensing; • The implementation of recovery measures by the insurer does not provide a significant improvement with respect to the level of own funds or to the decrease of the risk profile; • In case of a group, it does not comply with the minimum group capital ratio; • The insurer is likely not to fulfil its obligations except those towards policyholders; and • An extraordinary public support is required. Since the scope of the resolution framework extends to firms under Solvency II, it has been designed to trigger early supervisory action when an insurer breaches Solvency Capital Requirements (SCR), but while it remains balance sheet solvent. The breach of SCR would put the firm into enhanced monitoring or recovery. Key tools available to the

	ACPR before entry in resolution include: restriction of activities, restriction of policy surrenders, and requirements to reduce exposure. Moreover, resolution measures could be implemented only if the Solvency II value of assets is higher than the Solvency II value of liabilities (Article L. 311-18 III 4°), i.e., the firm would have breached the Minimum Capital Requirement (MCR), but capital is still Solvency II positive. In this sense, unless an entity is balance sheet solvent, it cannot be resolved. If the insurer is not balance sheet solvent, it would be put into regular liquidation/wind-down. See EC 2.4 regarding the interaction between the Supervisory and Resolution Colleges.
EC 3.2	Effective and adequate arrangements including evaluation and decision-making processes are in place to support the timely determination of nonviability or likely nonviability and entry into resolution.
Description & findings	The IC provides clear processes that support the timely determination of nonviability or likely nonviability and entry into resolution, including the triggers. The resolution college evaluates if the conditions of entry into resolution are met; however, it can open a resolution procedure only after obtaining the assent of the supervisory college (Article L. 311-18), which de facto undermines the power of the resolution authority. There are four cumulative conditions of entry into resolution: • The insurer is failing or likely to fail; • A resolution action is necessary to preserve the enumerated resolution objectives; • There is no reasonable prospect, which alternative measures would prevent the failure; and • Net assets are positive. Once the resolution procedure is opened, the resolution college decides on the measure or combination of measures to be applied as provided by the law. For cases of cross border entities, the college of supervisors has arrangements (Annex 1E) to activate emergency alerts and crisis management procedures. For G-SIIs the cooperation agreements within the Crisis Management Groups (CMGs) include specific provisions for cooperation and coordination during a crisis. In order to effect the closure and orderly wind-down (liquidation) of the whole or part of a failing firm, the powers under the recovery and resolution framework are supplemented by several court-based insolvency proceedings. In principle, all types of company law insolvency proceedings are available to insurance companies; although, the use of some of them appears less likely. For example, a conciliation procedure may be opened with the assent of the ACPR and explored with creditors for subsequent approval by the court, though it appears unlikely that the ACPR would consent to such a procedure. An entity at risk of suspension of payments could request a safeguards procedure, which would require the submission of a recovery plan to the court for approval, with the ACPR providing its views on the plan. The legal redress procedure for entities that are viable but in suspension of payments (unable to settle its current liabilities with available assets) may be used at the request of the administrator appointed by the resolution college, in particular to deal with a residual insurance entity following a portfolio transfer. For insurance companies, the legal redress procedure is opened at the request of the ACPR or by the court, but with the assent of the ACPR. It

	begins with an observation period to prepare the recovery of the undertaking under the conditions provided for in a recovery plan adopted by the court. In legal redress, the court monitors the implementation of the recovery plan until the financial condition improves or, if unsuccessful, enters the entity in liquidation. If an insurer's financial position has deteriorated well below the conditions for entry in resolution to the point that there is a suspension of payments and recovery is impossible, resolution will no longer be feasible, and liquidation proceedings will apply. Liquidation proceedings may only be requested by the ACPR or proceedings may be commenced by the courts after having obtained consent from the ACPR. Some experience has been gained with the liquidation of insurers of comparatively small size, such as the 2008 failure of a nonlife insurer (health insurance) in an overseas territory. In the liquidation of an insurance entity, the judicial liquidator is appointed by the courts from a list of competent persons maintained by the commercial court of each region working alongside an administrative liquidator designated by the ACPR. In liquidation, financial support may be sought from the relevant PPS to settle outstanding claims and to facilitate a portfolio transfer (in full or in part).
EC 3.3	The resolution authority has powers to remove and replace senior management and directors of the insurer in resolution.
Description & findings	The resolution college has the power to "suspend or revoke any person exerting effective management" according to Article L. 311-30 1°. This includes the ability to suspend or revoke the continuation of the mandate of Board members of the insurer (see L. 311-30 2°).
EC 3.4	The resolution authority or another relevant authority has the power to recover monies, including variable remuneration, from persons whose actions or omissions have caused or materially contributed to the failure of the insurer.
Description & findings	Under its supervision duties, the ACPR inspectors review whether managers' contracts have clauses that would allow any variable remuneration and other compensation not yet paid out to be reduced or cancelled in case of resolution. If the ACPR is not satisfied with the contractual clauses, it requests the insurance undertaking to make changes. Article L. 311-16 mandates the resolution authority to ensure that individuals in executive positions contribute financially to the resolution. However, the law does not include specific claw-back provisions in reference to variable remuneration already paid out at the time of failure, which could be possible only via a court-led process. French law (Article L. 241-3 of the Commercial Code) criminalizes the misuse of company assets and sanctions a manager who, for personal interest, makes use of company assets contrary to the interests of the entity. There are specific sanctions on the payment of remuneration which due to its excessive amount constitutes a misuse of funds or an unusual risk to the company. In order to determine whether an amount qualifies as "excessive" two main criteria are assessed by the criminal courts: first, from the perspective of the company, remuneration is considered excessive—even if adequate consideration for the work of the manager—when it exceeds the entity's financial capacity, endangering its financial health; second, remuneration may be excessive with regard to the work actually performed by the manager.
EC 3.5	The resolution authority has powers to temporarily take control and operate an insurer in order to achieve its orderly resolution. This includes powers to: take actions to restructure or wind down the insurer's operations; terminate, continue or transfer existing contracts; enter into new contracts and service agreements to ensure the continuity of essential services and functions; and purchase or sell assets.

Description & findings	Article L. 311-30 explicitly includes powers to effect portfolio transfer, the sale of business, and change of legal forms. These powers include asset sales. The power to purchase assets exists within the context of changes in asset allocation such as portfolio rebalancing. The resolution authority can also restrict or forbid the continuation of certain activities, including the distribution of dividends. In order to carry out these powers and effectively manage the entity, the Resolution College can appoint an administrator.
EC 3.6	The resolution authority has powers to ensure continuity of essential services by: (i) requiring that the insurer in resolution temporarily provides, to any successor or acquiring entity to which assets and liabilities of the insurer have been transferred, such services related to those assets and liabilities; (ii) requiring companies in the same group (whether or not they are regulated) to continue to provide such services to the insurer in resolution or to any successor or acquiring entity at a reasonable rate of reimbursement; or (iii) procuring such services from unaffiliated third parties on behalf of the insurer in resolution.
Description & findings	Article L. 311-51 contains several provisions allowing the resolution college to "provide to the purchaser the services or infrastructures which are necessary… [and] takes any measure making it possible to ensure the continuity of the rights and commitments related to the transferred activity." Also, Article L. 311-19 provides detailed explanations on the conditions under which the services and infrastructures shall be provided to the successor/acquiring party.
EC 3.7	The resolution authority has the power to affect the sale of the insurer or its merger with another institution, or the transfer of assets or liabilities (including insurance contracts and any associated assets and liabilities) to a third party, bridge institution, or management vehicle without requiring the consent of any interested private parties, including the shareholders or creditors, of the insurer in resolution. This power includes the power to transfer related reinsurance contracts.
Description & findings	The legal framework sets out a broad range of powers and tools as described above; moreover, it provides that the decisions of the Resolution College, with respect to a resolution measure, should not be opposed or interfered with (Articles L. 311-30 3° and 4°, L. 311-35, L. 311-41, and L. 311-23). However, these powers could be less effective given the absence of other enabling elements in the framework. These missing tools include: resolution funding and the participation of PPSs in resolution (e.g., for portfolio transfers (other than in the context of a forced portfolio transfer) and bridge bank capitalization). Moreover, the role of a trust fund scheme (*fiducie*) has the potential to be used, yet its operational framework is not specified (see EC 3.9).
EC 3.8	The resolution authority has the powers set out in KA 3.4 to establish one or more bridge institutions. The legal framework specifies, or gives the resolution authority the power to specify, the terms and conditions under which a bridge institution will be set up and operate as a going concern, including: (i) its ownership structure; (ii) the sources of capital, its operational financing and liquidity support;

	(iii) the applicable regulatory requirements, including regulatory capital; (iv) the applicable corporate governance framework; and (v) the process for appointing the management of the bridge institution and its responsibilities.
Description & findings	The bridge institution tool is provided for in the framework. A bridge entity has in principle a life span of two years after the last transfer. Such deadline can be extended for one-year periods as many times as needed. There is no time limit in terms of finalizing the transfer of liabilities (and assets) to the bridge bank: liabilities can be transferred in and out at any point in time during the life of the bridge institution. While this feature provides flexibility to the tool, it could also give rise to legal certainty concerns and hence lead to legal challenges by creditors. Some safeguards are needed to ensure that relevant decisions are taken in a timely manner (following an in-depth valuation process) to ensure that the bridge institution will be returned to the private sector in due course. The capitalization of a bridge institution could be challenging within the existing framework (EC 3.7).
EC 3.9	The resolution authority has the power to establish a separate management vehicle for the purposes of managing and winding down assets or liabilities transferred to it from an insurer in resolution, including through a run-off of insurance contracts.
Description & findings	The IC provides for this kind of management vehicle in the form of a trust fund scheme (*fiducie*), typically used in company restructuring (Articles L. 311-41 and 311-42). The details of the *fiducie* would be laid down in a contract. Setting up such an estate, legally separated from the insurer (or insurers) which would be the trustee(s), can be helpful in cases where the failing insurer has portfolios that are not commercially attractive and/or are high risk (for instance, asbestos risks). To the extent that such estates are transferred to several trustees, this tool has the potential to provide a market solution (i.e., several insurers join forces in running this estate) for challenging portfolios that no individual insurer would accept. The creation of the *fiducie* would include the following: a detailed contract setting out the operating methods required to manage the trust, including the elements for remuneration (as the trustee takes on risks); A trustee or trustees would need to be identified and awarded this *fiducie* (with a selection process that needs to be specified); The trustee must be an insurance undertaking willing to take on the risk of the final outcome of the wind-down of the *fiducie* portfolio. If the trust expired before the completion of the portfolio run-off, the remaining assets and liabilities would be transferred to the trustee's balance-sheet; and the *fiducie* is not a separate legal entity but constitutes a separate estate, on which the entity under resolution does not have control.
EC 3.10	The resolution authority has the power to reverse the transfer of assets or liabilities to a bridge institution or to a management vehicle. The exercise of the reverse transfer power is subject to appropriate safeguards, such as time restrictions.
Description & findings	Article L. 311-37 establishes that the resolution college has the power to reverse the transfer of assets and liabilities to a bridge institution before the resolution procedure is closed. The law does not provide the same feature for the *fiducie* model and it is not anticipated to reverse transfers to a management vehicle. However, as the *fiducie* is

	established by nature of a contract it could potentially include the ability to reverse transfers. There are no clear time restrictions other than the end of the resolution procedure.
EC 3.11	The resolution authority has powers that would allow it to give effect to the following actions to absorb losses and achieve the resolution objectives, subject to the safeguards described in KAs 5.1 and 5.2: (i) Write down equity and cancel shares or other instruments of ownership of the insurer. (ii) Write down unsecured creditor claims (see EC 3.13 on powers to restructure insurance liabilities). (iii) Exchange or convert into equity or other instruments of ownership of the insurer, any successor in resolution (such as a bridge institution to which part or all of the business of the failed insurer is transferred), or the parent company within that jurisdiction, all or parts of unsecured creditor claims (see EC 3.13 on powers to restructure insurance liabilities). (iv) Override pre-emption rights of existing shareholders of the insurer. (v) Issue new equity or other instruments of ownership. (vi) Issue warrants to equity holders or subordinated (and if appropriate senior) debt holders whose claims have been subject to bail-in (to enable adjustment of the distribution of shares based on a further valuation at a later stage). (vii) Suspend (or to seek suspension of) shares and other relevant securities from listing and trading for a temporary period, if necessary to affect the bail-in. (In order to comply with this EC, it is not necessary to have the power to apply a bail-in to policyholder claims. See EC 3.12).
Description & findings	The legal framework does not grant the resolution authority powers to restructure liabilities (i.e., write down or convert capital instruments or bail-in unsecured creditors) as required in this EC. This represents an important departure from the KA toolkit and limits the scope of action in a systemic resolution scenario. The existing legal framework only allows for the restructuring of liabilities in the context of a forced portfolio transfer. In that case, the resolution college of the ACPR is authorized to accept a third party offer which may include the restructuring of portfolio claims (including a reduction of the guaranteed rate in life policies). While the authorities see merit in establishing such powers, they noted a few reservations of an operational nature (e.g., structure of balance-sheets and level of liabilities of insurers which are not part of bancassurance and treatment of policyholders' claims in different business lines), and that a number of legal considerations needed to be weighed. First, it is understood that there are no legal constraints under the French constitution that would hinder the introduction of bail-in powers. The protection of property rights stems from Article 34 of the French Constitution and the provisions in the Declaration of Human and Civic Rights of August 26, 1789. Article 17 of the Declaration of Human and Civic Rights provides that no one may be deprived of the right to property, unless there is public necessity, a clear legal basis, it is obviously required, and just and prior indemnity has been paid. While there has been some legal debate whether it would be

	possible to provide a mechanism for compensation, where appropriate, in a manner that would satisfy the requirement that "just and prior indemnity has been paid", it seems that this test could ultimately be met. Second, the existing bank resolution framework includes bail-in powers as provided for in the EU Bank Recovery and Resolution Directive.[18] In this case, the national transposition is based on an EU Directive as a legal basis already in force. Moreover, the BRRD includes various provisions providing for specific exemptions under certain other EU Directives, such as the protection of shareholders' rights under the Company Directive.[19] However, the situation in insurance resolution differs from bank resolution as no European framework for insurance resolution has yet been developed. For example, actions by the resolution authority for loss-absorption or conversion, in the absence of a decision by shareholders in a general meeting, could be deemed to undermine shareholders' rights incompatible with EU law. Further, it remains unclear whether the flexibility that the Solvency II framework provides at the national level could provide a sufficient legal basis to overcome the constraints in existing EU law.[20] As a result, legal uncertainty may emanate from the lack of specific exemptions set out in EU law that could subsequently be exploited by creditors in legal challenges when bail-in powers are applied.
EC 3.12	The legal framework provides clarity with regard to the scope of the bail-in power set out in KA 3.5, including the range of liabilities covered and whether or not policyholder claims are excluded from bail-in, the grounds or triggers for the exercise of the power, and application in a manner that respects the hierarchy of claims as established in KA 5.1.
Description & findings	There is no bail-in power (see EC 3.11).
EC 3.13	The resolution authority has powers to restructure insurance liabilities (whether currently due and payable or contingent) subject to the safeguards described in KAs 5.1 and 5.2.
Description & findings	The power exists only in limited circumstances, specifically in the context of a forced portfolio transfer to a third party accepted by the resolution authority. Restructuring would result from a competitive bidding (tender) process for an objective valuation of the portfolio, so the resolution authority would not control the outcome (Article L. 311-31 and L. 612-33-2 of the MFC). These powers were enhanced following a 2015 decision by the Supreme Court emphasizing the need for fair and prior compensation and have yet to be tested in practice.
EC 3.14	The resolution authority has the power to impose a suspension of payments (moratorium) on unsecured creditors. This includes the power to temporarily restrict or suspend the rights of policyholders to withdraw from their insurance contracts.

[18] See: https://ec.europa.eu/info/law/bank-recovery-and-resolution-directive-2014-59-eu/law-details_en

[19] See Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law.

[20] For example, recent legislative initiatives for insurance resolution in the Netherlands include bail-in powers.

Description & findings	Article L. 311-30 8° empowers the college of resolution to "suspend, delay or limit for whole or part of the portfolio the payment of surrender values" as well as advances on contracts for an individual insurer. However, there is no overall power to suspend payments to unsecured creditors, which are understood as senior debtholders' claims (or claims ranked pari passu) and are ranked differently from policyholders in terms of the hierarchy of creditor claims in insolvency. The latter distinction should be clarified in the law. Moreover, the HCSF could impose system-wide measures to maintain financial stability.
EC 3.15	The resolution authority has the power to issue or obtain a stay of creditor actions to attach assets or otherwise collect money or property from the insurer.
Description & findings	The resolution authority does not have the power to impose a stay of creditor actions. Pursuant to Article L. 311-29, the resolution administrator may ask the resolution college to initiate a legal redress procedure in the courts. The legal redress procedure encompasses notice to creditors and the suspension of payments as decided by the court.
EC 3.16	The resolution authority has the power to effect the closure and orderly wind-down of the whole or part of a failing insurance company, and in such event, has the capacity and practical ability to effect or secure all of the following: (i) The timely pay-out to policyholders in respect of valid and eligible claims; (ii) The transfer of insurance contracts and any associated assets and liabilities to a third party or bridge institution; and (iii) The discontinuation of the writing of new business while existing contractual policy obligations continue to be administered (run-off).
Description & findings	With respect to the timely pay-out (item (i)) while there is no explicit provision in the law, the objective is understood to be captured under the broad mandate of policyholder protection, and it is foreseen as a primary duty in the resolution process—unless the resolution authority considers a moratorium necessary for the correct implementation of the resolution scheme. The portfolio transfer tool (item (ii)) exists in the new recovery and resolution framework and it has been part of the court-led liquidation process (see EC 3.7 and 3.8). Regarding the discontinuation of the underwriting of new business (item(iii)), this power exists (Article L. 310-30 5°). In order to effect the closure and orderly wind-down (liquidation) of the whole or part of a failing firm, the powers under the recovery and resolution framework are supplemented by several court-based insolvency proceedings (see EC 3.2).
EC 3.17	The legal framework enables the resolution authority either to combine resolution actions or to apply resolution actions sequentially.
Description & findings	There is no reference in the recovery and resolution framework that can be interpreted as constraining the discretion of the resolution authority to combine resolution tools at the time resolution action is taken, or at a later stage ("implemented separately or in combination", see Article L. 311-33).
Assessment of KA 3	Resolution powers is an area where the framework departs from the KAs in a significant way. This leads to limiting the toolkit for an effective resolution.

	First, regarding powers of the resolution authority (EC 3.2) two issues require attention, otherwise the power given to the resolution authority in order to address forbearance is diluted: • The separation and independence of the supervisory from the resolution activity via the composition of the supervisory college (insurance and restricted configuration) and that of the resolution college, needs to be secured. • The resolution authority has a constrained power to declare an insurance undertaking failing or likely to fail, as it needs the assent of the supervisory college. Second, some important resolution tools are missing, in particular: • Resolution funding (resolution fund and/or power to restructure liabilities in a way that increases own funds). This renders the bridge institution tool difficult to implement; • More clarity in the role of PPSs in resolution. It is not defined whether the two existing PPS may provide funding to support a portfolio transfer (other than in the context of a forced portfolio transfer). Thus far their role is to provide support in liquidation proceedings. • Provisions to verify the failing entity's valuation. The valuation of assets and liabilities is fundamental at the time an undertaking is in difficulty or possibly failing. The framework foresees resolution action for an entity subject to Solvency II by focusing on the existing Solvency II valuation of the portfolio at the point of failure. To the extent that the Solvency II valuation process is a well understood, broad and prudent framework, its use appears advantageous at a time of crisis when quickly updating key metrics including the Best Estimate becomes of critical importance. However, valuation estimates made in normal circumstances under Solvency II (which are currently not required to be audited by an external audit firm) would need to be updated and validated. There is no guidance in the current legal framework regarding such valuation arrangements (e.g., whether it would be performed by the failing undertaking, by the resolution authority, or by an onsite inspection of the resolution authority, and/or by a third party supporting the authority in that respect). Consideration should be given to making an external audit of the Solvency II calculations and process mandatory in line with the prevailing practice in many EU member states. The process that the authority would follow for validation should be transparent and set out in the law. • The trust fund scheme (*fiducie*) has the potential to be used effectively, yet its operational framework is not entirely specified (see EC 3.9). There is no provision for a management vehicle setup by the resolution authority. Third, the bridge institution tool is available in the framework, but it may require additional specifications. There is no deadline to finalize the transfers in and out of the bridge institution. This gives rise to legal certainty issues and potential legal challenges by creditors. Also, some safeguards are needed to ensure that relevant decisions are taken in a timely manner (following an in-depth valuation process) to ensure that the bridge institution will be returned to the private sector in due course. Fourth, under the framework, resolution measures can be implemented only if the Solvency II value of assets is higher than the Solvency II value of liabilities

	(Article L. 311-18 III 4°), i.e., the insurer would have breached the MCR, but capital is still Solvency II positive. In this sense, if an insurer is not balance-sheet solvent, it cannot be resolved; it would be placed into regular liquidation/wind-down. Some consideration may be given to exploring possible enhancements in the legal framework to strengthen the powers available to the resolution authority (rather than the courts) for imposing a suspension of payments and to stay creditor actions seeking to attach assets or otherwise collect money or property from the insurer. Regarding cross-border cooperation, there are provisions (Articles L. 311-59 II and L. 311-60) on the establishment of colleges of the competent equivalent authorities for cross-border groups led by the ACPR as home authority or in which the ACPR may participate as host authority. At this time, the authorities are not contemplating having BRRD-like Resolution Colleges with other insurance resolution authorities (where available) for the insurers that are now subject to RRP. They consider the current approach adequate given the predominantly domestic nature of the activity of the group of insurers under the scope of the resolution framework; however, some of these undertakings may have systemic presence in other jurisdictions—making Resolution Colleges useful to reduce risk of spillovers. Finally, regarding transparency, the framework includes some publication requirements. For example, the ACPR decisions on forced portfolio transfers must be published in the Official Journal of the French Republic. The publication of the ACPR's individual decision makes the portfolio transfer enforceable vis-à-vis the public, including policyholders. The publication also stipulates a two-month period to bring a legal challenge before the Conseil d'État (Articles R. 311-1 and R. 421-1 of the Code of Administrative Justice). Key decisions are published in the Official Journal of the French Republic, but the ACPR's practice is to issue press releases or other forms of communication only in cases they consider important. The authorities should assess if these communication tools are sufficient.
KA 4 Set-off, netting, collateralisation, segregation of client assets	
4.1	The legal framework governing set-off rights, contractual netting and collateralization agreements and the segregation of client assets should be clear, transparent and enforceable during a crisis or resolution of firms and should not hamper the effective implementation of resolution measures.
4.2	Subject to adequate safeguards, entry into resolution and the exercise of any resolution powers should not trigger statutory or contractual set-off rights or constitute an event that entitles any counterparty of the firm in resolution to exercise contractual acceleration or early termination rights provided the substantive obligations under the contract continue to be performed.
4.3	Should contractual acceleration or early termination rights nevertheless be exercisable; the resolution authority should have the power to stay temporarily such rights where they arise by reason only of entry into resolution or in connection with the exercise of any resolution powers. The stay should: (i) Be strictly limited in time (for example, for a period not exceeding 2 business days);

	(ii) Be subject to adequate safeguards that protect the integrity of financial contracts and provide certainty to counterparties (see I-Annex 5 on Conditions for a temporary stay); and (iii) Not affect the exercise of early termination rights of a counterparty against the firm being resolved in the case of any event of default not related to entry into resolution or the exercise of the relevant resolution power occurring before, during or after the period of the stay (for example, failure to make a payment, deliver or return collateral on a due date). The stay may be discretionary (imposed by the resolution authority) or automatic in its operation. In either case, jurisdictions should ensure that there is clarity as to the beginning and the end of the stay. **4.4** Resolution authorities should apply the temporary stay on early termination rights in accordance with the guidance set out in I-Annex 5 to ensure that it does not compromise the safe and orderly operations of regulated exchanges and FMIs.
Essential criteria for KA 4	
EC 4.1	The legal framework is clear regarding the treatment of specific assets linked to insurance contracts (e.g., investment-linked products, unit-linked products), including whether legal or accounting segregation of such assets is required. Where legal segregation is required, that segregation is enforceable during the resolution of an insurer and there are clear rules on how losses are shared between policyholders in the event of shortfalls in any pool of assets.
Description & findings	In the French insurance regime policyholders do not have proprietary claims or other rights with respect to assets that the insurer holds, even in the case of unit-linked insurance contracts. Hence, there is no requirement for the segregation of assets, with the exception of specific products related to particular pension policies of limited significance. Pursuant to Article L. 327-2, policyholders have a claim against the insurer for compensation with a preferential ranking in the hierarchy of creditor claims in insolvency (for a discussion of the hierarchy of creditor claims more generally, please refer to EC 5.1). In the case of unit-linked products, this compensation could take the form of additional shares (e.g., shares of UCITs) beyond those originally allocated via the contract purchase.
EC 4.2	The legal framework does not permit the exercise by counterparties of early termination rights that arise by reason only of the entry into resolution of, or the exercise of any resolution power against an insurer, provided the substantive obligations (for example, payment and delivery obligations) under the contract continue to be performed.
Description & findings	The insurance code (Article L. 311-15) stipulates that as long as the essential obligations of a contract continue to be met, a recovery or resolution measure taken by the authorities cannot infringe in any way on the contractual rights of the entity. Early termination, suspension, modification, compensation or any other rights attached to this contract cannot be exercised on the ground of the competent authority's actions in the context of recovery and/or resolution. Finally, to the extent that the insurance code is an administrative law (*loi de police*), any contract clauses that are not in line with this provision are null and void.

EC 4.3	The legal framework does not permit the exercise by reinsurers of any rights to terminate or not reinstate coverage under existing contracts of reinsurance that arise by reason only of the entry into resolution of, or the exercise of any resolution power against an insurer, provided the substantive obligations (for example, premium payment) under the contract continue to be performed.
Description & findings	The legal framework (Article L. 311-15 of the insurance code) refers broadly to "contracts" and as such encompasses reinsurance. So, the continuity of reinsurance contracts is also ensured beyond the resolution event. Enforcement of this important principle would be straight forward in case of domestic reinsurers or reinsurance contracted through a local broker, but in the case of contracts with foreign reinsurers the resolution authority would need to coordinate with the home supervisors beforehand. Continuation of reinsurance contracts can be decisive in the process of asset/liability restructuring, for instance in the case of resolution using a bridge institution.
EC 4.4	Where financial contracts are not subject to the prohibition referred to in EC 4.2, the legal framework provides, in relation to such contracts, for a temporary stay on the exercise of early termination rights that arise by reason only of entry into resolution or in connection with the exercise of any resolution powers, subject to the following conditions: (i) The stay is limited in time; (ii) If the stay is used in connection with a transfer power, the resolution authority is not permitted to select for transfer some, but not all, contracts with the same counterparty that are subject to the same netting agreement; (iii) Where the contracts to which the early termination right relates are transferred to another entity or remain with an insurer that has been recapitalized in resolution, early termination rights can be exercised after the expiry of the stay period, only in the event of a separate default under the terms of the contract that is not based on the entry into resolution or the exercise of resolution powers; and (iv) Where those contracts remain with the failing insurer that has not been recapitalized, any early termination rights that were subject to the stay may be exercised immediately on the expiry of the stay, or if earlier, a notification by the resolution authority that the contracts will remain with that insurer.
Description & findings	Language in Article L. 311-15 covers financial contracts; hence, they are subject to the prohibition referred to in this EC.
Assessment of KA 4	The framework is aligned with the principles under this KA. Specification of the scope regarding reinsurance contracts (EC 4.3) would provide further clarity to the applicability of certain resolution tools (e.g., bridge institution).
KA 5 Safeguards	
5.1	Resolution powers should be exercised in a way that respects the hierarchy of claims while providing flexibility to depart from the general principle of equal (pari passu) treatment of creditors of the same class, with transparency about the reasons for such departures, if necessary to contain the potential systemic impact of a firm's failure or to maximize the value for the benefit of all creditors as a whole. In particular, equity should absorb losses first, and no loss should be imposed on senior debt holders until subordinated debt (including all regulatory capital instruments) has been written-off entirely (whether or not that loss-absorption through write-down is accompanied by conversion to equity).

5.2	Creditors should have a right to compensation where they do not receive at a minimum what they would have received in a liquidation of the firm under the applicable insolvency regime ("no creditor worse off than in liquidation" safeguard).
5.3	Directors and officers of the firm under resolution should be protected by law (for example, from law suits by shareholders or creditors) for actions taken when complying with decisions of the resolution authority.
5.4	The resolution authority should have the capacity to exercise the resolution powers with the necessary speed and flexibility, subject to constitutionally protected legal remedies and due process. In those jurisdictions where a court order is still required to apply resolution measures, resolution authorities should take this into account in the resolution planning process so as to ensure that the time required for court proceedings will not compromise the effective implementation of resolution measures.
5.5	The legislation establishing resolution regimes should not provide for judicial actions that could constrain the implementation of, or result in a reversal of, measures taken by resolution authorities acting within their legal powers and in good faith. Instead, it should provide for redress by awarding compensation, if justified.
5.6	In order to preserve market confidence, jurisdictions should provide for flexibility to allow temporary exemptions from disclosure requirements or a postponement of disclosures required by the firm; for example, under market reporting, takeover provisions, and listing rules, where the disclosure by the firm could affect the successful implementation of resolution measures.

Essential criteria for KA 5	
EC 5.1	The resolution authority is required to exercise resolution powers in a way that respects the applicable hierarchy of claims.
Description & findings	There is no provision in the legal framework requiring the resolution authority to exercise resolution powers in accordance with the applicable hierarchy of creditor claims. Policyholders have preferential rights over the assets of the insurance undertaking (Article L. 327-2), ranking sixth on movable property (see Article 2331 of the Civil Code) and ranking second on immovable property (see Article 2375 of the Civil Code). However, these provisions should be combined with other relevant parts of the French legislative framework as follows: Ranking of the claims on the movable assets of French insurance undertakings: (i) Contributions and taxes (Article 1920 of the General Tax Code); (ii) Except as otherwise provided, claims with special "furniture privileges" (Article 2332-1 of the Civil Code); (iii) Legal costs (Article 2331, 1° of the Civil Code); (iv) Funeral fees (Article 2331, 2° of the Civil Code); (v) Any costs of the last disease, irrespective of their termination, concurrently between those to whom they are owed (Article 2331, 3° of the Civil Code); (vi) Certain wage claims (Article 2331, 4° of the Civil Code); (vii) Social security funds claims (Article 2332-2 of the Civil Code);

	(viii) Supplies of subscriptions to the debtor and his family during the last year and, for the same time period, certain agricultural products (Article 2331, 5° of the Civil Code); (ix) The claim of a victim of an accident or of its successors relating to medical, pharmaceutical, and funeral expenses and for allowances awarded as a result of temporary disability (Article 2331, 6° of the Civil Code); (x) Claims of policyholders and beneficiaries of contracts (Article L. 327-2); (xi) Workers' and employees' allowances by clearing banks and other institutions authorized for the service of family allowances or by employers exempted from membership of such an institution under Article 74 of Livre I of the Labor Code (Article 2331, 7° of the Civil Code); and (xii) The claims of the clearing banks and other institutions authorized for the service of family allowances towards their members, and certain payments related to family allowances (Article 2331, 8° of the Civil Code). Claims of policyholders on the immovable property of French enterprises: (i) Legal costs (Article 2375, 1° of the Civil Code); (ii) Certain wage claims (Article 2375, 2° of the Civil Code); (iii) Claims of policyholders and beneficiaries of contracts (Article L. 327-2); and (iv) Claims secured by special property privilege (Article 2376 of the Civil Code). As described in the assessment of KA 3, the legal framework has embedded the notion that an insurance undertaking is balance-sheet solvent under Solvency II at the time resolution action is taken and for the implementation of a resolution tool. In that context, the Solvency II value of its assets is expected to be at least equal to the value of its liabilities, which would ensure compensation in full of all policyholders. Under such notion, the legal framework does not need to mandate the application of the hierarchy of creditor claims and provide for safeguards such as the NCWO principle. However, shareholders and subordinated debtholders may suffer losses. Hence, the application of any resolution measure is conditional on fair and prior compensation (for example, see Article L. 311-31 for the case of a portfolio transfer and Article L. 311-42 for the case of a liability management structure). [21]
EC 5.2	The legal framework requires the resolution authority, as a general principle, to observe the principle of equal (pari passu) treatment of creditors of the same class while permitting departure from that principle where it is necessary for either of the following purposes: (i) to protect financial stability by containing the potential systemic impact of the insurer's failure; or (ii) to maximize the value of the insurer for the benefit of all creditors.

[21] Fair compensation is understood as the consideration that they would have received in the case the transaction was executed under market conditions.

Description & findings	The current resolution framework does not include provisions for a pari passu treatment, it is designed to achieve the full repayment of all policyholders (see EC 5.1). While the resolution authority will be informed by pari passu considerations, it may pursue different strategies where pari passu treatment may not be feasible. For instance, during the application of the portfolio transfer tool part or the entirety of the insurance book will be transferred. It is not expected that the decision of which policies to transfer and which not to transfer will observe, or be constrained by, the pari passu principle.
EC 5.3	The resolution regime provides that creditors that receive less as a result of resolution than they would have received in liquidation have a right to compensation. The legal framework specifies how the right to compensation can be exercised.
Description & findings	The framework does not require a counter-factual calculation in the context of liquidation (see EC 5.1). For creditors (including policyholders), a NCWO consideration and compensation, if found to be required, could materialize through unilateral action. Creditors could proceed to seek damages in a court depending on the outcome of the counterfactual analysis. As such, NCWO is not built into the framework. For policyholders, compensation may be available from the PPS (within certain limits).
EC 5.4	The legal framework protects the directors and officers of an insurer in resolution against liability, including to shareholders and creditors of the insurer, arising from actions taken when acting in compliance with decisions and instructions of domestic resolution authorities.
Description & findings	Directors and officers acting in compliance with instructions from the Resolution College of the ACPR are protected against liability on the basis of a provision of the criminal code. Article L. 122-4 of the Criminal Code exempts persons who make a damaging event from liability when acting on instructions from a public authority known as "legitimate authority", such as the ACPR's Resolution College in this context.
EC 5.5	The legal framework enables the resolution authority to exercise the powers in KA 3 in a timely manner and without any delay that could compromise the achievement of the objectives mentioned in KA 2.3. Where prior court approval is required, the timelines required for completing court proceedings are consistent with KA 5.4 and are incorporated into resolution planning.
Description & findings	Under the framework, resolution decisions do not need prior court approval, as described in KA 2.3. Moreover, the legal framework specifically stipulates that there should not be any impediment to decisions taken by the resolution college.
EC 5.6	The legal framework provides that the only remedy that can be obtained from a court or tribunal through judicial review of measures taken by resolution authorities acting within their legal powers and in good faith is compensation, to the exclusion of any remedy that could constrain the implementation of, or reverse, any such measure taken by the resolution authority.
Description & findings	It is clearly stated in the legal framework that the decision of the resolution college cannot be reversed (Article L. 311-54). Courts may only award compensation up to the amount of incurred losses, but they cannot reverse the resolution measure. Nothing can be possibly allowed that would oppose or otherwise impede the decisions taken by the resolution college. This is understood to also include any attempts to suspend the applicability of the decisions.

EC 5.7	The legal framework allows for temporary exemptions from disclosure requirements; for example, under market reporting and listing rules, or the postponement of a disclosure by an insurer, to be granted in circumstances where that disclosure could affect the successful implementation of resolution measures.
Description & findings	The insurance code (Article L. 311-23) clearly specifies that other obligations than those resulting from the execution of the resolution measures shall be fulfilled to the extent that circumstances so permit, if these requirements remain relevant at that point in time. The relevant provision clearly refers to publication and reporting obligations that may be postponed to a later date.
Assessment of KA 5	Alignment of the safeguards provisions in the law shows gaps with respect to the KAs, but they seem consistent with the structure followed in the overall framework. To the extent resolution is applied with a limited scope only to balance-sheet solvent entities, ECs 5.1, 5.2, and 5.3 would not be critical. However, further safeguards are needed when contemplating a broader framework.

KA 6 Funding of firms in resolution

6.1 Jurisdictions should have statutory or other policies in place so that authorities are not constrained to rely on public ownership or bail-out funds as a means of resolving firms.

6.2 Where temporary sources of funding to maintain essential functions are needed to accomplish orderly resolution, the resolution authority or authority extending the temporary funding should make provision to impose any losses incurred on (i) shareholders and unsecured creditors subject to the "NCWO than in liquidation" safeguard (see KA 5.2); and recover them (ii) if necessary, from the financial system more widely.

6.3 Jurisdictions should have in place privately-financed deposit insurance or resolution funds, or a funding mechanism with ex post recovery from the industry for the costs of providing temporary financing to facilitate the resolution of the firm.

6.4 Any provision by the authorities for temporary funding should be subject to strict conditions that minimize the risk of moral hazard, and should include the following:

(i) a determination that the provision of temporary funding is necessary to foster financial stability and will permit implementation of a resolution option that is best able to achieve the objectives of an orderly resolution, and that sources of private funding have been exhausted or cannot achieve these objectives; and

(ii) the allocation of losses to equity holders and residual costs, as appropriate, to unsecured and uninsured creditors and the industry through ex post assessments, insurance premium or other mechanisms.

6.5 As a last resort and for the overarching purpose of maintaining financial stability, some countries may decide to have a power to place the firm under temporary public ownership and control in order to continue critical operations, while seeking to arrange a permanent solution such as a sale or merger with a commercial private sector purchaser. Where countries do equip themselves with such powers, they should make a provision to recover any losses incurred by the state from unsecured creditors or, if necessary, the financial system more widely.

Essential criteria for KA 6

EC 6.1	The legal framework establishes credible arrangements to provide temporary financing (including both temporary liquidity support and temporary solvency support), in terms of the nature, availability and sufficiency of the funding, that can assist the use of the

	resolution powers set out in KA 3 and achieve the resolution objectives. Those arrangements include one or a combination of the following: (i) A privately funded resolution fund; (ii) A privately funded PPS; (iii) A privately funded fund with combined policyholder protection and resolution functions; and (iv) Recourse to public funds, coupled with a mechanism for recovery from the industry of any losses incurred in the provision of public funds.
Description & findings	The framework does not contemplate a privately funded resolution fund for the insurance sector. There are two PPSs: FGAO and FGAP. Representatives of these two PPS could be heard/consulted by the authority's resolution college; however, they have no role in the support of resolution actions (see KA 2). However, both PPSs could be involved in the context of the application of a resolution tool, in a supplementary manner akin to the one they have in normal insolvency proceedings. For instance, they would support the liquidation of the undertaking with the portfolios and assets that were left behind (i.e., unless it was subject to a transfer to a third party, bridge institution or *fiducie*). Specific references to their possible role in the context of a portfolio transfer can be found in Articles L. 421-9, L. 423-2, and L. 612-33-2 of the MFC. The FGAO was founded in 1951, before third party motor liability insurance became mandatory (in 1958) to compensate victims of traffic accidents caused by uninsured or unidentified drivers. The FGAO also provides compensation for accidents on the ground (i.e., skiing and bicycling), hunting insurance, and mining-related housing damages. Since 2003 it acquired a role in case of failure of nonlife insurers providing compulsory classes of nonlife insurance (motor vehicle insurance and construction-related damages). The FGAO is a legal entity under private law, it is entirely industry-funded by ordinary contributions, the level of which is decided every year on the basis of the financial results of the fund. It is governed by a board of directors (directoire) under the surveillance of a Board (conseil de surveillance). The MoF is responsible for its oversight. The FGAP covers policyholders in the life insurance industry. It was created in 1999 (Loi 99-532 25 June 1999, art. 68 JORF 29 June 1999), following the failure of a life insurance company a year earlier. Specific references to the FGAP's role can be found in Articles 423-1 to 423-8. Its funding is based on the amount of TP (0.05 percent of that amount) in the sector; although half of the contribution is kept on the insurers' balance-sheet in a segregated account with the FGAP as the beneficiary. The Fund also has a committed line from the insurance industry which can be activated upon request, without the intervention of the MoF. In the event of a failure, the FGAP works very closely with the liquidator and ensures that there is enough liquidity for the repayment of the policyholders' claims; the guaranteed amounts are €70,000 per policyholder and €90,000 for bodily harm damages. Then,

	the FGAP is subrogated to policyholders' claims against the estate in liquidation to recover any amounts it contributed.
EC 6.2	If the resolution regime provides for the provision of temporary recourse to public funds under point (iv) of EC 6.1, it also ensures that such financing is made available only if: (i) It has been assessed as necessary for financial stability by supporting the implementation of a resolution option that best achieves the statutory objectives of resolution (see KA 2.3); (ii) Private sources of funding have been exhausted or would not achieve those objectives; (iii) Losses are allocated in accordance with the hierarchy of claims to (a) shareholders, (b) unsecured creditors and (c) as appropriate, policyholders; and (iv) If necessary, public funds are recovered from the insurance sector or financial industry.
Description & findings	The framework does not envisage the temporary provision of public funds (see EC 6.1).
EC 6.3	If the resolution regime includes the option of placing an insurer under temporary public ownership as part of a resolution action the exercise of that option is subject to the following conditions: (i) The failure of the insurer, or its resolution through all other options, would cause financial instability; and (ii) There are clear rules regarding the allocation of losses to shareholders and creditors or, if necessary, recovery from financial system participants more widely.
Description & findings	The framework lacks provisions for granting public support (including temporary public ownership) and bail-in powers.
Assessment of KA 6	The resolution framework has no adequate mechanisms to provide funding for insurers under resolution. The PPSs are geared to provide support under liquidation. This is consistent with the framework that is designed to resolve insurers on the notion that they are balance-sheet solvent.
KA 7 Legal Framework Conditions for Cross-Border Cooperation	
7.1	The statutory mandate of a resolution authority should empower and strongly encourage the authority wherever possible to act to achieve a cooperative solution with foreign resolution authorities.
7.2	Legislation and regulations in jurisdictions should not contain provisions that trigger automatic action in that jurisdiction as a result of official intervention or the initiation of resolution or insolvency proceedings in another jurisdiction, while reserving the right of discretionary national action if necessary to achieve domestic stability in the absence of effective international cooperation and information sharing. Where a resolution authority takes discretionary national action, it should consider the impact on financial stability in other jurisdictions.
7.3	The resolution authority should have resolution powers over local branches of foreign firms and the capacity to use its powers either to support a resolution carried out by a foreign home authority (for example, by ordering a transfer of property located in its jurisdiction to a bridge institution established by the foreign home authority) or, in exceptional cases, to take

	measures on its own initiative where the home jurisdiction is not taking action, or acts in a manner that does not take sufficient account of the need to preserve the local jurisdiction's financial stability.[22] Where a resolution authority acting as host authority takes discretionary national action, it should give prior notification and consult the foreign home authority.
7.4	National laws and regulations should not discriminate against creditors on the basis of their nationality, the location of their claim, or the jurisdiction where it is payable. The treatment of creditors and ranking in insolvency should be transparent and properly disclosed to depositors, insurance policyholders, and other creditors.
7.5	Jurisdictions should provide for transparent and expedited processes to give effect to foreign resolution measures, either by way of a mutual recognition process or by taking measures under the domestic resolution regime that support and are consistent with the resolution measures taken by the foreign home resolution authority. Such recognition or support measures would enable a foreign home resolution authority to gain rapid control over the firm (branch or shares in a subsidiary) or its assets that are located in the host jurisdiction, as appropriate, in cases where the firm is being resolved under the law of the foreign home jurisdiction. Recognition or support of foreign measures should be provisional on the equitable treatment of creditors in the foreign resolution proceedings.
7.6	The resolution authority should have the capacity in law, subject to adequate confidentiality requirements and protections for sensitive data, to share information, including RRPs, pertaining to the group as a whole or to individual subsidiaries or branches, with relevant foreign authorities (for example, members of a CMG), where sharing is necessary for RRP or for implementing a coordinated resolution.
7.7	Jurisdictions should provide for confidentiality requirements and statutory safeguards for the protection of information received from foreign authorities.

Essential criteria for KA 7	
EC 7.1	The legal framework empowers and strongly encourages the resolution authority, wherever possible, to act to achieve a cooperative solution with foreign resolution authorities and contains no material barriers to cooperation.
Description & findings	The legal framework encourages cross-border cooperation between resolution authorities (Articles L. 311-59 and L. 311-60). It establishes that the ACPR "shall, where appropriate, involve the competent equivalent authorities in this work" (Article L. 311-59(1)). While there is no automatic trigger built into the framework with respect to resolution action and hence cooperation could be achieved at various steps of the process, at the same time the law falls a bit short from strong encouragement. There are provisions (Articles L. 311-59 II and L. 311-60) on the establishment of colleges of the competent equivalent authorities for cross-border groups led by the ACPR as home authority or in which the ACPR may participate as host authority, but establishment is not mandatory. A more structured process would seem appropriate for systemic insurers (and not only for G-SIIs), given the still fragmented insurance resolution environment in the EU and beyond. The authorities are currently in the process of identifying groups for which cross-border cooperation in the form of a dedicated Resolution College would be relevant, taking into account the size, complexity, and impact of cross-border activities.

[22] This should not apply where jurisdictions are subject to a binding obligation to respect the resolution of financial institutions under the authority of the home jurisdiction (for example, the EU Winding up and Reorganization Directives).

EC 7.2	The legal framework does not provide for automatic action as a result of official intervention or the initiation of resolution or insolvency proceedings in other jurisdictions.
Description & findings	There are no automatic requirements built into the framework (see EC 7.1).
EC 7.3	The legal framework (as applicable to the resolution or insolvency of an insurer) does not discriminate among creditors of the same class on the basis of their nationality, the location of their claim or the jurisdiction where their claim is payable.
Description & findings	The insurance resolution legal framework and the French insolvency law do not discriminate on the basis of nationality or location of the claim, when the jurisdiction where the claim is payable is France. Liquidation proceedings commenced in the French court system are global in scope.
EC 7.4	The legal framework of the jurisdiction under review establishes a transparent and expedited process through which the resolution measures taken in the exercise of the resolution powers under KA 3 and KA 4 by a foreign resolution authority can be given effect in the jurisdiction under review. The process applies with respect to a branch, subsidiary, or assets of a foreign insurer located in, or a liability governed by the law of, the jurisdiction under review.[23] The process provides for recognition or the taking of measures under the domestic resolution or supervisory legal framework that support and are consistent with the resolution measures taken by the foreign resolution authority, as necessary, to give effect to a foreign resolution measure. Recognition or support of foreign resolution measures is provisional on the equitable treatment of domestic creditors in the foreign resolution proceeding.
Description & findings	Under the law, authorities clearly pledge to cooperate with their peers in other jurisdictions (see EC 7.1). However, there is currently little evidence to support the requirements for a transparent and expedited process through which a foreign resolution authority's measures would be given effect in ACPR's jurisdiction. While the authorities have a declared preference for a multiple-points-of-entry (MPE) resolution strategy for domestic systemically important insurers, that in itself is consistent with resolution action of foreign resolution authorities, but not sufficient. Currently, there are (a) no specific references in the legal framework to provide the broad lines/contours of such a process; (b) no information of an internal plan and/or crisis management manual, template, procedures, etc., given that it is early in ACPR's resolution planning preparations. Moreover, the specific channels for interaction and coordination between a (French) resolution authority and court-based liquidation proceedings in other jurisdictions remain unclear. At a minimum, the resolution authority could obtain information from the relevant foreign supervisory authority.
EC 7.5	The resolution regime enables the resolution authority to take resolution action with respect to the local branch of a foreign insurer (i) to support a foreign resolution; and (ii) on its own initiative where the home authority is not taking action or is acting in a manner that does not take sufficient account of the need to preserve financial stability in the local jurisdiction.

[23] This does not apply to the extent that jurisdictions are required by the applicable legal framework to recognize the resolution of financial institutions (including automatic mutual recognition) under the law of their home jurisdiction and carried out by the authorities of their home jurisdiction. However, EC 7.4 applies in an assessment of such jurisdictions in relation to a branch, subsidiary, or assets of a foreign insurer located in, or a liability governed by the law of the jurisdiction under review, which are not covered by such an obligation to recognize resolution actions by the home jurisdiction of that insurer.

Description & findings	The French recovery and resolution framework can apply to a French branch of a foreign insurer, provided that insurance activity is defined as in Article L. 310-1, but it does not apply to the local branch of a foreign reinsurer (Article L. 311-1(2), also see EC 1.1). Per Article L. 311-60, cooperation with the resolution authority of the foreign insurer requires that the resolution authority responsible for the branch takes resolution action (both in support or per its own initiative).
EC 7.6	The resolution regime requires that, prior to exercising resolution powers in relation to a branch of a foreign insurer, on its own initiative and independently of action taken by the home authority, the resolution authority give prior notice of the intended measure to and consult with the home resolution authority.
Description & findings	The framework (and, in particular, Article L. 311-59(3)) clearly establishes the requirement to inform the home resolution authority prior to taking action. The ACPR is expected to inform without delay ("il en informe, sans délai") the competent authorities of the other EU member states or parties to the European Economic Area and, where appropriate, the competent authorities of other jurisdictions.
Assessment of KA 7	Main cross-border cooperation features are clearly established in the law and fairly aligned with the KAs. However, as in other areas of the framework, in the interest of effectiveness, the authorities should implement specific procedures, manuals, and templates that would provide for the uniform implementation of the provisions of international cooperation. The specific channels for interaction and coordination between a (French) resolution authority and court-based liquidation proceedings in other jurisdictions remain unclear. This could be particularly challenging when relying on an MPE resolution strategy.
KA 8 Crisis Management Groups (CMGs)	
8.1	Home and key host authorities of all G-SIFIs should maintain CMGs with the objective of enhancing preparedness for, and facilitating the management and resolution of, a cross-border financial crisis affecting the firm. CMGs should include the supervisory authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for guarantee schemes of jurisdictions that are home or host to entities of the group that are material to its resolution and should cooperate closely with authorities in other jurisdictions where firms have a systemic presence.
8.2	CMGs should keep under active review, and report as appropriate to the FSB and the FSB Peer Review Council on: (i) progress in coordination and information sharing within the CMGs and with host authorities that are not represented in the CMGs; (ii) the RRP process for G-SIFIs under institution-specific cooperation agreements; and (iii) the resolvability of G-SIFIs.
Essential criteria for KA 8	
EC 8.1	If the jurisdiction under review is the home jurisdiction of one or more G-SIIs, a CMG is established and maintained for each G-SII, which includes the authorities that would be involved in the resolution of the G-SII (including supervisory authorities, central banks, resolution authorities, finance ministries, and public authorities responsible for guarantee schemes of jurisdictions that are home or host to entities of the group that are material to its resolution). A policy, process, and criteria are maintained for determining which jurisdictions are host to entities that are material for a group-wide resolution of the insurer and are represented in the CMG.

Description & findings	There is only one G-SII in France. As the group-wide supervisor of the G-SII, the ACPR coordinates the CMG. The members of the CMG are limited to supervisors of jurisdictions that are material to the resolution of the insurer (for example, BaFin, FINMA, NYDFS, and NBB). This assessment is made by the ACPR annually. The CMG meets 2–3 times per year to discuss resolvability and resolution planning. The ACPR considers the CMG an important part of resolution planning and preparedness. It also participates reciprocally as a host authority in the CMGs of Allianz (Germany), Aviva (UK), and Generali[24] (Italy).
EC 8.2	If the jurisdiction under review is the home jurisdiction of one or more G-SIIs, it has processes to ascertain which jurisdictions that are not represented in the CMG assess the local operations of the G-SII as systemically important to the local financial system. There is a documented process for cooperation, or other evidence of efforts to cooperate with relevant authorities in those jurisdictions that have been identified through this process.
Description & findings	For the relevant jurisdictions not represented in the CMG, a joint risk assessment is performed annually through regular college of supervisors meetings and conference calls. Membership to the CMGs is assessed by the ACPR at least annually (see EC 8.1). For example, with the recent acquisition of an insurer based in Bermuda, the ACPR will assess whether the Bermuda Monetary Authority should become a member. For jurisdictions that have yet to sign the COAG, dedicated fora are organized, or bilateral meetings can take place as needed. The cooperation and information sharing takes place to the extent permitted by confidentiality rules.
EC 8.3	The jurisdiction under review (if it is not itself the home jurisdiction) participates, when invited, in a CMG for a G-SII.
Description & findings	The ACPR participates in the CMGs to which it is invited (See EC 8.1). In addition to several calls and meetings annually, members comment on and provide analysis for liquidity risk management plans (LRMP), systemic risk management plans (SRMP), and RRPs.
Assessment of KA 8	The ACPR's establishment and management of, and participation in the CMGs has been consistent with the KAs and productive for progress on the RRPs.

KA 9 Institution-Specific Cross-Border Cooperation Agreements

9.1 For all G-SIFIs, at a minimum, institution-specific cooperation agreements, containing the essential elements set out in Annex I, should be in place between the home and relevant host authorities that need to be involved in the planning and crisis resolution stages. These agreements should, inter alia:

(i) Establish the objectives and processes for cooperation through the CMGs;

(ii) Define the roles and responsibilities of the authorities, pre-crisis (that is, in the RRP phases), and during a crisis;

(iii) Set out the process for information sharing before and during a crisis, including sharing with any host authorities that are not represented in the CMG, with clear reference to the legal basis for information sharing in the respective national laws and to the arrangements that protect the confidentiality of the shared information;

[24] Although Generali is no longer a G-SII, the home authority continues to hold the CMGs in support of the insurer's resolution planning.

(iv) Set out the processes for coordination in the development of the RRPs for the firm, including parent or holding company and significant subsidiaries, branches, and affiliates that are within the scope of the agreement, and for engagement with the firm as part of this process;

(v) Set out the processes for coordination among home and host authorities in the conduct of resolvability assessments;

(vi) Include agreed procedures for the home authority to inform and consult host authorities in a timely manner when there are material adverse developments affecting the firm and before taking any significant action or crisis measures;

(vii) Include agreed procedures for the host authority to inform and consult the home authority in a timely manner when there are material adverse developments affecting the firm and before taking any discretionary action or crisis measure;

(viii) Provide an appropriate level of detail with regard to the cross-border implementation of specific resolution measures, including with respect to the use of bridge institution and bail-in powers;

(ix) Provide for meetings to be held at least annually, involving top officials of the home and relevant host authorities, to review the robustness of the overall resolution strategy for G-SIFIs; and

(x) Provide for regular (at least annual) reviews by appropriate senior officials of the operational plans implementing the resolution strategies.

9.2 The existence of agreements should be made public. The home authorities may publish the broad structure of the agreements, if agreed by the authorities that are party to the agreement.

Essential criteria for KA 9	
EC 9.1	If the jurisdiction under review is home to a G-SII, it maintains a COAG with all members of the CMG and publicly discloses the existence of those agreements.
Description & findings	The legal basis for the CMG where the ACPR is the home authority is set out, in particular, in Article L. 311-59 and Article R. 311-24. The COAG for the only French G-SII was drafted by the ACPR to be fully compliant with the relevant KAs as well as relevant European legislation and national laws. The COAG is a nonbinding, multilateral agreement that facilitates the exchange of information, views and assessments, fosters a common understanding of the resolution strategies of the G-SII, allows coordination and communication between authorities, and provides a framework for an orderly resolution if needed. The terms on information sharing between members of the CMG are standard and are documented in the COAG. To the extent permitted by their respective laws, the authorities exchange relevant information. The presence of the COAG has not been publicly disclosed by the ACPR; however, there are no obstacles to doing so, and the existence of the CMG has been mentioned in the ACPR's annual report.
EC 9.2	If the jurisdiction under review is invited by the home jurisdiction to be party to a COAG for a G-SII, it has concluded, or can demonstrate that it is engaging in good faith negotiations towards the conclusion of, an agreement with other members of the CMG.

Description & findings	The legal basis for the CMG where the ACPR is a host authority is set out, in particular, in Article L. 311-60. The ACPR has signed the COAGs of the CMGs for which it is a member: Allianz, Aviva, and Generali.
Assessment of KA 9	The ACPR initiated the COAG for the French G-SII and is signatory of the COAGs for all of its CMG memberships in the host role. Given the lack of legal impediments, public disclosure of the existence of these agreements is recommended.

KA 10 Resolvability Assessments

10.1 Resolution authorities should regularly undertake, at least for G-SIFIs, resolvability assessments that evaluate the feasibility of resolution strategies and their credibility in light of the likely impact of the firm's failure on the financial system and the overall economy. Those assessments should be conducted in accordance with the guidance set out in I-Annex 3.

10.2 In undertaking resolvability assessments, resolution authorities should in coordination with other relevant authorities assess, in particular:

(i) The extent to which critical financial services, and payment, clearing, and settlement functions can continue to be performed;

(ii) The nature and extent of intra-group exposures and their impact on resolution if they need to be unwound;

(iii) The capacity of the firm to deliver sufficiently detailed, accurate, and timely information to support resolution; and

(iv) The robustness of cross-border cooperation and information-sharing arrangements.

10.3 Group resolvability assessments should be conducted by the home authority of the G-SIFI and coordinated within the firm's CMG taking into account national assessments by host authorities.

10.4 Host resolution authorities that conduct resolvability assessments of subsidiaries located in their jurisdiction should coordinate as much as possible with the home authority that conducts resolvability assessment for the group as a whole.

10.5 To improve a firm's resolvability, supervisory authorities or resolution authorities should have powers to require, where necessary, the adoption of appropriate measures, such as changes to a firm's business practices, structure, or organization, to reduce the complexity and costliness of resolution, duly taking into account the effect on the soundness and stability of on-going business. To enable the continued operations of systemically important functions, authorities should evaluate whether to require that these functions be segregated in legally and operationally independent entities that are shielded from group problems.

Essential criteria for KA 10

EC 10.1	If the jurisdiction under review is home to one or more G-SIIs or insurers that are subject to a requirement for resolution plans under KA 11, arrangements and processes are in place whereby the resolution authorities undertake, in cooperation with relevant host authorities, regular group resolvability assessments, including when there are material changes to the resolution plan.
Description & findings	The ACPR has supervised the G-SII's CMG's (Axa Group) yearly resolvability assessment process since its designation as a G-SII. This practice became a requirement following the creation of the resolution regime for insurers (Article L. 311-59.-I.-2°).

	The first draft resolution plan was adopted in late 2015 (the CMGs started in 2013) and included a section on resolvability assessment. One challenge of the process has been working within current structural and legal constraints (e.g., lack of resolution framework in different jurisdictions). Other issues such as operational continuity, separability, and organizational structure have been analyzed as part of the process. Three cycles have been completed, and in the future the exercise will be led by the resolution team in the ACPR with input from the Supervision Department. The resolvability assessment process will be expanded to the other 13 insurers over the €50 billion asset threshold in the coming years: the first recovery plans are expected by July 2019 (see EC 2.4). Additionally, the authorities, cognizant of the importance of the bancassurance model in France, are aiming to coordinate work in RRP, focusing in a first stage, on a side-by-side analysis of banking and insurance recovery plans of financial conglomerates. In doing so, they expect to develop insights for the review of the respective resolution plans that the ACPR is starting to prepare.
EC 10.2	If the jurisdiction under review is host to one or more G-SIIs or insurers that are subject to a requirement for resolution plans under KA 11, it has in place arrangements and processes whereby the resolution authorities cooperate with the home jurisdiction and contribute to the development of the resolvability assessments where invited to do so by the home jurisdiction, including by sharing results of local resolvability assessments with the home authority.
Description & findings	Analysis and documentation requested by home authorities for resolvability assessments of the CMGs of which it is a member as a host jurisdiction (Allianz, Aviva, and Generali) have been provided to the respective home authorities.
EC 10.3	The supervisory authorities or resolution authorities have the power to require changes to an insurer's business practices, legal, operational or financial structures, or organization that are necessary to improve the resolvability of the insurer.
Description & findings	The Insurance Code (Article L. 311-12 III) provides the list of measures that the resolution college could take in case the determination is made that there are substantial impediments to resolvability. The powers given to the ACPR are broad and cover changes to (i) business and financial practices, for instance requesting suspension of activities; restricting or forbidding new activities; requesting the sale of assets/businesses; requesting a review of service contracts and possibly cancellations, changes, to ensure continuity of critical functions, (ii) legal and operational structures, for instance modifying legal entity or entities and/or operational structure(s) to reduce complexity and force legal and/or operational separation of critical functions, and (iii) reporting requirements.
Assessment of KA 10	The legal framework and the practice in recent years regarding resolvability assessments of the only G-SII and the three entities where the ACPR is the host supervisor are aligned with the KAs. Though there are no recent experiences, the framework includes the power to alter business practices and other operational requirements that could be derived from the assessments themselves. The regularity of these assessments, once extended to the full scope of the framework, will yield insights regarding resolvability under different legal frameworks (e.g., absence of *fiducie* structure) and the complexity associated with bancassurers.

KA 11 Recovery and Resolution Planning

11.1 Jurisdictions should put in place an on-going process for RRP, covering at a minimum domestically incorporated firms that could be systemically significant or critical if they fail.

11.2 Jurisdictions should require that robust and credible RRPs, containing the essential elements of Recovery and Resolution Plans set out in I-Annex 4, are in place for all G-SIFIs and for any other firm that its home authority assesses could have an impact on financial stability in the event of its failure.

11.3 The RRP should be informed by resolvability assessments (see KA 10) and take account of the specific circumstances of the firm and reflect its nature, complexity, interconnectedness, level of substitutability, and size.

11.4 Jurisdictions should require that the firm's senior management be responsible for providing the necessary input to the resolution authorities for (i) the assessment of the recovery plans; and (ii) the preparation by the resolution authority of resolution plans.

11.5 Supervisory and resolution authorities should ensure that the firms for which a RRP is required maintain a recovery plan that identifies options to restore financial strength and viability when the firm comes under severe stress. Recovery plans should include:

(i) Credible options to cope with a range of scenarios including both idiosyncratic and market wide stress;

(ii) Scenarios that address capital shortfalls and liquidity pressures; and

(iii) Processes to ensure timely implementation of recovery options in a range of stress situations.

11.6 The resolution plan is intended to facilitate the effective use of resolution powers to protect systemically important functions, with the aim of making the resolution of any firm feasible without severe disruption and without exposing taxpayers to loss. It should include a substantive resolution strategy agreed by top officials and an operational plan for its implementation and identify, in particular:

(iv) Financial and economic functions for which continuity is critical;

(v) Suitable resolution options to preserve those functions or wind them down in an orderly manner;

(vi) Data requirements on the firm's business operations, structures, and systemically important functions;

(vii) Potential barriers to effective resolution and actions to mitigate those barriers;

(viii) Actions to protect insured depositors and insurance policyholders and ensure the rapid return of segregated client assets; and

(ix) Clear options or principles for the exit from the resolution process.

11.7 Firms should be required to ensure that key service level agreements can be maintained in crisis situations and in resolution, and that the underlying contracts include provisions that prevent termination triggered by recovery or resolution events and facilitate transfer of the contract to a bridge institution or a third-party acquirer.

11.8	At least for G-SIFIs, the home resolution authority should lead the development of the group resolution plan in coordination with all members of the firm's CMG. Host authorities that are involved in the CMG or are the authorities of jurisdictions where the firm has a systemic presence should be given access to the RRPs and the information and measures that would have an impact on their jurisdiction.
11.9	Host resolution authorities may maintain their own resolution plans for the firm's operations in their jurisdictions cooperating with the home authority to ensure that the plan is as consistent as possible with the group plan.
11.10	Supervisory and resolution authorities should ensure that the RRPs are updated regularly, at least annually or when there are material changes to a firm's business or structure, and subject to regular reviews within the firm's CMG.
11.11	The substantive resolution strategy for each G-SIFI should be subject, at least annually, to a review by top officials of home and relevant host authorities and, where appropriate, the review should involve the firm's CEO. The operational plans for implementing each resolution strategy should be, at least annually, reviewed by appropriate senior officials of the home and relevant host authorities.
11.12	If resolution authorities are not satisfied with a firm's RRP, the authorities should require appropriate measures to address the deficiencies. Relevant home and host authorities should provide for prior consultation on the actions contemplated.

Essential criteria for KA 11	
EC 11.1	The resolution regime requires the development and maintenance of the RRPs for all G-SIIs for which the jurisdiction is the home country and for any other insurer that could be systemically significant or critical if it fails.
Description & findings	Per the recovery and resolution framework, currently there are 14 insurers (including one G-SII) that are subject to RRP requirements. However, except for the G-SII case, those requirements are still in the process of implementation. The identification of the entities that need to develop and maintain the RRPs follows a rule specified in the framework (see EC 1.1). These are: • Axa Group. • CNP Group. • Covea Group. • Groupama Group. • AG2R-La Mondiale Group.[25] • Allianz France Group (subgroup of Allianz). • Aviva France Group (subgroup of Aviva). • Generali France Group (subgroup of Generali). • BNP Paribas Assurances Group (subgroup of BNP Paribas). • SOGECAP Group (subgroup of Société Générale). • Crédit Agricole Assurances Group (subgroup of Crédit Agricole). • Natixis Assurances Group (subgroup of BPCE). • GACM (subgroup of Crédit Mutuel - CM11). • Suravenir (subsidiary of Crédit Mutuel - Arkea).

[25] AG2R-La Mondiale-Matmut Group, since January 1, 2019

	The ACPR will begin the RRP process in 2019 for the 13 insurers, which are newly subject to the requirements (see ECs 2.4 and 10.1). The ACPR estimates that each insurer will employ approximately 2–3 FTEs to develop an initial recovery plan, and that there are synergies with the ORSA and Solvency II work already performed.
EC 11.2	The development and maintenance of the RRPs for insurers covered by EC 11.1 that are not G-SIIs takes into account the specific circumstances of the individual insurers, including their nature, complexity, interconnectedness, level of substitutability and size, and the extent of cross-border operations.
Description & findings	The rule used to identify insurers that need to develop RRPs based on asset size alone, but it was calibrated to include all those entities considered important by the ACPR. There are no proportionality criteria in the framework; however, beyond asset size, the ACPR may require insurers that present a specific risk or provide critical functions to also develop RRPs.
EC 11.3	The legal framework imposes the responsibility for the development and maintenance of insurers' recovery planning process on the board and senior management, subject to regular review by supervisory or resolution authorities. Maintenance includes reviewing and updating the recovery plan at least annually, and sooner in the event of material changes to the insurer's business or structure.
Description & findings	The Insurance Code establishes that recovery plans are subject to the review and validation of the insurers board of directors (Article L. 311-5). The Insurance Code also lays down the content of recovery plans, and the frequency of their updates. It is expected that recovery plans be reviewed and updated every two years at a maximum, and sooner in the event of material changes (for a period not exceeding 6 months) (Article A. 311-2 and A. 311-3). G-SIIs are expected to review their plans annually. The supervisory college of the ACPR is charged with the assessment of the recovery plans. In the case of the G-SII, the only insurer that has completed a few cycles of recovery planning, the plan is developed under the supervision of the chief risk officer; then discussed at the risk committee (management level); then discussed by the Comité de Direction (executive committee); reviewed at the financial sub-committee (board level); and finally reviewed and approved by the full board. The plan is then submitted to the ACPR. The supervisory team analyzes the recovery plan, and after that it is reviewed by the director of insurance supervision and the first deputy secretary general of the ACPR. At that stage, the supervisory college review process is launched. The framework gives the ACPR up to six months for the completion of the recovery plan review. Four months after submission, the results of the assessment must have been endorsed by the Supervisory College, so that the supervisory dialogue with the insurer on key findings proceeds. In the event that the assessment concluded that the plan has significant shortcomings, then the insurer needs to submit a revised recovery plan to the ACPR within a period of two months from this supervisory notification (as per Article 311-6 of the insurance code). Should the resubmitted recovery plan still be with significant shortcomings, then the entity may be instructed to take a variety of measures ranging from a reduction of its risk profile to actions that would lead to its recapitalization.

EC 11.4	The legal framework requires recovery plans to: (i) include measures for addressing capital shortfalls and liquidity pressures; (ii) set out credible recovery options to deal with a range of stress scenarios covering both idiosyncratic and market wide stress; and (iii) define clear backstops and escalation procedures, identifying the quantitative and qualitative criteria that would trigger implementation of the plan by the insurer.
Description & findings	Article A. 311-3 requires recovery plans to include the main elements set out in this EC. In particular, the recovery plan must include: • The list of the critical functions and interconnected activities. For each item, the capacity to externalize and/or "separate" from these activities is analyzed; • Measures necessary for the operational continuity of the company, including infrastructure and IT systems, communication with customers and intermediaries; • Systemic and idiosyncratic crisis scenarios. The insurer designs crisis scenarios, and assesses their impact in terms of economic and financial stability; • The definition of indicators: these indicators measure the financial, liquidity, solvability situation of the company. These indicators set thresholds, aligned with the risk appetite framework of the insurer, that trigger the recovery governance if appropriate. In this context, the governance and the decision process are also defined; • Options and measures available to preserve and/or recover the financial viability and reduce the exposure to risk. For each option, there is an estimation of the expected impact and timing; • Finally, the plan analyzes the potential limits of its recovery options and the potential impacts on customers, intermediaries, and financial stability. These requirements are set out by Arrêté and are in line with the law, but their implementation by systemic institutions is still underway. To the extent the Resolution Department manages successive assessment cycles, key insights will be developed, and regulations may need to evolve accordingly.
EC 11.5	The resolution regime sets out the requirements for the content of resolution plans which, at a minimum, include a substantive resolution strategy and an operational plan that meets the requirements set out in points (i) to (vi) of KA 11.6 (for all insurers).
Description & findings	The framework sets out the broad requirements with respect to the contents of resolution plans (Article L. 311-8). An Arrêté by the MoF further details these requirements, fleshing out the expectations in terms of the minimum content of a resolution plan. Resolution plans shall notably: • Identify critical functions and critical shared services; • Describe the resolution strategies and the operational plan that ensures the feasibility of the proposed resolution strategy (for example, which holding company or intermediate holding company would serve as point of entry in an SPE plan); • Assess the overall resolvability of the insurer (Article L. 311-6 provides the aspects that need to be assessed).

	As in EC 11.4, this aspect of the framework has yet to begin its implementation phase in 2020. ACPR is currently building the team that will be in charge of this task.
EC 11.6	If the jurisdiction is home to a G-SII, the home resolution authority has a process in place for the authorities represented on the CMG or equivalent arrangement to review the substantive resolution strategy for the insurer and for the agreement of that strategy by top officials of those authorities.
Description & findings	The COAG of the CMG for the French G-SII and the annual working program for CMGs call for members to regularly review the resolution strategy and provide a formal opinion by top officials on the strategy embedded in the resolution plan.
EC 11.7	In order to support operational continuity of the critical functions of an insurer in resolution, the resolution regime: (i) requires insurers to ensure that their Service Level Agreements, that are required to maintain continuity of critical functions or critical shared services, can be maintained in crisis situations and in resolution, and that the underlying contracts include provisions that prevent termination from being triggered by recovery or resolution events, and facilitate transfer of the contract to a bridge institution or a third-party acquirer; and (ii) ensures that, as part of resolution planning for insurers that are FMI participants, resolution authorities consider how the insurer in resolution or a successor would maintain access to the FMI services that are necessary to support the critical functions of the insurer.
Description & findings	The resolution authority has the power to require from the insurer to take any measure and include any provisions in Service Level Agreements in order "… to ensure the continuity of the rights and commitments related to the transferred activity." (See EC 3.6). The French G-SII does not have direct access to FMIs.
EC 11.8	The resolution regime requires authorities to review and, to the extent necessary, update resolution plans at least annually, and sooner upon the occurrence of an event that materially changes the insurer's business or structure, including its operations, strategy or risk exposure. That review includes assessment of the feasibility and credibility of the resolution plans in the light of the likely impact of the insurer's failure on the financial system and the overall economy.
Description & findings	At this stage the framework in this regard has yet to be fully established. Article A.311-2 II, mandates that the Resolution College shall update the resolution plans after each update of the recovery plans. For the only G-SII, the recovery and resolution process is annual. For the remaining 13 insurers covered by the recovery and resolution framework, the cycle is biennial, starting with the submissions of the first recovery plans in July 2019. ACPR has the power to require more frequent updates in case of an important change of the activities or the risk profile of the insurer.
EC 11.9	If the jurisdiction is home to an insurer with material cross-border operations that is subject to a resolution planning requirement in the home jurisdiction, the home resolution authority has a process in place, including appropriate and proportionate arrangements for cross-border cooperation and information sharing with host authorities, to support the development and maintenance of recovery and resolution plans.
Description & findings	The framework (Articles L. 311-57, L. 311-58, L. 311-59, and R. 311-22, R. 311-23 and R. 311-24) foresees that the ACPR may involve host resolution authorities (without

	distinction) in the development and maintenance of recovery and resolution plans. That has been the case for the French G-SII. For other insurance groups with cross-border activities, the authorities are currently in the process of identifying groups for which cross-border cooperation in the form of a dedicated Resolution College would be relevant, taking into account the size, complexity and impact of cross-border activities. Article R. 311-24 specifically provides that the Resolution College shall determine the functioning of the college of competent equivalent authorities provided for in Article L. 311-59 II. This includes establishing the detailed terms and procedures, informing members of meetings, inviting observers, and ensuring the adequacy of the composition of the college with the topics on the agenda. In accordance with Article R. 311-23, cooperation agreements concluded with competent supervisory authorities or resolution authorities shall be authorized by the Supervisory College or Resolution College, in accordance with their respective competencies and the content of those agreements. One of the main constraints for the cooperation with host authorities is the need for an adequate treatment of confidential information. Article R. 311-22 stipulates that in exercising their powers, the Supervisory College and the Resolution College shall assess the potential effects of disclosing information relating to the person concerned or the resolution process, including the recovery and resolution plans. They must ensure that the assignee, the transferee candidates, the trustees and the bridge institutions concerned have procedures in place to limit the risk of disclosure of information which may prejudice the resolution. ACPR evaluates these factors prior to engagement.
EC 11.10	If the jurisdiction is home to a G-SII, the home resolution authority has a process in place to develop a group-wide resolution strategy and to plan for the G-SII in coordination with all members of the insurer's CMG and gives all members of the CMG access to the insurer's RRP and information on measures that would have an impact on their jurisdiction.
Description & findings	The framework is fully aligned with these requirements (see EC 11.9). For the French G-SII, a CMG has been set up and thus far the ACPR held 14 physical meetings dedicated to discussing recovery and resolution plans of the group.
EC 11.11	If the jurisdiction is home to a G-SII, the home resolution authority has a process in place to cooperate with authorities of jurisdictions where the G-SII has a systemic presence and the G-SIIs are not members of the CMG, and they provide authorities in those jurisdictions with access to relevant material from the RRPs and information on resolution strategies or measures that the home resolution authority judges would have an impact on their jurisdiction.
Description & findings	The framework incorporates criteria of cooperation with authorities from other jurisdictions, especially if the G-SII has a systemic presence in those (see EC 11.9). The practice to cooperate with host authorities is established for CMGs (see EC 8.2); however, the process still needs to be further developed in the context of resolution planning. One key constraint for further engagement in many cases is the lack of a resolution framework in the host jurisdictions.
EC 11.12	If the jurisdiction under review is a host to an insurer that is subject to a resolution planning requirement in the host jurisdiction and maintains its own resolution plans for the insurer's local operations in its jurisdiction, there is a clear process for coordination with the home authority to ensure that the plan is as consistent as possible with the group plan.

Description & findings	The framework supports and promotes cross border cooperation. Article L. 311-60 provides, in particular, that for entities of a group where the ultimate parent undertaking is established outside France, the ACPR cooperates with the relevant counterpart authorities. In order to facilitate such cooperation, the ACPR may participate in colleges comprising the competent counterpart authorities and enter into coordination arrangements with these other authorities. In accordance with Article R. 311-23, cooperation agreements concluded with competent supervisory authorities or resolution authorities shall be authorized by the Supervisory College or Resolution College, in accordance with their respective competencies and the content of those agreements. Further, Article R. 311-22 stipulates that in exercising their powers, the Supervisory College and the Resolution College shall assess the potential effects of disclosing information relating to the person concerned or the resolution process, including the recovery and resolution plans. They must ensure that the assignee, the transferee candidates, the trustees and the bridge institutions concerned have procedures in place to limit the risk of disclosure of information which may prejudice the resolution. The ACPR makes efforts to fully coordinate with its counterparts; however, clear processes have yet to be developed. Moreover, it is currently foreseen that the ACPR will develop its own resolution plans for the subsidiaries that it is hosting (that is Allianz, Aviva, and Generali, though the latter is no longer classified as a G-SII), ensuring consistency with group plans. Finally, it should be mentioned that the framework (Article L. 311-5 I) provides, under certain conditions, for the exemption from recovering planning requirements of subsidiaries of foreign insurers that are captured by the group plans.
EC 11.13	If the jurisdiction under review is home to a G-SII, it has in place a process for coordination with authorities participating in the CMG for the review, at least annually, of: (i) the resolution strategy by top officials of home and relevant host authorities, involving the insurer's CEO where appropriate; and (ii) the operational plans for the implementation of the resolution strategy by senior officials of the relevant (home and host) authorities.
Description & findings	For the only French G-SII, its COAG includes an annual review by senior officials' clause and that has been the practice in the recent years. Senior officials sign the COAGs and review them as often as deemed necessary, via written procedure.
EC11.14	The supervisory or resolution authority has the power to require an insurer to take measures to address deficiencies in its recovery plan and provide inputs to their resolution plan, and in cases where authorities require insurers to prepare a resolution plan, furnish its resolution plan.
Description & findings	These requirements are foreseen in Article L. 311-6 (see EC 11.3). In case of material deficiencies in the recovery plan, the ACPR can require an insurer to resubmit the plan, request changes in the risk profile on recovery measures, and on the ability to restore the financial soundness of critical functions or core business lines. Moreover, Article L. 311-8 II mandates insurers to provide any information that is necessary to develop and maintain resolution plans.
Assessment of KA 11	The recovery and resolution framework is overall well aligned with KAs for RRP. Since the framework is still in an implementation phase, several components of RRP

	have yet to be established in detailed regulations, manuals, and general guidance from the ACPR. With recovery planning only now getting underway for 13 insurers, the anticipated frequency of updates for non-globally systemic insurers is expected to be biennial rather than annual as envisaged under the KA.

KA 12 Access to Information and Information Sharing

12.1 Jurisdictions should ensure that no legal, regulatory or policy impediments exist that hinder the appropriate exchange of information, including firm-specific information, between supervisory authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for guarantee schemes. In particular:

(i) the sharing of all information relevant for RRP and for resolution should be possible in normal times and during a crisis at a domestic and a cross-border level;

(ii) the procedures for the sharing of information relating to G-SIFIs should be set out in institution-specific cooperation agreements (see Annex I); and

(iii) where appropriate and necessary to respect the sensitive nature of information, information sharing may be restricted but should be possible among the top officials of the relevant home and host authorities.

12.2 Jurisdictions should require firms to maintain Management Information Systems (MIS) that are able to produce information on a timely basis, both in normal times for RRP and in resolution. Information should be available at the group level and the legal entity level (taking into account information needs under different resolution scenarios, including the separation of individual entities from the group). Firms should be required, in particular, to:

(i) maintain a detailed inventory, including a description and the location of the key MIS used in their material legal entities, mapped to their core services and critical functions;

(ii) identify and address exogenous legal constraints on the exchange of management information among the constituent entities of a financial group (for example, as regards the information flow from individual entities of the group to the parent);

(iii) demonstrate, as part of the RRP process, that they are able to produce the essential information needed to implement such plans within a short period of time (for example, 24 hours); and

(iv) maintain specific information at a legal entity level, including, for example, information on intra-group guarantees and intra-group trades booked on a back-to-back basis.

Essential criteria for KA 12	
EC 12.1	The resolution authority has the power under the legal framework to access any information from insurers that is material for the planning, preparation and implementation of resolution measures in a timely manner.
Description & findings	The legal framework establishes the powers to access the information required for resolution. Moreover, while onsite inspection takes place via the Supervision Department staff; for resolution purposes, the Resolution Department can request offsite information directly (see EC 2.7).
EC 12.2	The legal framework permits, and contains adequate legal gateways for, the disclosure, in normal times and during a crisis, of nonpublic information (including insurer-specific information) necessary for RRP and for carrying out resolution to domestic and foreign authorities that could have a role in resolution, including as appropriate supervisory

	authorities, central banks, resolution authorities, finance ministries, and the public authorities responsible for guarantee schemes. Disclosure under those legal gateways is conditional on the recipient authority being subject to adequate confidentiality requirements and safeguards that are appropriate to the nature and sensitivity of the information to be disclosed.
Description & findings	The ACPR is able to exchange information with any foreign authority once an assessment of confidentiality requirements has been completed. Relevant references can be found in Articles L. 311-56 and L. 311-57, for European stakeholders, and in Articles L. 632-7, L. 632-13 and L. 632-15 of the MFC, for third country authorities.
EC 12.3	The legal framework or resolution regime incorporates adequate safeguards to protect the confidentiality of nonpublic information received from other domestic or foreign authorities. Such safeguards: (i) require authorities to keep such information confidential and to use it only in accordance with the terms on which the information was provided; (ii) prohibit domestic authorities from disclosing such information to other domestic or foreign authorities or other third parties, without the prior express consent of the authority that provided it, unless such disclosure is compelled by law; and (iii) exclude information received from foreign authorities from mandatory disclosure pursuant to freedom of information or similar legislation that may exist in that jurisdiction or treat such information as falling under an exemption from disclosure requirements.
Description & findings	Several information protection safeguards can be found in the framework. Article L. 612-17 of the MFC lays down the general principle of professional secrecy, according to which any person who participates (or has participated) in the performance of tasks mandated by the ACPR is bound by professional secrecy. Article L. 311-26 further provides that persons who have directly or indirectly contributed to the exercise of the resolution tasks in insurance, including potential acquirers or beneficiaries, shall be bound by professional secrecy. Violation of professional secrecy may lead to imprisonment and fines under the Criminal Code. Additionally, Article L. 632-1 A provides that any information received by the ACPR from EEA or third country supervisory authorities cannot be disclosed to third parties without the express prior consent of the providing party and solely for the purposes it has agreed to.
EC 12.4	The resolution authority has policies and procedures in place to control and monitor the dissemination within the authority of nonpublic information received from a foreign home or host authority.
Description & findings	This is the task of a dedicated ACPR department: Quality and Methods Department. Its mandate includes the review and verification of document classification and usage. The Resolution Directorate was recently assessed.
EC 12.5	Insurers subject to an RRP requirement are required to maintain management information systems that are capable of producing information necessary for RRP, assessing resolvability and the conduct of resolution, including the items specified in KA 12.2, and delivering that information to authorities on a timely basis.
Description & findings	The ACPR has a dedicated supervisory team looking onsite at management information systems. There have been several reviews in the context of Solvency II implementation (see EC 12.6).

EC 12.6	The jurisdiction has in place processes (for example, through regular examinations) to test insurers' ability to produce information for RRP and in resolution on a timely basis.
Description & findings	As it is early in the implementation phase, planning requirements have not been tested yet. Moreover, there is no obligation in the framework to perform testing. However, resolution-related processes could be put into the general supervisory testing program (e.g., Data Quality Framework), and insurers have been subject to granular and high frequency reporting for the last 20 years as part of Solvency I requirements. This reflects a sophisticated development of IT systems that will support RRP.
Assessment of KA 12	The framework is well aligned with the KAs on information access and sharing. However, testing would be warranted in the area of information sharing for RRP.