

Creation of a prudential control authority for the bank and insurance industries

Ordinance no. 2010-76 of January 21, 2010 established a new administrative control authority for the banking and insurance industries, the *Autorité de contrôle prudentiel* (Prudential Control Authority or hereinafter “ACP”). The ACP was formed through the merger of existing licensing and supervisory authorities that supervised the bank and insurance industries (i.e. the *Commission Bancaire* (Banking Commission), the *Autorité de Contrôle des Assurances et des Mutuelles* (Insurance and Mutual Insurance Societies Supervisory Authority), the *Comité des Etablissements de Crédit et des Entreprises d’Investissement* (Credit Institutions and Investment Firms Committee) and the *Comité des Entreprises d’Assurance* (Insurance Companies Committee).

1. The necessary reform of international supervisory authorities

The financial crisis raised issues that are widely debated, including notably the operation of supervisory authorities. In the countries deeply hit by the financial crisis, the current banking regulation and supervision have shown their limits and weaknesses and no regulatory authority was able to anticipate the crisis.

In order to remedy these defects, the G20 decided in April 2009 to strengthen the supervision of financial risks at the **international level** by creating the Financial Stability Board (FSB) to replace the Financial Stability Forum formed in 1999 comprising only the richest countries.

At the European level, the European Commission built the foundation of a reform of financial supervision in Europe and proposed the creation of three new financial supervisory authorities for the financial markets, the banking sector and the insurance sector, as well as the setting up of a European Systemic Risk Board to detect risks to the financial system as a whole with a critical function to issue early risk warnings to be rapidly acted on.

These proposals have been transmitted to the European Parliament and should be adopted before the summer 2010.

In France, the Law for the Modernization of the Economy of August 4, 2008 already kicked off the reform process by authorizing the government to address this issue by way of ordinances and regulations (instead of laws passed by Parliament).

2. The French reform

Contrary to the industry-oriented approach of the European Commission, the ACP shall ensure an integrated supervision of the bank and insurance industries.

2.1 Purpose

The ordinance of January 21, 2010 aims at improving the French supervision system around three objectives:

- Protecting the consumers of banking and financial products: this concern is at the heart of the reform. The ordinance strengthens notably the cooperation between the ACP and the *Autorité des Marchés Financiers* (Financial Market Regulator or hereinafter “AMF”) that must pool means and resources to supervise the marketing of banking, savings and insurance products;
- Increasing financial stability: the ACP must supervise the whole financial sector – limited however to the bank and insurance industries since the reform does not apply to financial markets;
- Enhancing France’s influence in international negotiations on financial regulation. The ACP shall represent France in the international forums of banking and insurance supervisory authorities.

In this context, the ACP shall ensure prudential supervision of both sectors mentioned above, notably by making sure that the financial institutions are solid and sustainable and by controlling marketing methods applied, or even marketed products, in order to better protect consumers.

2.2 The ACP

The ACP is governed by the provisions set forth in the French Monetary and Financial Code (*Article L. 612-1 et seq. of said Code*).

Pursuant to such legal provisions, the ACP is an independent administrative authority (with financial autonomy) even though it does not have legal personality (which means that the French government shall be liable for any adverse consequences that may result from the ACP’s activities).

The ACP is made up of a Board that comprises two sector-oriented sub-boards and a sanction committee. Each sub-board comprises eight members appointed for their competence and expertise. The Board is chaired by the Governor of the French Central Bank (the ACP has been allocated resources from the Central Bank, including staff), assisted by a Vice-President with expertise in insurance matters. The sanction committee is headed by a Council of State Judge and comprises five members.

The ACP is responsible for the ongoing supervision and control of the financial services and insurance industries (*Article L. 621-1, of the French Financial Code*). As such, its mission is to:

- Permanently monitor the financial situation and operating conditions of banks and insurance companies;
- Ensure compliance with solvability requirements;

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- Ensure compliance with the obligation to hold funds to guarantee that professionals are able to meet their commitments;
- Ensure that all persons falling under its scope of supervision comply with consumer protection rules resulting notably from legal and regulatory provisions and professional best practices.

In performing these tasks, the ACP must take into account the objectives of financial stability within the European Economic Area and the convergent implementation of national and Community provisions (*Article L. 621-1, III of the French Monetary and Financial Code*).

To accomplish its mission, the ACP has been vested with significant powers, including notably the power to issue licensing authorizations, to carry out controls, to take administrative measures and issue injunctions and to impose sanctions. Even though the ACP – contrary to the AMF – has no authority to issue regulations, its powers are still quite important as it is the single licensing and supervisory authority for those working in the banking and insurance industries and may sanction entities that do not comply with their obligations.

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