

We got everything under control! Basel III and the Post-Crisis Regulation of the Financial Sector

Banking, Finance and Capital Markets Law Commission

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National Report of France

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**Questionnaire concerning the implementation of The Basel III guidelines
and the regulatory framework for Managers of Alternative Investment Funds**

1. The implementation of the Basel III guidelines

1.1 Is there a basic intent in your country to implement the Basel III guidelines?

Yes, there is. The Capital Requirements Directive IV (CRDIV) and the Regulation (EU) n°575/2013 of the European Parliament and of the Council of June 26, 2013 on prudential requirements for credit institutions and investment firms - which transpose the new global standards on bank capital (i.e., the Basel III agreement) into the EU legal framework - entered into force on July 17, 2013¹.

Law n°2013-672 of July 26, 2013 segregates banking activities relevant for the financing of the economy from speculative activities. The Ministerial order n°2013-544 of June 27, 2013 modifies the status of credit institution with respect to the preparation of the implementation of Basel III guidelines via the CRDV IV and the Capital requirements regulation (CRR).

1.2 In which stage of the implementation of the Basel III guidelines is your country currently? When will rules be enacted?

French banks are making considerable efforts to adapt to these important regulatory changes. The main institutions have confirmed that they would be in compliance with the solvency ratio required by Basel III no later than 31 December 2013. The French banks must push further to comply with the liquidity ratio².

The instructions on the procedure for calculating the solvency ratio and methodological guidance on the reporting of the solvency ratio were approved by the Prudential Control Authority (here in after “ACPR”) respectively at meetings of January 16, 2013 and September 29, 2011³. Both documents specify the supervision conditions - by the ACPR - of the implementation of the regulation on minimum solvency requirements.

¹ http://ec.europa.eu/internal_market/bank/regcapital/legislation_in_force_en.htm

² <http://www.fbf.fr/fr/contexte-reglementaire-international/cadre-juridique/l'application-de-bale-en-europe---de-fortes-contraintes-pour-les-banques>.

³ <http://acpr.banque-france.fr/international/les-grands-enjeux/les-accords-de-bale/modalites-de-calcul-et-de-declaration-du-ratio-de-solvabilite.html>

1.3 Is there delay in the implementation of the Basel III guidelines? If yes, what is the main cause for it?

Not really. The dispositions regarding the solvency ratio are implemented and the dispositions regarding the liquidity ratio should be implemented at the latest in January 2016⁴.

1.4 Does the national implementation of the Basel III guidelines meet, exceed or undercut the stated minimum standards concerning the below mentioned issues?

a. Capital requirements

The instructions on the procedure for calculating the solvency ratio and methodological guidance on the reporting of the solvency ratio approved by the ACPR outline the same stated minimum standard⁵.

The ACPR may prohibit operations which can affect the financial stability or the proper functioning and the integrity of financial markets. The banks solvability risk is not necessary for this prohibition. Nonetheless, the ACPR may prohibit an operation if it deems there is a potential risk⁶.

Regarding capital requirements, the national implementation of the Basel III exceeds the stated minimum standards required by the Basel III committee.

b. Leverage Ratio

The European norms provide that the Liquidity Coverage Ratio (here in after “LCR”) will be introduced as planned on January 1, 2015, but the minimum requirement will be set at 60% and will rise 10% each year to reach the full 100% requirement in January 2019 at the latest.

The French legislation specifies that banks must to have, at all times, a liquidity coefficient at least equal to 100%⁷.

c. Counter cyclical capital buffer

The European norms provide that the counter cyclical capital buffer will be of 2,5% of the capital in January 2019. The High Financial Stability Board (*Haut conseil de stabilité financière*⁸) may, on proposition by the Governor of the *Banque de France*, require an increase in institutions' funds, to avoid

⁴ The Capital Requirements Directive IV (CRDIV) and the Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

⁵ <http://acpr.banque-france.fr/international/les-grands-enjeux/les-accords-de-bale/bale-iii.html>.

⁶ Law n°2013-672 of July 26, 2013.

⁷ May 5th, 2009 Ministerial Order relating to identifying, measuring, managing and monitoring liquidity risk.

⁸ Article L.631-2-1 of the Monetary and Financial Code.

excessive debt growth or prevent an increased risk of destabilizing the financial system⁹.

d. Capital conservation buffer

The European norms provide that the capital conservation buffer will be 2,5% of the capital in January 2019. This rule is applicable in France¹⁰.

1.5 How many systematically relevant financial institutions are located in your jurisdiction?

In France, BNP PARIBAS, Crédit Agricole and Société Générale are systematically relevant financial institutions¹¹.

1.6 How does your country regulate the capital requirements for systematically relevant financial institutions?

The same rules are applicable for all the financial institutions, whether they are systematically relevant financial institutions or not. Banks edit their ratio and communicate this ratio to their intern control and to the national authority¹².

1.7 Do you think that many banks in your country will struggle to meet the requirements of Basel III? Why do you think so?

Large French banks had publicly announced their intent to fully comply in 2013 with the new Basel III solvency requirements. For example, the Société Générale has provided a LCR above 100% based on date form December 31, 2013¹³.

However, French banks have not succeeded. For example, the Crédit Agricole's capital coefficient was of 2.2%, well below the 3% requirement to be met by December 31, 2013¹⁴.

2. The regulatory framework for Managers of Alternative Investment Funds

2.1. Is there any legislation in your jurisdiction concerning Managers of Alternative Investment Funds?

Yes. Before the transposition of the AIFM Directive, French law regulated the undertakings for collective investment in transferable securities, e.g., Ministerial Order n°2011-915 of August 1, 2011 on undertakings for collective investment in transferable securities and modernize the legal framework for asset management, or Ministerial Order n°2005-1278 of October 13, 2005 on establishing the legal

⁹ Article L631-2 of the Monetary and Financial Code.

¹⁰ The Capital Requirements Directive IV (CRDIV) and the Regulation (EU) n°575/2013.

¹¹ In 2011, 29 institutions were identified as Global Systemically Important Banks (G-SIBs) who will be subject to additional capital requirements.

¹² <http://finance.blog.lemonde.fr/2014/01/31/4123/>

¹³ <http://www.kpmg.com/FR/fr/IssuesAndInsights/ArticlesPublications/Documents/Newsletter-Performance-grands-groupes-bancaires-122013.htm>

¹⁴ <http://finance.blog.lemonde.fr/2014/01/31/4123/>

regime of collective investment properties and methods of processing civil real estate investment trusts in collective investment real estate.

2.2. Is your jurisdiction member of the EU or the EEA and therefore legally obligated to implement the AIFM directive 2011/61/EU? If yes: Is the implementation of the AIFM directive 2011/61/EU already successfully completed?

Yes. The AIFM directive 2011/61/EU was transposed into national law by the Ministerial Order n°2013-676 of July 27, 2013, the Ministerial Order n°2013-687 of July 25, 2013 and the Delegation order of August 8, 2013 amending the legal framework for asset management. The AIF managers at the date of Ministerial Order n°2013-676 who were required to obtain a portfolio management license could do so during a transitional period which ended July 22, 2014. The AIFM have one year to comply with Directive¹⁵.

2.3. At which point in time was the legislation concerning AIFM enacted?

The legislation concerning AIFM was enacted on July 25, 2013¹⁶.

2.4. What is the name of the competent supervisory authority for Alternative Investment Funds in your country?

The name of the competent supervisory authority for Alternative Investment Funds is the *Autorité des Marchés Financiers* (here in after “AMF”).

2.5. Which minimum-capital does an AIFM require in order to obtain a licence or authorization?

Article 317-2 of the AMF General Regulation specifies that the minimum capital for an AIFM is 125 000€¹⁷. The AIFM who manage exclusively AIF which are not regulated by the Monetary and Financial Code and have a value of total assets less than 100 (with lever effect) or 500 (without lever effect) millions Euros must register with the AMF if the shareholders of capital are professional.

2.6. How long is the duration of authorization process to obtain an AIFM-Licence?

The AMF answers to application renders for a license within 3 months of receipt. The AMF can extend the period by another 3 months¹⁸. In practice, the average delay is more or less 2 months.

¹⁵ AMF Guide, Management company, published on April 16, 2013, page 26.

¹⁶ With publication in the Official Journal on 27 July 2013 and with Decree n°2013-687 of 25 July 2013 adopted in implementation of the Ordinance of 25 July 2013.

¹⁷ The article 317-2 of the AMF General Regulation : “*The minimum amount of capital of a company asset management AIF is equal to 125 000 euros and must be paid in cash at least up to this amount*”.

¹⁸ Instruction AMF n°2008-03.

2.7. What are the key elements of the authorization process?

The requirements for this application are listed in Article 316-3 of the AMF General Regulation. Information includes information on the individuals who effectively direct the operations of the AIFM, identity of the shareholders and any person who holds an interest in the AIFM, compensations policies, programs and plans, program activity, and regarding the each AIF which is administered or was previously administered.

After verification that the file is complete, a delivery receipt is sent that the application is under consideration. When the decision is taken, the AIFM is notified its authorization¹⁹.

There are two procedures for the deliverance of an authorization: a simplified procedure for portfolio management companies already recognized which do not need to submit a registration file (just information regarding liquidity management, reporting, lever effect, evaluation, compensation, delegation of power) and a standard procedure for new managers of Alternative Investment Funds as well as for managers of specific funds (i.e., real estate investment trusts).

2.8. Is it mandatory for AIFM to have a local residence in your jurisdiction?

No. When an investment management company from another Member State is seeking to provide its services in France, this is referred to as an "incoming" passport; when a French investment management company is seeking to provide its services in the European Union, it is referred to as an "outgoing passport".

The incoming passport corresponds to asset management companies from another Member State of the European Union or a State that is a party to the European Economic Area (EEA) agreement exercising the European passport in France.

The AMF acknowledges receipt of:

- European passport applications in accordance with the UCITS IV Directive notified by the competent authority of the home State of the asset management company seeking to conduct the activities covered by its authorization in its home State in France under the freedom to provide services or the freedom of establishment,
- European passport applications in accordance with MiFID notified by the competent authority of the home State of the asset management company seeking to conduct the activities covered by MiFID, for which it has received an authorization, in France under the freedom to provide services or the freedom of establishment,

¹⁹ Instruction AMF n°2008-03.

The AMF supervises compliance of branches established in France under the European passport with the legislation and regulations applicable to them.

The AMF delivers an “outgoing passport” if the investment management company must appoint a legal representative established in France and must to designate France as the reference Member State²⁰.

2.9. Does the legislation distinguish between different types of AIFM? What are the key differences between them?

French legislation distinguishes between²¹:

- Asset management companies,
- Management companies for forestry investment companies (SEFs), real estate investment trusts (SCPIs) and debt securitisation funds (FCCs),
- Self-administered vehicles.

There are not really key differences between them. All these AIFM are subject to the Directive. That being said, the European passport does not apply to companies managing FCCs, SCPIs or SEFs.

2.10. Are there any legislative restrictions regarding legal structures of AIFM?

Directive 2011/61/EU applies to AIFM which manage AIF with assets exceeding 100 million Euros and AIF is managed with lever effect or whose assets are exceeded 500 million of euros²².

The AIFM that manages exclusively ad hoc securitization structures or manages AIF whose investors are only the entities of the group of the company is excluded from the scope of the AIFM Directive²³. It is the same for the AIFM that operate only OPCVM.

2.11. If you are a member of the EU or EEA, can AIFM in your country obtain an EEA/EU Passport which enables to distribute AIFs to professional investors?

Yes, AIFM can²⁴.

The AIFM licensed in Member State of the EU may distribute AIFs to professional investors in France if the AMF has received from the competent authorities of the State a program of activities and certificate that this AIFM is authorized under Directive 2011/61/EU²⁵.

²⁰ http://www.amf-france.org/en_US/Acteurs-et-produits/Societes-de-gestion/Passeport.html?langSwitch=true

²¹ Article L214-24 of the Monetary and Financial Code.

²² Article 3.2 of the Directive 2011/61/EU.

²³ Article L214-24 of the Monetary and Financial Code.

²⁴ Articles 31 and 33 of the Directive 2011/61/EU.

²⁵ AMF Directive AIFM guidelines on July 12, 2013, p.5.

French AIFM may distribute AIFs to professional investors in EU Member States after communicating to the AMF the name of the Member State and its program of activities, and transmission by the AMF to the competent authority of the receiving Member State.

2.12. Do AIF themselves require to be licensed or authorised by a competent supervisory authority?

The AIF can self-manage. In this case, the AIF must satisfy the same conditions as an AIFM and receive a license.

2.13. How are AIFs categorized and what is the authorisation or licence requirement for each category?

French Law distinguishes AIF distributed to non-professional investors from those distributed to professional investors.

The creation, transformation or closing of AIF distributed to non-professional investors requires an authorization by the AMF, e.g., Article L214-24-24 of the Monetary and Financial Code specifies that the investment funds representing general interests need to be approved by the AMF.

Some AIF distributed to professional investors need to be authorized by the AMF, “approved funds”. Other AIF distributed to non-professional investors need to be declared to the AMF. The AIF distributed to professional investors can be managed by AIFM with just the European marketing passport in the UE²⁶.

2.14. How long does the process of authorization or licensing of AIFs take?

It is the same process of authorization than the process for authorization of AIFM.

2.15. Are there certain legal structures for AIFs? Please name them.

For the AIF distributed to non-professional investors, there are:

- Investment funds representing general interests,
- Private equity funds,
- Real estate investment scheme,
- Real estate investment fund,
- Closed-end investment trust,
- Funds of hedge funds.

For the AIF distributed to professional investors, there are:

- Approved funds,

²⁶ AMF Directive AIFM guidelines on July 12, 2013, p.17.

- Reported funds,
- Employee savings funds,
- Securitization funds.

2.16. What are the key differences with reference to the authorisation and marketing of AIFs that are distributed to retail investors and those only distributed to professional investors?

The marketing of an AIF to professional investors outside of France when the AIF is managed by AIFM established in France is subject to providing notification of marketing to the AMF.

The marketing of an AIF outside of France by AIFM established in France is not possible to retail investors.

The European passport allows a portfolio management company that has been authorized by the authority of its home country to conduct its activities throughout the European Union or in States that are parties to the European Economic Area (EEA) agreement²⁷.

2.17. Are there any special requirements for leveraged AIFs?

For leveraged AIFs, the AIFM should provide regulatory information on substantial leverage, the ventilation of the effect of leverage arising from borrowing cash, financial instruments of financial contracts and the reinvestment of the assets of the AIF under arrangements of leverage.

Article L214-24-20 of the Monetary and Financial Code specifies that the identity of the five largest sources of cash or borrowed financial instruments, including money market instruments, and the amount of leverage for each source effect must be communicated at the AMF.

The regulator has the right to impose limitations on leverage which a management company may use within the framework of the management of the AIF to ensure stability and integrity of the financial system.

2.18. Are there any special regulations with regard to private investors or semi-professional investors?

Same answer as question 2.13. The French Law distinguishes between AIF distributed to non-professional investors and professional investors.

The formation, transformation or closing of AIF distributed to non-professional investors should to have an authorization by AMF, e.g. the article L214-24-24 of the Monetary and Financial Code specifies that the investment funds representing general interests should be accept by the AMF.

²⁷ http://www.amf-france.org/en_US/Acteurs-et-produits/Societes-de-estion/Passeport.html?langSwitch=true

Some AIF distributed to professional investors should have an authorization by AMF, it is the approved funds. Other AIF distributed to non-professional investors should to be declared at the AMF. The AIF distributed to professional investors can be managed by AIFM with just the European marketing passport in the UE.