



Legal high Committee for  
Financial markets of Paris

# ***REPORT ON THE BANKING MONOPOLY***

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## REPORT ON THE BANKING MONOPOLY

In France, a “banking monopoly” is commonly taken to mean that all persons or undertakings other than certain categories of regulated entities are prohibited from carrying out banking transactions on a regular basis. The term is therefore not understood as a monopoly in the economic sense of the word but rather a system whereby certain activities are limited to persons or undertakings that fall into certain categories.

This limitation, the infringement of which constitutes a criminal offence<sup>1</sup>, is applied very broadly by legislation and case law. It encompasses not only:

- deposit-taking and the taking of other repayable funds from the public, which is restricted to credit institutions;

- payment services and the issuance and management of electronic money, which payment institutions and electronic money issuers may also carry out, alongside credit institutions;

which, in both cases, is in line with European Union regulations; but also:

- credit transactions, which may be carried out only by credit institutions and finance companies, contrasting with the situation in some other European countries.

The *Haut Comité Juridique de la Place Financière de Paris* or HCJP (legal high committee for the financial markets of Paris) was asked to investigate whether this situation is to blame for the distortion of competition and regulatory arbitrage that is drawing business away from the Paris financial markets and, if this is indeed the case, to determine what measures can be taken to remedy the problem.

A “Banking Monopoly” Working Group was set up for this purpose. Its members are listed in [Annex I](#). In preparation for this report, the Working Group held 17 plenary meetings and interviewed representatives from a number of organisations that are directly affected, which are listed in [Annex II](#).

The Working Group found that, broadly speaking, the current “banking monopoly” system is the outcome of layer upon layer of past legislation, often drawn up in response to a particular issue at a given time. These overlapping laws, alongside case law and administrative interpretations that are generally logical but often complex, make it difficult to examine the matter in a comprehensive manner. It also means that it is complicated to envisage amendments, since any changes may upset the current balance. Furthermore, the Working Group was unable, in the given timeframe, to obtain comprehensive information on the rules and practices in competing financial markets.

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<sup>1</sup> Art. L. 571-3 of the CMF: Any entity that fails to comply with this rule incurs a three-year prison sentence and a €375,000 fine.



Due to the reasons cited above and underlying economic interests, the opinions that the Working Group expresses hereafter do not always reflect a unanimous position on the part of the members of the Working Group or, for that matter, that of the organisations interviewed. In other words, the Working Group sought to reach a consensus but was unable to form a unanimous opinion.

In essence, the opinion of the Working Group differs depending on whether the opinion relates to the deposit-taking monopoly and the payment services monopoly, for which it only deems clarifications necessary (I), or the credit monopoly, for which certain amendments could be warranted (II).



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## **I. Deposit-taking / the taking of other repayable funds from the public and payment services: two monopolies that simply require clarification**

### **A. The monopoly in deposit-taking and in the taking of other repayable funds from the public**

#### **1. The principle of this monopoly should not be called into question.**

This first restriction is laid down by Article 9-1 of the European Capital Requirements Directive, CRD IV<sup>2</sup>, which prohibits all undertakings from carrying out the business of taking deposits and other repayable funds from the public, except for credit institutions, within the meaning of the definition set forth in Article 4 of the Capital Requirements Regulation (CRR)<sup>3</sup>, i.e. undertakings whose business is to take such deposits and funds and to grant credits for their own account.

This first aspect of the banking monopoly is fully justified as it seeks to protect depositors from the risk of insolvency or illiquidity of undertakings that may be tempted to use deposits for transformation or leverage purposes without being subject to the rules and regulations governing credit institutions. Its principle is not contested.

#### **2. Additional clarifications would be beneficial in removing uncertainty over its scope of application stemming from the use of certain terms that are open to interpretation.**

The criticism voiced in France tends to concern the uncertainty that may exist over the exact scope of the monopoly due to the use of certain terms that are open to interpretation. There are two examples of this uncertainty.

In French law, the notion of the receipt of repayable funds “on a regular basis” does not adequately convey the European legislator’s intention to solely subject to the monopoly the activity of taking in funds for the purposes of lending, in other words, the business or the transaction of money. What is more, case law has provided an extensive range of interpretations of the notion of “regular”, to the extent that the term could apply from the moment an undertaking carries out a second transaction with a second person or undertaking.

At the European level, the same can be said of the notion of “*repayable funds from the public*”. On the basis of Recital 14 of CRD IV, it is acknowledged that this encompasses “*the continuing issue of bonds and other comparable securities*”. While it does not mention the condition of continuity, point 4°, paragraph I, Article L. 511-7 of the *Code Monétaire et Financier* (French Monetary and Financial Code - CMF) only excludes such issues from the monopoly if they are carried out by undertakings that “do not carry out credit transaction”. If

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<sup>2</sup> Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

<sup>3</sup> Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms (“the CRR”).



this was taken literally, it could result in an undertaking that only carries out a credit transaction from time to time being prohibited from issuing bonds in a continuous manner. This clearly distorts the intention of the European legislator, which is simply to only include in the scope of the monopoly issues carried out to finance a credit “activity”.

### 3. The Working Group’s proposals

In order to better reflect the intention of the European legislator, the Working Group recommends referring to the carrying out of transactions “as their customary profession”, the terminology already employed in the CMF, notably to define credit institutions (Article L. 511-1 of the CMF). In addition to the concept of custom, this notion introduces criteria that characterise a professional activity, such as seeking customers and a regular source of income. This expression should be incorporated into the definition of both the monopoly in the taking of repayable funds from the public and in that of the credit monopoly.

Consequently, the Working Group proposes the following:

#### To word Article L. 511-5 of the CMF as follows:

*“Article L. 511-5. – It is prohibited for any entity other than a credit institution or a finance company to carry out banking transactions ~~on a regular basis~~ **as part of its customary profession***

*It is, moreover, prohibited for any entity other than a credit institution to receive on-demand deposits ~~on a regular basis~~ or to provide banking payment services **as part of its customary profession**.”*

Point 4°, paragraph I, Article L 511-7 of the CMF makes the issuing of debt securities contingent on the non-carrying out of credit transactions. This point was only introduced to prohibit finance companies from issuing debt securities under conditions that could be comparable to the taking of repayable funds from the public, which would have made it necessary to apply credit institution status to such undertakings. It must not, however, lead to a situation whereby non-financial undertakings that occasionally carry out a credit transaction would be prohibited from issuing bonds.

The Working Group therefore proposes that:

#### 1° the wording of point 4°, paragraph I, Article L. 511-7 of the CMF be amended as follows:

*“Article L. 511-7 – I – The prohibitions indicated in Article L. 511-5 do not prevent a firm, regardless of its type, from:*

*[...]*

*4 Issuing **debt securities as referred to in point 2°, paragraph II, Article L. 211-1;***

*[...] ».*



2° an Article L. 515-1-2, worded as follows, be inserted after Article L. 515-1-1 of the CMF:

*“Article L. 515-1-2. – Notwithstanding anything to the contrary, finance companies are prohibited from the issue of debt securities that, by virtue of Article L. 312-2, could be compared to the taking of repayable funds from the public.”*

## B. The payment services monopoly

### 1. Definition

Under European regulations, the payment services monopoly restricts the business of providing payment services, as set out in paragraph II, Article L. 314-1 of the CMF<sup>4</sup>, to credit institutions, payment institutions and electronic money issuers. Payment institutions are subject to authorisation and must fulfil capital requirements to be eligible to provide payment services<sup>5</sup>. Moreover, pursuant to Article L. 526-2 of the CMF, electronic money issuers may provide payment services related to their electronic money issuing and management activity and, as such, are subject to the same ongoing capital requirements as payment institutions.

Under the regulations specific to France, only credit institutions are authorised to provide banking payment services<sup>6</sup>, which are understood to mean issuing and managing means of payment other than the payment services referred to in paragraph II, Article L. 314-1 of the CMF and the issuance and management of electronic money.

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<sup>4</sup> Art. L. 314-1 of the CMF: «II. The following are payment services: 1° Services enabling cash transfers to be made to a payment account and administration of a payment account; 2° Services enabling withdrawals of cash from a payment account and administration of a payment account; 3° Execution of the following payment transactions associated with a payment account: a) Direct debits, including one-off direct debits; b) Payment transactions carried out with a payment card or by a similar means; c) Transfers, including standing orders; 4° Execution of the following payment transactions associated with a line of credit: a) Direct debits, including one-off direct debits; b) Payment transactions carried out with a payment card or by a similar means; c) Transfers, including standing orders; 5° The issuance of payment instruments and/or the acquisition of payment orders; 6° Cash transmission services; 7° The execution of payment transactions where the payer's consent is given by means of any telecommunications, digital or IT device and the payment is sent to the operator of the system or of the telecommunications or IT network acting solely as an intermediary between the user of payment services and the supplier of goods or services.”

<sup>5</sup> Articles L. 522-6 et seq of the CMF for payment institutions and Articles L. 526-7 et seq of the CMF for electronic money issuers.

<sup>6</sup> Reminder: payment services do not incorporate banking payment services.



## 2. Legal basis

In principle, European regulations governing payment services are harmonised and do not, as such, carry a risk of distortion of competition or regulatory arbitrage that may draw business away from certain financial markets. The Working Group did not come across such instances in the course of its review.

Some new non-regulated activities relating to payment account information and payment initiation have emerged in Europe. Under the new Payment Services Directive II<sup>7</sup> (PSD II), such activities will constitute new payment services and will therefore be restricted to payment institutions. These activities will be governed by measures transposing the Directive. By virtue of Article 115 of said Directive, these measures shall apply from 13 January 2018.

During its review, the Working Group was not made aware of any difficulties related to banking payment services.

**Nevertheless, it is the opinion of the Working Group that the nature of these banking payment services should be specified by decree.**

## 3. Compliance

The funds received by a payment institution or an electronic money issuer are not repayable funds from the public. Unlike credit institutions, payment institutions and electronic money issuers may not freely dispose of the funds that they receive from their customers, as these funds are set aside to execute payment or electronic money transactions. Moreover, this is specified in Article 18(3) of the PSD II. These funds must either be segregated (mandatory deposit in a special account opened with a credit institution), or covered by a financial guarantee issued by a credit institution or a finance company (a first-demand guarantee or a bonding arrangement) or a guarantee from an undertaking that does not belong to the same group, or possibly a combination of the two mechanisms.

However, it is unclear how the two techniques could be combined. For guarantees, the Order of 29 October 2009<sup>8</sup> provides for two standard formulations stating that the commitment covers all of the payment institution's obligations in respect of its payment activities. Moreover, if a specific segregation were put in place, the formulation should specify that the guarantee or surety covers the obligations of the payment institution in respect of its payment activities only insofar as said activities are not already protected by segregation.

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<sup>7</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, and repealing Directive 2007/64/EC.

<sup>8</sup> The Order of 29 October 2009 on prudential requirements for payment institutions.





Consequently, the Working Group would like the aforementioned Order of 29 October 2009 to be clarified in this respect.

Payment institutions and electronic money issuers are allowed to carry out certain types of credit transactions within the framework of their authorisations, as part of related services; the rules in this respect are harmonised in the PSD. These credit transactions must not be financed using funds received from the users of payment services.

#### 4. Problems encountered

In the course of the interviews that it carried out, the Working Group identified at least the following two problems:

- The first problem stems from the development of anonymous payment cards and, especially, virtual currency systems such as the Bitcoin, in which transactions are carried out anonymously. Their anonymous nature naturally poses a problem, in particular regarding the fight against money laundering and terrorism financing. However, this matter is being examined by other European and national authorities<sup>9</sup> and does not fall within the Working Group's remit.
- The second is related to the fact that existing legislation does not appear to provide sufficient legal certainty for payments to and receipts from a third party by an undertaking belonging to a group (generally the parent undertaking) on behalf of an affiliated company within the same group, even when such payments and receipts are conducted by a payment service provider. At present, only Recital 17 of the PSD II seems to really address this matter.

**It seems important to clarify the wording of French legislation in this respect, either through a response from the ministry or a Position by the *Autorité de Contrôle Prudentiel et de Résolution* (the French prudential supervisory and resolution authority - ACPR), in order to ensure that the aforementioned payments and receipts are considered by extension to be an intragroup cash transaction as defined in point 3°, paragraph I, Article L. 511-7 of the CME, and are covered by the exception referred to in point 2°, Article L. 311-4 of the CME.**

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<sup>9</sup> ACPR Position No. 2014-P-01 on Bitcoin transactions in France.



## II. The credit monopoly: changes are warranted

The principle of the credit monopoly is called into question far more widely and its scope is often criticised. A credit monopoly is commonly understood to mean the restriction of the credit activity to credit institutions and, in France, finance companies, i.e. approved undertakings that are governed by banking regulations or regulations that are similar to banking regulations.

### A. Criticisms generally levelled against the credit monopoly

There are four main reasons for criticism of the credit monopoly:

- Firstly, the credit monopoly and, more broadly, the regulation of the credit business, is not imposed by European law but left to the discretion of individual Member States. Yet, the solutions vary significantly across Member States, ranging from considerable leeway (United Kingdom) to the application of a system close to that governing credit institutions (France, Spain and Italy) or a *sui generis* approach in which oversight is entrusted to the authority in charge of supervising credit institutions. This lack of harmonisation has triggered a distortion of competition and regulatory arbitrage that is drawing business away from certain financial markets. For instance, French legislation governing the acquisition of unmatured loan receivables – discussed in greater detail later on in this report – hinders syndication in France and creates a situation whereby transactions are housed within ad hoc undertakings in other EU Member States in which the acquisition of unmatured loan receivables does not fall within the scope of a banking monopoly, such as in Germany or the United Kingdom, or even in offshore platforms outside the European Union. This may also lead certain banks to originate or book loans in countries with more preferential legislation in order to facilitate their syndication.

It is important to stress that criminal law in France is a very powerful deterrent to violation of the banking monopoly. This is embodied in Article 113-2 of the French *Code Pénal* (penal code), which states that the monopoly shall be deemed violated even when a single element of the violation has occurred in France (which, in a credit transaction, applies broadly: disbursement, booking of the transaction, location of the debtor, etc.). This can have a bearing on international transactions such as syndicated transactions, whereby French credit institutions are prohibited from acting as arranger or agent when the syndicate includes a non-European bank (a Swiss or American bank, for example) or a non-banking institutional investor. This is because the execution in France of certain functions connected to the role of arranger or agent (negotiation, disbursement, call for funds, etc.) may form a sufficient link to the jurisdiction of France to result in the application of the banking monopoly rules. For this reason, lawyers who draft legal opinions on such transactions generally warn lenders of this risk. Ultimately, this leads to a situation in which foreign banks tend to be chosen over French banks as arrangers or agents.

Furthermore, French banks may not be selected for export credit activities if the credit insurance agency is from another country because such activities can be compared to a signature commitment in France.



Yet, when such signature commitments are issued on behalf of a French-based business or credit institution, they fall, in the opinion of many foreign legal experts, within the scope of either the credit monopoly (since the guarantees extended as a part of customary activity can be compared to credit transactions), or the insurance monopoly (the French *Code des Assurances* (insurance code) qualifies this type of export credit activity as an insurance transaction). The ACPR argues that such transactions fall solely within the scope of the *Code des Assurances*. All involved should be made aware of the ACPR's stance in this respect.

- Secondly, the argument that the credit monopoly is linked to the demands of economic and monetary policy lost some weight with the lifting of credit controls, the use of new instruments of monetary policy and the transfer of responsibility for applying this policy within the Euro zone to the European Central Bank (ECB).

- The third reason is that the most recent banking regulations, embodied in the Basel III framework, eroded credit institutions' capacity to bear the risks of financing the economy, obliging them to find alternative sources of financing in the securities market, not always successfully, notably in the case of SMEs.

- Lastly, the third reason cited above has, in recent years, led to an increase in the number of exceptions to the credit monopoly, notably through the following:

- (i) all insurance undertakings (insurance companies, mutual insurance firms and provident institutions) are now authorised to lend to businesses, either directly or through loan funds;
- (ii) private individuals are permitted to lend money subject to the conditions and limits of crowdfunding schemes;
- (iii) third-party financing companies are now authorised to finance major energy-efficient building renovation projects, in return for a rental payment based on the energy savings<sup>10</sup>; and
- (iv) businesses will be authorised, under conditions that have yet to be set, to extend short-term loans to microbusinesses, SMEs and mid-market companies with which they have economic ties<sup>11</sup>.

There has been no guiding principle for any of this, resulting in a collection of special measures that undermines the coherence and clarity of the legislation. Moreover, the combination of certain exceptions, such as that between companies belonging to the same group, irrespective of whether they are located in France or abroad, with the principle of territoriality, enables the restrictions laid down by the legislator to be sidestepped.

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<sup>10</sup> Law No. 2015-992 of 17 August 2015 on energy transition for green growth.

<sup>11</sup> Paragraph 3bis, Article L. 511-6 of the CMF, as introduced by Article 167 of Law No. 2015-990 of 6 August 2015 on growth, activity and equal economic opportunities.



## B. Justifications for the credit monopoly

In the first phase of its review, the Working Group considered the justifications for the credit monopoly in order to better grasp its contours.

If we leave aside the protection of borrowers against the risk of misleading information, poor advice or the unfair termination or continuation of loans, which fall more within the realm of codes of conduct applicable to the sale or marketing of products, contract law or collective proceedings, the justifications fall into two categories<sup>12</sup>:

- the protection of lenders, their solvency and liquidity against the risk of debtor default;
- the protection of the financial system against the risk of contagion ensuing from the insolvency or illiquidity of a lender that is “systemically-important” because of its size and its links with other undertakings within the system.

**Credit risk** (or counterparty risk) is the common thread in both categories of protection and must be understood, assessed and measured before credit is granted.

The role of credit institutions and finance companies must remain paramount at the loan origination stage, as they have the tools to gauge, analyse and assess borrowers’ credit quality, particularly for those borrowers that are not rated by credit rating agencies (SMEs, mid-market companies, individuals, etc.). Supervisory oversight is particularly pronounced in this domain.

This also ensures that appropriate clauses are included in loan agreements as regards covenants, i.e. the debtor’s commitment to comply with certain financial ratios, to enable the credit line to remain open. Extending the field of lenders at the origination stage would open the door to lenders that are less vigilant and subject to less stringent oversight, and that are willing to accept lower levels of commitment (and charge higher interest rates in return). This phenomenon prompted Moody’s to publish a report on the risk of another covenant bubble.

While the loan originator has the initial responsibility in this area, potential assignees of unmatured receivables should also ensure that they have the right tools to assess and monitor their credit risk.

Credit risk is not, however, specific to loans. It also concerns bonds and negotiable debt instruments, but, in such cases, is generally spread over a large number of risk takers and the liquidity risk is lower if there is an active secondary market for such products. For this reason, legislators in all countries

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<sup>12</sup> Furthermore, under existing regulations, in the specific case of successive disbursement loans, the borrower is protected against lender default when the funds are made available.



have based the protection of investors on financial communication and the proper functioning of organised markets. Admittedly, there is less protection for securities that are issued as part of private placements, although such solutions are intended for well-informed investors. There is no denying, however, that there is a narrow line between loans and the private placement of debt securities. This is one of the issues that posed a problem for the Working Group.

Be that as it may, credit risk is a fundamental aspect of lending and merits answers to some of the questions that are central to the criticism levelled against the credit monopoly. It also has a significant bearing on the possible changes that the Working Group recommends hereafter.

### **C. Possible changes in the credit monopoly (the Working Group's recommendations)**

The Working Group has identified six possible and desirable changes to the credit monopoly.

#### **1. Extending the possibilities for the acquisition of unmatured receivables of a business nature**

Based on administrative precedent and case law<sup>13</sup>, the acquisition of unmatured receivables is currently viewed as a credit transaction that can be executed solely by a credit institution, a finance company, a securitisation fund or a similar fund abroad, as well as, in a general sense, the other undertakings referred to in the first paragraph of Article L. 511-6 of the CMF<sup>14</sup>, within the limits of the rules applicable to such undertakings.

Prevailing opinion is critical of this view, on the grounds that a credit transaction constitutes a disbursement of funds and that, following the disbursement, the acquisition of unmatured receivables no longer falls within the scope of the credit monopoly. This theory essentially makes a distinction between the primary credit market, which would be subject to the monopoly, and the secondary market, which would be accessible unconditionally. However, this view does not acknowledge the fact that the acquisition of unmatured receivables implies the transfer to the assignee of the risk of non-repayment, which means it cannot be accessible to all undertakings unconditionally.

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<sup>13</sup> Cass. Crim. (criminal division of the Cour de cassation), 20 Feb. 1984, No. 83-90.738, Bull. crim. (report on the decisions handed down by the Cour de cassation), No. 62. – TGI Paris, 11th chamber, 6 July 1982: JCP 1983, éd. CI, II, 13939; CA Paris (Paris court of appeal), 15th chamber B, 19 Jan. 2006, Grinberg et a. c/ SA Jet Flint; Council of State, dispute hearing, 8 July 1987, No. 47192.

<sup>14</sup> Paragraph 1, Article L. 511-6 of the CMF: "Without prejudice to the specific provisions applicable thereto, the prohibitions referred to in Article L. 511-5 shall not apply to the institutions and units enumerated in Article L. 518-1, to companies governed by the French Insurance Code, to reinsurance companies, to the provident institutions which are subject to the provisions of Title III Book IX of the French Social Security Code, to the approved bodies which are subject to Book II of the French Mutuality Code, to investment firms, to electronic payment issuers, to payment institutions, to the bodies that collect the employers' contribution to building efforts for transactions that come under the French Building and Housing Code, to undertakings for collective investment in transferable securities (organismes de placement collectif en valeurs mobilières, OPCVM) or to Alternative Investment Funds referred to in paragraphs 1, 2, 3 and 6, sub-section 2, and sub-sections 3, 4 and 5, Section 2, Chapter IV, Title I of Book II."



Nevertheless, it is the Working Group's view that the acquisition of unmatured receivables with a banking origin could be made accessible to undertakings other than credit institutions, finance companies and securitisation funds. This should apply only to receivables of a business nature, not those granted to individuals for their personal use, which are governed by a harmonised European framework. Furthermore, access would have to be subject to conditions appropriate to the legal status and location of the different assignee categories, making a distinction between assignees that are (a) regulated financial undertakings, other than credit institutions and finance companies, operating in France, (b) regulated financial undertakings, other than credit institutions and finance companies, operating abroad, and (c) non-financial undertakings, termed "qualified assignees".

**a. The assignment of unmatured bank receivables to regulated financial undertakings, other than credit institutions and finance companies, operating in France**

The categories of financial undertakings referred to in the first paragraph of Article L. 511-6 of the CMF are excluded from the scope of application of the credit monopoly by virtue of said article. They are authorised to acquire unmatured receivables of a business nature from credit institutions or finance companies subject to special provisions specifically applying to such undertakings.

Under legislation currently in force, insurance undertakings may acquire unmatured receivables directly or via loan funds. Alternative Investment Funds (AIFs) may also acquire such receivables, be they securitisation vehicles created for that specific purpose (Article L. 214-168 of the CMF), or for example:

- retail investment funds, within the limit of 10% of their assets (Article R. 214-32-19, §II of the CMF);
- alternative funds of funds, also within the limit of 10% of their assets (Article R. 214-32-19, §II of the CMF with reference to Article R. 214-183 of the CMF); or
- professional investment funds, within the limit of 50% of their assets (Article R. 214-32-19, §II of the CMF with reference to Article R. 214-187 and Article R. 214-190 of the CMF).

Moreover, the specialised professional investment funds referred to in Article L. 214-154 of the CMF - which benefit from less restrictive investment constraints - may also invest in unmatured receivables without limitation in relation to their assets.

The *Autorité des Marchés Financiers* (French financial markets authority - AMF) has confirmed that, to date, it has not received any specific requests from portfolio management companies regarding the possibility of extending the authorisation to acquire unmatured receivables to other types of AIF, or the possibility of raising the 10% and 50% thresholds.

**However, the 10% threshold could be envisaged as specific to receivable acquisitions only and not included in the "catch-all ratio", which also applies to other asset categories.**





Nevertheless, it is the Working Group's view that, based on a literal interpretation of the provisions of the *Comité de la Réglementation Bancaire's* (French banking regulation committee - CRB) Regulation No. 85-17 of 17 December 1985, notably those in the second paragraph of Article 2<sup>15</sup>, credit institutions may be deemed authorised to assign unmatured receivables only to undertakings that have themselves been granted credit institution status or to securitisation vehicles.

**The Working Group therefore recommends that Regulation No. 85-17 of 17 December 1985 be repealed or entirely re-worded in order to adapt it to today's legislative context and current practices.**

Furthermore, the Working Group finds it regrettable that the CMF does not apply the same provisions to other categories of investment funds, for example specialised professional investment funds, as it does to securitisation vehicles with respect to the acquisition and holding of receivables. This hinders the creation of a level playing field on a national level, which is unfortunate considering the flexibility sought in other areas. The difference in treatment has the following notable implications:

- there is no specific receivables acquisition framework for traditional investment funds, whereas securitisation vehicles are covered by paragraph 2, IV, Article L. 214-169 of the CMF. A securitisation vehicle can acquire receivables (and the related sureties and guarantees) simply by delivering a transfer instrument. There is no such possibility for other types of funds, which may face considerable difficulties when attempting to acquire a receivables portfolio;
- nor is there any protection against default for investment funds other than securitisation vehicles. There are specific provisions in place that exempt securitisation vehicles alone from the procedures of Book VI of the *Code de Commerce* (French commercial code) (safeguard, administration or receivership). These provisions also specifically recognise the validity of the payment allocation and subordination rules set out in a securitisation vehicle's regulations or by-laws, even if the vehicle were to go into receivership (paragraph 3, II of Article L. 214-169 of the CMF) as well as the impossibility for a creditor to take any civil proceedings against the assets of the securitisation vehicle (paragraph 4, II of Article L. 214-169 of the CMF).

**Consequently, the Working Group recommends that the provisions applicable to securitisation funds in such instances be extended to all funds that are authorised to acquire unmatured bank receivables.**

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<sup>15</sup> Paragraph 2, Article 2 of Regulation No. 85-17 of 17 December 1985 on the interbank market: (free translation) Only credit institutions and the undertakings referred to in Article L. 518-1 of the *Code Monétaire et Financier* shall be authorised to acquire or take under a reverse repurchase agreement other types of receivables, in whatever form. Without prejudice to the transactions referred to in Article 1 of Regulation No. 93-06, these institutions and undertakings shall not be authorised to assign, via a repurchase agreement or otherwise, said receivables to undertakings that fall into a different category.



#### **b. The assignment of unmatured bank receivables to regulated financial undertakings operating abroad**

The current wording of the first paragraph of Article L. 511-6 of the CMF refers only to French undertakings.

Foreign undertakings that are comparable to the French undertakings referred to in said article (e.g. securitisation mutual funds) and interpret this wording in a literal sense are therefore reluctant to finance French credit institutions. This reluctance is all the more understandable considering that violation of the banking monopoly is a criminal offense<sup>16</sup>.

**The Working Group therefore recommends that the possibility of acquiring unmatured bank receivables be explicitly extended to foreign undertakings that are subject to rules equivalent to those applicable to French credit institutions and the other undertakings referred to in the first paragraph of Article L. 511-6 of the CMF, as well as to foreign pension funds.**

#### **c. The assignment of unmatured bank receivables to non-financial undertakings, termed “qualified assignees”**

There was much discussion within the Working Group regarding the possibility of authorising non-financial undertakings (businesses, foundations, etc.) to acquire unmatured bank receivables.

Some members argued that no such need had been expressed within the Paris market, by either members of the banking profession or the treasurers of large corporations.

Others noted that this was undoubtedly due to the fact that there was no such possibility at present and requests could well emerge if the possibility was opened up, thereby enhancing liquidity and the sharing of banking risk.

Drawing on the precedent set with the admission of qualified investors to trade in financial instruments, the majority of the Working Group’s members believed that non-financial undertakings could be authorised, as “qualified assignees”, to acquire unmatured bank receivables subject to the following conditions:

- the acquisition of unmatured bank receivables be restricted to legal entities or undertakings that have the means to assess and manage credit risk;
- qualified assignees should only be authorised to acquire unmatured bank receivables as part of an ancillary activity alongside their core business;

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<sup>16</sup> Art. L. 571-3 of the CMF: Any entity that fails to comply with this rule incurs a three-year prison sentence and a €375,000 fine.





- only fully-drawn non-revolving loans granted by credit institutions or finance companies could be assigned;
- the institutions or companies assigning the receivables should be required to retain a substantial portion of the credit risk associated with the assigned receivables. A ministerial order should set the minimum mandatory retention percentage<sup>17</sup>, as well as the conditions and duration thereof<sup>18</sup>;
- the acquisition of unmatured bank receivables should not be financed by borrowing.

**Provided that the aforementioned conditions are met, the majority of the members of the Working Group therefore believe that it would be opportune to extend the possibility of acquiring unmatured bank receivables to non-financial undertakings, termed “qualified assignees”.**

## **2. Softening the rules governing the eligibility of intragroup cash transactions**

According to the *Association Française des Trésoriers d'Entreprise* (French association of corporate treasurers - AFTE), which was interviewed by the Working Group, the exception that renders intragroup cash transactions eligible under the credit monopoly does not go far enough. At present, such transactions can only be executed with companies that are under their parent's “effective” control, i.e., in practice, companies that are majority-owned (based on share capital or voting rights) by the parent.

The only intragroup transaction that can be carried out by a company in which an affiliated company owns an interest of between 5% and 50% is a shareholder's current account advance. In practice, the conditions governing such transactions do not make it possible to either finance the company under market conditions or to ensure equal treatment among the shareholders. Therefore, the AFTE would like intragroup cash transactions to encompass such transactions executed with all companies in which an affiliated company holds, directly or indirectly, an interest of at least 5%.

The Working Group did not believe that it would be possible to satisfy such a request, as it would call into question the very notion of a group as recognised under French law.

**Nevertheless, the Working Group suggests that the credit monopoly exception covering intragroup cash transactions should be extended to the abovementioned transactions carried out with all companies within the scope of the consolidated or combined financial statements of the affiliated company. If consolidated financial statements are prepared, this would imply extending the exception in particular to companies in which the parent company exercises significant influence, which *inter alia* presupposes a holding of at least**

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<sup>17</sup> According to the Working Group, the minimum retention percentage could be set at 20%.

<sup>18</sup> According to the Working Group, this minimum retention percentage could cease to be mandatory when a procedure in accordance with Book IV of the Code de Commerce, or an equivalent foreign procedure, is opened.



**In the absence of consolidation, the exception would apply to transactions carried out with all the companies over which the affiliated company has exclusive control within the meaning of Article L. 233-16 of the *Code de Commerce*.**

**Moreover, the Working Group would like to see the notion of “cash transaction” legally reinforced. This notion, as referred to in point 3°, I of Article L. 511-7 of the CMF, is currently defined solely on the basis of the parliamentary work relative to the French banking law of 1984 and a letter, dated 6 December 1985, that the head of the French Treasury sent to the Chairman of the CNPF employers’ union (*Conseil National du Patronat Français*). Thirty years on, the CNPF is still referring to that letter<sup>19</sup>.**

### **3. Selectively extending powers to grant loans of a business nature**

Loans of a business nature may be granted by insurance undertakings, either directly or via loan funds and, more recently, with the entry into force of the Regulation of 29 April 2015<sup>20</sup>, by European Long Term Investment Funds (ELTIF).

#### **a. Extending loan granting powers to certain AIFs**

French funds do not hold such powers under existing French legislation. Certain AIFs are authorised to acquire unmatured receivables but not to directly grant loans to businesses.

In light of changing European regulations, the AMF decided to explore the possibility of authorising certain French funds - *Fonds Professionnels Spécialisés* (professional specialised investment funds - FPS), *Fonds Professionnels de Capital Investissement* (professional private equity investment funds - FPCI) and *Organismes de Titrisation* (securitisation vehicles - OT) - to grant loans to European non-financial undertakings, subject to the following conditions:

- investment management companies that wish to grant loans for funds under their management must be authorised as an AIFM (Alternative Investment Fund Manager) and have a programme of activity authorised for the management of receivables. As part of this, they must notably ensure that they have the procedures in place to analyse, measure and monitor credit risk, as provided for in the Order of 9 December 2013 on the rules governing investment by insurance undertakings in loans or loan funds for the economy;

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<sup>19</sup> Letter sent by the head of the French Treasury to the Chairman of the *Conseil National du Patronat Français* on 6 December 1985: The law therefore simply grouped together the two types of banking transactions referred to in Article 1 (of the Law of 24 January 1984), i.e. deposit-taking and credit transactions, the latter encompassing credit guarantees within the meaning of Article 3.

<sup>20</sup> Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds.



- the funds authorised to grant loans must be closed-end funds in which shares are either not redeemable at all or only in very limited proportions during the life of the fund, so that the loans can be extended without a transformation of maturity;
- for the same reason, the maturity of the loans must not be longer than the life of the fund;
- the loans granted must not be financed through borrowing, to prevent the use of leverage. In the same vein, the funds must not engage in short-selling, securities lending/borrowing or repurchase/reverse repurchase agreements and should use derivative instruments only to hedge their risks.

**In a legal opinion issued on 25 November 2015, the HCJP approved the provisions proposed by the AMF, subject to the following observations:**

- **the condition laid down for ELTIFs, which states that they must not be listed or must have a market capitalisation of less than €500 million, should be applied to the eligible undertakings to ensure that the funds collected are directed towards the financing of SMEs, which is a priority;**
- **with regard to the length of the loans, while it is essential that they do not exceed the life of the fund, the HCJP does not believe it would be useful to set a minimum term of two years, which would rule out the possibility of granting cash loans to meet a temporary need at eligible undertakings;**
- **lastly, alongside the possibility of building a diversified portfolio of loans that would, quite rightly, be reserved for professional funds, subject to substantial credit risk control requirements, it would be opportune to open up the possibility for private equity investment funds, even non-professional ones, to grant loans (other than shareholder current account advances, which are already eligible) as an ancillary activity to their core business, to companies in which they have shareholdings. Such loans would be subject to less restrictive constraints in relation to credit risk management, which, as shareholders, they will be in a position to monitor and assess.**

**b. Extending powers to companies authorising them, as an ancillary and related activity to their core business, to lend to other companies with which they have economic ties that justify such lending**

It is the opinion of the Working Group that the new paragraph 3 bis inserted into Article L. 511-6 of the CMF in response to the Macron Law (loi Macron) of 6 August 2015<sup>21</sup>, which opens up this possibility, is a suitable response to intercompany lending needs (which must continue to rely, first and foremost, on compliance with payment deadlines), provided that:

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<sup>21</sup> Law No. 2015-990 of 6 August 2015 on growth, activity and equal economic opportunities.



- the notion of economic ties<sup>22</sup> is interpreted in a broad sense and covers all production networks;
- these economic ties provide the lending company with a sufficient understanding of the borrowing company's economic and financial situation to enable it to assess and monitor the borrower's solvency;
- the loans may only be granted under such an arrangement when payment deadline conditions are met; and
- the loans granted under such an arrangement are not limited in absolute value, but that the total amount does not exceed a - minority but significant - percentage of the lending company's cash surplus, bearing in mind that the Working Group considers that this percentage could be as high as 30%.

**While it is the opinion of the Working Group that the new paragraph 3 bis inserted into Article L. 511-6 of the CMF in response to the Macron Law of 6 August 2015 does indeed meet intercompany lending needs subject to certain conditions, this additional exception to the credit monopoly must not result in a more restrictive interpretation of the exemption provided for in point 1°, I of Article L. 511-7 of the CMF, under which a company may grant extended payment deadlines or advances to the other contracting party. In this respect, the Working Group recommends that the legislative position be reinforced.**

#### **4. Subjecting new lenders to appropriate rules**

This matter gave rise to much debate within the Working Group. A minority of the members argued that, to ensure the clarity of our laws and the appeal of the Paris market, it would be preferable not to regulate these new lenders.

However, the majority of the Working Group members felt that a minimum degree of regulation was necessary on a harmonised basis to avoid the distortion of competition. This regulation would need to be commensurate with the activity of the contracting parties and based on the “*same business, same rules*” principle.

##### **a. Making a distinction between two categories of lenders...**

A distinction needs to be made between two categories of “new lenders”:

- those seeking to build up a diversified portfolio of loans and receivables (insurance undertakings, loan funds, securitisation vehicles and AIFs authorised to invest a portion of the funds they collect in a portfolio of loans or receivables); and

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<sup>22</sup> The *Fédération Bancaire Française* (French federation of banks - FBF), on the other hand, indicated that it would prefer a strict interpretation of the notion of economic ties.



- those that simply intend to grant occasional loans to specific companies (those referred to in paragraph 3 bis, Article L. 511-6 of the CMF, private equity investment funds lending, as an ancillary activity, to companies in which they have shareholdings).

**b. ...each meeting the requirement of not specifically financing their loans through borrowing...**

One common aspect found in both categories of lenders is that they finance their loans using their equity and not through borrowing; as a result, they do not seek to use leverage and engage in very little maturity transformation, if at all. It would therefore not be pertinent to subject them to the same capital requirements and liquidity ratios as banks.

**c. ...but bound by certain rules, common to both categories**

These two categories of lender must comply with a small number of common rules.

Firstly, they must comply with the rules governing all lenders:

- rules relating to the information that must be provided to the debtor:
  - on the granting of loans: the lender must inform the debtor of the characteristics of the loan and, if necessary, warn them of the specific risks that the loan may carry;
  - for the assignment of unmatured receivables: the rules governing the communication of information to debtors have been simplified by Ordinance No. 2016-131 on the reform of contract law, general rules and proof of obligations, published in the French official gazette (*Journal Officiel*) No. 0035 of 11 February 2016. By way of reminder, the communication of information to the debtor, which may now simply take the form of a notification instead of a communication of meaning, is not a prerequisite for the valid assignment of receivables between the parties. Rather, it is a perfection requirement for the effectiveness of the assignment to the assigned debtor. The Working Group does not suggest changing this.
- provisions relating to the unfair continuation of lending arrangements.

They must also comply with a certain number of rules applicable to credit institutions and finance companies:

- professional secrecy rules as regards information received as part of the assignment of receivables or the granting of a loan (Article L. 511-33 of the CMF);
- they must have an effective mechanism in place to manage conflicts of interest;
- they must agree to report information to the Banque de France in return for access to the FIBEN (*Fichier Bancaire des Entreprises*) companies database; and
- in relation to the fight against money laundering and terrorist financing measures (AML-CFT), the persons other than those referred to in Article L. 561-2 of the CMF, who, in the normal course of their business, execute, supervise or recommend transactions giving rise to capital movements are required, in accordance with Article L. 561-1 of the CMF, to declare to the French Public Prosecutor (*Procureur de la République*) any transactions they have knowledge of that involve sums that they know to be the proceeds of an offence referred to in Article L. 561-15 of the CMF.



These rules will need to be adapted to the nature of the new lenders' activities and to the category into which they fall.

**d. Rules commensurate with lenders' activity with respect to the selection of borrowers and the monitoring of credit risks:**

The lenders must be subject to rules that are commensurate with their activity in relation to the selection of borrowers and the monitoring of credit risks:

- the definition of an investment policy and the measurement of the overall risks of a credit portfolio are only mandatory for lenders that intend to build a diversified loan portfolio; lenders that invest occasionally in specific companies need only have a sufficient understanding of the borrowing company's economic and financial situation to assess and monitor the borrower's repayment capacity throughout the life of the loan;
- while lenders belonging to the first category may consult the data regarding all the companies registered in the *Banque de France's* FIBEN database, access to the database by lenders in the second category should be limited, as far as possible, to the specific companies to which they intend to lend. This would necessitate modifications to the database's programs.

**5. Providing a secure framework for loans granted directly by private individuals to companies and, more particularly, households**

The average saver has neither the expertise nor the means to assess the risk of lending to companies and, even less so, to households. He/she can only make limited forays into this market and, for some time to come, this will only be possible through intermediation.

**It is the view of the Working Group that such lending should remain within the scope of the two possibilities recently provided for by law, until lessons can be drawn from this experience:**

- crowdfunding is the first of these possibilities. Crowdfunding was introduced into law in point 7° of Article L. 511-6 of the CMF by Ordinance No. 2014-559 of 30 May 2014<sup>23</sup>, which authorises individuals to grant loans to finance specific projects (of a creative or entrepreneurial nature), for non-professional or non-commercial purposes. Crowdfunding is subject to a number of conditions, notably the following: (i) the loan must not exceed €1,000 per investor and per project when it carries interest, or €4,000 when no interest is charged; (ii) the term of the loan must not exceed seven years; (iii) the total amount that the project owner can borrow must not exceed €1,000,000<sup>24</sup>; and (iv) the loan is conditional on the use of crowdfunding intermediaries that must be capable of assessing and measuring the credit risk in order to select the projects that investors are asked to fund;

<sup>23</sup> Ordinance No. 2014-559 of 30 May 2014 on crowdfunding: *Journal Officiel (JO)* 31 May 2014, p. 9075.

<sup>24</sup> Art. D. 548-1 of the CMF.



- the draft ordinance pursuant to Article 168 of the Macron Law<sup>25</sup> offers individuals (and legal entities) the possibility of purchasing or subscribing to interest-bearing notes within a crowdfunding framework.

Time constraints meant that the Working Group was unable to deliberate as regards this ordinance. In keeping with the positions that the Working Group adopted on previous matters, its Chairman nonetheless appreciates that priority should be given to loans that are intermediated via platforms managed by *Conseillers en Investissement Participatif* (crowdfunding advisors - CIP) or *Prestataires de Services d'Investissement* (investment services providers - PSI) and subject to the rules of conduct incumbent upon these specialists, notably in relation to the obligation to inform, warn and advise. The Chairman also approves of the provisions that are intended to place a cap on issues and to restrict them to companies that have three years of annual financial statements and fully paid-in share capital, and the provisions that provide for the application of the least risky loan structure.

In such areas that deal with the protection of savers and borrowers, a certain amount of prudence from the outset is the best way to avoid any major pitfalls.

## 6. Ensuring the legal classification of debt securities

The issue of debt securities as an exception to the banking monopoly is provided for in Article L. 511-7 of the CMF. The benefits of this exception and the robustness of the legal classification of debt securities is therefore an essential issue for the Paris market, since the violation of the banking monopoly constitutes a criminal offence.

Yet, this classification is not sufficiently robust in the case of certain issues, notably Euro PPs, which are used extensively across the market and discussed in depth in the industry guidance document entitled “*Charter for Euro Private Placements (Euro PP)*”, which the *Banque de France* published in June 2014. There is notably some uncertainty with respect to non-listed private placements that can initially be subscribed to by a single person or for which the contractual terms may restrict the categories of possible assignees or have a bearing on the conditions under which the securities may be transferred. There are diverging opinions regarding the possibility of reclassifying these mechanisms as bilateral loans.

Yet, based on the information gathered, the Working Group found that such risks do not have a legal existence in our main neighbouring European financial markets, where the notion of a financial security is essentially characterised by its corporeality.

Nevertheless, this single formal criterion is not echoed in French legal conventions and, the Working Group felt, could not on its own serve as a basis to ensure the classification of financial securities in French law.

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<sup>25</sup> Law No. 2015-990 of 6 August 2015 on growth, activity and equal economic opportunities.





Nor should ensuring this classification be contingent on investor plurality. In fact, a given financial security issue can legitimately be held by a single investor.

When financial securities are issued in the jurisdiction of France and subject to French law, they are instruments issued in execution of an agreement, evidenced by book entries and transmissible from one account to another via book transfer. Their “*negotiability*” (Article L. 211-14 of the CMF) characterises their legal classification, i.e. their ability to be transmitted faster and more efficiently than if the standard procedures provided for in civil law were applied and without the mandatory civil enforcement procedures required of assignments<sup>26</sup>. Hence, the notion of negotiability is not the same as the notion of assignability.

Naturally, a security subject to conditions that simply prohibit assignment, other than for occasional periods, cannot be considered negotiable. However, conversely, it should be possible to agree on or to restrict the conditions under which a security can be assigned or transferred (approval clauses, categories of assignees, periods of non-assignability, etc.), without calling its negotiable nature into question, so long as the restrictions do not lead, in law or in practice, to a situation whereby the assignment of the securities would be prohibited or impossible during their entire useful life.

The Working Group therefore recommends that:

**1° Article L. 211-2 of the CMF be clarified as follows:**

*“Article L. 211-2. – Financial securities, which include transferable securities as defined in the second paragraph of Article L. 228-1 of the Commercial Code, may be issued only by the State, a legal entity, a common fund, a real-estate investment trust or a securitisation common fund. **Such securities may be subscribed to by a single person.**”*

**2° an additional sentence be inserted in Article L. 211-14 of the CMF:**

*“Article L. 211-14. – With the exception of shares in real-estate investment companies referred to in Article L. 214-114, and shares held in forestry investment companies referred to in Article L. 214-121, financial securities are negotiable.*

***Nothing in the provisions of the first paragraph shall prevent the parties from agreeing on restrictions to the transfer of a debt security as long as such restrictions do not prohibit or prevent the assignment of the debt security until maturity.”***

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<sup>26</sup> Gérard Cornu, «Vocabulaire juridique», PUF.





## CONCLUSION

The measures proposed herein seek to prevent regulatory arbitrage and situations that draw business away from the Paris market, without undermining the solidity of the French banking system, which is one of the market's strengths. Such measures therefore need to be targeted and managed, as underlined in this report:

- they must first be centred on provisions that make it possible to reconcile the eminent and irreplaceable loan origination expertise of credit institutions and finance companies with the possibility for them to reduce some of the credit risk to which their balance sheets are exposed, which is what is intended through the possibility of assigning unmatured bank receivables to other undertakings;
- they must then target areas in which it would be useful to open up new sources of financing other than through banks and the market, such as cash loans to SMEs within the same group or to SMEs affiliated to the same production network;
- lastly, they must be supervised to ensure that credit risk is not passed on unfiltered to end investors, particularly retail investors. Hence the importance, in a system involving the partial disintermediation of bank funding, of financial intermediaries subjected to a common set of regulations and, where necessary, controls.



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## *ANNEX 1*

### Composition of the «Banking Monopoly» Working Group



**The “Banking Monopoly” Working Group is composed of the following members:**

- **Jacques Delmas-Marsalet**, Chairman of the Working Group and rapporteur of this report
- **Laura Gabay**, Lawyer with the Bredin Prat law firm, co-rapporteur of this report
- **Christophe Arnaud**, Deputy Director, Legal Affairs, Banque de France
- **Sébastien Bonfils**, Deputy Executive Director, Legal Affairs Directorate, AMF
- **Bertrand Brehier**, Deputy Head of Société Générale’s Banking and Financial Regulation Department, representing the FBF
- **Alban Caillemer du Ferrage**, Partner with the Jones Day law firm
- **Malo Carton**, Direction Générale du Trésor (French treasury agency)
- **Pierre-Henri Cassou**, Consultant and President of the Observatoire des Fonds de Prêts à l’Economie (Alternative Lending Watch)
- **Eric Fontmarty-Larivière**, Deputy Head of the ACPR’s Financial Regulation Division
- **Henry de Ganay**, General Counsel at the ACPR
- **Gérard Gardella**, Secretary General of the HCJP
- **Rodolphe Lelté**, Direction Générale du Trésor (French treasury agency)
- **Pierre Minor**, Head of Legal Affairs and Chief Compliance Officer at Crédit Agricole S.A., representing the FBF
- **Gilles Petit**, Head of the ACPR’s Financial Regulation Division
- **Alain Pietrancosta**, Law Professor at Paris I university
- **Stéphane Puel**, Partner with the Gide Loyrette Nouel law firm
- **Hubert de Vauplane**, Partner with the Kramer Levin law firm



## *ANNEX 2*

List of representatives of the organisations  
that were interviewed



**The Working Group interviewed representatives of the following organisations:**

- Representing the *Fédération Bancaire Française* (French Banking Federation - FBF):
  - Alain Gourio, Head of Legal and Compliance Expertise at the FBF; and
  - Pierre Minor, Chairman of the FBF's Legal Committee, Head of Legal Affairs and Chief Compliance Officer at Crédit Agricole S.A.
  
- Representing the *Association Française des Trésoriers d'Entreprise* (Association of French Corporate Treasurers - AFTE):
  - Alexandre Akhavi, Chairman of the AFTE's Legal Committee, Legal Counsel at EDF; and
  - Bruno Fitsch-Mouras, Vice-Chairman of the AFTE's Legal Committee, Senior Legal Counsel at Orange.
  
- Representing the *Association Française des Sociétés Financières* (French Association of Specialised Finance Companies - ASF)
  - Françoise Palle-Guillabert, Director General of the ASF; and
  - Karine Rumayor, Head of the ASF's Legal Department.



## **ANNEX 3**

The Banking Monopoly and its  
justifications - Factors to consider  
A. Pietranscosta

*January 2016*



## ***ANNEX 4***

The Working Group's proposals on the  
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Ph. Cassou

***12 october 2015***





## ***ANNEX 5***

The rules currently applied in France to  
undertakings that grant or acquire loans of  
a business nature

Ph. Cassou

***3 July 2015***



## ***ANNEX 6***

Fact sheet - Extraterritoriality  
A.Caillemer du Ferrage

*May 2015*



## *ANNEX 7*

Table of international comparisons  
A.Caillemer du Ferrage



## **ANNEXE 8**

Observations of the *Fédération Bancaire Française* (FBF) on the draft report of the *Haut Comité Juridique de la Place Financière de Paris* on the banking monopoly

**10 February 2016**



## *ANNEX 9*

FBF - Introduction of a « Banking Monopoly » exemption for the assignment of unmatured receivables



## ***ANNEX 10***

AFTE - Exceptions to the Banking  
Monopoly - Interview of 16 December 2015



## *ANNEX 11*

ASF - Interview of 17 September 2015