FINANCIAL ACTION TASK FORCE

Mutual Evaluation Executive Summary

Anti-Money Laundering and Combating the Financing of Terrorism

France

25 February 2011

France is a member of the Financial Action Task Force (FATF). The FATF evaluation of France was adopted by the FATF Plenary on 25 February 2011.

MUTUAL EVALUATION OF FRANCE:

EXECUTIVE SUMMARY

Background information

1. This report provides a summary of AML/CFT measures in place in France as at the date of the on-site visit (18 January - 2 February 2010) or immediately thereafter (up to 31 March 2010). It describes and analyses those measures, and provides recommendations on how certain aspects of France's AML/CFT system could be strengthened. It also sets out French levels of compliance with the FATF 40+9 Recommendations (see the attached table on the Ratings of Compliance with the FATF Recommendations).

Key Findings

- This was the FATF's third mutual evaluation of France. The implementation of the transposition into French law of the Third European Directive, 2005/60/EC, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing by the *Ordonnance* No. 2009-104 of 30 January 2009 and the subsequent implementing decrees are the latest step in strengthening its preventive regime.[1] Among some of the main new measures introduced in 2009 include: (1) increasing the number of sectors covered by AML/CFT provisions to include in particular domiciliation companies[2]; (2) submitting all covered institutions/professions to an AML/CFT oversight and sanction system; (3) adopting a risk-based approach to due diligence measures; (4) extending the obligation to report suspicious transactions to all offences under "ordinary law", including tax fraud, and increasing the powers of the financial intelligence unit (Tracfin); (5) introducing a licensing system for the money changing profession to replace the previous simple registration requirement and (6) broadening the prohibition from making payments in cash.

- In addition to the creation of an AML/CFT advisory committee, which is intended to strengthen the co-ordination of the effort of the relevant state authorities and the supervisors of the institutions/professions covered by AML/CFT obligations, one major recent institutional innovation (March 2010) has been the grouping of the licensing and supervision responsibilities regarding banks, payment institutions, investment firm (with the exception of portfolio-management firms) and money changers together with insurance companies, mutual insurance, provident insurance institutions under one independent government agency called the Prudential Supervision Authority (*Autorité de contrôle prudentiel* – ACP).

[1] The first AML/CFT measures were taken in France starting from 1990, and these have been to a large degree supplemented since then.

[2] The scope of application of AML/CFT obligations extends beyond the professions foreseen by the FATF (for example, institutions providing non-life insurance, gaming companies and gambling clubs, as well as sports and horse race betting).

- *Ordonnance* No. 2009-104 of 30 January 2009 and its implementing decrees revised and supplemented customer due diligence obligations. These new obligations, which apply to both financial institutions and non-financial professions, together with record-keeping and suspicious transaction reporting (STR) obligations, are very comprehensive and largely compliant with FATF requirements. The level of compliance of non-financial professions with their AML/CFT obligations, however, is not completely satisfactory. The authorities will therefore need to make a considerable effort in this area.

- The French prudential supervision authorities have sufficient powers to carry out their inspections (whether specifically AML/CFT-related or not) and exercise them conscientiously. The oversight system revolves around co-ordinated use of ongoing off-site inspections and on-site inspections to make the supervisory system effective and efficient. In addition, all relevant authorities have the power to take sanctions in AML/CFT matters, and they have, in most cases, made effective, proportionate and dissuasive use of them.

- In terms of the number of convictions, fraud and drug trafficking are the most common predicate offences for money laundering in France. The money laundering offence, which is largely in compliance with international law, is being progressively appropriated into case law and by the *Cour de cassation*. The assessors noted as well that France introduced in 2005 the offence of non-justification of resources which enables "laundering by association" (*blanchiment de proximité*) to be targeted in that the offence aims to penalise individuals for whom the evidence of participation in an act of money laundering cannot be proven even though circumstantial elements appear to show the contrary. Despite a continuous increase in the number of convictions for money laundering, the assessors observed quite a strong tendency among courts to prosecute on the charge of the predicate offence. They thus recommend enhancing the judicial resources made available for investigations and, more generally, for law enforcement measures against economic and financial crime. France has a very comprehensive array of legal tools for criminalising terrorist financing; likewise, law enforcement authorities have the investigative techniques and powers for combating terrorist financing and money laundering, which are compliance with FATF requirements.

- France is able to offer extensive mutual legal assistance for investigations and prosecutions relating to money laundering and terrorist financing. Available measures relating to extradition are also satisfactory, even if the lack of adequate statistics makes it very difficult to determine exactly how effective the current system is.

- This mutual evaluation of France considered the matter of the local government authorities (*collectivités territoriales*) located overseas to determine their role and contribution regarding the country's AML/CFT policy. It is important to note that despite their differences in status, these territories are an integral part of the French Republic and, as such, are governed by the same AML/CFT rules as those in force in metropolitan France (apart from a few highly specific sector-based or geographical characteristics referred to in the report[3]). The report therefore focuses mainly on how the AML/CFT standard is implemented in these territories and on how effective it

[3] Saint Barthélemy, Saint Martin, Saint Pierre and Miquelon, Mayotte, New Caledonia, French Polynesia and the Wallis Islands have specific powers in tax matters and labour law. The assessors identified other matters where the Pacific local government areas have maintained certain powers that are of interest to AML/CFT issues, including: real estate and property rights governed by custom - including customary law regarding the seizure of real estate property - land registry and ship registration. The euro is in use in Martinique, Guadeloupe, French Guiana, Réunion, Mayotte and Saint Pierre and Miquelon under the same conditions as in metropolitan France. The CFP franc is legal tender in New Caledonia, French Polynesia and Wallis and Futuna.

is, taking into account the financial weight that these territories represent.[4] The assessment team particularly targeted some of these regions because of their exposure to certain risks relating to AML/CFT and other phenomena that lead to crime[5]. This detailed analysis shows that while the strong financial connection with metropolitan France facilitates the implementation of AML/CFT legislation in these territories, it is also true that the geographical remoteness of these territories lessens the impact of the authorities' communication and awareness efforts regarding the covered professions. Although the legislation in force is, apart from a few minor exceptions, the same throughout France, the assessors highlighted in the report several situations that raise doubts as to how effectively AML/CFT measures are implemented in overseas France. Thus, there remain serious doubts as to the full implementation of the STR obligation in certain territories situated overseas (this point applies to both the financial and non financial professions). In this regard, it should be noted that no resources – or almost none – are devoted by Tracfin in territories located overseas to dialogue and exchanges and, more particularly to awareness raising on STR obligations among covered professions. At the level of AML/CFT compliance inspections for financial professionals, the evaluation report notes the virtual absence of on-site inspections by the AMF in these territories and the necessity for the ACP to increase its inspection activity. Regarding the non-financial professions, the assessors learned through interviews with a sampling of professions carrying out such activity overseas that they are confronting significant challenges in implementing their AML/CFT obligations, in particular when they do not have a professional organisation in a position to guide and assist them in their efforts in this area. The absence of government authorities clearly identified for dealing with AML/CFT matters in these territories is especially viewed as a difficulty. French authorities should rectify these shortcomings and, more broadly, improve knowledge of the risks of money laundering and terrorist financing in every region of the country.

Legal Systems and Related Institutional Measures

2. The ancillary offences for money laundering, as provided for under the Vienna and Palermo Conventions, are established under French law in accordance with Recommendation 1. The money laundering offence extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime. Predicate offences for money laundering in France cover each of the designated categories of offences referred to in Recommendation 1. Article 121-2 of the Penal Code provides for the criminal liability of legal persons. Money laundering is punishable by a penalty of five years' imprisonment, which is in the upper average range for sanctions and on a par with penalties for other comparable financial offences, such as receiving stolen property, misuse of corporate property, fraud and tax fraud and non justification of income. After examining actual prison sentences, however, the assessors were not convinced that the sentences for money laundering passed by French courts against legal persons and, to a lesser degree, natural persons, were effective and dissuasive.

[4] It should be noted that the banking activities in these territories account for less than 0.01% of the total banking activity in France.

[5] Money-laundering in Guadeloupe, Martinique and Saint Martin derives mainly from drug-trafficking or economic and financial offences. Illegal gold-mining is a particular issue in French Guiana. In the Indian Ocean *départements*, local money-laundering activities can involve the proceeds of undeclared work, activities in the underground economy, tax fraud or local offences. French Polynesia and New Caledonia recently admitted to a steep rise in fraud and economic and financial offences, as well as a significant increase in drug-trafficking offences. The assessment team also focused on the activities of financial institutions and certain non-financial professions in the Ile-de-France and Provence-Alpes-Côte-d'Azur (PACA) regions (including Corsica) which, in view of their large population and economic weight, play a decisive role in the French economy.

3. Under Article 421-2-2 of the Penal Code: "It also constitutes an act of terrorism to finance a terrorist organisation by providing, collecting or managing funds, securities or property of any kind, or by giving advice for this purpose, intending that such funds, securities or property be used, or knowing that they are intended to be used, in whole or in part, for the commission of any of the acts of terrorism listed in the present chapter, irrespective of whether such an act takes place." Analysis of the national counter-terrorism system reveals that France has criminalised all acts covered by the international agreements listed in the Annex to the International Convention for the Suppression of the Financing of Terrorism, and that all SR II criteria are met. The applicable penalties for financing terrorism are a term of ten years' imprisonment and a fine of EUR 225 000 (Article 421-5 of the Penal Code). Few cases of terrorist financing have been tried to date.

4. During the on-site visit, serious deficiencies were found in French law on seizure and confiscation in terms of both content and implementation. The assessors welcome the major reform of the seizure law adopted in July 2010, which sets out to address the shortcomings identified in the report.

5. UN Security Council Resolutions 1267 and 1373 are applied in France through Community regulations that are directly applicable throughout the European Union. France may also rely on an "administrative" or "sovereign" system for freezing terrorist assets, implemented nationally through the Law of 23 January 2006 on combating terrorism, which includes various provisions relating to security and border controls. The aim of this system is to supplement, rather than replace, freezing operations carried out under EU regulations and existing systems of legal co-operation. France has made limited use of its national freezing system (it has only been implemented against persons or entities domiciled in France and not included in the list appended to Common Position 2009/468/CFSP). Measures set up at the European level regarding the implementation of S/RES/1267 are relatively comprehensive. It should be noted, however, that the situation envisaged by the UN Resolution for the freezing of assets owned or controlled by persons or entities acting on behalf of, or at the direction of, designated persons or entities is not covered by EU legislation, and it has not been demonstrated that the French legislation fills the gap on this point. In addition, the time taken to pass EU regulations aimed at integrating amendments to the list published by Committee 1267 can be relatively long, which means that the obligation to freeze terrorist funds without delay is not observed; it has not been demonstrated that the French legislation fills the gap on this point. Regarding the implementation of S/RES/1373, France has taken no steps to enable the freezing of funds or other assets owned by terrorists or terrorist organisations with no links outside the EU. Lastly, the instructions to the financial sector, non-financial sector and, more generally, to other persons or entities liable to own funds or other designated assets are generally lacking in effectiveness and clarity.

6. The Law of 12 July 1990 defined Tracfin's AML responsibilities, giving it financial intelligence unit (FIU) status. Decree No. 2006-1541 of 12 December 2006 established Tracfin as a "service with national competence" (*service à compétence nationale*), under the dual administrative supervision of the Ministry of the Economy, Finance and Employment and the Ministry for the Budget, Public Accounts and State Reform. Tracfin is an FIU showing many signs of maturity. It makes significant efforts to fulfil its mission to collect and analyse STRs and to disseminate reports to the judicial and law enforcement authorities, as well as to other relevant government agencies, including the intelligence services. It also has access to a considerable number of information sources. The following remarks, however, must be made. Tracfin does not publish enough detailed, written guidance for non-financial institutions on how to prepare suspicious transaction reports. There are also questions concerning Tracfin's operational effectiveness. First, the resources employed to conduct analysis are not sufficient to cope with the amount of incoming reports; the absence of quantifiable information concerning the judicial follow-up of Tracfin cases means that their contribution to AML/CFT investigations cannot be evaluated and thus there relevance to such investigations cannot be assessed. Lastly, despite the increase in the number of STRs, statistics show a constant decline between 2005 and 2009 in the number of information notes sent by Tracfin to the judicial

authorities. French authorities should employ every available means to assess the FIU's operational effectiveness more accurately.

7. There are a large number of law enforcement authorities in France. All staff encountered during the on-site visit demonstrated a perfect command of their jobs and a thorough understanding of AML/CFT issues at their own level. The creation of Specialised Inter-regional Courts (*Juridiction interrégionale spécialisée* - JIRS) in 2004 and the setting up of financial "hubs" both reflect a determination to provide specific means for combating financial crime, including money-laundering. This multitude of law enforcement structures is one of the major assets of the French AML/CFT system, even if the variety of actors also makes it difficult to determine the exact volume of investigations carried out into money laundering and terrorist financing. French authorities should therefore consider collecting quantified data more systematically and broadly by motivating all the authorities involved. Also, despite the existence of law enforcement authorities in the territories located overseas, too little quantified data is available regarding their crime-fighting activities in these regions. The lack of statistics and clarity in the available quantified data thus made it impossible for the assessment team to assess with any certainty the effectiveness of law enforcement authorities concerning AML/CFT throughout France. Lastly, it should be noted that law enforcement authorities have adequate search and seizure powers to obtain the documentation necessary for conducting their investigations.

8. The system for controlling cross-border cash movements is based on two regulations. One is domestic, while the other, dating back to 15 June 2007, is a Community regulation. Article L.152-1 of the Monetary and Financial Code (*Code monétaire et financier* – CMF) repeated in Article 464 of the Customs Code establishes a mandatory declaration system for all cash movements between France and European Union member states. EC Regulation No. 1889/2005 of 26 October 2005 of the European Parliament and the Council on the control of cash entering and leaving the European Community applies to cash movements between third states and the European Community. France has a declaration system for cross-border physical transportation (in-bound and out-bound and as defined by the FATF) of currency or bearer negotiable instruments between France and third countries (in and outside the EU) above the threshold of EUR 15 000 (maximum threshold defined by the FATF). This system fully complies with SR IX. It does seem, however, that information to travellers about the declaration requirement could be better adapted and more systematic.

Preventive Measures – Financial Institutions

9. The scope of preventive measures in the area of AML/CFT for the financial sector covers all institutions/professions working in a financial activity as defined by the FATF, whether in metropolitan or overseas France[6].

10. For two business sectors (money exchange and insurance intermediation as subsidiary activities), France has exercised the option offered by the FATF Recommendations not to apply some or all AML measures to certain natural or legal persons carrying out a financial activity on an occasional or very limited basis (according to quantitative and absolute criteria), such that there is little risk of money laundering. For both money changing and insurance intermediation activities, France uses a combination of criteria or thresholds which appears to adequately incorporate the notion of proportionality regarding compliance with AML/CFT obligations. In particular, the combination of these criteria limits the scope of the exemptions concerned to situations in which the risk of money laundering or terrorist financing appears low. It should be noted, however, that the exemption which may apply to money changing activities is a recent innovation. The French authorities should therefore take the necessary steps to ensure that the

[6] It should be remembered that all French territories located overseas, with the exception of a few highly specific sector-based or geographic characteristics, are governed by exactly the same rules as those in force in metropolitan France (either automatically or through systematic extension of applicable AML/CFT standards).

persons claiming this new exemption do fulfil the stipulated conditions and limits on which the exemption depends, in addition to the declaration of activity transmitted to ACP.

11. The new customer due diligence requirements which are applicable to all financial institutions are set out in Articles L.561-5 to L.561-14-2 of the CMF). These legal provisions are stipulated by the regulatory provisions contained in Articles R.561-5 to R.561-22 of the same Code. Further, an Order by the Ministry of Economy dated 2 September 2009 specifies the information to be collected by the covered professions regarding knowing the customer and the business relationship and ongoing due diligence. Lastly, sector-based regulations were adopted to supplement the legal and regulatory provisions applicable to all financial institutions with more specific measures. These provisions are very comprehensive and the legal and regulatory framework meets most of the requirements set out in Recommendation 5.

12. This new French legal and regulatory framework applicable to all financial institutions does not break with the previous legal framework which constituted its basis, but rather builds upon it, providing more details and clarifying the methods for implementation by covered institutions/professions. However, it appeared too early at the time of the on-site visit to be sure that new aspects introduced to this end in the new framework had been implemented effectively. Moreover, for existing customers, some of the new rules did not come into full effect when they were adopted and published (Article 19 of *Ordonnance* 2009-104 of 30 January 2009 provided for an implementation period by financial institutions of up to 4 September 2010 and according to a risk-based approach[7]).

13. Except for the particular case of anonymous capitalisation bonds, the French provisions prohibiting the holding of anonymous accounts or accounts under fictitious names are in compliance with the FATF Recommendation. Regarding anonymous capitalisation bonds, the purpose of anonymity is exclusively tax-related. For AML/CFT purposes, measures are taken to identify and verify the identity of the person (and the beneficial owner of the bearer) who subscribes and, upon maturity, the person who requests reimbursement or repurchase. A separate register is kept. Additional due diligence measures are required, as bonds, by their very nature, present a high risk of money laundering and terrorist financing. This is because they can circulate between subscription and reimbursement without the identity of the persons holding them being known. This situation does not comply with FATF recommendations. This finding should, however, be seen in perspective, as there is a clear tendency to reduce the supply, subscription and outstanding value of these anonymous bonds. French authorities should nonetheless consider repealing the provisions which authorise and organise the issuance of such anonymous bonds.

14. The legal and regulatory provisions concerning situations in which the customer must be identified comply with FATF recommendations and appear to be sufficiently detailed. Note, however, that the obligation to identify the customer because of suspicions of money laundering or terrorist financing explicitly concern occasional customers. In the case of regular customers that, in the course of their business relations with the entity subject to AML/CFT obligations, carry out a transaction that arouses suspicions of participation in money laundering or terrorist financing, French authorities deduce the existence of this obligation from the CMF provisions concerning requirements for a) ongoing due diligence obligations; and b) suspicious transaction reporting obligations.

15. The legal and regulatory provisions explicitly set out the obligations to identify and verify the identity of the customer when entering into a business relationship or carrying out occasional transactions with customers whether they are natural or legal persons.

[7] This risk-based approach consists of updating, on a priority basis, the files of customers presenting higher risk of money laundering or terrorist financing.

16. Article L.561-5 of the CMF requires that before entering into a business relationship, professions obliged to undertake customer due diligence must, if necessary, identify the beneficial owner of the business relation through any appropriate process and verify this identification data through any submitted valid written document. Pursuant to Article L.561-2-2 of the CMF, the notion of beneficial owner is understood as "the natural person who directly or indirectly controls the customer, or the natural person on behalf of whom a transaction or activity is conducted." This legal definition is also stipulated in Articles R.561-1 to R.561-3 of the CMF. The legal and regulatory requirements concerning the identification of beneficial owners are defined in compliance with Recommendation 5. They are extensively based on the provisions of Directive 2005/60/EC. In addition, the meetings between the assessors and representatives of the financial sector confirmed that the financial institutions were aware of these requirements.

17. Article L.561-6, paragraph 1, of the CMF provides that persons subject to AML/CFT obligations are required to collect information as to the purpose and nature of the business relationship and any other relevant information concerning this customer before entering into a business relationship. Article L.561-6, paragraph 2, of the CMF provides that institutions/professions subject to AML/CFT obligations must exercise ongoing due diligence throughout the duration of the business relationship. Article L.561-6, paragraph 2, of the CMF also requires financial institutions to undertake an "attentive examination of the transactions executed and ensure that they are consistent with the current knowledge they have concerning their customer." These legal and regulatory obligations appear to meet the requirements of Recommendation 5, although it was not possible to fully assess how effectively they were implemented (in particular because of the time period allowed for extending the obligation to existing customers).

18. The new legal and regulatory framework set up in 2009 appears on the whole to meet the requirement for enhanced measures for the highest-risk customers, products or transactions. These provisions are detailed, combining both an approach to risk based on the classification of risks that the institutions are obliged to develop under the oversight of the supervisory authorities and a rules-based approach in which the legislation and regulations list the situations that covered entities are required to consider as presenting a higher-than-normal risk. It should be noted, however, that the additional measures set out in Article R.561-20 I of the CMF, which must be implemented in the case of business relationships or transactions considered as high risk, essentially concern the process of identifying and verifying the identity of the persons involved in the business relationship; they do not systematically cover an obligatory increase in monitoring of transactions that are conducted later (throughout the business relationship) to take into account the heightened risk associated with these situations.

19. The customer due diligence regime in place in instances of low risk of money laundering or terrorist financing has two distinct parts. The first allows financial institutions the possibility of reducing the level only of ongoing due diligence for customers and products that they have identified as being of low risk and under the oversight of the supervisory authority. The second part relates to low-risk customers and products listed in the legislation and for which the due diligence measures in place do not fully comply with the FATF standard in that they represent an exemption from due diligence obligations, rather than reduced or simplified due diligence measures, as understood by the FATF. This exemption does not exist, however, in the case of a suspicion of money laundering or terrorist financing.

20. Politically exposed persons (PEP) are now covered by a specific legislative and regulatory framework adopted on the basis of the provisions of the Third AML Directive and its implementing Directive No. 2006/70/EC concerning the definition of "politically exposed persons." This framework makes no provision for enhanced due diligence measures when the beneficial owner of the customer is a politically exposed person. The authorities should seek to remedy these shortcomings. In addition, there is no obligation to exercise enhanced due diligence for foreign PEPs residing in France. Lastly, the effective implementation of due diligence measures concerning PEPs could not be systematically assessed.

21. The CMF only provides for specific correspondent banking measures when this type of relationship is established with customer institutions located in non-EU Member States or countries which are not party to the EEA agreement. This approach does not comply with FATF standards, as the FATF has identified correspondent banking as an intrinsically high-risk activity which requires enhanced due diligence measures in all cases. The CMF does not have any express provision for the obligation to collect information on the customer institution in connection with any investigations or disciplinary decisions concerning it. It does however provide for a more general obligation to collect sufficient information to assess its reputation and la quality of supervision to which the institution is subject.

22. Under current provisions, financial institutions are required to define policies concerning the use of new technology. These obligations are interpreted not specifically, but consider it from a broader perspective of analysing the risks associated with products and distribution channels. The analysis examines, in particular, risks relating to how new technology is used in the specific context of each financial institution concerned. In this way, suitable strategies can be defined to prevent the misuse of technology for the purposes of money laundering or terrorist financing. The French legal and regulatory system addresses the particular risks associated with non-face-to-face relationships chiefly through the additional due diligence measures required at the time of customer identification. These measures do not include any enhanced ongoing due diligence concerning transactions carried out by customers who were not identified face to face; the decision whether to increase due diligence is left to the covered institution/profession on the basis of their assessment of the risks. This needs to be remedied.

23. Under Article L.561-7 I of the CMF, financial institutions in France, with the exception of payment institutions, which mainly offer fund transmission services, and money changers, can entrust the fulfilment of their initial due diligence obligations to third parties which are members of these professions or members of the legal and accounting professions (also subject to AML/CFT provisions). The CMF provisions covering reliance on a third-party introducer to fulfil identification and know-your-customer obligations provided for in Articles L.561-5 and L.561-6 of the CMF meet some of the requirements set out in Recommendation 9. Only persons subject to equivalent AML/CFT obligations are eligible to act as third-party business introducers. The provisions in force also require that the covered institution relying on a third-party introducer must immediately obtain the identification data from the latter, and that the third-party introducer must, on the first request, submit a copy of the documentation to the financial institution relying on it. In addition, it is explicitly stipulated that the covered institution relying on a third-party introducer remains fully responsible for complying with its own due diligence requirements. The provisions in force, however, do not require covered financial institutions to verify that third-party introducers have taken measures to meet customer due diligence and record-keeping requirements. Lastly, the capacity of third-party introducers is automatically attributed to institutions established in the EU, EEA or an equivalent third country (financial institutions do not have to meet the obligation to ensure that the third-party introducer is subject to regulation and AML/CFT supervision). These shortcomings must be remedied.

24. While French law recognises professional secrecy for financial institutions, and provides for criminal sanctions for the failure to observe this obligation, it also provides all the necessary limits and exceptions to this secrecy obligation to avoid impeding the effective implementation of the legal and regulatory AML/CFT system. In particular, financial institutions cannot invoke professional secrecy to withhold information from the supervisory authorities in the performance of their duties. It does not prevent the exchange of information between competent authorities at the national or international levels. In fact, such exchange is permitted for French authorities in respect of professional secrecy due to the exceptions to this obligation provided under French law.

25. The record-keeping requirements concerning customer identification are very comprehensive. Nonetheless, the type of information to be collected for the reconstruction of transactions (other than

information on the customer's identity) is only specified for certain categories of transaction or with certain covered persons. This needs to be remedied.

26. Special Recommendation VII was implemented in the European Union by Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer (i.e. originator) accompanying transfers of funds, in force since 1 January 2007. This legal act is obligatory in France without any related transposition procedure being required. The provisions of the European Regulation are directly applicable, not only to payment service providers established in metropolitan France, but also in the overseas *départements* and Saint Martin and Saint Barthélemy. In addition, *Ordonnance* No. 2009-104 of 30 January 2009 on information relating to the originator which must accompany transfers of funds in Saint Pierre and Miquelon, Mayotte, New Caledonia, French Polynesia and the Wallis and Futuna Islands imposes rules identical to those stipulated by Regulation No. 1781/2006, in these overseas local government areas. As well as implementing the measures set out in the European Regulation, France has taken steps to monitor the compliance of financial institutions with rules and regulations implementing SR VII. In this respect, France complies with SR VII.

27. Article L.561-10-2 II of the CMF requires financial institutions to review in greater detail any transaction that is complex, involves an unusually large amount or does not appear to have any economic justification or lawful purpose as is foreseen by Recommendation 11. It is not clear, however, how financial institutions are in a position to pay particular attention to their customers when there is little risk of money laundering or terrorist financing, since Article L.561-9 II of the CMF exempts financial institutions from any form of due diligence with regard to such customers.

28. Financial institutions other than insurance companies are obliged by law to include in their risk classification activities carried out with countries or territories that do not apply, or inadequately apply the FATF Recommendations, unless the foreign country or territory concerned is subject to counter-measures. Measures have also been taken in the past to inform financial institutions of concerns raised by weaknesses in the AML/CFT systems in countries other than those identified by the FATF. However, the due diligence measures applicable to transactions serving no apparent economic or lawful purpose are not specifically enhanced (in particular through an obligation to provide a written report on a routine basis) when these transactions are carried out with legal and natural persons residing in countries that do not apply, or inadequately apply the FATF Recommendations.

29. The French legal system includes a direct legal requirement for financial institutions to submit a suspicious transaction report to Tracfin when they know, suspect or have good reason to suspect that the funds derive from an offence punishable imprisonment of more than one year or which contribute to terrorist financing. This obligation applies to funds which are the proceeds of any offences punishable by at least one year's imprisonment, including all the offences that must be included from the list of predicate offences for Recommendation 1. The obligation to report suspicious transactions also applies to funds for which there are reasonable grounds to suspect, which are suspected, or which are known to be connected with or related to terrorism or liable to support terrorism, terrorist acts or terrorist organisations or those financing them. This legal obligation applies to financial institutions regardless of the amount of the suspicious transaction to be reported. It also applies in the case of attempted suspicious transactions. Finally, the obligation to report suspicious transactions applies whether or not any tax aspects are connected with the transaction in question.

30. Regarding effectiveness, the statistical data provided by Tracfin indicates that it received a very large number of reports from credit institutions. A significant number of reports come from money changers. Insurance companies are well behind these first two sectors, although some progress seems to have been made compared with 2009. Other categories of financial professionals subject to the STR obligation appear to have made a very limited contribution. While the STR obligation is formulated clearly

and comprehensively in respect of the requirements of Recommendation 13 and Special Recommendation IV, actual implementation would seem to vary considerably from one category of covered professional to another.

31. The French AML/CFT system contains the necessary provisions to ensure that financial institutions and their directors and employees are afforded effective legal protection against any criminal or civil liability for violation of confidentiality rules because they have reported their suspicions to the FIU in good faith. Under French law, financial institutions and their directors and employees are also explicitly prohibited from disclosing that an STR or information relating to it has been submitted to the FIU.

32. The competent authorities provide the financial institutions with appropriate feedback, both in terms of general AML/CFT types and trends in France, and in terms of specific feedback regarding the suspicious transaction reports submitted by these institutions. It seems, however, that Tracfin should improve its guidelines for detecting suspicious financial transactions and produce more substantial sector-based typologies. This is true for both the financial[8] and non-financial sectors.

33. The legal and regulatory provisions relating to the creation of AML/CFT internal procedures and to internal controls appear to be comprehensive and sufficiently detailed in nearly all sectors of financial activity. This is the case for credit institutions, payment institutions, investment firms, insurance companies, mutual insurance, provident insurance institutions and insurance intermediaries supervised by the ACP, as well as entities supervised by the AMF. For insurance intermediaries, the exemptions based on proportionality provided for in Article A310-7 of the Insurance Code appear reasonable. The measures in place for money changers, however, are incomplete.

34. Article L. 561-34, paragraph 1 of the CMF requires French institutions to apply in their subsidiaries and branches located abroad measures that are at least equivalent to those provided for in the CMF with regard to customer due diligence and record keeping. Article L. 561-34, paragraph 3 of the CMF also requires French financial institutions to inform their branches and subsidiaries abroad of the appropriate minimum AML/CFT measures to be implemented. The legal and regulatory provisions in force, however, do not explicitly state that financial organisations must take particular care to ensure that the above principles are implemented at their subsidiaries and branches located in countries which do not, or do not adequately, apply the FATF Recommendations.

35. The legal and regulatory provisions that apply in France regarding shell banks are comprehensive in respect of the requirements contained in FATF Recommendation 18.

36. France has entrusted two authorities with the task of ensuring that financial institutions adequately fulfil their AML/CFT obligations: the ACP[9] for credit institutions, payment institutions, investment firms, money exchangers, insurance companies, mutual insurance, provident institutions and insurance intermediaries, and the French securities regulator (*Autorité des marchés financiers* - AMF), for portfolio management companies, central securities depositories, managers of financial instrument settlement and delivery systems and financial investment advisers. The ACP and the AMF have the necessary powers to supervise financial institutions and ensure that they meet their AML/CFT obligations.

37. For credit institutions, investment firms (including portfolio management companies) and insurance companies, oversight of AML/CFT compliance is part of the ACP or AMF general prudential

[8] Such guidance was adopted in 2010 in co-operation with the AMF and ACP.

[9] At the time of the on-site visit, it was too early to assess the effectiveness of the new prudential supervision authority, which results from the merger of the Banking Commission (*Commission bancaire*) and the Insurance Control Authority (*Autorité de contrôle des assurances et des mutuelles* - ACAM)

supervisory functions. It follows that specific AML/CFT oversight is performed under the general principles which apply, either to prudential supervision (exercised by the ACP) or to ensuring the observance of professional obligations resulting form laws, regulations and rules of the profession (exercised by the AMF). Conversely, persons responsible for prudential supervision take account of AML/CFT concerns and issues in the performance of their oversight activities. Similarly, as part of their general oversight activities, French authorities also ensure that payment institutions meet their AML/CFT obligations. The supervision of money changers, which is the responsibility of the ACP, may benefit as well from the assistance of the customs service, something that might make the oversight more effective in view of the large number and geographical dispersal of these entities.

38. The authorities of the financial sector in France have sufficient powers to carry out their inspections (whether specifically AML/CFT-related or not) and exercise them conscientiously. Their off-site inspection system, including, in particular, annual AML/CFT questionnaires (QLBs) appeared appropriate for performing this type of supervision effectively. The off-site inspections are an effective component of the ACP oversight system, on which on-site inspections can be based. The inspection system is based on co-ordinated use of ongoing off-site inspections and on-site inspections to make the supervisory system effective and efficient. The assessors also found the quality of on-site inspections to be satisfactory, particularly in terms of the resources used and the thoroughness of the examinations carried out.

39. On-site inspection frequency has fallen over the last few years; however, an increase in inspection activity of this type has been planned for 2010 and 2011 to ensure that the new AML/CFT measures introduced in 2009 are implemented by covered entities. According to the authorities, there is less need for on-site inspections because of preventive detection work and rectification of deficiencies identified by supervision teams, whether related to off-site or on-site inspections. This has gradually led over the years to a significant and lasting increase in the level of AML/CFT compliance among covered entities. Notwithstanding the above, the number of inspections for certain categories of covered institutions - money changers and insurance brokers in particular - should be significantly increased. In the insurance sector, the human resources allocated to AML/CFT inspections seemed inadequate at the time of the on-site visit. The authorities should give this issue their full attention. The AMF recently strengthened its awareness raising efforts on AML/CFT issues and seems to have adopted this line of action. AML/CFT inspections of portfolio management companies, however, fell between 2005 and 2008 while inspections of financial advisers remain very limited.

40. The licensing, authorisation or prior registration conditions applicable to financial institutions in France comply with FATF standards. The general principles which apply to the oversight of credit institutions, investment firms, payment institutions and insurance companies, particularly for checking the integrity of shareholders and executives at the time of licensing and afterwards, are satisfactory.

41. The relevant authorities all have the appropriate power to take sanctions in AML/CFT matters and, in most cases, make effective, proportionate and dissuasive use of these powers. Sanctions can be taken both against the financial institutions themselves, as well as their executives and persons under their responsibility. The range of disciplinary sanctions the authorities have at their disposal seems sufficiently broad and dissuasive. In particular, the sanctions imposed between 2000 and 2009, where necessary backed up by a judge to interpret legal wording, provided financial professions (particularly in the banking sector) with a solid and accurate reference base regarding AML/CFT expectations in France. The effectiveness of sanctions taken by the AMF in AML/CFT matters could not be demonstrated however.

42. *Ordonnance* No. 2009-866 of 15 July 2009 defines funds transfer services as payment services (Article L. 314-1-II 6° of the CMF). Payment services may be provided by credit institutions as well as by

payment institutions[10]. The licensing conditions are fulfilled and the ACP updates and publishes the list of these two categories of institution that provide money or value transfer services. It also maintains a list of the agents of payment and credit institutions authorised to transfer funds on their behalf. Lastly, France does not seem to implement systematic and rational measures to detect unauthorised transfers of funds or values.

Preventive Measures – Designated Non-Financial Businesses and Professions

43. The AML/CFT system set out in the CMF applies to the following non-financial businesses and professions: (1) professionals acting as real estate intermediaries; (2) all regulated legal and judicial professions, including lawyers and notaries, as well as fiduciary lawyers[11]; (3) legal representatives and managers responsible for casinos; (4) accounting professions, i.e. accountants and auditors; (5) persons regularly dealing in or organising the sale of precious stones and precious metals; and (6) company domiciliation agents[12].

44. The marketing of casino gambling to French consumers through the Internet was prohibited at the time of the on-site visit[13]. The authorities specify that since online casinos are illegal in France, the online offering of casino gambling to French consumers is de facto not covered by the legislative and regulatory obligations covering authorised "real" casinos. Any online site proposing casino games (other than poker since the Law of 12 May 2010) is thus considered as carrying out an unlicensed activity and is consequently liable to prosecution. Cruise ship casinos may be opened in accordance with the provisions of Article 33 of the Law of 3 May 2005 on the creation of the French International Register (RIF), which authorise casinos on passenger ships. The authorities stated that no cruise ships sailing under the French flag offered casino gambling at the time of the on-site visit.

45. Persons who regularly deal in, or organise the sale of precious stones and precious materials are subject to AML/CFT obligations. The FATF standard stipulates the coverage of this profession only for cash transactions exceeding EUR 15 000. France decided to apply AML/CFT obligations to the profession unconditionally (i.e. whatever the type of transaction) by combining this regime with the prohibition to make cash payments above EUR 15 000 (Article L.112-6 of the CMF).

46. The non-financial businesses and professions listed in Article 561-2 of the CMF are subject to the same customer due diligence obligations as financial professions (i.e. identifying the customer and, where applicable, the beneficial owner, obtaining information on the purpose and nature of the business relationship, ongoing due diligence on the relationship, reduced and enhanced due diligence), subject, however, to the specific provisions for casinos (Article L.561-5-III) and judicial and legal professions

[10] Article L. 522-1 of the CMF defines payment institutions as legal persons, other than credit institutions and the persons mentioned in Article L. 522-1 (II) of the CMF, which provide payment services, as defined in Article L. 314-1 of the CMF, as their customary business activity. Before the EU Directive 2007/64/EC of 13 November 2007 on payment services in the internal market was transposed into French Law, funds transfer was considered to be a banking transaction.

[11] Article 561-3 of the CMF requires the lawyers to be covered by AML/CFT obligations where they participate in the "formation, management or administration of French law or foreign law *fiducies*, or any other similar structure" (see I 2° f) as well as when they act as "fiduciaries".

[12] Company domiciliation agents (also known as "business centres") serve as the head office for businesses registered in the Registry of Business and Companies (*Registre de commerce et des sociétés* - RCS) or listed in the trades directory. As such, company domiciliation agents (who may be natural or legal persons) fall under the FATF's definition of "trusts & company service providers" (TCSP).

[13] The Law of 12 May 2010 concerning the opening to competition and regulation of the online gambling and betting sector authorised online poker game operators.

(Article L.561-3-II and III).[14] It should be noted that Article L.561-3-II provides for very broad exemptions for lawyers (and solicitors), exempting them from all "the provisions of this chapter", which means not only from the obligation to report suspicious transactions (see below), but also from customer due diligence obligations during activities relating to judicial proceedings and legal consultations (unless the customer wishes to obtain legal advice for money laundering purposes).

47. The legal provisions relating to politically exposed persons and the record-keeping requirements concerning customer identification applicable to financial institutions apply to non-financial professions under the same conditions, except for the exemptions mentioned above concerning lawyers. Many of these professions are gradually assimilating legal obligations by developing sector-based professional quality standards. Significant awareness-raising efforts, however, still seem necessary among real estate agents and jewellers.

48. Under Article L.561-15 of the CMF, the obligation to report transactions or attempted transactions where there is a suspicion of money laundering involving funds generated by activities punishable by more than one year of imprisonment or of financing terrorism, as described in Recommendation 13, applies to non-financial businesses and professions subject to AML/CFT provisions, as well as to financial institutions. Specific procedures have been defined for non-financial professions to take into account their status, codes of ethics and professional organisation[15]. Available statistics clearly show that certain non-financial professions do not make a sufficient contribution to AML/CFT efforts, either because of an lack of awareness of their AML/CFT obligations or because they do not understand their vulnerability to money laundering and terrorist financing (real estate agents, jewellers). Representatives of lawyers also expressed their reluctance to adhere to the AML/CFT system as defined in France.

49. At the time of the on-site visit, the internal AML/CFT control procedures and measures applicable to non-financial professions (Recommendation 15) were either totally lacking or very mediocre. This was the case for casinos, real estate agents, company domiciliation agents and jewellers. Under Recommendation 21, non-financial businesses and professions are not required by law to include in their risk classification activities carried out with countries or territories that do not, or do not adequately, apply the FATF Recommendations, unless the foreign country or territory involved is subject to formal counter-measures by decree.

50. Article R. 561-39 states that inspections to monitor the compliance of casinos with AML/CFT obligations are carried out by national police officers responsible for policing gambling activities. In practice, this includes officers of the Central Racetracks and Gambling Department (*Service central des courses et jeux* - SCCJ), who report to the Central Judicial Police Directorate (*Direction centrale de la police judiciaire* - DCPJ). This service carries out administrative and judicial police activities. It ensures that games are fair and honest, protects players, defends the interests of the state and, within the judicial context of criminal investigations, plays a role in combating all forms of illicit gambling, including on the Internet. Until 10 December 2009 (when the SCCJ was appointed as the competent authority in AML/CFT matters), these inspections were aimed at checking that casinos met one particular AML/CFT obligation, namely customer due diligence, which is an obligation included in the gambling regulation in casinos.

[14] The new Article L. 561-13 of the CMF, derived from the *Ordonnance* of 30 January 2009 mentioned above, states that "casinos are required to verify, on presentation of a valid document, the identity of players, and then record their names and addresses upon the exchange of any means of payment, gambling chips, and vouchers whose amount exceeds a threshold designated by decree". This threshold was raised to EUR 2 000 per session by Decree No. 2009-1013 of 25 August 2009 published on 27 August 2009.

[15] For example, for lawyers, *Conseil d'État* lawyers, *Cour de cassation* lawyers and solicitors, reports shall also be transmitted via the specific professional authority of each professional (President of the Bar).

Inspection powers were extended to cover all AML/CFT obligations further to the *Ordonnance* of 30 January 2009 and the Decree of 10 December 2009.

51. The activity of online casinos (illegal in France except for online poker since May 2010) is monitored by the services of the Ministry of the Interior and, more particularly, by the sub-directorate for racetracks and gambling. The authorities stated that, in view of the constant rise in the number of illegal gambling websites, and in order to ensure that prohibition was effectively enforced, the SCCJ had launched several judicial investigations since 2004. In September 2006, an monitoring unit for games based on new technologies was set up within the SCCJ to develop detection, analysis and operational intelligence-gathering assignments for the identification of illegal sites. The authorities stated that in all, a hundred or more judicial proceedings had been launched by the SCCJ for the operation of illegal gambling clubs or advertising for an illegal website. They admitted, however, that hardly any of the proceedings initiated led to criminal sanctions, as national courts had difficulties in prosecuting the companies and managers operating these websites, which in practice are based outside France.

52. The French legal system for casinos is based on the general principle of prohibition, as provided for by Law No. 83-628 of 12 July 1983 on games of chance, which is based on the provisions of Article 410 of the former French Penal Code. Gambling is only authorised as an exception to these legal provisions. French law provides for extremely thorough regulation of casinos. This regulation is achieved both by imposing an obligation for each casino to obtain an opening and operating license and by maintaining the previous requirement for an investment license for foreign investors.

53. With respect to sanctions, the National Sanctions Committee, provided for under Articles L. 561-37 to L. 561-44 of the CMF, derived from the *Ordonnance* of 30 January 2009, is responsible for taking disciplinary sanctions against casinos (as well as real estate agents and company domiciliation agents) for violations of AML/CFT obligations. The Committee was set up to handle cases referred to it by the Ministry of the Interior, the Ministry for the Economy and the Ministry for the Budget in the event of violations of obligations being detected during SCCJ inspections of casinos and gaming organisations. The Regulatory Authority for Online Gambling (*Autorité de régulation des jeux en ligne* - ARJEL) also refers directly to the Committee for the inspections that it will carry out of online activities within its jurisdiction, i.e., for sports betting, horse racing wagering and poker. The Directorate for Competition, Consumer Rights, and Protection Against Fraud (*Direction générale de la concurrence, de la consommation et de la répression des fraudes* - DGCCRF), which is responsible for inspecting real estate agents and company domiciliation agents in AML/CFT matters, will also refer to the Committee. The National Sanctions Committee can decide on a wide range of sanctions, from warnings to licence withdrawals. It can also impose fines, instead of or as well as, any other sanctions. The amount of the fine depends on the seriousness of the breaches but cannot exceed EUR 5 000 000. The sanctions regime applicable to casinos, real estate agents and company domiciliation agents for breach of their AML/CFT obligations was too recent for the effectiveness of the measures in place to be assessed at the time of the on-site visit.

54. Following the adoption of the *Ordonnance* of 30 January 2009, the French authorities rethought the organisation of AML/CFT inspections of non-financial professions. Two different situations can be observed. At one end of the spectrum are well-structured, highly organised professions (notaries, lawyers, auditors and accountants), with a culture of regulation and structured disciplinary and ethical rules. These professions must now take AML/CFT concerns into account in their routine (and methodical) inspections. At the other end of the spectrum are casinos, real estate agents and company domiciliation agents. Unregulated until 2009, these professions are now covered by brand new inspection rules and a sanctions system that has yet to be tested. In this respect, the inspection of non-financial professions and their effective, proportionate and dissuasive implementation represents a challenge for French authorities. Inspections in overseas territories are organised in the same way as in metropolitan France, apart from a few exceptions, the scope of which is still hard to determine. The deployment of LAB/CFT inspections

cannot be measured in these territories either. It appears to be crucial for the authorities to examine the organisation of these inspections and their effectiveness throughout the whole country. AML/CFT inspections of non-financial professions have only been organised very recently. For this reason, it was impossible to assess technical and human resources and the extent to which they meet inspection needs in each profession.

55. In view of exposure to money-laundering and terrorist financing risks, the French AML/CFT system applies not only to the non-financial businesses and professions designated by the FATF, but also to: (1) auction houses, antiques and art dealers; (2) all regulated legal and judicial professions, in addition to lawyers and notaries (i.e. bailiffs, auctioneers, receivers and legal agents); and (3) groups, clubs and companies organising games of chance, lotteries, sports or horse race betting, subject to specific provisions. Lastly, France appears to have a relatively proactive policy aimed at encouraging the use of modern, more secure means of payment.

Legal Persons and Arrangements & Non-Profit Organisations

56. Legal persons can have many different forms under French law, the main ones being commercial companies, non-commercial companies, economic interest groupings, associations and foundations. Provision is also made for a particular legal arrangement called a *fiducie*.

57. France counts on the very full provisions of its commercial law (including the registration and disclosure obligations of its corporate law, and the related oversight), and on the powers of investigation of the competent authorities to obtain or gain access to information concerning beneficial owners and control of legal persons. The law enforcement authorities have exhaustive investigative powers. Other competent authorities such as the AMF can mobilise considerable investigative resources and have full international co-operation tools. It should also be noted that, in France, company domiciliation activities have been covered by the AML/CFT system since the adoption of the *Ordonnance* of 30 January 2009, and are thus subject to the obligation to identify and check the identities of their customers and of the beneficial owners, and to keep records on their customers.

58. Information on the management bodies of the company and its partners can be found in the Register of Business and Companies (*Registre du commerce et des sociétés* – RCS). Although information on the beneficial owners (as defined by the FATF) does not appear in all cases as such in the register, details useful for identifying them are available for most types of legal persons: (1) with regard to public companies (*societé anonyme* - SA), when the shareholders are legal persons, the list of subscribers indicating the number of shares subscribed to and paid up by each of them is available; (2) if the management or direction functions, or powers to commit the company on a usual basis, are exercised by registered legal persons governed by French law (except for foundations), their "SIREN" national business number and the indication "RCS", followed by the name of their city of registration, are recorded in the registry. Thus, traceability of the information is possible in a "chain of companies" scenario, at least for companies registered in France.

59. In France, financial securities have been dematerialised since the Finance Law of 30 December 1981 (Articles 94-I and 94-II) and the texts for its application (the title deed is no longer a printed share that can be passed on from hand to hand). Article L. 211-3 of the CMF takes up this general obligation by requiring all securities to be entered into accounts, regardless of their issuer (public or private) or form (registered or bearer), either with the issuing company or with a financial intermediary mentioned in Article L. 542-1 of the CMF. Although all securities must be entered into accounts, bearer securities continue to exist under that name.

60. In France, a registered security is distinguished from a bearer security not by its material representation, but by the identity of the body that acts as its custodian. If a security is one whose owner can, within certain limits, remain anonymous with respect to the issuer, it may under no circumstances be physically represented. It should also be pointed out that, although securities must be entered in the names of their owners, either in the account opened with the issuing company or in the account opened with the intermediary, this rule does not apply for foreign investors, on whose behalf any intermediary may be entered.

61. By dematerialising financial securities (see above), France has reduced the risks relating to shareholder anonymity - since shareholders are now easier to identify - and thus enhanced the traceability of the movements of securities. However, the identification of non-resident shareholders remains an issue.

62. The analysis of these transparency measures lead the team to consider them to be largely compliant with the FATF standards with regard to knowledge of the beneficial owner and control of legal persons.

63. Law No. 2007-211 of 19 February 2007 introduced the *fiducie* (≈ trust) into French law. These provisions were then amended by Article 18 of the Law No. 2008-776 of 4 August 2008 on the modernisation of the economy and subsequently by *Ordonnance* No. 2009-112 of 30 January 2009. It should be remembered that institutions and businesses that manage foreign trusts on a professional basis in France are subject to AML/CFT provisions regardless of the location of the assets of the trust or of the legal system under which the trust has been created.

64. *Fiducies* are governed by Articles 2011 ff of the Civil Code. Article 2011 of the Civil Code provides that "a *fiducie* is formed when one or more settlors transfer property, rights or collateral, or a set of property, rights or collateral, whether present or future, to one or more fiduciaries, who keep these assets separate from their own, and act in the interests of one or more beneficiaries". A *fiducie* must be created by law or by contract, or by a notarial act. It must be express (Article 2012 of the Civil Code) and established for a maximum period of 99 years from the date the contract is signed (Article 2018, Civil Code).

65. Article 2020 of the Civil Code provides for the creation of a *fiducie* registry. Decree 2010-219 of 2 March 2010 establishes the creation of the "National Registry of *Fiducies*". Article 1 of the Decree stipulates that the aim of the automatic processing of *fiducie*-related data is to "centralise trust contract-related information required for facilitating supervision in the fight against tax evasion, money laundering and the financing of terrorism".

66. *Fiducies* involve three parties: the "settlor", the "fiduciary" (i.e. a bank, insurance company or lawyer) and the final beneficiary (possibly the same person as the settlor). *Fiducies* are established so that money may be legally transferred from a settlor's property to property held in through the *fiducie*. The law establishing *fiducies* applies several mechanisms to the system to limit the risks inherent to this legal arrangement. These mechanisms include: (1) the obligation to mention the identity of the beneficiaries in the *fiducie* contract or, if this is not possible, the rules for appointing them, failing which the contract will be null and void; (2) implementing measures to ensure that *fiducie* disclosure requirements are met and recognising an extended authority of the supervisory, tax and judicial authorities to obtain information to ensure the transparency of the mechanism; (3) restricting the exercise of the fiduciary role to certain professions, namely lawyers and regulated financial institutions, all subject to the AML/CFT system; (4) measures preventing *fiducies* from being set up for the sole purpose of avoiding tax obligations. With regard to direct taxes, *fiducie* earnings are taxed on the basis of the settlor's assets during the *fiducie* contract lifespan and until such time as the assets are transmitted to a beneficiary. Fiduciaries only pay taxes related to their own activity.

67. According to the authorities, only four *fiducies* under French law had been established at the time of the on-site visit. When it created the *fiducie*, France set up a series of mechanisms aimed at controlling risks inherent to this legal arrangement. The creation of a National Registry of *Fiducies* is a very important initiative that guarantees an adequate level of transparency. It is, however, too early to assess the effectiveness of the system in place.

68. The non-profit sector in France is essentially made up of associations (of which there are around 1.5 million in France) and foundations (some 1 500). These two forms of non-profit organisation (NPO) are governed by specific legislation and regulations. The French authorities base their analysis and monitoring of the associations sector and of its potential permeability to the risk of terrorist financing on several complementary types of action, including: (1) improved capacity for analysing and learning more about the associations sector. In this respect, the setting up of the National Register of Associations (*Répertoire national des associations* - RNA) will provide more reliable, regularly updated figures on this sector (the Order of 14 October 2009 authorised the creation of the RNA, but its implementation could not be assessed); (2) improved governance of associations and foundations (especially at the financial level) to enhance vigilance and oversight in this area, with particular regard to how they handle funds; (3) action by the intelligence services to monitor the associations sector with regard to the risk of terrorist financing. France should, however, conduct specific periodic reviews of the situation of NPOs in this respect. It should also take steps to heighten awareness in associations of the risk of abuse for the purposes of terrorist financing. Record-keeping obligations should be clearer and more standardised.

National and International Co-operation

69. The Ministry of the Economy determines the broad outlines of the French AML/CFT system. Within the ministry, the Directorate General of the Treasury (*Direction générale du Trésor* - DG Trésor) leads and co-ordinates the various stakeholders in the system, at both the domestic and international levels. At the domestic level, the Directorate spearheads and co-ordinates the drafting of the legislative and regulatory framework. All stakeholders (administrators, regulatory bodies, financial intelligence unit) take part in drafting the texts that concern them. As appropriate, professional bodies are also consulted before and during these processes. More bilateral co-operation mechanisms complete the system. At the interagency level, an interministerial AML/CFT Advisory Board (*Conseil d'orientation de la lutte contre le blanchiment de capitaux et le financement du terrorisme*) was set up on 18 January 2010. It aims to: (1) ensure better co-ordination between and enhance the effectiveness of government agencies and regulatory bodies in this area; (2) provide professionals with better information; (3) propose improvements to the national AML/CFT system; and (4) co-ordinate the development and updating of a document summarising the money laundering and terrorist financing threat. The creation of the Advisory Board represents a significant step forward towards enhanced co-operation among agencies and the co-ordination with the various AML/CFT supervisory authorities. The evaluation report also stresses the need for better co-ordination between the various law enforcement authorities and improved dialogue between them and Tracfin. Lastly, France should set up a system for measuring the overall effectiveness of its AML/CFT regime.

70. France signed and approved the Vienna Convention of 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. It also signed and ratified the 2000 Palermo Convention against Transnational Organised Crime. France has largely implemented these conventions, with one reservation (the criminalisation of the acquisition, possession or use of property with knowledge, at the time of receipt, that such property represents the proceeds of crime, is covered in French law by the offence of receiving stolen property (*recel*), which is more restrictive than that of money laundering. France signed and ratified the 1999 United Nations Convention for the Suppression of the Financing of Terrorism and has a very comprehensive array of legal tools for combating the offence of terrorist financing. Measures have been

taken to implement United Nations Security Council Resolutions 1267 and 1373; however, these are in general not sufficient (see above).

71. The French mutual legal assistance system is characterised by the fact that international conventions take precedence over laws, subject to the application of those conventions by the other parties. There are three possible legal frameworks for mutual assistance: multilateral conventions, bilateral conventions and, failing this, the principle of reciprocity. France is party to a number of multilateral instruments that contain provisions governing mutual legal assistance in criminal matters. It is also party to regional instruments on mutual legal assistance such as the European Convention on Mutual Assistance of 20 April 1959 and the Convention on Mutual Legal Assistance in Criminal Matters between Member States of the European Union of 29 May 2000 and its protocol of 16 October 2001. France is pursuing the development of an active policy of negotiating new bilateral agreements designed to reinforce, simplify and improve the legal framework for providing mutual assistance in criminal matters.

72. Mutual assistance may be granted in France for all criminal offences. It can be involved at any stage in criminal proceedings, whether or not charges have already been brought. Requests for mutual assistance made by foreign judicial authorities in this context must be executed "according to the rules of procedure set out by the French Code of Criminal Procedure" unless the request for mutual assistance stipulates that it must be executed according to the rules of procedure expressly set out by the competent authorities of the requesting state. The provisions specific to mutual assistance between France and the other member states of the European Union are defined under Article 695 of the Code of Criminal Procedure. The Office for International Mutual Assistance in Criminal Matters (*Bureau de l'entraide pénale internationale*) receives and forwards all requests for co-operation in criminal matters that may be addressed or received by the Ministry of Justice under the provisions of international instruments. French requests for mutual assistance may be submitted by a member of the public prosecutor's office or, if they concern an investigative document, by an investigating judge. France can provide a wide range of mutual legal assistance in investigations, prosecutions and related proceedings concerning money laundering and the financing of terrorism. French law sets out specific circumstances under which mutual legal assistance may not be provided. These conditions do not seem unreasonable, disproportionate or unduly restrictive. France does not appear to make unreasonable use of the condition of dual criminality with regard to mutual legal assistance.

73. France considers that the operating conditions regarding mutual legal assistance have seen a particular improvement in recent years. The increasingly common practice of sending requests directly from one judicial authority to another means that the central mutual assistance department no longer has the monopoly it had in this area until recent years. Thus, with regard to mutual assistance, the general trend is now towards a faster and more systematic execution of each request, particularly if that request comes from a country in the European Union. Another positive point is that France has promoted an increase in the number of liaison magistrates within its own borders and in third countries. It remains, however, very difficult to determine exactly how effective the mutual legal assistance system is, for want of adequate statistics. There are also doubts as to France's capacity to respond effectively and in good time to requests for mutual legal assistance submitted by foreign countries with regard to the identification, freezing, seizure or confiscation of assets or proceeds resulting from the commission of an offence. The adoption of Law No. 2010-768 of 9 July 2010 in this regard should help to bolster the country's capacity to meet its international obligations in this area. Lastly, attention should be drawn to the problem of the insufficient resources made available to the judicial authority.

74. Under French law, extradition is not subject to the existence of a convention and can be carried out on the basis of reciprocity. France is party to the European Convention on Extradition of 13 December 1957, the European Convention on the Suppression of Terrorism of 27 January 1977 and around fifty bilateral treaties. It incorporated the European arrest warrant, provided for under the Council Framework

Decision 2002/584/JAI of 13 June 2002, into the Law of 9 March 2004 adapting criminal law to changes in criminality. The offences of money laundering and terrorist financing can therefore be considered as grounds for extradition. France does not appear to make unreasonable use of the dual criminality condition regarding extradition. As a general rule, it does not extradite its nationals. It may extradite them, but only for the purposes of criminal prosecution, and subject to reciprocity under the simplified extradition procedure between member states of the European Union. Otherwise, it may refuse to extradite its nationals without undertaking to prosecute the offence for which extradition is sought.

75. France should make more effort to process requests for extradition from outside the European Union (and Switzerland) more quickly. Since the country does not extradite its nationals, it should also relax the conditions for bringing proceedings against them. It is recommended that France should keep comprehensive statistical records of the number of extradition requests it makes and receives (active and passive requests), requests accepted and refused, the time taken to process them and any grounds for refusal, concerning AML/CFT matters.

76. Tracfin has suitable judicial and legal resources for cooperating with foreign FIUs. The only reservation concerns its capacity to provide its counterparts with rapid, constructive and effective assistance in all cases. The other competent authorities also have suitable instruments for co-operation with their foreign counterparts. The time taken by institutions in the banking sector to respond to co-operation requests from foreign authorities seems reasonably short, in view of the urgent nature of the requests and the complexity of the issues concerned. The time taken by the AMF to respond to requests for assistance from its foreign counterparts seems satisfactory, taking into account the urgent nature and complexity of the requests.

Resources and Statistics

77. The human, financial and technical resources allocated to competent authorities regarding AML/CFT matters are not satisfactory on the whole. Firstly, the resources made available to the judicial and law enforcement authorities for dealing with cases of money laundering and terrorist financing are inadequate. Nor is there enough effort devoted to training the judiciary in AML/CFT matters and issues such as confiscation and international co-operation in criminal matters. It also seems that the FIU does not assign enough analysts to ensure satisfactory in-depth analysis of STRs. The resources deployed to supervise insurance companies (including insurance intermediaries) are inadequate. Lastly, the resources made available to the authorities for supervising non-financial professions could not be assessed.

78. France should devote greater resources to gathering statistics. There are no judicial statistics available on seizures and confiscations connected with money laundering and terrorist financing or predicate offences (except in respect of drug trafficking). There are not enough statistics on the number of investigations and prosecutions for money laundering and terrorist financing. There are no available statistics on the number of mutual assistance requests, whether accepted or denied, and response times. Nor are there any statistics available concerning the number of passive and active extradition requests, whether accepted or denied, processing times and reasons for refusal, in connection with money laundering and the financing of terrorism. The authorities should remedy these shortcomings.

TABLE 1: RATINGS OF COMPLIANCE WITH THE FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF Recommendations has been made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or in exceptional cases, Not Applicable (N/A).

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely Compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially Compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non-Compliant	There are major shortcomings, with a large majority of the essential criteria not being met.

Forty Recommendations	Rating	Summary of factors underlying the rating [16]
Legal systems		
1. ML offence	LC	• The material element of the offence of ML mentioned in the United Nations Conventions on the acquisition, possession or use of property knowing, at the time of receipt, that such property is the proceeds of crime, is covered in French law by the offence of receiving stolen property (which is more restrictive than that of money laundering); • Effectiveness: (1) in the absence of sufficiently clear and comprehensive statistics on the number of investigations and prosecutions, it is difficult to establish the effectiveness of the ML offence; (2) a fairly marked trend persists in the courts of prosecuting the predicate offence and not ML due to the difficulty in having to prove the material elements of the two offences; (3) the resources provided for the justice system and law enforcement authorities to handle ML cases are inadequate.
2. ML offence – mental element and corporate liability	LC	• Effectiveness: (1) the effectiveness and dissuasiveness of sanctions for ML applied to legal persons, and to a lesser extent natural persons, by the French courts has not been fully established; (2) in the absence of sufficiently clear and comprehensive statistics on the number of investigations and prosecutions, it is difficult to evaluate the effectiveness of the ML offence; (3) a fairly marked trend persists in the courts of prosecuting the predicate offence rather than ML; (4) the resources provided for the justice system to handle ML cases were considered to be inadequate.
3. ML offence – mental element and corporate liability	PC	• The scope of the property able to be seized and then confiscated does not extend to intangible property; • Confiscation of assets for legal persons is incomplete and

[16] These factors are only required to be set out when the rating is less than Compliant.

Forty Recommendations	Rating	Summary of factors underlying the rating [16]
		under-used; • Seizure measures applicable to organised crime are effective only against the person under investigation and allow the criminal's entourage (front men, shell companies) to escape protective seizure; • The confiscation system is confusing and lacks consistency; • Effectiveness: (1) seizure procedures are cumbersome and restrictive, and the many physical obstacles impede the use of seizure mechanisms by the courts; (2) the seizure and confiscation systems lack effectiveness and have major problems with implementation, particularly in some local government areas with their own competence in this area; (3) the means available to the justice system for handling confiscation are inadequate.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	The recommendation is fully observed.
5. Customer due diligence	• LC	• Insurance companies may issue anonymous capitalisation bonds; • The obligation to identify the regular customer in cases of a transaction arousing suspicion of ML or FT is foreseen by the legislative texts; however, this requirement is implicit in certain cases; • Additional due diligence measures that should be taken in the case of certain higher risk business relationships or transactions does not systematically cover a mandatory increased monitoring during the course of the business relationship; • The exception established in Article L.561-9 II CMF dispenses financial institutions from any form of customer due diligence when the risk of money laundering or terrorist financing is low; • The systematic categorisation of all the EU or EEA member countries as adequately applying the FATF standards (and without any other form of assessing risk) is not adequate. This is also true of the exemptions applicable to equivalent third countries; • The effectiveness of the implementation of customer due diligence measures could not be systematically assessed for certain obligations because of the newness of these specific measures.
6. Politically exposed persons	PC	• The legislative framework does not provide enhanced due diligence measures when the beneficial owner of the customer is a politically exposed person, nor does it take into account similar reputational risks associated with members of the family of or persons closely associated with a politically exposed person; • The obligation to perform enhanced due diligence is not applicable when PEP resides in France;

Forty Recommendations	Rating	Summary of factors underlying the rating [16]
		• Although due diligence measures applicable to PEPs existed before the adoption of *Ordonnance* No. 2009-14 of 30 January 2009, the effectiveness of the implementation of customer due diligence measures introduced at that time could not be systematically assessed.
7. Correspondent banking	PC	• The obligations of the CMF concerning correspondent banking (including those involving the maintenance of payable-through accounts) do not apply to relationships with respondent institutions located in EU or EEA member countries (these relationships are considered to present low risks in the absence of a suspicion of money laundering or terrorist financing); • The CMF also does not expressly obligate the collection information on the respondent institution concerning possible investigations or disciplinary actions to which it may have been subject.
8. New technologies & non face-to-face business	LC	• The additional due diligence measures which are specifically required in the case of non-face to face relationships do not expressly include enhanced ongoing due diligence measures with regard to transactions and the business relationship.
9. Third parties and introducers	PC	• The provisions in force do not require the covered financial institutions to verify that third-party introducers have taken measures to comply with the customer due diligence and record keeping requirements; • The capacity of third-party introducers is automatically attributed to institutions established in the EU, EEA or an equivalent third country; • The measures regarding third-party introduction, as set out in the CMF, are too recent to allow their effectiveness to be assessed.
10. Record keeping	LC	• The type of information to be collected to allow for the reconstruction of transactions (other than information on the customer's identity) is only specified for certain categories of transactions or with regard to certain covered persons.
11. Unusual transactions	LC	• It is not clear how French financial institutions would be able to pay particular attention to customers when there is a low risk of money laundering or terrorist financing since for these customers Article L.561-9 II of the CMF dispenses financial institutions from any form of due diligence.
12. DNFBP – R.5, 6, 8-11	PC	• The exemption applicable to lawyers with respect to customer identification is not compliant with FATF standards; • Shortcomings identified in the framework of Recommendations 5, 6, 8, 10 et 11 are applicable to non-financial professions; • Questions linked to the implementation of AML/CFT obligations are raised: (1) dealers in precious stones and metals do not actually participate in the AML/CFT system;

Forty Recommendations	Rating	Summary of factors underlying the rating [16]
		(2) the profession of real estate agents is not sufficiently mobilised in the AML/CFT system; (3) there are doubts about the implementation of AML/CFT standards by the least structured and organised non-financial professions operating overseas.
13. Suspicious transaction reporting	LC	• Effectiveness: (1) investment companies, financial investment advisors and, especially, insurance intermediaries and investment management companies contribute very marginally to the system of reporting suspicious transactions; (2) doubts exist concerning the quality of STRs and their usefulness; (3) serious doubts exist concerning the implementation of the requirement to report suspicious transactions in the overseas territories.
14. Protection & no tipping off	C	The Recommendation is fully observed.
15. Internal controls, compliance & audit	LC	• There is no provision in the CMF requiring money changers to allow the AML/CFT Compliance Officer and other members of staff to have timely access to customer identification data, other information relating to due diligence measures and any other relevant information.
16. DNFBP – R.13-15 & 21	PC	• Certain non-financial professions are not subject to internal AML/CFT control rules (casinos, real estate agents, company domiciliation agents). • Shortcomings identified in the framework of Recommendation 21 are applicable to non-financial professions. • Effectiveness: (1) The reporting system is not achieving results in the case of certain professions (real estate agents, lawyers and jewellers, in particular). (2) The lack of statistics for STRs from professionals based in the French territories located overseas makes it impossible to judge how well the reporting obligation has taken hold in these regions, even if interviews led by the evaluation team indicate that the knowledge and taking ownership of AML/CFT obligations are minimal.
17. Sanctions	LC	• The effectiveness of the AML/CFT sanctions imposed by the Banking Commission, ACAM and AMF on money changers is less than perfect
18. Shell banks	C	The Recommendation is fully observed.
19. Other forms of reporting	C	The Recommendation is fully observed.
20. Other NFBP & secure transaction techniques	C	The Recommendation is fully observed.
21. Special attention for higher risk countries	LC	• Insurance businesses are not required by the law to include in their assessment of risk activities conducted with states or territories that do not, or do not adequately, apply the FATF Recommendations, unless the foreign state or territory concerned is subject to formal counter-measures. • The attention to be paid to transactions with no apparent

Forty Recommendations	Rating	Summary of factors underlying the rating [16]
		economic or lawful purpose does not expressly target transactions with legal and natural persons residing in countries that do not, or do not adequately, apply the FATF Recommendations.
22. Foreign branches & subsidiaries	LC	• The obligation of financial institutions to pay particular attention to subsidiaries and branches located in countries which do not, or do not adequately, apply the FATF Recommendations is not made explicit in legal and regulatory provisions.
23. Regulation, supervision and monitoring	LC	• There are questions about the effectiveness given the very low number of on-site AML/CFT inspections performed: (1) by the Banking Commission on money changers, (2) by ACAM on insurance companies and even more so on insurance intermediaries; (3) by the AMF in general and on financial investment advisers in particular. • The effectiveness of the supervision system set up following the creation of the ACP cannot be evaluated.
24. DNFBP – regulation, supervision and monitoring	NC	• Due to the newness of the sanctions regime applicable to casinos for violations of their AML/CFT obligations, the effectiveness of the measures in place cannot be assessed. • Precious metals and precious stones dealers are not covered by any AML/CFT related inspections. • AML/CFT compliance controls for company domiciliation agents is not effective. • Notaries, lawyers, auditors, certified accountants with well-established inspection structures do not (or inadequately) incorporate AML/CFT concerns into their routine inspections. • It was not demonstrated that self-regulatory organisations have the appropriate technical or human resources to meet AML/CFT inspection needs for each profession. • The effectiveness of inspections and sanctions regimes applicable to non-financial professions, including casinos, could not be assessed due to the newness of the system. • The organisation of inspections in overseas territories is not very clear, and their effectiveness could not be assessed.
25. Guidelines & Feedback	PC	• Tracfin's policy of publishing analytical documents is not satisfactory; • Tracfin's feedback on STRs is considered to be inadequate. • The guidelines provided to financial institutions are too few in number. • No guidelines have been developed for real estate agents, company domiciliation agents or casinos.
Institutional and other measures		

Forty Recommendations	Rating	Summary of factors underlying the rating [16]
26. The FIU	LC	• Although detailed, written advice for financial institutions on preparing reports does exist, the other reporting parties only receive very general, purely practical information about how to prepare STRs; • Tracfin operations raise questions about effectiveness: (1) the resources employed to conduct investigations are not sufficient to cope with the volume of incoming reports (which, furthermore, is continuously rising); (2) the absence of quantifiable information concerning the judicial follow-up of Tracfin cases means that their contribution and relevance to the investigation of money laundering and terrorist financing cannot be assessed; (3) despite the increase in the number of STRs, statistics show a consistent decline between 2005 and 2009 in the number of information notes sent by Tracfin to the judicial authorities; (4) judges met during the on-site visit reported that Tracfin cases focuses on more minor offences and increasingly less on organised crime or large-scale financial crime; (5) Tracfin does not deploy any, or hardly any resources in overseas *départements* and territories in terms of dialogue and exchanges and particularly in terms of raising awareness among covered institutions/professions of their duty to report.
27. Law enforcement authorities	LC	• The effectiveness of law enforcement and prosecution authorities in money laundering or terrorist financing investigations has not been demonstrated due to a lack of statistics and clarity of available quantified data both for France and its overseas territories.
28. Powers of competent authorities	C	The Recommendation is fully observed.
29. Supervisors	LC	• The effectiveness of the supervision system set up following the creation of the ACP cannot be assessed.
30. Resources, integrity and training	PC	• The resources available to the judicial and prosecuting authorities in dealing with cases of money laundering and financing of terrorism are not sufficient; • Efforts to train the judges with regard to AML/CFT and in particular to aspects of confiscation and international cooperation in criminal matters are not sufficient; • The number of analysts assigned to carry out in-depth analysis of STRs is not sufficient; • The resources used for inspecting insurance companies (including insurance intermediaries) appear to be insufficient; • The inspection resources available to the authorities supervising non-financial professions could not be assessed.
31. National co-operation	LC	• Given the number of law enforcement/prosecution authorities, interagency cooperation is crucial and it is currently unsatisfactory; • The dialogue between Tracfin and law

Forty Recommendations	Rating	Summary of factors underlying the rating [16]
		enforcement/prosecution authorities is insufficient; • Given the recent establishment of the AML/CFT Advisory Committee, it is too early to assess its functioning or impact on the ability of authorities to work more closely together on AML/CFT issues
32. Statistics	PC	• France has no system for measuring the overall effectiveness of its AML/CFT regime; • There are no judicial statistics on seizures and confiscations in money laundering and financing of terrorism or in connection with the predicate offences (except in respect of drug trafficking); • Statistics collected on the number of investigations and prosecutions for money laundering and terrorist financing are insufficient; • No statistics are collected regarding the number of requests for mutual legal assistance granted or denied and response times; • No statistics are collected regarding the number of active and passive extradition requests (whether granted and denied, turnaround times and reasons for refusal), submitted in respect of money laundering and financing of terrorism.
33. Legal persons – beneficial owners	LC	• Competent authorities should be able to obtain, in a timely manner, adequate, accurate and current information on the beneficial owner in all situations and with respect to all legal persons.
34. Legal arrangements – beneficial owners	LC	• The legal system implemented for controlling the risks of *fiducies* being used for money laundering and for financing terrorism is satisfactory, though it is too recent to be able to assess its effectiveness.
International Co-operation		
35. Conventions	LC	• Implementation of the Vienna and Palermo Conventions • The material element of the offence of money laundering set out in the United Nations Conventions on acquiring, possessing or using property by a person knowing at the moment of acquisition, possession or use that they are the proceeds of crime is covered under French law under the offence of receiving stolen property (which is more restrictive than the offence of money laundering).
36. Mutual legal assistance (MLA)	LC	• Effectiveness: (1) in the absence of statistics, it has not been proven that requests for mutual legal assistance are processed in good time, effectively and without undue delay; (2) the resources provided to judicial authorities for the purpose of responding to foreign mutual legal assistance requests are insufficient.
37. Dual crmininality	C	The Recommendation is fully observed.

Forty Recommendations	Rating	Summary of factors underlying the rating [16]
38. MLA on confiscation and freezing	LC	• Taking into account the shortcomings in the seizure and confiscation regime, the ability of French authorities to respond effectively and in good time to requests for mutual legal assistance from foreign countries concerning the identification, freezing, seizure or confiscation of assets or proceeds resulting from the commission of an offence has not been demonstrated; • The resources provided to judicial authorities for the purpose of responding to foreign mutual legal assistance requests are insufficient.
39. Extradition	LC	• France may refuse to extradite its nationals without undertaking to prosecute the offence for which extradition is sought; • There are questions as to effectiveness: (1) extradition procedures outside the European Union and Switzerland are cumbersome and restrictive; (2) in the absence of detailed statistics, the effectiveness of the extradition system as a whole could not be measured; (3) the means provided to the judicial system regarding international co-operation are insufficient
40. Other forms of co-operation	LC	• Tracfin's ability to provide rapid, constructive and effective assistance in its exchanges with its counterparts has not been fully demonstrated.

Nine Special Recommendation	Rating	Summary of factors underlying the ratings
SR I Implement UN instruments	LC	• The implementation of Resolutions 1267 and 1373 is not satisfactory.
SR II Criminalise terrorist financing	C	The recommendation is fully observed.
SR III Freeze and confiscate terrorist assets	PC	*Implementation of S/RES/1267* • The situation envisaged by the UN Resolution for the freezing of assets in the event of control or possession of assets by persons acting in the name of or at the direction of designated persons or entities is not covered by EU legislation; it has not been clearly demonstrated that the French law on this matter covers this gap; • The time taken for EU regulations to be adopted aimed at dealing with amendments made to the list published by the 1267 Committee can be relatively long; it has not been clearly demonstrated that the French law on this matter covers this gap; *Implementation of S/RES/1373* • Although France has a national administrative freezing system, it has not used it for terrorists classified as "internal to the EU". *Effective procedures for examining the initiatives taken with respect to freezing mechanisms in other countries* • The effectiveness of procedures for examining initiatives

Nine Special Recommendation	Rating	Summary of factors underlying the ratings
		taken with respect to freezing mechanisms in other countries, in order, as appropriate, to make them effective has not been demonstrated; *Instructions to financial institutions and other persons who may hold funds* • The existing instructions are very general in nature and lack clarity, in particular as regards non-financial professions; *Other shortcomings* • It does not appear that any compliance verification of obligations pursuant to Special Recommendation III is carried out in practice, in particular as regards non-financial professions.
SR IV Suspicious transaction reporting	LC	• Questions arise concerning the effectiveness (see analysis concerning Recommendation 13).
SR V international co-operation	LC	• The shortcomings identified for Recommendation 36 apply to SR V; • The shortcomings identified for Recommendation 38 apply to SR V • The shortcomings identified for Recommendation 39 apply to SR V. • The shortcomings identified for Recommendation 40 apply to SR V.
SR VI AML requirements for money/value transfer services	LC	• The shortcomings identified in Section 3 concerning preventive measures, and Recommendations 17 and 23 apply also to money or value transfer services.
SR VII Wire transfer rules	C	The Recommendation is fully observed.
SR VIII Non-profit organisations	LC	• France does not conduct periodic specific reviews of the situation of NPOs as regards the risk of terrorist financing; • France has not conducted outreach to associations for raising their awareness of the risk of being misused for terrorist financing.
SR IX Cross-Border Declaration & Disclosure	LC	• The shortcomings identified under R.3 and SR III apply to SR IX; • Effectiveness: the implementation of the declaration requirement is not very effective in the absence of systematic information to travellers.