

Creation of the Autorité des marchés financiers

France reorganised its financial regulatory authorities in 2003. A single entity, the Autorité des marchés financiers (AMF), was set up to handle all the tasks involved in supervising corporate finance, financial information, investment service providers, collective investment schemes, financial markets and post-trade activities. The new authority has an extended and coherent remit. It is more transparent and effective than its predecessor organisations, and it has greater powers and resources, including a legally secure disciplinary procedure.

The AMF was inaugurated by Francis Mer, then Minister of the Economy, Finance and Industry, on 24 November 2003, pursuant to the Financial Security Act of 1 August 2003¹. The Act streamlined and unified the regulatory mechanisms of France's financial markets, bringing together under a single umbrella the powers exercised by the Conseil des Marchés Financiers (CMF) since 1996, the Commission des Opérations de Bourse (COB) since 1967, and the Conseil de Discipline de la Gestion Financière (CDGF) since 1989.

The AMF has succeeded to the rights and obligations of its predecessors. It has taken over unchanged the inspection, investigation and sanction procedures initiated by those organisations; and it enforces the regulations of the COB and the general regulations of the CMF, which will remain in effect until the new authority adopts its own rulebook.

The Financial Security Act has also overhauled France's prudential mechanisms. The oversight of insurance companies, complementary health insurers and provident institutions has been entrusted to a new, independent public authority. And cooperation between banking supervisors and insurance regulators has been placed on an organised footing. This has simplified the regulatory architecture and clarified the division of powers among different authorities (tables 1 and 2).

¹ The main provisions regarding the AMF are codified as Articles L. 621-1 - L. 621-30 of the Monetary and Financial Code.

Table 1: Situation prior to the Financial Security Act of 1 August 2003

	Comp. health insurers	Insurers	Credit institutions	Investment services	Market under-takings	Asset management
Regulation	Welfare Ministry	Finance Ministry	CRBF	COB + CMF		COB
Consultative powers	CSM	CNA	CNCT			COB/C DGF
Conduct of business rules	CCMIP	CCA	CB	CMF		
Prudential supervision						
Licensing	Welfare Ministry	Finance Ministry	CECEI	CECEI/CMF	CECEI	COB

Source: Ministry of the Economy, Finance and Industry

CB: Commission bancaire; CCA: Commission de contrôle des assurances; CCGF: Comité consultatif de la gestion financière; CCMIP: Commission de contrôle des mutuelles et institutions de prévoyance; CDGF: Conseil de discipline de la gestion financière; CECEI: Comité des établissements de crédit et des entreprises d'investissement; CMF: Conseil des marchés financiers; CNA: Conseil national des assurances; CNCT: Conseil national du crédit et du titre; COB: Commission des opérations de bourse; CRBF: Comité de la réglementation bancaire et financière; CSM: Conseil supérieur de la mutualité.

Table 2: Situation after the Financial Security Act of 1 August 2003

	Comp. health insurers	Insurers	Credit institutions	Investment services	Market under-takings	Asset management
Regulation	Welfare Ministry	Finance Ministry		AMF		
Consultative powers	CSM	CCLRf / CCSF				
Conduct of business rules	CCAMIP		CB			
Prudential supervision						
Licensing	Welfare Ministry	CEA	CECEI			

Source: Ministry of the Economy, Finance and Industry

AMF: Autorité des marchés financiers; CCAMIP: Commission de contrôle des assurances, des mutuelles et institutions de prévoyance; CCLRf: Comité consultatif de la législation et de la réglementation financières; CCSF: Comité consultatif du secteur financier; CEA: Comité des entreprises d'assurance

1 – An independent public authority

As a public authority, and in accordance with its State-mandated mission, the AMF has considerable financial and operational autonomy, which has been stipulated in and confirmed by decree².

The AMF's public status is evidenced most notably in the method of appointment of its members, all of whom are nominated by public authorities. Its chairman is appointed by the President of the Republic. The vice-president of the Conseil d'État, the first president of the Court of Cassation and the first president of the Cour des Comptes each appoint one magistrate to the Board. The governor of the Banque de France chooses a representative, and the chairmen of the three constitutional assemblies each appoint a member. The other Board members are appointed by the finance minister, after consultation with representative professional organisations. The chairman of the Conseil National de la Comptabilité, who himself is appointed by the finance minister, is an ex officio member.

The independence of AMF members is guaranteed by several factors, including the multiplicity of the appointing authorities, terms of office restricted to five years and renewable only in certain circumstances, and strict rules on ethical behaviour and the prevention and management of conflicts of interest, set forth in Title I of the general regulations³.

The AMF is an original legal entity insofar as its revenues are based on investment services and the business of investment service providers, which make it financially independent. Those resources are managed by a chief executive appointed by the Chairman with the assent of the Board and the approval of the finance minister. The Board also decides the AMF's budget, sets its internal regulations and drafts the ethical rules applicable to its staff.

The AMF has considerable latitude in terms of management. Exempt from expenditure oversight, it can employ persons from the private and public sectors and is not subject to the Government Procurement Code.

2 – Two multidisciplinary bodies with collective responsibility

The AMF is empowered to take general and individual decisions, to carry out inspections and to issue sanctions. It is composed of two collegiate bodies, each with entirely separate members: a sixteen-person Board and a twelve-person Disciplinary Commission. This arrangement establishes an institutional basis for the segregation of the prosecutorial and disciplinary functions, pursuant to Article 6§1 of the European Convention for the Protection of Human Rights.

With a staff combining national legal officers, representatives of the public authorities, persons chosen for the expertise and industry professionals, the AMF boasts a remarkably extensive and diversified set of skills. Except for the ex officio members, namely the representative of Banque de France and the chairman of the CNC, the members of the Board and the Disciplinary Commission

² Decree 2003-1109 of 21 November 2003 on the Autorité des marchés financiers (OJ, 23 November 2003, page 19904) and Decree 2003-1290 of 26 December 2003 on the amounts and rates of the taxes received by the Autorité des marchés financiers (OJ, 30 December 2003, page 22417).

³ Approved by decree by the finance minister on 23 February 2004 (OJ, 10 March 2004).

are appointed for a five-year term. One-half of the membership of each body is renewed every thirty months. Members' terms of office can be renewed only once.

The Financial Security Act has also increased the presence of the State, represented by a government commissioner. The commissioner, who is not entitled to vote, sits on all committees and specialised commissions, except where sanctions are being decided, and is entitled – save in the case of sanctions – to order a second round of discussions. Furthermore, in compliance with the constitutional principles governing the exercise of regulatory powers, the finance minister approves the AMF's general regulations (table 3).

Table 3

Members of the Board⁴	Members of the Disciplinary Commission⁵
Michel Prada, Chairman, appointed by decree by the President of France on 21 November 2003	Jacques Ribs, appointed by the vice-president of the Conseil d'État Chairman-elect of the Commission and Section 1 ⁶
Jacques Delmas-Marsalet, appointed by the vice-president of the Conseil d'État	Jacques Bonnot, appointed by the vice-president of the Conseil d'État
Claire Favre, appointed by the chief justice of the Court of Cassation	Claude Nocquet-Borel, appointed by the chief justice of the Court of cassation, Chairman-elect of Section 2 ⁷
Philippe Adhémar, appointed by the auditor general of the Cour des Comptes	Marielle Cohen-Branche, appointed by the chief justice of the Court of Cassation
Jean-Paul Redouin, appointed by the governor of the Banque de France	Yves Brissy, appointed by the finance minister
Antoine Bracchi, chairman of the Conseil National de la Comptabilité	Alain Ferri, appointed by the finance minister
Jean de Demandolx Dedons, appointed by president of the Senate	Jean-Pierre Hellebuyck, appointed by the finance minister
Jean-Michel Naulot, appointed by the president of the National Assembly	Pierre Lasserre, appointed by the finance minister
Bernard Esambert, appointed by the president of the Conseil Économique et Social	Jean-Pierre Morin, appointed by the finance minister Thierry Coste, appointed by the finance minister Joseph Thouvenel, appointed by the finance minister Jean-Jacques Surzur, appointed by the finance minister
Monique Bourven, appointed by the finance minister Bernard Field, appointed by the finance minister Antoine Giscard d'Estaing, appointed by the	

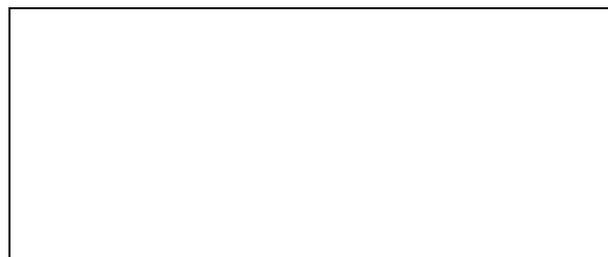
⁴ OJ, 23 November 2003 page 19949.

⁵ OJ, 23 November 2003 page 19949.

⁶ OJ, 18 December 2003, page 21615.

⁷ OJ, 18 December 2003, page 21615.

finance minister
Dominique Hoenn, appointed by the finance minister
Yves Mansion, appointed by the finance minister
Jean-Claude Mothié, appointed by the finance minister
Jean-Pierre Pinatton, appointed by the finance minister.



Government Commissioner,
Jean-Pierre Jouyet, Director of the Treasury Department (or his representative)
(sits without voting rights on all specialised commissions)

3 – Significant organisational flexibility

The Board is the decision-making body of the AMF. It has fundamental jurisdiction, which it can delegate to specialised commissions composed of its own members. At this writing, three commissions have been set up, each composed of five Board members and headed by the AMF's Chairman. The commissions are responsible for examining inspection and investigation reports and, where necessary, initiating sanction proceedings by issuing a statement of objections against the persons in question⁸. In an emergency, the commissions can suspend the business activities of professionals that are subject to an ongoing sanction proceeding. Furthermore, where a possible offence or violation is noted, they must send their report to the prosecutor's office.

The Board has delegated signature authority to its chairman to take a number of individual decisions, particularly as regards the registration of prospectus⁹ and the approval of investment service providers or financial products. The Chairman also has proprietary powers to suspend listings and to represent the AMF in the courts.

To assist it with its deliberations, the Board can call on five consultative commissions composed of between twelve and eighteen members. Where necessary, it may also rely on ad hoc working groups and on institutional cooperation with representatives of industry professionals and issuers' associations. Chaired and vice-chaired by two Board members, the commissions will address issues related to market organisation and operation; custody, clearing and settlement; individual and collective investment schemes; financial disclosures and corporate finance; and the protection of individual investors and minority shareholders¹⁰.

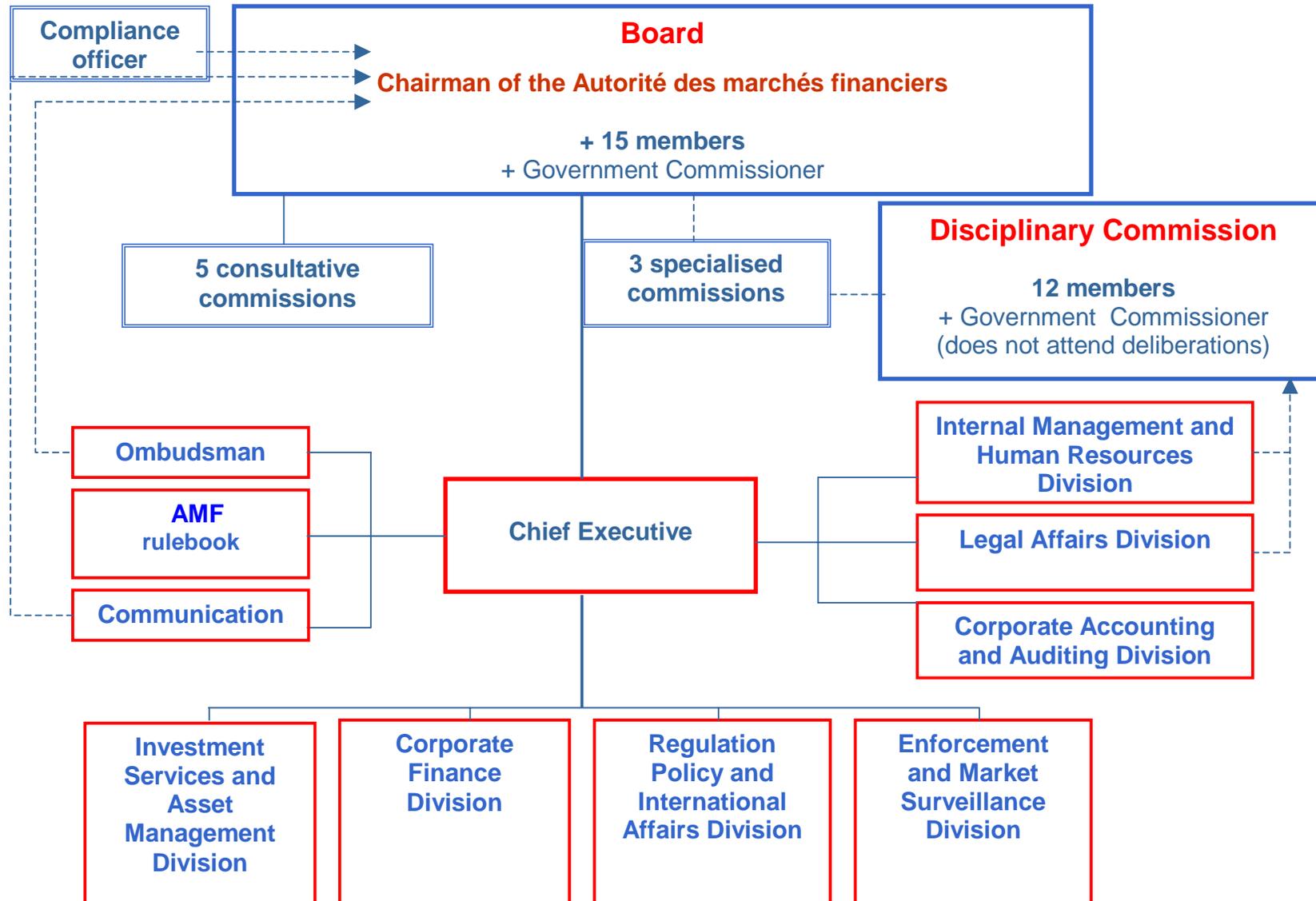
⁸ Decision 7 of 26 November 2003 on the creation of specialised commissions by the Autorité des marchés financiers (OJ, 23 December 2003, page 22006).

⁹ Decision 2 of 24 November 2003 on signature authority (OJ, 26 November 2003, p. 20108).

¹⁰ AMF news release, 20 February 2004.

The consultative commission dealing with individual and collective investment schemes has taken over the activities of the Comité Consultatif de la Gestion Financière (CCGF), except as regards individual decisions on the licensing of asset management companies and the review of their programmes of operations. (The CCGF was abolished by Article 48 I-1 Financial Security Act).

Table 4: Organisation of the AMF



4 – A broader remit

The AMF's remit has a threefold remit: to safeguard investments in financial instruments and other publicly issued securities, to ensure that investors receive material information, and to maintain orderly financial markets.

The Authority also has a number of new missions, namely supervising the new regulated profession of "financial investment adviser", overseeing independent financial analysts, controlling direct sales agents working for asset management companies, and fostering corporate governance and transparency through information on internal control. In addition, the AMF is required to publish a yearly report assessing the role of credit rating agencies and their impact on financial markets .

As regards the licensing of investment service providers by the CECEI, the AMF simply issues an opinion on the programmes of operations of providers specialising in services other than asset management. (Previously, licenses had to be approved by the CMF.)

The fact that powers are concentrated in a single authority will make it easier for the AMF to carry out its missions, in particular the oversight of public tender offers.

5 – Extended powers

- The AMF's regulatory powers have been extended to reflect these new responsibilities¹¹. The powers are exercised within the framework of a general book of rules, or General Regulations, interpreted through instructions and recommendations. The AMF uses the rulebook as a basis for its decisions on the registration of informational disclosures, the acceptability of tender offers, the licensing of collective investment schemes, and so on.

Table 5: AMF General Regulations

Pursuant to Article L. 621-7 of the Monetary and Financial Code, the General Regulations of the Autorité des marchés financiers stipulate the following:

"I – The standards of professional practice applicable to issuers making public offerings of securities, **as well as the rules to be respected in connection with** transactions **in financial instruments placed by public offering.**

II – Rules on **public tender offers** for financial instruments issued by public offering.

III. – The **conduct of business rules and other professional obligations** to be respected at all times by the persons referred to in Section II of Article L. 621-9, and which must take into account the financial skills of the person to whom the service is provided.

IV. – Regarding **investment service providers, market undertakings and members of regulated markets, and clearing houses and their members:**

¹¹ See in particular Article L. 621-7 of the Monetary and Financial Code.

- 1) The conditions under which investment service providers supply the services defined in Article L. 321-2;
- 2) The conditions under which the clearing houses members referred to Article L. 442-2 conduct their business;
- 3) The conditions governing authorisation and revocation of authorisation of natural persons acting under the authority or on behalf of investment service providers, market undertakings, members of regulated markets, clearing houses and their members;
- 4) The rules applicable to the persons covered by Article L. 532-18;
- 5) The conditions under which certain investment service providers may act otherwise than as del credere agents;
- 6) The conditions governing the authorisation of certain natural or legal persons who are not investment service providers to provide services listed in Article L. 321-1 (2) and (3) on regulated markets;
- 7) The conditions governing the approval of the rules of clearing houses by the Autorité des marchés financiers pursuant to Article L. 442-1, without prejudice to the powers given to the Banque de France under Article L. 141-4.

V. – Regarding **asset management and collective investments:**

- 1) The conditions governing the activities of investment service providers supplying an asset management service, exclusively or principally, and the conditions for authorising portfolio management companies;
- 2) The conditions governing the authorisation and activities conduct of collective investment management companies;
- 3) The conditions for authorising collective investment schemes;
- 4) The conditions governing the activities of depository of collective investment schemes.

VI. – Regarding the **custody and administration of financial instruments, central depositories and securities settlement system:**

- 1) The conditions governing the custody or administration of financial instruments by legal persons making public offerings of securities, and the intermediaries authorised to that effect, as stipulated in Article L. 542-1;
- 2) The conditions under which the Autorité des marchés financiers authorises central depositories, and the conditions under which such Authority approves their operating rules;

3) The general organisational and operating principles of securities settlement system, and the conditions under which the Autorité des marchés financiers approves the operating rules of such systems, without prejudice to the powers given to the Banque de France by Article L. 141-4.

VII. – Regarding **regulated markets in financial instruments:**

1) The general organisational and operating principles that regulated markets must observe, and the rules governing the execution of transactions in financial instruments traded in those markets;

2) The conditions under which the Autorité des marchés financiers, proposes to recognise or revoke the status of regulated markets in financial instruments, pursuant to Articles L.421-1 and L. 421-3;

3) The conditions for obtaining a derogation to Article L. 421-12;

4) The rules governing the way in which the Autorité des marchés financiers and the public are informed about orders for and transactions in financial instruments traded on a regulated market.

The General Regulations may also set out the operating rules for financial instrument markets other than regulated markets.

VIII. – Regarding the **persons**, other than those referred to in 1) and 7) of Section II of Article L. 621-9, who produce and disseminate **investment research:**

1) The conditions governing the activity of persons referred to in Article L. 544-1;

2) The rules of conduct applicable to natural persons acting under the authority or on behalf of persons that produce and disseminate investment research as their usual business, the provisions intended to ensure their independent judgment and to prevent conflicts of interest."

The General Regulations also specify:

- the terms and procedures whereby the Chief Executive authorises investigations;
- the procedures for supervising transactions and reporting them to the AMF;
- the conditions for publicising information concerning the disclosure of shareholdings, shareholder pacts, the report on internal control, and directors' dealings;
- the rules governing professional expertise and the instructions to be respected by the code of conduct applicable of financial investment advisers;
- the conditions under which portfolio management companies report their policies on the exercise of voting rights attaching to securities held by the collective investment schemes that they manage;
- the rules applicable to collective investment schemes with simplified investment rules and to contractual collective investment schemes, as well as the special rules applicable to general collective investment schemes, futures funds and debt securitisation funds;
- the money laundering prevention rules applicable to participants in the asset management market.

- The AMF's powers of administrative injunction, inherited from the COB, are underscored by the segregation of the prosecutorial and disciplinary functions. Those powers encompass any practice that contravenes laws and regulations in such a way as to impinge on the rights of individual investors; interfere with the orderly operation of the market; provide interested parties with an unwarranted advantage, i.e. one unobtainable under normal market conditions; infringe investors' rights to equal information and treatment or harm investors' interests; and allow issuers and investors to benefit from the professional misconduct of financial intermediaries. The AMF exercises its powers in the adversarial framework set out in the decree of 21 November 2003.

Moreover, the chairman of the AMF asks the president of the Paris regional court to issue cease and desist orders in the event of practices that contravene rules and regulations.

As part of its mission, the AMF supervises markets, carries out inspections to ensure that industry professionals are in compliance with the relevant conduct of business rules, and organises investigations at the behest of the Chief Executive in the event of possible market abuse.

Investigations are governed by a set of procedural rules laid down in the Monetary and Financial Code and the decree of 21 November 2003 with the aim of protecting personal rights. The corresponding investigative procedures are the same as those that were applicable to COB investigations.

6 – A legally secure sanction procedure

The AMF's power to impose penalties and sanctions is exercised by the Disciplinary Commission at the request of one of the specialised commissions set up by the Board¹². Headed by a chairman elected from among its members, who are also members of the court, the Disciplinary Commission comprises two sections, one headed by its chairman – an honorary State Councillor – and the other by an advisor to the Court of Cassation.

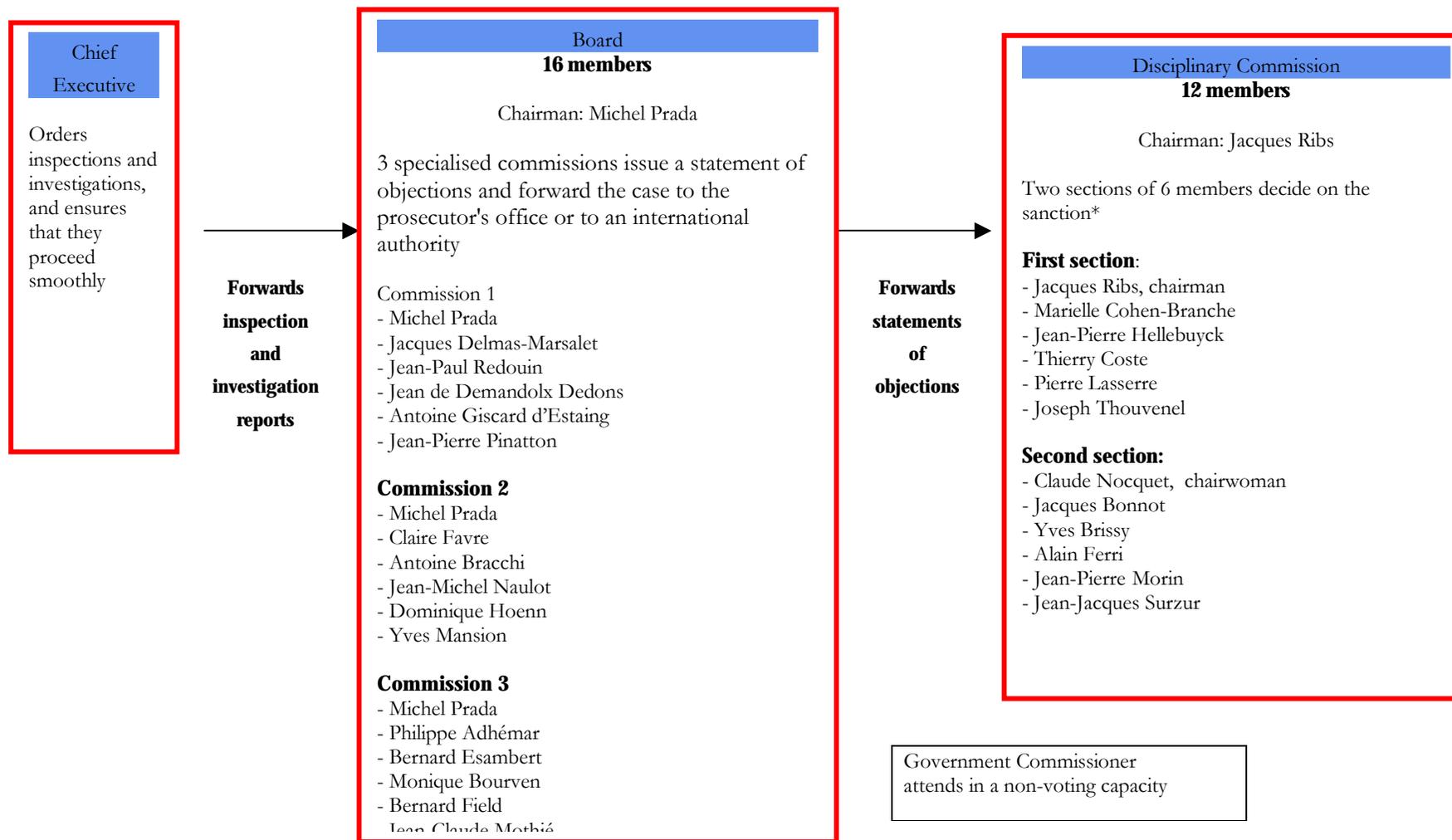
Cases are examined *inter partes* by a rapporteur appointed by the chairman of the Disciplinary Commission from among its members. The accused has the right to be heard by the rapporteur, who takes all necessary steps, in particular the organisation of additional hearings.

Disciplinary Commission proceedings are organised in accordance with the rules of due process: hearings are held in public at the request of the accused; the rapporteur does not take part in the deliberations; the sanction must be commensurate with the seriousness of the offence; and the reasons for the sanction must be explained.

The sanctioned person may be ordered to pay the cost of the proceedings. The decision may be made public through any medium chosen by the Disciplinary Commission, in which case the sanctioned person bears the cost of publication.

¹² See Chapter VI – Market supervision and discipline.

Table 6: Sanction proceedings



* not attended by the rapporteur or the government commissioner