

French banking and financial regulation law: implementation of the global financial supervision system

The French banking and financial regulation Law (the “FBFRL”) was enacted on October 20, 2010 and published in the Official Journal on October 23, 2010. It aims at implementing the decisions made at the G-20 summits in Washington, London and Pittsburgh and drawing lessons from the crisis in order to foster economic recovery.

The FBFRL includes 92 articles structured around two main axes, i.e. implementing a system of supervision of certain operators and certain activities on the one hand, and bolstering the financing of the economy to encourage economic recovery on the other hand.

To many observers, this reform is disappointing and rather unambitious. They say decisions should have been made at the international level, not only at the level of the countries. It is however clear that the recent legislations on banking and financial matters adopted in France are a direct follow-up to the decisions endorsed at the international level to respond to the latest global and multi-sector crisis.

This article will focus on the main decisions made at the last G-20 summits in respect of supervision of financial operators and financial markets and discuss the national measures implemented under the FBFRL.

1. Regulation, monitoring and sanction of credit rating agencies

The 2007 financial crisis cast light on the insufficiencies of the credit rating system.

During the G-20 held in Washington in November 2008, a consensus arose on the necessity to better regulate credit rating agencies notably to avoid conflicts of interest and to increase transparency for investors.

A few months later, **EC Regulation n°1060/2009 of September 6, 2009** was adopted. Its main objectives are to ensure that, in the future, evaluations shall be independent, objective and satisfactory. As such, this Regulation imposes on credit rating agencies the obligation to obtain a license to conduct their activities within the European Union and to be monitored by the financial regulatory authorities of the relevant Member States.

This Regulation also imposes transparency requirements (annual publication of the 20 largest clients and related turnover, publication of the evaluation methods, procedures and ratings) and aims at strengthening the

quality of the ratings through the implementation of internal control procedures.

Since January 1, 2011, the *Autorité des Marchés Financiers* (French financial markets regulator or hereinafter the “AMF”) is responsible for registering and monitoring credit rating agencies (Article 10 of the FBFRL). From now on, the AMF will license, monitor and, as the case may be, impose penalties on credit rating agencies.

In addition, the liability of the credit rating agencies can be sought in case of “*breach or failure to implement the requirements of the aforementioned EC Regulation*”. Agencies will be liable for the faults committed in the credit rating process and any contractual provision aimed at excluding or limiting such liability shall be held null and void. In addition, to prevent credit rating agencies from delocalizing their contracts (and thereby escape liability), the FBRL stipulates that any agreements, the effect of which is to submit a dispute relating to the activity of such agencies to a jurisdiction outside the EU in circumstances where, in the absence of such agreement, French courts would have jurisdiction to settle the dispute, will be held null and void.

The objective of the new regulations approved at the international level and subsequently implemented in Europe and in France is to establish a regulatory framework for certain financial actors that were either not subject to any regulation or insufficiently regulated (hedge funds and credit rating agencies) and to further regulate certain activities considered as potentially dangerous for the financial stability (derivatives and short selling).

2. Improved monitoring and supervision of the financial sector

The objective here was to adapt the mode of supervision both to the size, complexity and international dimension of financial operators.

As such, in the wake of G-20 summit in Washington, the Heads of State and Government decided in London in April 2009 that the Financial Stability Forum (FSF) - an informal group created in 1999 at the initiative of the G-7 following the Asian financial crisis - would be enlarged to include all members of the G-20 and Spain. It is now called the Financial Stability Board and its ambitious mission is to address market vulnerabilities, promote the co-ordination and information exchange among authorities responsible for financial stability, monitor and advise on market developments and their implications for regulatory policy, in order to increase financial stability and improve the openness and transparency of the financial sector.

At the European level, the EU Parliament **adopted on September 22, 2010 a Regulation** creating new supervisory authorities for banking, insurance and capital markets (the **European Systemic Risk Board** and **three other supervisory authorities** with advisory and monitoring powers responsible for ensuring a consistent implementation of EU laws throughout the EU).

In France, **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). This new Authority is responsible for monitoring banks, investment and insurance companies as



well as intermediaries operating in the banking and insurance sectors (see our [February 2010 e-newsletter](#)).

The FBFRL also adapted the French supervision systems to the framework implemented at the European level through the creation of the **Conseil de Régulation Financière et du Risque Systémique** (Board of Financial Regulation and Systemic Risk), chaired by the Minister of the Economy. It is composed of the Governor of the Bank of France (who is also chairman of the *Autorité de Contrôle Prudentiel*) the President of the AMF, the President of the *Autorité des Normes Comptables* (Authority of Accounting Standards), and three other competent individuals.

The purpose of the Board of Financial Regulation and Systemic Risk is notably to ensure cooperation and information exchange between the different financial authorities in France, evaluate systemic risk in the financial sector and financial markets, facilitate coordination between international and European standards applicable to the financial sector.

The AMF also plays an important role in the new supervision and monitoring framework as its powers are significantly reinforced. As such, it may now impose fines up to EUR 100 million on any persons committing a market abuse and up to EUR 15 million on any individual who acts on behalf or under the authority of a professional operator regulated by the AMF. The President of the AMF is now entitled to take measures in order to restrict the trading of financial instruments, in the event of exceptional circumstances which threaten the stability of financial markets.

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