AUTORITÉ
DES MARCHÉS FINANCIERS

AMF

AMF NOVEMBER 2018

2018 REPORT ON CORPORATE GOVERNANCE AND EXECUTIVE COMPENSATION IN LISTED COMPANIES

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AUTORITÉ DES MARCHÉS FINANCIERS

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REPORT OUTLINE

EXECUTIVE SUMMARY

This report was prepared in accordance with Article L. 621-18-3 of the Monetary and Financial Code, resulting from the Financial Security Act of 1 August 2003, which requires the Autorité des Marchés Financiers (AMF) to draw up an annual report based on the information on corporate governance and executive compensation published by companies that have their registered office in France and are listed on a regulated market. This is the fifteenth such report written by the AMF. It first describes developments in governance and compensation and then takes an in-depth look at two topical issues: changes in executive corporate officers and say on pay.

■ DEVELOPMENTS IN GOVERNANCE AND COMPENSATION

First, the report presents key recent developments in governance and compensation, in France and abroad. In particular, it provides details on certain provisions of the "Pacte" bill (*Plan d'Action pour la Croissance et la Transformation des Entreprises*, i.e., the business growth and transformation bill) and recommendations made both in the AFEP-MEDEF code and by the AMF.

■ *The "Pacte" bill*

↗ Article 61 of the "Pacte" bill supplements Articles 1833 and 1835 of the Civil Code with paragraphs stating, respectively, that "*The company shall be managed in its corporate interest and taking the social and environmental aspects of its activity into consideration*" and that "*The articles of incorporation may specify the mission that the company intends to pursue in the conduct of its business*". It also amends Articles L. 225-35 and L. 225-64 of the Commercial Code to give the boards of directors and management boards of French public limited companies (*sociétés anonymes*) a key role in considering the social and environmental aspects of their company's business.

↗ Article 66 of the bill transposes into the Commercial Code and Monetary and Financial Code the provisions of the Shareholder Rights Directive II on the identification of shareholders and fees charged by financial intermediaries for certain services, the engagement policy and investment strategy of institutional investors and asset managers, the transparency of proxy advisors, and the transparency and approval of material related-party transactions. It also authorises the government to transpose, by means of an ordinance, the provisions of the directive on the transmission of information between companies and shareholders, the facilitation of the exercise of shareholder rights, and the transparency and approval of executive compensation (say on pay).

■ *The recommendations of the AFEP-MEDEF code and the AMF*

↗ In June 2018, the AFEP and the MEDEF published an amended version of the corporate governance code for listed companies, which included new recommendations on, among others, the tasks of the board and the latter's dialogue with shareholders, ethical rules for directors and employee directors, executive compensation, and the corporate commitment to non-discrimination and diversity.

↗ In July 2018, the AMF Board decided to integrate into AMF Recommendation no. 2012-05 all the proposals in the report of the AMF's "Shareholder rights and voting at general meetings" working group relating to the counting of shareholder votes, the participation of bailiffs (*huissiers de justice*) in general meetings, the use of voting pads at general meetings, fees that dissuade shareholders from voting or registering their shares, and the preparation of a methodological guide to processing votes at general meetings. It also forwarded this report to the Minister of Justice and the Minister for the Economy and Finance and asked them to make the legislative or regulatory amendments needed to strengthen the transparency of voting by proxy and by mail as well as that of votes rejected by general meetings.

■ FINDINGS REGARDING EXECUTIVE CORPORATE OFFICERS' APPOINTMENTS, DEPARTURES AND REAPPOINTMENTS

The first theme was selected in the context of the AMF's finding that a larger number of terms of office of corporate officers expired in 2018 compared to previous years. The AMF thus reviewed the information published when executive corporate officers of SBF 120 companies were appointed, left the company or were reappointed. This topic has the advantage of addressing, via a single entry point, several major corporate governance and executive compensation issues. The sample consisted of companies in the SBF 120 at which an executive corporate officer was appointed or left the company and/or another one was appointed between the last annual general meeting held by these companies in 2017 and the one held in 2018, whether these corporate officers were directors or not. This represents a total of 43 companies, including 17 CAC 40 companies.

Changes in executive corporate officer executive corporate officer functions were analysed from two perspectives. The first aim of the review was to understand how the board anticipates expiry of terms of office, particularly from a decision-making process standpoint, and then how governance can evolve when these changes occur. The review then focused on the procedures for determining compensation when these changes in executive corporate officers occur, i.e., appointments, reappointments and departures.

THE GOVERNANCE STRUCTURE AT THE TIME OF CHANGES IN MANAGEMENT

- *Defining and implementing a succession plan*

  - The expiration of a corporate officer's term of office generally offers the board of directors or supervisory board an opportunity to implement, where applicable, the succession plan it has developed. All the companies under review, with one exception, included the term "succession plan" in their registration document. In most cases, this term mainly referred to the succession plan for the key executive corporate officers of the company.

  - With respect to the procedures for developing the succession plan, the degree of detail provided by companies nonetheless varied significantly. Less than half of companies under review that had put a succession plan in place disclosed the time horizon for which this plan had been developed. However, when they did do so, they all stated that they had taken care to ensure management continuity in the event of an unplanned vacancy.

  - Companies also generally did not provide much information on how the work of the board is coordinated with the work of the committee responsible for this issue or on the role of the current executive corporate officer, if he or she is involved in the process. It therefore seems that, without revealing their entire plan in detail, companies could provide some information on the existence of a succession plan.

  - The AMF recommends that companies that draw up a succession plan for their executive corporate officers explain the decision-making process associated with its development, including, for example, the role of the competent committee, the time horizon for which the plan has been developed, the frequency with which it is reviewed, and the procedures for potentially involving the executive in question.

- *Changes in the board functioning in relation to the expiration of terms of office*

  - Some companies took the expiration of their executive corporate officers' term of office as an opportunity to raise questions about the organisation and/or composition of their executive management, in particular with regard to the decision about whether to split the roles of chief executive officer and chairman of the board of directors.

  - Similarly, the board may also consider the checks and balances within the board in general, and an

analysis of the sample shows that companies have put forward several mechanisms to ensure that the board carries out its work independently and objectively. One widespread practice is therefore to hold executive sessions, which are meetings held without the presence of the executive corporate officer, as recommended by the AFEP-MEDEF code. Similarly, companies frequently choose to appoint a lead director to take on various tasks. As the AFEP-MEDEF code recommends,[1] "*The Board may appoint a Lead Director from among the independent directors*". The AMF notes, however, that while the nature of the lead director's tasks is generally clearly explained, a detailed overview of his or her activity for the year is more rarely provided.

DETERMINATION OF COMPENSATION UPON THE CHANGE OF EXECUTIVE CORPORATE OFFICER

- *Determination of a corporate officer's compensation at the time of his or her appointment*

  - An appointment is defined as a change in executive corporate officer or the election to the board of a new corporate officer, with the new member having been recruited internally (change of role) or externally. Within the sample, 34 corporate officers were appointed at 20 companies.

  - When manager corporate officer is appointed, the board of directors, acting on a proposal from the remuneration committee, determines all the components of the remuneration package. Since the law now requires that executive compensation be determined in accordance with the principles and criteria approved by the general meeting, the board of directors verifies whether these components of compensation are consistent with the compensation policy adopted at the last company's general meeting. Among the companies affected by the appointment of manager corporate officer in 2017, the AMF notes that 68% of the time the effective date for the appointment of the officer was post-year end 2017, so that he or she would benefit from the new compensation policy[2].

  - When an employee becomes an executive corporate officer of the company, the AFEP-MEDEF code recommends that his or her employment contract be ended. The AMF found that 11% of new executive officers who had previously held a position in the company maintained their employment contract by suspending it. The companies justified this mainly on the grounds of the candidate's length of service within the group. Despite the justifications provided, this percentage of non-compliance with the code remains fairly high. The AMF insists on the fact that companies are encouraged to provide explanations specific to each executive officer's situation (seniority, benefits resulting from the employment contract etc.) and notes that the High Committee on Corporate Governance (Haut Comité de Gouvernement d'Entreprise, HCGE) had stated in its 2015 Annual Report that explanations of the benefits procured by maintaining an employment contract should be provided to "*Enable shareholders to be sure that maintaining it does not generate non-compliances with the other provisions of the Code, specifically when it comes to termination payments*"[3]. The companies in the sample did not always provide these clarifications.

  - Fourteen new corporate officers are eligible for a severance payment in case of forced departure within two years of their appointment while recommendation 24.5.1 of the AFEP-MEDEF code specifies that: "*The performance conditions set out by the Board for these benefits must be assessed over at least two financial years*". Companies should explain under which circumstances such payments triggered during the first two years of mandate are in line with the code's recommendations, including in cases where the amount is calculated on a pro-rata basis (100% of payment should be paid only if performance has been assessed over two years).

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1 Recommendation 3.2 of the AFEP-MEDEF code.

2 Article L. 225-37-2 of the Commercial Code. For companies with a board of directors, the law applies to compensation for the offices of chairman, chief executive officer and deputy chief executive officer, and for companies with a management board, to members of the management board or supervisory board and to the sole chief executive. For companies with a management board and supervisory board, it applies to members of the management board, or to the sole chief executive, and to members of the supervisory board.

3 2015 Annual Report of the High Committee on Corporate Governance, p. 20.

- *Executive compensation challenges associated with reappointments*

  - Within the sample, 30 reappointments were noted at 27 companies in 2018.

  - The AMF found that the commitments made to corporate officers, such as severance, pensions and non-competition agreements, last for several years and that, if changes are made to the code on these matters, some commitments that were in line with the provisions of a previous version of the code might no longer comply with the new version, although there is no requirement that they do so. On this basis, the AMF recommends that the board regularly review the components of compensation likely to be owed at the time of or after the departure of a corporate officer and that it consider whether it is possible and advisable to comply with the new provisions of the code, particularly at the time of a reappointment.

  - As part of the "comply or explain" approach, the AMF recommends that companies explain all deviations from the current version of the code and specify why it is neither possible nor advisable for the company to ensure the compliance of a commitment made before the entry into force of the new provisions of the code. Otherwise, the information provided is fragmented and not comparable from one company to another.

- *Amounts paid at the time of corporate officers' departures*

  - Within the sample, there were 27 corporate officer departures at 20 companies.

  - Three companies granted one of their corporate officers a severance payment. The code provides for the payment of such a benefit only in the event of a forced departure. The AMF found that in the case of a management transition where the executive officer leaving the company is then appointed as a non-executive director, one company considered this as a forced departure entitling him to such benefit while another company believed this departure was not forced. Since in some cases the appointment of a former executive officer to the board could facilitate a management transition, the AMF invites the code and/or the HCGE to clarify the concept of forced departure when an executive officer continues to play a non-executive role within the group.

  - Four companies paid one of their corporate officers a non-competition benefit. Questions were occasionally raised about the legitimacy of paying such a benefit:

    - One company in the CAC 40, Carrefour, awarded a non-competition benefit[4] to its chairman and chief executive officer on his retirement. In its press release of 15 June 2018, the High Committee on Corporate Governance raised questions about the "*procedures for determining the compensation of the group's executives and in particular the termination benefits for its former chairman and CEO, Georges Plassat. The HCGE believes that these represent significant deviation from the AFEP-MEDEF code*[5]". The company and the executive officer reached an agreement under which he would refund the benefit and the non-competition agreement would be revoked. The company also made sure that the non-competition benefit for the new chairman and chief executive officer comply with the provisions of the new code.

    - At two other companies, a former chief executive officer received a non-competition payment while continuing to play a non-executive role within the group.
      The AMF reminds companies that they must justify the payment of such a benefit even if the corporate officer continues to play an executive or non-executive role within the group insofar as he or she could still be subject to a general duty of

[4] This was, more specifically, a termination benefit whose payment was subject to performance conditions and contingent on a non-compete commitment.

[5] The new version of recommendation 23.4 in the June 2018 AFEP-MEDEF code now specifies that no non-compete benefit "*[is] to be paid once the officer claims his or her pension rights*. *In any event, no benefit can be paid over the age of 65*".

confidentiality and/or loyalty given the role that he or she continues to play within the group.

- While recommendation 24.5.2 of the AFEP-MEDEF code requires disclosure of the financial conditions relating to the departure of all corporate officers, 13 companies did not publish this information. Although the AMF found that this concerned departures of non-executive corporate officers or situations in which the executive officer who left the company did neither received severance nor non-competition benefits, the companies did have to make decisions about certain components of compensation, such as the vesting of pension rights and long-term variable compensation for which the performance period had not expired. It is important to disclose these decisions to the market.

- Seven companies stated that, even if the corporate officer leaves before the end of the period required for the assessment of the performance criteria attached to the long-term compensation mechanisms, he or she is entitled to receive the long-term variable compensation. Companies must, in accordance with recommendation 24.5.1 of the AFEP-MEDEF code, explain specifically why the entitlement has been maintained, as the corporate officer is no longer in a position to influence the company's performance after his or her departure. One company applied the pro-rating rule, which appears to be a best practice.

- In addition to the code's recommendation regarding the completeness of the information, the AMF recommends that companies summarise in a press release all the information needed to determine whether the amounts owed and paid at the time of the departure comply with the code.

- The AMF reminds that such press release must be fully and effectively distributed and not merely published on the company's website.

SAY ON PAY

The second topic was selected in the context of the progressive implementation of legislative provisions requiring a shareholder vote on executive remuneration. The AMF therefore analysed, for the companies in the above-referenced sample, the information published at the time of the ex-ante and ex post votes on executive compensation.

At companies listed on a regulated market, say on pay aims to encourage a dialogue between corporate officers and investors. The latter therefore have access to all the information about the compensation policy and about compensation paid and awarded.

Presentation of compensation

- Compensation is set out in detail in a corporate governance report that the companies in the sample often structured as follows: (i) general principles of the company's compensation policy; (ii) compensation policy submitted to shareholders' vote in 2017; and (iii) compensation paid in 2017 with a focus on the information needed for the shareholders' vote on compensation; as well as (iv) the tables required by the AFEP-MEDEF code for the presentation of certain components of compensation; and (v) the 2018 compensation policy submitted for the general meeting's approval. The report also includes the statement of compliance with the reference code selected by the company.

Ex-ante *say on pay*

- The year 2018 was the second year of implementation of ex-ante say on pay. The AMF notes that

the companies provided a great deal of information on the compensation structure and the different components of compensation:

- All CAC 40 companies included in the sample provided information on the panel used to determine corporate officers' compensation package;
- Some companies presented their corporate officers' compensation structure very clearly, differentiating between long- and short-term components.;
- Some companies provided details on the performance conditions that had to be met;
- The fixed compensation that they decided to award for financial year 2018 was specified by 75% of the companies, almost all of which were CAC 40 companies;
- The ceiling on 2018 variable compensation was generally disclosed and was on average 133% of fixed compensation;

↗ Certain information that was provided less consistently is also important:

- Presentation of changes in the compensation policy and examination of this policy over a longer-term horizon in conjunction with the group's strategy;
- Presentation of the potential beneficiaries of long-term variable compensation, as recommendation 24.3.3 of the code specifies that: "*such plans are not restricted solely to executive officers, and all or a part of the company's employees may benefit from them*";
- Lastly, the AMF recommends that companies disclose the various benefits potentially granted depending on the departure scenario (voluntary departure, forced departure and retirement) in their registration document and compensation policy. As an example of best practices, the AMF notes that Sanofi's registration document includes a very clear presentation of the financial conditions associated with each type of departure.

- *Completeness of the presentation of the compensation policy implemented*

↗ The AMF found that the presentation of components awarded and paid for the previous financial year does not provided a clear overview of the compensation policy over time. Compensation awarded by the company prior to the last financial year – but not yet paid was not presented insofar as it relates to the compensation policy for prior years. The report also did not systematically present the compensation awarded and/or paid since the end of the last financial year. The AMF therefore recommends that the corporate governance report and registration document include a comprehensive view of implementation of the compensation policy, in addition to the policy itself and the prior-year compensation.

- *Presentation of components of compensation awarded and paid for the last financial year and subject to a vote at the general meeting (*ex post *say on pay)*

↗ 2018 was the first year of implementation of *ex post* say on pay, as required by law. Due to the entry into force of the Sapin II law on say on pay, companies must nevertheless make sure to supplement this table with the components of compensation required under Article R. 225-29-1 of the Commercial Code, such as compulsory and collective pension and benefit schemes[6], the components of compensation and benefits in kind owed or likely to be owed to a corporate officer in title of agreements entered into, directly or through an intermediary, by virtue of the position held[7], and any other component of compensation that may be awarded by virtue of the position held.

- *Approval rate*

↗ In general, the AMF observed a high approval rate for resolutions relating to compensation. After

[6] Listed in Article L. 242-1 of the Social Security Code.

[7] This includes agreements entered into with the company in which the position is held, any company controlled by it, within the meaning of Article L. 233-16, any company that controls it or any company that is placed under the same control as it, within the meaning of this article.

a services agreement with one of its directors voted no, one company published a press release to clarify the consequences of this vote. The company has since terminated the services agreement.

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PART I

METHODOLOGY

1.1 PURPOSE AND METHODOLOGY OF THE REPORT

1.1.1 The report's approach

This report was prepared in accordance with Article L. 621-18-3 of the Monetary and Financial Code, which requires the Autorité des Marchés Financiers (AMF) to draw up an annual report based on certain information included in the new corporate governance report and published by companies that have their registered office in France and are listed on a regulated market[8]. The information used to prepare this report was therefore publicly disclosed by issuers in their registration document or annual report they published in 2018 for financial year 2017, in press releases published in first-half 2018 and/or on their website, primarily in the section dedicated to the annual general meeting.

In the past and up until 2017, the AMF used to conduct an annual review of the chairman's report on internal audit and risk management procedures, which was published separately or included in the last part of the report on corporate governance and executive compensation. In accordance with the proposals made in early 2016 by an AMF working group chaired by Jean-Claude Hanus, this chairman's report was eliminated with Order no. 2017-1162 of 12 July 2017 and Decree no. 2017-1174 of 18 July 2017, as Article L. 225-100-1 of the Commercial Code now specifies that the main features of the internal audit and risk management systems should be included in the management report and not in the new board report on corporate governance. The scope of the information required has also been limited solely to procedures for preparing and processing the accounting and financial information. As a result of these changes, and as so allowed under Article L. 621-18-3 of the Monetary and Financial Code, this year the report does not contain a section on internal audit and risk management.

The "comply or explain" principle, now required under subparagraph 8 of Article L. 225-37-4[9] (for companies with both a one-tier and two-tier board structure), is central to the framework of corporate governance norms. As such, compliance with AMF policy and with the AFEP-MEDEF code is rigorously assessed, in accordance with the European Commission's recommendation of April 2014.

The qualitative information contained in this report, illustrated by the statistics deemed most relevant, address an intentionally limited number of subjects on a thematic basis (see Section 1.1.2.1) so as to offer a meaningful analysis based on the current state of corporate governance.

As previous years, certain issuers are named for best and poor practices. For practices deemed to have room for improvement, companies are named if they do not apply a recommendation of the code and do not justify this deviation from the code or provide sufficiently detailed or appropriate explanations, in accordance with the "comply or explain" principle. No company was named based on the revised recommendations of the AFEP-MEDEF code published in June 2018.

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[8] It should be noted that this report of the board of directors or supervisory board, introduced by Order no. 2017-1162 of 12 July 2017 establishing various measures for simplifying and clarifying companies' disclosure requirements (applicable to financial years beginning on or after 1 January 2017), comprises, on the basis of established law, information on the operation of the governing bodies, executive compensation and factors likely to have an impact in the event of a takeover bid.

[9] Subparagraph 8 of Article L. 225-37-4 of the Commercial Code, as amended by Order no. 2017-1180 of 19 July 2017 on the disclosure of non-financial information by certain large undertakings and certain groups of undertakings, thus requires that the corporate governance report specify, "when a company voluntarily refers to a code of corporate governance drawn up by organisations representing companies, the provisions from which it has departed and the reasons for this departure, as well as the place where this code may be consulted or, if the company does not refer to such a code, the reasons the company decided not to refer to it, as well as, where applicable, the rules that it applies in addition to legal requirements". The wording has changed somewhat relative to the former Article L. 225-37, but the substance of the scope has not been significantly modified. It nevertheless requires, when a company does not refer to a corporate governance code, that the company specify its reasons as well as, "where applicable" (the previous wording could be interpreted to mean systematically), the rules that it applies in addition to legal requirements.

1.1.2 Focus and sample

1.1.2.1 Focus

In order to highlight the most important messages, the AMF decided in 2016 to change the presentation of the report in a more concise format, taking an in-depth look at only a few issues considered topical or where additional progress could be expected. This remained a key priority for 2018 as the AMF explicitly stated in its strategic plan for 2018-2022 that it is keen to "*adapt the AMF's report on governance and executive compensation, taking account of the progress made by issuers in recent years*".

The AMF's 2017 report did in fact show that "*the number of best practices identified* (…) *far exceeds the number of issuers cited for poor compliance with the code*", thereby confirming a clear improvement in French issuers' corporate governance practices over the last few years.

To that end, the AMF therefore decided to establish its sample in light of one specific and relevant theme for the year under review, as Article L. 621-18-3 of the Monetary and Financial Code requires the publication of an annual report but does not specify the nature of the topics to be covered.

Thus, in the context of its thematic approach, the AMF found that a large number of terms of office of corporate officers expired in 2018 relative to previous years.

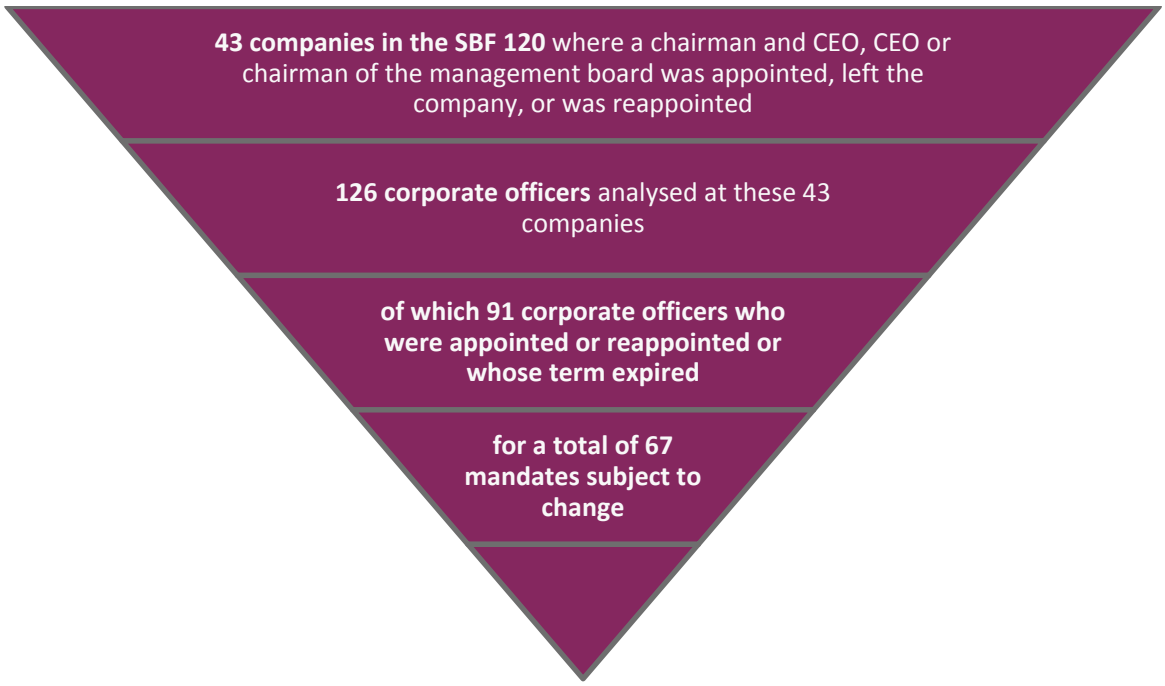
The AMF's first task was therefore to review the information published when executive corporate officers (chairman and chief executive officer, chief executive officer, or chairman of the management board) of SBF 120 companies were appointed, left the company, or were reappointed. This topic has the advantage of addressing, through a single entry point, several major corporate governance and compensation issues on which the appointment of new executive officers may have had an impact. Certain issues, such as the board diversity, are not directly related to the theme but have also been developed as they provide findings. However, some quantitative findings remain limited in scope given the biaised sample of companies studied.

Subsequently, in the context of the gradual implementation of legislative provisions requiring a shareholder vote on executive compensation, the AMF analysed, for these same companies, the information disclosed at the time of the *ex ante* and *ex post* votes on executive compensation.

1.1.2.2 Sample

The sample, which is presented in Appendix 1, consists of companies in the SBF 120[10] at which an executive corporate officer was reappointed or a executive corporate officer (chairman and chief executive officer, chief executive officer, or chairman of the management board) left the company and/or was appointed between the last annual general meeting held by these companies in 2017 and the one held in 2018[11], whether or not these corporate officers were also board members. This represents a total of 43 companies, including 17 CAC 40 companies:

[10] *Composition as at 31 December 2017 in order to freeze the sample.*
[11] *Total as at 31 July 2018.*



All the companies in the sample are incorporated under French law, given the applicable legal provisions, and follow the corporate governance code developed by the AFEP and the MEDEF, with one exception (**DBV Technologies**) which follows the corporate governance code developed by Middlenext.

As part of its review of the expiration of the terms of office of corporate officers within the SBF 120, the AMF focused its analysis on the 91 corporate officers who were appointed, whose term was terminated or was renewed. Corporate officers whose term was ongoing have been excluded from the first part of this report. These 91 corporate officers selected for the thematic review of appointments, departures and reappointments are divided over a total of 67 positions subject to change.

Lastly, as part of the review of the compensation policy, the analysis focused on the 65 corporate officers whose term was ongoing or whose terms had been renewed so as to have a comparison of compensation over two years.

1.1.3 Analytical method

The analysis of the information published by the sampled companies was based on both quantitative and qualitative criteria, in particular through the use of a grid comprising most of the recommendations of the AFEP-MEDEF and Middlenext codes, as well as best practices for corporate governance and executive compensation.

Thus, the first step in the analysis involved a fairly extensive review of the selected companies' compliance with the reference texts. It was seen as important for the AMF to maintain, generally speaking, its role in verifying both the quality of the information published by the companies and the implementation of the recommendations of the AFEP-MEDEF code. However, as indicated above, the analysis delved deeper into the corporate governance and compensation issues identified in the context of the reappointment, departure and/or appointment of a corporate officer and the vote on executive compensation.

The AMF informed the relevant issuers of the observations and facts likely to result in their being named in the report. These companies were given an opportunity to submit their comments to the AMF before the report was finalised. However, only public information (press releases, excerpts from registration documents, etc.) that may, where applicable, have been overlooked during the initial review or that was published before September was taken into account for the names cited in this report.

In the report, findings of non-compliance, potentially resulting in the naming of a company, were made on the basis of the recommendations of the AFEP-MEDEF code of June 2018 (and, in one case, the Middlenext code) and, where applicable, the application guide for the code.

Regarding the statistics on compensation, it was assumed that, if the compensation awarded to one of the company's corporate officers did not comply with a recommendation, the company was considered to have failed to comply with the recommendation even if the compensation awarded to the other corporate officers was compliant.

1.1.4 Structure of the report

The main developments, in France and in Europe, in the normative environment for governance of listed companies in the last year are presented in the second part of the report.

Each of the thematic sections below is structured as follows:

- a summary of the applicable legal provisions, the provisions of the AFEP-MEDEF code (and, where applicable, the Middlenext code) and the recommendations formulated by the AMF in previous years on the themes developed by the report;
- general observations based on statistics and incorporating an in-depth study of certain topics;
- an overview of practices observed in relation to the themes selected for the report, the most significant of which resulted in the naming of the relevant companies;
- where applicable, the AMF's latest recommendations for companies and avenues of discussion that may lead to updates of the AFEP-MEDEF code.

1.2 LEGISLATIVE AND REGULATORY FRAMEWORK

The applicable legislative and regulatory framework consists of European and national texts.

At the European level, a number of texts are applicable with respect to corporate governance and executive compensation, in particular Directive 2006/46/EC (the "Accounting" directive) of 14 June 2006, amended by Directive 2013/34/EU of 26 June 2013[12], and Directive 2014/95/EU of 22 October 2014[13], whose Article 20 forms the basis of community law for implementation of the "comply or explain" principle. Four European Commission recommendations, published between 2004 and 2014, also deal with director compensation, the role of independent directors and committees, and the "comply or explain" approach.

At the national level, based on Article L. 621-18-3 of the Monetary and Financial Code, this report presents the changes in the governance practices of certain listed companies in relation to three frameworks:

- legislative provisions, in particular those related to the board's report on corporate governance[14], the "comply or explain" principle, gender balance, multiple directorships, the appointment of directors representing employees, the audit committee, and references in the corporate governance report;
- self-regulation, through the recommendations in the AFEP-MEDEF and Middlenext codes applicable as at 31 December 2017;

[12] Directive 2013/34/EU of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

[13] Directive 2014/95/EU of 22 October 2014 as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

[14] Provisions amended notably by the above-mentioned Order no. 2017-1162 of 12 July 2017 establishing various measures for simplifying and clarifying companies' disclosure requirements.

- AMF Recommendation DOC-2012-02, updated each year through 2016, which aggregates the recommendations that were made in the previous reports and are applicable to listed companies that have stated that they follow the AFEP-MEDEF code.

PART II

LEGISLATIVE AND REGULATORY FRAMEWORK

2.1 FRANCE

2.1.1 The provisions of the business growth and transformation bill (the *Plan d'Action pour la Croissance et la Transformation des Entreprises* ("Pacte") bill)

2.1.1.1 Article 61 on the concepts of "corporate interest" and "corporate mission"

The "Pacte" bill is the result of a broad consultation with all stakeholders[15]. It was transmitted to the Speaker of the French National Assembly on 19 June 2018 and aims, in particular, to reduce paperwork and simplify the regulatory environment for businesses to facilitate their creation and support their growth.

As drafted by the government, Article 61 of this bill first establishes the precedent of corporate interest[16] in Article 1833 of the Civil Code, by supplementing that article with a paragraph pursuant to which "*the company shall be managed in its corporate interest and taking the social and environmental aspects of its activity into consideration*". The preamble to the bill notes in this regard that the reference to "social and environmental aspects" clarifies that all senior managers should examine these aspects and consider them carefully, in the company's interest, when making management decisions. It specifies that "*if the corporate interest corresponds in this way to the senior manager's management horizon, consideration of these aspects appears to be one of the ways for such manager to estimate the social and environmental consequences of his or her decisions. Accordingly, social or environmental damage does not, on its own, demonstrate failure to comply with this obligation*".

Second, this article offers entrepreneurs the option to include their company's "mission" in their articles of incorporation, following the recommendation of the report published on 9 March 2018 by Nicole Notat and Jean-Dominique Senard entitled *L'entreprise, objet d'intérêt collectif* (The Company as an Object of Collective Interest)[17]. It supplements Article 1835 of the Civil Code with a paragraph whereby "*the articles of incorporation may specify the mission that the company intends to pursue in the conduct of its business*". The preamble to the bill specifies that the concept of "mission" seeks to "*align business leaders and businesses with their long-term environment*". In this respect, it reflects the wording of the above-referenced report, stating that this concept can be defined "*as the expression of what is necessary to fulfil the corporate purpose*" and therefore "*as having a strategic use, by providing a framework for the most important decisions*".

Lastly, Article 61 of the "Pacte" bill seeks to give the boards of directors and management boards of French public limited companies (*sociétés anonymes*) a pivotal role in considering the social and environmental aspects of their company's business by amending the first paragraph of Article L. 225-35 (for companies with a one-tier board structure) and Article L. 225-64 (for companies with a two-tier board structure) of the Commercial Code. This code would now stipulate that the board of directors or management board "*shall determine the company's business strategy, in accordance with its corporate purpose and taking its social and environmental aspects into consideration*[18]*. It shall also consider the company's mission, where this is defined in the articles of incorporation pursuant to Article 1835 of the Civil Code.* […]".

2.1.1.2 Article 62 on increasing the number of employee members on boards of directors and supervisory boards

Article 62 of the "Pacte" bill seeks to increase the number of employee members on the boards of directors and supervisory boards of companies with more than 1,000 employees in France or 5,000 employees in France and abroad. Articles L. 225-27-1 II subparagraph 1 and L. 225-79-2 II subparagraph 1 of the Commercial Code would

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15 The first consultation phase took place from 23 October to 10 December 2017, with six work groups in which a parliamentarian was paired with a business leader. The proposals that resulted from this work were then submitted for public consultation in January 2018 for a one-month period. The "Pacte" bill is based on the contributions made over the course of these successive consultations.

16 While the Civil Code and Commercial Code occasionally make reference to "*companies' interests*", and while judges have used the concept of corporate interest in certain disputes concerning, in particular, the misuse of company assets or abuse of majority powers (*abus de majorité*), the legislature has never defined the concept of "*corporate interest*".

17 This report is available at the following link: https://www.economie.gouv.fr/files/files/PDF/2018/entreprise_objet_interet_collectif.pdf

18 The first paragraph of Article L. 225-35 of the Commercial Code further stipulates, for companies with a one-tier board structure, that the board of directors "*shall ensure the implementation*" of the business strategy it has defined for the company.

thus be amended such that the threshold that determines the appointment of two employee members to the board would be lowered from twelve to eight non-employee members.

These employee representative directors and members of the supervisory board would take office no later than six months after the general meeting that approved the amendments to the articles of incorporation necessary for their appointment, as such amendments must be proposed at the first general meeting after the law takes effect.

2.1.1.3 Article 66 transposing Directive 2017/828 of 17 May 2017 "as regards the encouragement of long-term shareholder engagement" (the second Shareholder Rights Directive or "SRD II")

Article 66 of the "Pacte" bill seeks to transpose, directly through legislation, most of the provisions of the second Shareholder Rights Directive[19]. It also authorises the government to take, by means of an order, within 12 months of publication of the law, the relevant measures to transpose certain other provisions of the directive. Lastly, it makes provision for amendments to certain articles of the Commercial Code, relating in particular to registered intermediaries and regulated agreements, although these changes are not required as part of the transposition of the directive.

The main provisions of Article 66 of the "Pacte" bill, which transposes SRD II and also amends certain articles of the Commercial Code, are presented in the table below.

Identification of shareholders (Article 3a of the directive)
■ Article L. 228-2 of the Commercial Code would be amended to provide that: o the company's articles of incorporation may state that the company or its agent is entitled to request, either from the central securities depositary or directly from one or more intermediaries, information about the identification of owners of its shares and securities with voting rights. For companies listed on a regulated market, this ability would exist as of right and any clause in the articles of incorporation to the contrary would be considered unwritten[20]; o when an account-keeper identifies an intermediary registered on behalf of one or more third-party owners[21], it shall transmit this request for identification to this intermediary, unless the issuing company or its agent expressly objects; o unless otherwise provided by the issue contract, any bond-issuing legal entity may request the identification of holders of these securities under the above-mentioned conditions. ■ Article L. 228-3-1 would be amended to provide that, as long as the company believes that certain holders whose identity has been transmitted to it are holding securities on behalf of third-party owners of those securities, it shall have the right to ask them to transmit information about such third parties. ■ Article L. 228-3-3 would be amended to provide that, when the recipient of a request for identification has not transmitted the relevant information, or has transmitted incomplete or erroneous information, this person's shares, bonds or securities giving access to capital shall be stripped of voting rights until such time as the identification request has been fulfilled, and the payment of any corresponding dividends shall also be deferred until that date. ■ An Article L. 228-3-5 would be created whereby any contractual stipulation whose object or effect is to limit the transmission of the above-mentioned information would be considered unwritten.

[19] Member States must transpose SRD II no later than 10 June 2019.

[20] The requirement that companies include in their articles of incorporation a clause authorising them to identify their shareholders would therefore be eliminated.

[21] With regard to registered intermediaries, Article 66 of the "Pacte" bill proposes amending Article L. 228-1 of the Commercial Code to provide that:
- when the company's equity securities or bonds are listed on one or more regulated markets or multilateral trading facilities (MTFs) authorised in France, in another Member State or in a state that is party to the Agreement on the European Economic Area, or on a market considered as equivalent to a regulated market, and when their owner is not domiciled in France, any intermediary may be registered on behalf of such owner;
- when the company's equity securities or bonds are listed only on one or more markets considered as equivalent to a regulated market, this registration may be made on behalf of any owner;
- the intermediary's registration may take the form of a collective account or several individual accounts each corresponding to one owner.

- An Article L. 228-3-6 would be created and would state that:
  - the personal data collected shall be processed automatically for the purpose of identifying the owners of the securities and communicating with such owners;
  - these data may not be retained for longer than 12 months after the intermediaries and the company have become aware that the person concerned has ceased to be a shareholder;
  - a legal entity[22] that owns securities shall, in particular, have the right of rectification of inaccurate information about it.

Transmission of information between companies and shareholders (Article 3b of the directive)

- Article 66 V of the bill authorises the government to take, by means of an order, measures permitting the introduction of requirements that financial intermediaries transmit certain types of information from the company to its shareholders.

Facilitation of the exercise of shareholder rights (Article 3c of the directive)

- Article 66 V of the bill authorises the government to take, by means of an order, measures permitting the introduction of requirements that seek to facilitate shareholders' exercise of their rights.

Fees charged by financial intermediaries (Article 3d of the directive)

- Article L. 228-2 of the Commercial Code would be amended to provide that:
  - any applicable charges for services relating to the identification of shareholders, the transmission of information and the facilitation of the exercise of shareholder rights shall be non-discriminatory and proportionate in relation to the costs incurred for delivering these services;
  - any differences in fees resulting from the cross-border nature of the service shall be authorised only if an explanation is provided and where they reflect the variation in costs incurred for delivering this service;
  - these fees shall be publicly disclosed separately for each service.

Institutional investor and asset manager engagement policy (Article 3g of the directive)

- Article L. 533-22 of the Monetary and Financial Code would be amended to provide that:
  - asset management companies, with the exception of those that manage certain alternative investment funds (AIFs), shall develop and publish a shareholder engagement policy that describes how they integrate their role as shareholder in their investment strategy, and shall publish an annual report on the implementation of this policy;
  - these companies may, however, choose not to comply with one or more of these requirements provided they publicly disclose their reasons on their website.
- An Article L. 533-22-4 of this same code would be created to provide that investment firms that provide asset management services on behalf of third parties shall be subject to the same requirements.
- An Article L. 310-1-1-2 of the Insurance Code would be created to provide that:
  - life insurance and reinsurance companies shall be subject to the same requirements, insofar as they invest in shares listed on a regulated market, directly or through one of the above-mentioned asset management companies or investment firms;
  - if an asset management company or investment firm implements the shareholder engagement policy on behalf of these companies, they shall indicate on their website where the voting information has been published.
- An Article L. 385-7-1 of this same code would be created to provide that supplemental occupational pension funds shall be subject to the same requirements.

Investment strategy of institutional investors and arrangements with asset managers (Article 3h of the directive)

[22] Natural persons who own securities already have this right under the European provisions on the protection of personal data.

- An Article L. 310-1-1-2 of the Insurance Code would be created to provide that:
  - life insurance and reinsurance companies shall publish how the main elements of their equity investment strategy are consistent with the profile and duration of their liabilities, in particular their long-term liabilities, and how they contribute to the medium- and long-term performance of their assets;
  - when they invest through one of the above-mentioned asset management companies or investment firms on a discretionary management basis or via a collective investment, these companies shall publish information about their contracts[23].
- An Article L. 385-7-1 of this same code would be created to provide that the same requirements shall be applicable to supplemental occupational pension funds.

Transparency of asset managers (Article 3i of the directive)

- Article L. 533-22 of the Monetary and Financial Code would be amended to provide that, when a life insurance or reinsurance company, a supplemental occupational pension fund, a supplemental occupational pension mutual company or union, or a supplemental occupational pension institution enters into a contract, on a discretionary management basis or via a collective investment, with one of the above-mentioned asset management companies, the latter shall provide it with information on how its investment strategy and implementation comply with this contract and contribute to the medium- and long-term performance of the assets of the investor or of the collective investment.

Transparency of proxy advisors (Article 3j of the directive)

- A new Article L. 544-7 of the Monetary and Financial Code would define the concept of "proxy advisor"[24].
- An Article L. 544-8 would be created requiring that proxy advisors:
  - specify, where applicable, why they depart from one or more provisions of the code of conduct that they follow, as well as any measures adopted as alternatives to those from which they have departed;
  - publicly disclose, at least on an annual basis, information in relation to the preparation of their research, advice and voting recommendations;
  - prevent, manage and disclose without delay to their clients any conflicts of interests or business relationships that may influence the preparation of their research, advice or voting recommendations and the actions they have undertaken to prevent and manage them.
- A new Article L. 544-9 would give any interested party the right to request that the presiding judge of the court order the proxy advisor, where applicable under penalty, to disclose the above-mentioned information on its website.

Say on pay: transparency and approval of the executive compensation policy (Article 9a of the directive) and of the report on executive compensation (Article 9b of the directive)

- Article 66 V of the bill authorises the government to take, by means of an order, the relevant measures to transpose Articles 9a and 9b of the directive, which will require amending the provisions of Book II of the Commercial Code to adjust the French framework governing executive pay.
- The preamble to the bill states that there are plans to undertake "*a coherent overhaul of the French framework, which would be structured around a binding ex ante vote on a unified compensation policy covering all compensation, and a binding ex post vote which would be coupled with a relevant and deterrent sanction*".

Transparency and approval of material related-party transactions (Article 9c of the directive)

[23] The content of this information and the procedures for making it publicly available will be laid down by decree of the Conseil d'Etat.

[24] This article would state that: "*A legal entity that analyses, on a professional and commercial basis, the corporate documents or any other information from companies whose shares are admitted for trading on a regulated market, for the purpose of informing the voting decisions of shareholders of these companies by providing research or advice or by making voting recommendations, shall be said to provide a proxy advisor service*".

- Article L. 225-37-4 of the Commercial Code would be amended to provide that the corporate governance report (introduced by the Order of 12 July 2017) shall disclose the agreements made between, first, any of the directors and corporate officers or shareholders holding more than 10% of a company's voting rights and, second, another company that is "*controlled by the first company within the meaning of Article L. 233-3*" of the same code.
- Article L. 225-40 (companies with a board of directors) and Article L. 225-88 (companies with a management board and a supervisory board) would be amended to provide that the person who is "*directly or indirectly concerned by the agreement*":
  - shall be required to inform the board as soon as he or she becomes aware of a regulated agreement and may not take part in the deliberations or the vote on the requested authorisation;
  - cannot participate in the vote at the general meeting deciding on the agreement, as his or her shares are also not taken into account when calculating the majority.
- Articles L. 225-40-2 and L. 225-88-2 would be created to provide that, for companies listed on a regulated market, information[25] on regulated agreements shall be published on the company's website at the latest at the time the agreement is entered into.
- Article L. 228-1 would provide for the right of any shareholder to receive a list of agreements relating to ordinary transactions concluded under normal conditions[26].

2.1.2 Corporate governance code, recommendations and reports

2.1.2.1 The revision of the AFEP-MEDEF corporate governance code

Following a public consultation held from 28 February to 11 April 2018, the AFEP and the MEDEF published an amended version of the corporate governance code for listed companies on 21 June 2018. The main changes in this code, some of which address the AMF's previous "avenues of discussion", are summarised in the table below.

Tasks of the board
■ In addition to the possible legislative developments referenced above, the code recommends that the board of directors endeavour to promote long-term value creation by considering the social and environmental aspects of its activities. It thus recommends incorporating one or more CSR criteria into senior managers' variable compensation. ■ Regarding risk prevention, the code recommends that the board ensure the implementation of a mechanism to prevent and detect corruption and influence peddling and that it receive the information needed to fulfil its tasks.
Employee directors
■ The code recommends, to ensure employee director representation "*where strategic decisions are made within a group*" and in accordance with the legal framework, that employee directors sit on the company's board.
High Committee on Corporate Governance (HCGE)
■ To achieve a greater diversity of backgrounds and skills, the number of members of the High Committee on Corporate Governance (*Haut Comité de Gouvernement d'Entreprise*, or HCGE) will be increased from seven to nine by the end of 2018. With a view to greater parity, in particular, individuals who hold or have held director or corporate officer positions in companies that follow the code may be appointed, even if they have not held executive offices[27]. ■ The HCGE is formally allowed to use "name and shame" (which it had already used in its 2017 report),

[25] A list of this information will be determined by decree of the Conseil d'Etat.

[26] The requirement to provide a list of these agreements to the board of directors or the supervisory board and to the statutory auditors – and, therefore, the right of shareholders to review it – had been eliminated by Law no. 2011-525 of 17 May 2011 on the simplification and improvement of the quality of law.

[27] New members of the HCGE, Marie-Claire Capobianco, Brigitte Longuet and Robert Peugeot, were appointed on 1st November 2018. Patricia Barbizet has also been chosen as chairwoman of the HCGE for a 3-year period.

meaning that, if a company has not responded to a letter from the High Committee within two months, the content of that letter can be publicly disclosed.
Corporate commitment to non-discrimination and diversity
■ The code recommends that the board of directors ensure that senior managers implement a policy of non-discrimination and diversity, notably with regard to gender balance on the governing bodies. This means, in addition to the board, the executive and management committees as well as upper management.
Executive compensation
■ The code strengthens the framework for non-compete clauses by recommending, in particular, that no non-compete agreement be entered into when a senior manager leaves and, for pre-existing clauses, that retirement benefits not be paid and that no benefits be paid once the senior manager is above the age of 65. The award of entitlements or compensation intended to constitute a supplementary pension scheme should also be subject to performance conditions[28].
Shareholder dialogue with the board of directors
■ The code specifies that a direct dialogue between shareholders and members of the board of directors, in particular on corporate governance aspects, may be entrusted to the chairman of the board or, if applicable, to the lead director. They must report to the board on their work.
Ethical rules for directors
■ The code recommends, in the case of a conflict of interest, that the director concerned, who should have already abstained from taking part in voting on the related resolution, abstain from attending the debate.
Transparency of the board of directors
■ To promote transparency, the code recommends that the corporate governance report include each director's rate of attendance at meetings of the board and of the committees. ■ To ensure that shareholders can make an informed vote on the appointment or reappointment of a director, the code recommends that the company specify the reasons for proposing his or her appointment to the general meeting. ■ The appendices to the code include a standard presentation for information about the board (membership, independence, attendance).

2.1.2.2 AMF recommendation on the award of share purchase warrants (bons de souscription d'actions — BSAs) to non-executive directors

In its review of the prospectuses submitted for its approval and of the registration documents filed, the AMF observed a growing practice by a certain category of issuers of issuing BSAs that are awarded to directors as free shares or under pricing conditions that do not reflect their market value. The AMF therefore sought, in a news release published on 5 June 2018[29], to draw issuers' attention to these BSA awards.

The AMF first noted that, pursuant to Article L. 225-44 of the Commercial Code, and without prejudice to remuneration that may be paid to the chairman of the board of directors and to senior managers, directors may not receive any permanent or other remuneration from the company other than attendance fees paid in cash and exceptional remuneration for missions or offices that do not fall within the normal course of their duties and are not permanent in nature. This article states in that respect that "Any clause to the contrary in the

[28] These new provisions are in addition to the termination benefit ceiling already included in the code.

[29] See the AMF's news release on this topic published on 5 June 2018, which is available at the following link: https://www.amf-france.org/Reglementation/Dossiers-thematiques/Societes-cotees-et-operations-financieres/Marches-d-actions/L-AMF-attire-l-attention-des--metteurs-autour-de-l-attribution-de-bons-de-souscription-d-action-BSA-aux-administrateurs

constitution shall be deemed unwritten and any decision to the contrary shall be deemed null and void". The AMF therefore recommends that companies that wish to award BSAs to their non-executive directors issue them at market conditions.

The AMF then stated that discussions were ongoing on the advisability of changing the legal framework. A review of the legal systems applicable to director compensation in different states, in Europe and in the United States, shows some disparities. Some foreign legal systems strictly prohibit the payment of equity or quasi-equity compensation to directors while others look more favourably on this practice. In light of the foreign experiences and the possible impacts of these differences on the competitiveness of the Paris financial market, discussions could therefore be held on the advisability of changing the existing legal framework, in particular for new companies or biotech companies. The AMF has referred the issue to the Legal High Committee for Financial Markets of Paris (*Haut Comité Juridique de la Place Financière de Paris*, or HCJP) to begin discussions on this subject.

2.1.2.3 The report of the AMF's "Shareholder rights and voting at general meetings" working group

In accordance with the Board's decision of 18 July 2017, the AMF established a working group[30] in October 2017 tasked with amending some of the proposals in the report of the Retail Investors Consultative Commission entitled "*For a transparent and effective vote at general meetings in the digital era*", published on 29 March 2017, and then with proposing the relevant recommendations[31].

Following extensive consultations with market participants, in particular associations representing issuers, shareholders and securities professionals, this working group produced a report in July 2018 entitled "*Shareholder rights and voting at general meetings*". This report, published on 5 October 2018[32], includes seven proposals that aim in particular to increase shareholders' confidence in how their votes are processed at general meetings.

At its meeting of 24 July 2018, the AMF Board decided to take all the proposals in this report on board and to incorporate them into AMF Recommendation DOC-2012-05 on the general meetings of shareholders. It also forwarded this report to the Minister of Justice and the Minister for the Economy and Finance and asked them to make the legislative and regulatory amendments recommended by the working group.
The seven proposals made by the working group are presented in the table below.

Proposal no. 1 – Transparency of voting by proxy and by mail
■ In the case of voting by electronic means referenced in Article R. 225-61 of the Commercial Code, promote transparency by supplementing Articles R. 225-77 and R. 225-79 of this code to require that all proxy and mail-in votes be time-stamped and that confirmation of receipt be sent electronically. ■ For all types of votes, establish in the Commercial Code the right of all shareholders of an issuer whose shares are admitted for trading on a regulated market to obtain, after the general meeting, upon request made within three months of the date of the vote, confirmation that their vote was properly recorded and counted by the issuer, or the reason it was not, unless this information is already available. ■ Supplement Article R. 225-79 subparagraph 1 of the Commercial Code as follows: "*The name of the agent shall be accompanied by an indication of the address of its head office if this is a legal entity or of his or her home if this is a natural person*". ■ Pending this amendment, remind listed and unlisted issuers that they cannot reject a proxy merely because the principal has not filled in the agent's domicile.

[30] This working group was composed of an equal number of members of the Retail Investors and Corporate Finance consultative commissions – as well as two people not on these commissions responsible for providing an additional, mostly technical, perspective – and co-chaired by two members of the Board, one of whom was a member of the Retail Investors consultative commission and the other of the Corporate Finance consultative commission.

[31] See the AMF's news release on this topic published on 24 October 2017, which is available at the following link: https://www.amf-france.org/en_US/Actualites/Communiques-de-presse/AMF/annee-2017?docId=workspace%3A%2F%2FSpacesStore%2F9c7dcf41-92c9-4d73-bb4f-f57f7d065013&langSwitch=true

[32] https://www.amf-france.org/Publications/Rapports-etudes-et-analyses/Rapports-des-groupes-de-travail?docId=workspace%3A%2F%2FSpacesStore%2F5ea7f76f-60ff-478a-ae93-4c735caae3c1

- Establish in the Commercial Code a requirement that:
  - all issuers whose shares are admitted for trading on a regulated market and all transfer agents retain for a period of three years from the date of the general meeting all ballots that were non-compliant or received after the deadline;
  - all custody account-keepers retain for a period of three years from the date of the general meeting all ballots that were non-compliant or received after the deadline that they did not transmit to the above-mentioned issuer or transfer agent.

Proposal no.2 – Counting of votes cast via a ballot that meets the legal and regulatory requirements

- Without prejudice to their right to recommend the use of the ballot of their choice, remind listed and unlisted issuers that they must count all votes cast via a document or ballot that meets the legal and regulatory requirements; the use of the standard ballot designed by ANSA (*Association Nationale des Sociétés par Actions*, the French association of joint-stock companies) and CFONB (*Comité français d'organisation et de normalisation bancaires*, the French committee for banking organisation and standardisation) is still recommended for listed issuers.

Proposal no. 3 – Publication of the number of voting rights rejected by issuers listed on a regulated market

- Supplement Article R. 225-106-1 of the Commercial Code which sets out the information that issuers whose shares are admitted for trading on a regulated market must publish when announcing the results of a vote, so that the total number of rejected voting rights that the issuer was aware of on the day of its general meeting is also publicly disclosed at that time.

Proposal no. 4 – Participation of bailiffs (*huissiers de justice*) in general meetings

- Recommend to shareholders and listed and unlisted issuers using the services of bailiffs at their general meetings that they require the latter to specify in the report they produce the extent and limits of their assignment.

Proposal no. 5 – Use of voting pads at general meetings of companies listed on a regulated market

- Recommend that issuers whose shares are admitted for trading on a regulated market who use electronic voting pads provide agents who request them with a reasonable number of voting pads at the general meeting.

Proposal no. 6 – Fees that dissuade shareholders from voting or registering their shares

- Recommend that issuers whose shareholders hold shares in bearer form clearly indicate to these shareholders, for example in the notice of general meeting, that an admittance card is sufficient to participate in the meeting in person and that they only need to request a certificate of ownership in exceptional cases where they have lost their admittance card or did not receive it in time.
- Pending transposition of SRD II, recommend that custody account-keepers:
  - publicly disclose, separately for each service, the fees, if any, that they charge shareholders of issuers whose shares are admitted for trading on a regulated market for the services that they provide in respect of voting or the formalities associated with voting;
  - where applicable, charge these shareholders fees that are non-discriminatory and proportionate in relation to the actual costs incurred to (i) provide services in respect of voting or the formalities associated with voting and (ii) register shares held in bearer form.
- Recommend that listed issuers and custody account-keepers not charge any fees related to registering shares held in bearer form awarded by the issuer to shareholders who already held registered shares and who may have made such a request at the time of a capital increase or any other securities transaction.

Proposal no. 7 – Methodological guide to processing votes at general meetings

- Recommend that a methodological guide to processing votes at general meetings be prepared as soon as possible by representatives of all relevant professionals, issuers and shareholders for use by the transfer agents, custody account-keepers and issuers that handle some or all of this processing. This publicly available guide should:
  - provide an overview of the legal and regulatory requirements, as well as the main professional rules or ethics principles, likely to be applied by the above-mentioned participants;
  - describe the procedures implemented to process votes at issuers' general meetings and the practices used to resolve the most common operational difficulties that arise before, during and after the meeting is held;
  - recommend that the mandate given to the transfer agent detail the nature of the services requested and specify their limits.

2.1.2.4 The report of the High Committee on Corporate Governance

The High Committee on Corporate Governance (*Haut Comité de Gouvernement d'Entreprise*, HCGE), established in 2013 at the initiative of the AFEP and the MEDEF in the form of an association, publishes an annual report that includes an overview of its activity and a detailed analysis of application of the AFEP-MEDEF code by the companies in the SBF 120 that follow it.

Amongst the different themes covered by the review of the HCGE, the main one were:

- Governance structure: the HGCE remains careful about the explanations provided by companies regarding the split of chairman and CEO functions and its consequences (for example, if the chairman continues to receive a disproportionate remuneration in comparison to his new responsibilities). While it does not have any preference on the combination or not of these functions, it underlines the importance of complying with the code, stating that "*In case functions are split, additional missions to those required by the law, if any, that are entrusted to the chairman of the board should be described*".

- Executives' remuneration: regarding variable compensation, the HCGE considers that information such as the nature of performance criteria, their respective weight or the assessment of the performance realised by the board, should be provided. It also believes that improvements are still waited on this issue and recommends that issuers better reflect the board's work on variable compensation of executive corporate officers. It has contacted 17 issuers to encourage them to disclose in a more detailed manner this information. Regarding exceptional remuneration, the HCGE considers that an additional remuneration granted to an executive corporate officer leaving the company to facilitate the transition should trigger complementary explanations. Indeed, such remuneration, being exceptional, is not covered by the code's provisions. It also underlines that the board should ensure that a succession plan exists and that severance awards remain an exceptional case.

- Board composition: regarding diversity, the HCGE noticed that the executive committee of a large number of companies have a small number of female representatives, if not any. It recommends that issuers take into account the new provision of the code 1.7 requiring boards "*to ensure that executive corporate officers implement non-discrimination and diversity policies, especially to guarantee a balanced representation of male and female executives*". The HCGE highlight that it will focus its attention on the compliance with this new provision over the next few years. Regarding the representation of employees in boards and remuneration committees, the HCGE asked 7 issuers to explain why such committee did not include any employee representative. Regarding the notion of independence and the criteria used to assess the existence of significant business relationships, the HCGE observed clear improvements but underlined that there is still room for improvement. It reminds issuers that they should clearly

mention in their annual reports which criteria they used. Regarding the nomination of a lead independent director, the HCGE reviewed explanations provided by issuers in situations where such director was not independent. It also noted the case of one lead director that was paid for consulting missions *via* a related-party transaction that has been rejected at the annual general assembly of 2018.

- Board's practices: regarding succession planning, the HCGE observed a slight evolution of practices compared to 2017. It contacted 13 issuers to point out that no information was provided on the existence and update by a specialized board committee of such a plan. 2018 has highlighted important shortcomings in this area and stressed the crucial importance for the board of directors to have an up-to-date and operational succession plan that must also take into account the organization and composition of executive bodies. More broadly, the HCGE believes that succession planning failures have very significant negative effects on companies in terms of strategy, competitiveness, and social performance and are extremely prejudicial to the company, its shareholders, employees and other stakeholders. Concerning executive sessions, the implementation of the recommendation to hold an annual meeting of board members outside the presence of executive corporate officers is improving. The HCGE reported to seven companies in its sample that it had provided guidance on the actual modalities of these meetings.
- Implementation of the "comply or explain" principle: the HCGE intervened with a few companies that declared that they fully complied with the recommendations of the code while in reality they failed to declare certain deviations. This situation occurred for 3 CAC 40 companies and 8 SBF 120 companies. The HCGE mentioned that it remains vigilant on this issue.

The HCGE also mentions its work on other governance topics:

- Review of "Say on pay" proposals and remunerations of executive corporate officers: in the light of situations or unsatisfactory explanations on these topics, the HCGE indicated that it will remain particularly vigilant about the evolution of fixed and variable remuneration, notably in the event of departure or arrival of executive corporate officers, the notion of exceptional remuneration and the respect of the conditions relating to severance pay and non-competition commitments, the terms of which must be strictly observed. The HCGE then recalls that the code states in article 25.1 that "*all potential or acquired remuneration elements of executive corporate officers are made public immediately after the board's decision.* ".It noted on several occasions that the online disclosure and updates of this information were late or even not respected and that access to this section of the website often remained difficult. It draws issuers' attention to the importance of having clear and easily accessible information on the compensation components of executive corporate officers. Finally, the HCGE considers that, on these subjects, an international cooperation is necessary between organisations responsible for corporate governance codes, insofar as some examples of remunerations paid by companies whose seat is abroad and not referring to the Code raised questions but proved to be beyond the competence of the High Committee. In this regard, he believes that a reflection on the application of the code must be initiated when a company is listed in Paris and / or develops a significant part of its activities in France.

- Shareholder dialogue: the HCGE noted that the code now specifies that a direct shareholder dialogue with members of the board may be assigned to the chairman of the board or, where appropriate, the Lead Director. In such cases, they must to report to the board on their mission. While the principle of direct communication is clearly stated, the HCGE believes that the wording of the code remains slightly behind the British code, which invites the chairman to discuss with key shareholders not only governance but also strategy and performance.

2.2 EUROPE AND INTERNATION

2.2.1 European Union

2.2.1.1 Adoption of the SRD II implementing acts

On 3 September 2018, the European Commission published the implementing acts specifying the requirements of Articles 3a to 3c of SRD II[33] concerning the identification of shareholders, the facilitation of the exercise of their rights and the transmission of information between companies and shareholders[34].

These implementing acts aim to harmonise Member States' implementation of the directive to make interactions between intermediaries, issuers and shareholders less complex and costly – mainly through the use of electronic communication formats – and thereby ensure a more efficient functioning of capital markets within the European Union. In particular, the implementing acts impose strict deadlines on financial intermediaries for the transmission of information to shareholders.

First, with respect to the identification of shareholders, Article 9 of the implementing acts specifies that any request for identification shall be transmitted between each intermediary the very day of its receipt by the relevant intermediary[35], and the response to this request for identification shall be transmitted to its addressee no later than during the business day immediately following the date of the issuer's request or the date of its receipt by the responding intermediary (whichever occurs later)[36].

Second, regarding the transmission to shareholders of information about actions planned by the company, including general meetings, this same article requires that the issuer transmit the information to the first intermediary[37] on the day the action is announced, and that this first intermediary transmit this information to the next intermediary on the same business day so that the last intermediary[38] can also transmit it to the shareholder on the same business day. Any information about a decision made by the shareholder is transmitted by each intermediary on the same business day that the relevant intermediary receives this information[39].

With respect to the exercise of shareholder rights, Article 5 of the implementing acts specifies that the last intermediary (the one closest to the shareholder) shall confirm, upon request, to the shareholder that the shareholder appears in the intermediary's accounts and is authorised to exercise the rights attached to shareholder status, including the right to participate and vote in a general meeting[40]. Article 9 also specifies that confirmation of receipt of electronic votes shall be transmitted to the shareholder immediately after voting[41], and that confirmation of recording and counting of votes at the general meeting shall be transmitted by the issuer no later than 15 days after such a request or the general meeting (whichever occurs later)[42].

Lastly, Article 2 of the implementing acts states that information shall be transmitted in accordance with the standardised formats set out in the annexes to the implementing acts, and provided in the language in which the issuer publishes its financial information pursuant to Directive 2004/109/EC (the Transparency Directive), and, unless not justified taking into account the company's shareholder base, "*in a language customary in the sphere of international finance*" (i.e., English). This article also states that the transmissions shall be made in electronic

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33 These implementing acts are available at the following link: https://eur-lex.europa.eu/legal-content/FR/TXT/HTML/?uri=CELEX:32018R12

34 Member States must bring into force, no later than two years after the adoption of the implementing acts, the legislative, regulatory and administrative provisions needed to ensure that national rules are consistent with Articles 3a to 3c of the Directive.

35 Where the intermediary receives the request for identification after 4:00 p.m., it shall transmit it no later than by 10:00 a.m. on the next business day.

36 The minimum types of information included in the request for identification, and the response to this request, are set out in Tables 1 and 2 of the annexes to the implementing acts.

37 This means the intermediary, where applicable the central securities depositary, in whose account the issuer's securities are registered.

38 This means the intermediary who maintains the securities account for the shareholder.

39 The minimum types of information transmitted to shareholders regarding general meetings are set out in Table 3 of the annexes to the implementing acts, and those regarding actions other than general meetings are detailed in Table 8.

40 The minimum types of information included in this confirmation of authorisation are set out in Table 4 of the annexes.

41 Table 6 of the annexes sets out the minimum types of information included in this confirmation of receipt of votes.

42 Table 7 of the annexes sets out the information included in the confirmation of recording and counting of votes at general meetings.

and machine-readable formats, which allow for interoperability and straight-through processing and which meet international standards such as ISO or a methodology compatible with ISO.

2.2.1.2 The proposed directive on "cross-border conversions, mergers and divisions"

On 25 April 2018, the European Commission published a legislative proposal to amend Directive 2017/1132 "*relating to certain aspects of company law*" (the "Company Law" Directive[43]) in order to regulate cross-border conversion, merger and division transactions. This proposed directive seeks to create a European legal framework that regulates cross-border conversions and divisions and to amend the existing European regime applicable to cross-border mergers. In particular, it imposes a number of disclosure obligations on the companies in question, sets out conditions for the approval of the planned transactions, and calls for measures to ensure shareholder, creditor and employee protection.

The proposed directive thus regulates employee participation on the board when the above-mentioned cross-border transactions are carried out. In that regard, it specifies that the company shall, as a matter of principle, comply with the rules of the destination Member State[44]. However, if that law does not require the same level of participation as that required by the departure Member State[45], the company will have to enter into negotiations with the employees to determine the extent of their participation on the board. These negotiations should result in an agreement regulating employee participation or, alternatively, in application of the employee participation rules set out in the annex to Directive 2001/86/EC on the statute for a European company[46]. The company will be required to disclose the outcome of the negotiations to its employees.

The proposed directive also stipulates that the competent authority[47] of the departure Member State shall evaluate whether the planned transaction prejudices, in particular, the rights of employees. The competent authority of the destination Member State shall ensure compliance with the rules applicable, where relevant, to the outcome of the negotiations on employee participation.

2.2.1.3 The UK corporate governance reform

As it had announced in the summary of responses to the Green Paper on corporate governance reform published on 29 August 2017[48], the Department for Business, Energy & Industrial Strategy (BEIS) introduced a bill on 11 June 2018 in the UK Parliament to strengthen executive pay transparency, consideration of stakeholder interests and "corporate governance arrangements". This bill therefore seeks to require:

- that quoted companies with more than 250 employees in the United Kingdom: (i) report annually the ratio of CEO pay to the average pay of their UK workforce, along with an explanation of changes to that ratio, and (ii) provide a clear explanation of the impact that share price movements are likely to have on share-based executive pay;
- that large businesses[49], both quoted and unquoted, explain how their senior managers take stakeholder interests into account in pursuing the success of the company[50];

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43 Directive 2017/1132 codifies, in the interests of clarity and rationality, the directives on company law 82/891/EEC, 89/666/EEC, 2005/56/EC, 2009/101/EC, 2011/35/EU and 2012/30/EU, which have been substantially amended several times.

44 For conversions, this means the State where the company has transferred its registered office. For divisions, it means the States where the companies resulting from the division will be registered. For mergers, it means the State where the registered office of the company resulting from the merger is established.

45 In other words, for conversions, the State where the company initially had its registered office; for divisions, the State where the company being divided was registered; and for mergers, the State whose law applied to the companies that merged.

46 Directive 2001/86/EC supplements "*the Statute for a European company with regard to the involvement of employees*". The annex to this directive, in Part 3 (a) and (b), determines the national rules for employee participation in the administrative or supervisory body. For conversions, the applicable rules are those of the departure State. For divisions, they are those of the State of the company being divided. For mergers, they are those of the State of the merging companies that provides the most favourable regime for employees.

47 With the European text silent on the subject, it is up to Member States to designate their competent authority, which may be administrative or judicial, for example.

48 *Department for Business, Energy & Industrial Strategy, Corporate governance reform - the Government response to the green paper consultation*, August 2017.

49 These are companies that meet two of the following three criteria: turnover of more than £36 million, a balance sheet total of more than £18 million, and more than 250 employees (in the United Kingdom and abroad).

- that unquoted companies with more than 250 employees in the United Kingdom publish "*their corporate governance arrangements*" on their website and indicate whether they follow a specific corporate governance code.

Subject to approval by the UK Parliament, these new requirements will apply as of 1 January 2019.

Furthermore, as requested by BEIS in the above-referenced summary, the Financial Reporting Council (FRC) launched a public consultation from December 2017 to February 2018 on a revision to the UK Corporate Governance Code.

Based on the 275 responses received, in July 2018 the FRC published the updated version of this code[51], applicable as of 1 January 2019, which is designed to "*promote transparency and integrity in business and attract investment in the UK for the long-term, benefiting the economy and wider society*". The FRC also plans to revise the UK Stewardship Code "*later this year*"; this document sets out the principles that institutional investors are invited follow.

First, regarding the "*company purpose*", the UK corporate governance code now establishes the principle that the board must promote the long-term success of the company, generating value for shareholders and "*contributing to wider society*, and must ensure that workforce policies and practices are consistent with the company's values and support its long-term success. More specifically, it recommends that:

- quoted companies adopt one or more of the following mechanisms: appoint a non-executive director responsible for reflecting the workforce's specific concerns, create a workforce advisory panel, or appoint a director from the workforce;
- when 20% or more of shareholder votes have been cast against a board recommendation for a resolution[52], the board should explain in a report published no later than six months after the shareholder meeting, and then in the annual report, what actions it intends to take to address shareholders' concerns.

Second, regarding the "*composition, succession and evaluation of the board*", the code now recommends that:

- the chair should not remain in post for more than nine years; to facilitate succession planning, this period can be extended for a limited time;
- the annual report should describe the work of the nomination committee, including on the gender balance of those in the executive corporate officer.

Lastly, regarding "*remuneration*", the UK corporate governance code recommends that:

- the chair of the remuneration committee should have served on the remuneration committee for at least a year;
- the remuneration committee should determine the remuneration policy for the chair, directors and executive corporate officer, should review the policy applicable to the workforce and should take that policy into account when setting the policy for the actual remuneration of executive directors;
- the minimum period for which senior managers must hold shares awarded to them should be increased from three to five years.

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[50] Article 172 of the UK Companies Act 2006 requires that senior managers take the interests of stakeholders (employees, suppliers, customers, etc.) into consideration in promoting the success of the company.

[51] The updated version of the code is available at the following link: https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.PDF

[52] The Investment Association maintains a public register of quoted companies which have received votes of 20% or more against any resolution submitted for approval at general meetings.

2.2.1.4 The revision of the European code of conduct for proxy advisors

An ad hoc committee representing the main European proxy advisor firms[53] developed a code of conduct for proxy advisors, which was published in March 2014. This code, named "*Best Practice Principles for Providers of Shareholder Voting Research & Analysis*", identifies best practices that apply to its signatories.

At the suggestion of ESMA, which evaluated the application of the code of conduct in a report published on 18 December 2015[54], the signatories to the code announced on 21 April 2017 that the code would be reviewed under the direction of Chris Hodge, the independent chairman of the committee. The aims of the review are to identify where there is scope to improve the transparency of proxy advisors and to take into account the relevant new requirements under SRD II. To that end, a public consultation was launched from 11 October to 31 December 2017, and an advisory panel, made up mainly of issuer, asset manager and investor representatives, was established to assist in any way possible.

On 21 June 2018, the signatories announced that Anna Tilba, Associate Professor in Governance at Northumbria University School of Law, would conduct a detailed analysis of the 76 responses received, and that a new chairman would soon be appointed following Chris Hodge's resignation in June 2018.

2.2.2 United States

The Securities and Exchange Commission (SEC) announced on 30 July 2018 that it would launch discussions on the submission by shareholders of proposals at general meetings as well as on proxy advisors[55].

Regarding the submission of proposals, the topics the SEC will consider concern, in particular:

- the appropriateness of the thresholds for ownership of shares, and for the length of time they are held, allowing shareholders to submit a proposal at general meetings[56], and of the rules that allow companies to omit from the meeting agenda resubmitted proposals that received less than 3%, 6%, or 10% of the vote at previous general meetings;
- whether meaningful ownership in the company can be demonstrated by factors other than the share ownership threshold and the length of time shares are held;
- the participation of long-term retail investors in the proposal submission process.

Regarding proxy advisors, the SEC will mainly consider:

- issuers' ability to raise concerns if they disagree with a proxy advisory firm's recommendations, including, in particular, if the recommendation is based on erroneous, incomplete, or outdated information;
- the degree of transparency about a proxy advisory firm's voting policies enabling companies, investors, and other market participants to understand how the advisory firm reached its recommendations;
- the existence of conflicts of interest and, where applicable, how those conflicts are disclosed and mitigated by the proxy advisory firm.

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[53] Glass Lewis, ISS, Ivox, Manifest, PIRC and Proxinvest.

[54] ESMA report, *Follow-up on the development of the Best Practice Principles for Providers of Shareholder Voting Research and Analysis, 18 December 2015, p.4: "(…) the governance to date regarding the on-going functioning of the Principles after their publication is viewed less positively and constitutes the main area in which ESMA encourages the industry group to take further steps"*.

[55] The SEC's public statement is available at the following link: https://www.sec.gov/news/public-statement/statement-announcing-sec-staff-roundtable-proxy-process

[56] The current system, resulting from Article 14a-8 of the Securities Exchange Act of 1934, allows shareholders who hold at least $2,000 in securities or 1% of the issuer's share capital for at least one year to submit proposals at general meetings. The Financial Choice Act 2.0 seeks, in particular, to reform this system by eliminating the $2,000 threshold and maintaining only the threshold of 1% of the issuer's share capital, with the holding period increased to a minimum of three years. This bill, which was passed by the House of Representatives on 8 June 2017, nonetheless faces strong opposition in the Senate.

PART III

FINDINGS REGARDING CORPORATE OFFICERS' APPOINTMENTS, DEPARTURES AND REAPPOINTMENTS

Changes in corporate officers were analysed from two perspectives. The first aim of the review was to understand how the board anticipates expirations of terms of office, particularly from a decision-making process standpoint, and then how governance can evolve when these changes occur. The review then focused on the procedures for determining compensation when these changes in executive corporate officer occur (i.e., appointments, reappointments and departures).

3.1 THE GOVERNANCE STRUCTURE AT THE TIME OF CHANGES IN MANAGEMENT

3.1.1 Presentation of information about the expiration of corporate officers' terms of office

Overall, the AMF reiterates the requirement of clarity in presenting the report on corporate governance[57]. As a reminder, for public limited companies (*sociétés anonymes*) with a board of directors, the corporate governance report is appended to the management report required under Article L. 225-100 of the Commercial Code. The corresponding information may also be presented in a specific section of the management report[58]. For public limited companies with a management board and a supervisory board, as well as for limited partnerships with share capital, this report is appended to the management report required under Article L. 225-100 of the Commercial Code[59]. The AMF recommends that when the content of the chairman's report (now the report of the board of directors or of the supervisory board) is presented in different chapters in the registration document, this should be specified in the body of the report with references to the appropriate sections. For companies publishing a registration document in the form of an annual report, the cross-reference table must be completed to this effect.[60]

The sample selected for the section on appointments, departures and reappointments of corporate officers' comprises a total of 67 officers, which can be broken down into three categories:

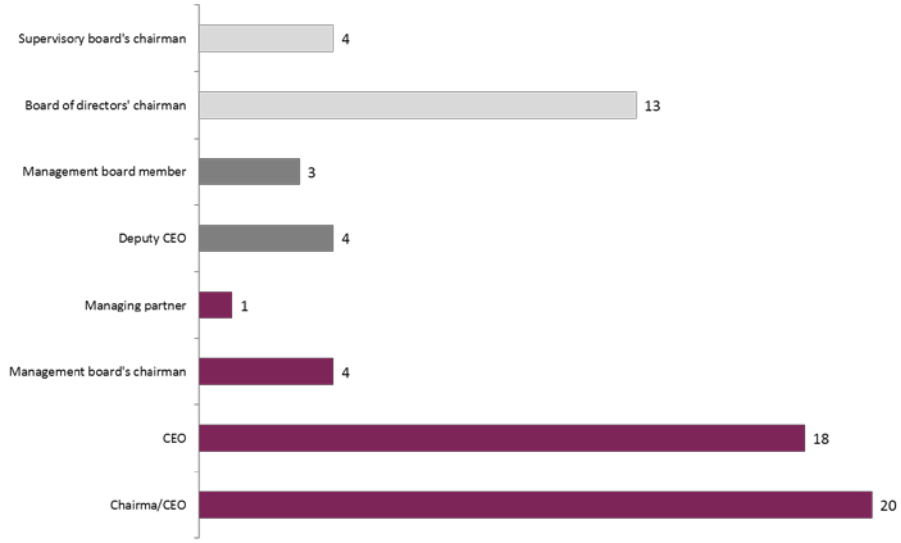
- 20 chairman and chief executive officers, 18 chief executive officers, 4 chairmen of the management board and 1 manager (hereinafter the "key executive corporate officers");
- 4 deputy chief executive officers and 3 members of the management board (hereinafter "other executive corporate officers");
- 13 chairmen of the board of directors and 4 chairmen of the supervisory board (hereinafter "non-executive officers").

[57] § 1.1.1 on the preparation and presentation of the information, Corporate governance and executive compensation in companies referring to the AFEP-MEDEF code – Consolidated presentation of the recommendations contained in the AMF annual reports (DOC-2012–02), November 2017.

[58] Article L.225-37 of the Commercial Code, amended by Order no. 2017-1162 of 12 July 2017, Art. 1.

[59] Article L.225-68 of the Commercial Code, amended by Order no. 2017-1162 of 12 July 2017, Art. 1.

[60] *Idem*.



Source: AMF

Depending on the relevant category of corporate officer, the expiration of the term of office is addressed by the companies:

- In the board's report on corporate governance as well as in other sections of the registration document with regard to key corporate officers; this topic is not, in most cases, addressed as such but rather discussed in the context of the succession plan for board members and corporate officers;
- Similarly, the expiration of the terms of office of other executive corporate officers is addressed in the context of the board members and corporate officers succession plan but without providing specific information on this category of corporate officers, as opposed to what the AMF observed for the previous category, where companies provided greater details;
- For non-executive corporate officers, this topic is generally addressed in the sections of the corporate governance report dealing with changes in the board.

The AMF found that matters relating to the company's human resources policy in general may be referred to the board and/or its committees to ensure the approach is consistent with the approach adopted for the succession of executive corporate officers. Thus, in one of the cases identified, the company stated, for example, that its Appointments and Governance Committee had reviewed "*the key positions in the organisation from the perspective of ensuring the continuity of business activities (in the short-term)*". Another company also detailed one of its programmes, implemented in 2017, for the top 50 high-potential managers in line for key positions within the company. Lastly, other companies disclosed, in their registration document, their efforts to organise this "*wider succession*" through a periodic review of the assessment of "*key persons*", "*internal talent*" or "*current or potential members of the Executive Committee*". This review can then be entrusted to one of the board's committees, usually the nominations committee (or its equivalent) or, where one exists, the human resources committee, which is then responsible for working on this issue in coordination with the nominations committee.

Regarding the succession of board members and corporate officers, recommendation 16.2.2 of the AFEP-MEDEF code states that "*The nominations committee (or an ad hoc committee) should design a plan for replacement of company corporate officers*". It also notes that "*This is one of the committee's most important tasks, even though it can, if necessary, be entrusted by the Board to an ad hoc committee*". Nevertheless, this recommendation does not set out specific provisions regarding the format or the nature of the information that companies can provide on this subject. The version of the application guide for the AFEP-MEDEF code published by the HCGE in November 2017 specifies, however, that "*The annual report should not only indicate whether these plans* [the succession plans] *fall within the scope of the nominations committee, but also whether they have in fact been reviewed by the board or the committee during the year*".

Thus, as the AMF noted in its 2017 report[61], "*Public reference to such a succession plan does not necessarily reflect interference in the management of the company or in some of its confidential decisions, but aims to inform investors about an aspect that illustrates the company's ability to plan for the future and ensure its sustainability, independent of the intuitu personae nature of the corporate officers*". It is therefore important for companies to reference the existence of a plan and to explain its main features to give shareholders as much visibility as possible on future, mainly managerial, developments within the company, which will potentially have an impact on its strategy and management.

All the companies under review, except one, included the term "*succession plan*" in their registration document. The AMF notes, however, that, in actual fact, this term referred to the succession plan for their key executive corporate officer.

It is, however, often difficult to aggregate all of the information on this topic and on the coordination of the work with that of the board of directors:

- Some companies in fact reference the succession plan for their key executive corporate officer in both the tasks of the nominations committee and the work of the board of directors, while others reference the succession plan only in the tasks and work of the nominations committee.
- Two companies chose to present it both via selected excerpts from their charter or internal rules and in the tasks of the committee and the work of the board of directors. One of them also references it in the duties of the lead director.
- Some companies chose to also discuss this topic in the first part of the registration document dedicated to presenting the company and its activities during 2017. Lastly, one company devoted a question to this issue in the interview with its senior manager found at the beginning of its registration document.

3.1.2 Findings regarding the functionning of the board: anticipating the expiration of terms of office

First, it is instructive to look at how the board anticipates the expiration of a corporate officer's term of office before considering the possible changes in corporate governance (see Section 3.3).

3.1.2.1 The work of the board

3.1.2.1.1 The respective roles of the management and the board's committees

The AMF found that 2 of the 43 companies in the sample reported that they were not in compliance with the recommendation in the AFEP-MEDEF code insofar as the board had not developed a succession plan for their board members and corporate officers at the time of publication of their registration document:

- One company thus stated that, by virtue of a shareholders' agreement entered into between the company's largest shareholders, the chairman and chief executive officer is selected on the joint proposal of these stakeholders;

- Another company stated that "*This item is on the Governance Committee's agenda for 2018*", as the evaluation of the board conducted in 2017 recommended that a formal succession plan be put in place.

The AMF observed, in this respect, that for six companies (14% of the sample) the succession plan was identified as an area of improvement as a result of the annual evaluation conducted by the board, illustrating the importance of this topic for the governing bodies. The desired improvements concerned either the structure or the implementation of the plan. As an example of best practices, the AMF points to one company, which explained in detail and in table form the desired improvements in this area following a formal evaluation in 2016, as well as the steps the board has taken since then to address this issue.

[61] 2017 report on corporate governance and executive compensation in listed companies, November 2017.

Evaluating the board's work on succession plans, which may have been discussed or targeted for improvement, is therefore a critical step for the board of directors or supervisory board to take to identify potential problem areas for this strategically important topic.

Furthermore, the AMF generally recommends that companies conduct, as far as possible, an evaluation of the board's functionning and that they provide details on how that evaluation was conducted, in particular whether an outside consultant was involved[62]. The AMF urges companies to disclose in sufficient detail the procedure put in place to evaluate the operation of the board and the results of this evaluation, as well as any follow-up actions and, more specifically, any areas of improvement that the company might consider[63]. The AMF notes that many of the questions that investors ask about governance relate to the operation of the board, which should encourage companies to provide more details on this subject.

The AFEP-MEDEF code also recommends that the board's work be evaluated in accordance with predefined procedures: "*Once a year, the Board should debate its operation*", *"There should be a formal evaluation at least once every three years*" and, lastly, "*The shareholders should be informed each year in the annual report of the evaluations carried out and, if applicable, of any steps taken as a result*".

Recommendation 16.2.2 of the AFEP-MEDEF code assigns responsibility for drawing up a succession plan for board members and corporate officers to the nominations committee, specifying that "*This is one of the committee's most important tasks, even though it can, if necessary, be entrusted by the Board to an ad hoc committee. The Chairman may take part or be involved in the committee's work during the conduct of this task".*

All 41 companies, out of the 43 in the sample, that had a succession plan in place at the time of the registration document's publication involve the nominations committee or its equivalent (compensation and nominations committee, governance committee, etc.) in defining and/or monitoring this plan.

Of the companies that have drawn up a succession plan, 95% give the nominations committee or its equivalent a dominant role and precisely describe the role of the committee, whether it has to "*design*" a succession plan, true for 13 companies, or develop "*proposals*", "*recommendations*" or "*solutions*" for the board, terms repeated verbatim 10 times in the sample. Two of them nevertheless mention "*discussions*" and a "*review*" of this plan without providing further details on the coordination of this work by this committee with that of the board.

Two companies instead charge the nominations committee with supervising the existence and content of the succession plan, for which the chief executive officer is responsible:

- At one of the companies, the Nominating Committee must periodically "*examine proposals made by the Chief Executive Officer*" and ensure that the chief executive officer is able to propose "*potential replacements"* to the board of directors *"at any time if a position suddenly becomes vacant*".

- The other company specifies that "*„In the presence of the Lead Independent Director and following discussions between the Chairman of the Committee and the Lead Independent Director with the Chairman and Chief Executive Officer, it* [the Nomination and Remuneration Committee] *confirmed the existence of succession plans for the Chairman and Chief Executive Officer in the event of an unanticipated vacancy and on the long-term*".

Seven companies, or 17% of the sample, explicitly stated that the committee works interactively with other stakeholders within the board:

- Four companies explicitly referenced the involvement of the chairman of the board of directors or supervisory board in preparing the succession plan:

62 § 1.1.9 on the evaluation of the board's work and that of its committees, Corporate governance and executive compensation in companies referring to the AFEP-MEDEF code – Consolidated presentation of the recommendations contained in the AMF annual reports (DOC-2012–02), November 2017.

63 *Idem*.

- Three companies explicitly noted that the committee seeks the chairman's views in the course of its work;

- One company stated that the chairman conducts "*interviews relating to the Management Board succession plan, particularly in case of an unforeseeable vacancy*".

- At one company, the committee also "*prepares the succession of the Executive Management*" with the chief executive officer, while at another company, the committee is responsible for "*examining proposals made by the Chief Executive Officer*" and "*ensuring that the Chief Executive Officer is able to propose potential replacements at any time if a position suddenly becomes vacant*".

- One company decided to establish an *ad hoc* committee "*in charge of closely monitoring the management transition phase*" the company is going through. This committee is made up of the vice-chairman of the board, the chairman of the strategy committee and the chairman of the ethics and governance committee. In this case, it is worth noting how this ensures consistency between the different committees of the board.

3.1.2.1.2 Content and frequency of the review of the succession plan

With respect to the succession plan itself, the AMF found that the degree of detail provided by companies varied significantly.

Succession planning can be considered over several time horizons to ensure an effective decision-making process and transition should a corporate officer's term come to an end, whether or not it was expected. Thus, the *Institut Français des Administrateurs* (French institute of directors, the IFA), in a report published in 2017[64], recommended that succession planning consider "*several time horizons*" and several types of related plans: a short-term plan for unplanned and accelerated successions; a medium-term plan for expected successions, in particular when a term of office is set to expire; and a long-term plan focused on the existing pool of potential candidates, which could be useful when developing a strategic plan, for example. While not mandatory, these recommendations can help companies define and structure a succession plan.

18 companies specified the time horizon for which their succession plan was designed:

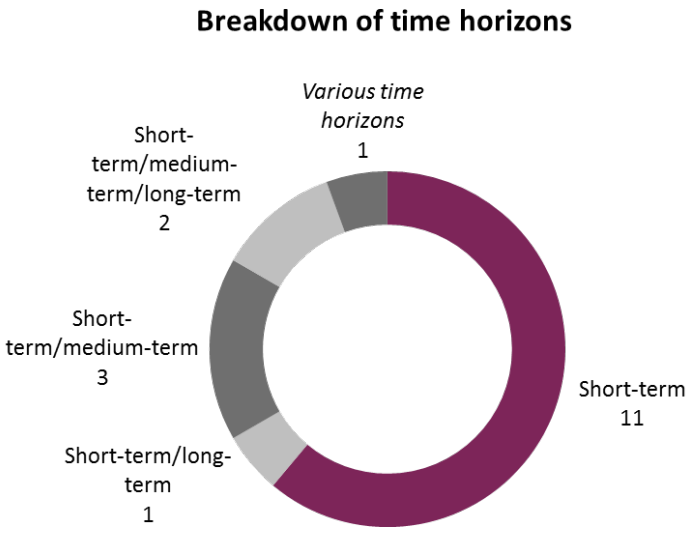
- 11 companies confirmed the existence of a short-term succession plan;

- Three companies stated that they had prepared short- and medium-term succession plans while 2 companies focused on short- and long-term horizons;

- Two companies explicitly noted that they had prepared a succession plan for all three time horizons:
  - One company detailed, for example, the various assumptions used in the committee's work: "*unplanned vacancy due to prohibition, resignation or death*, "*forced vacancy due to poor performance, mismanagement or misconduct*", and "*planned vacancy due to retirement or expiration of term of office*";

- 1 company stated in a general way that "*various time horizons*" had been considered.

64 Succession du dirigeant : quel rôle pour le conseil d'administration et le comité des nominations ? (What role should the board of directors and nominations committee play in succession planning?), IFA, February 2017.



Source: AMF

The AMF found that 16 companies specified the frequency with which they review their succession plans. Nearly two-thirds of these companies (63%) review their succession plan on a case-by-case basis. Six companies reported periodic reviews, with two of these companies specifying that they conduct their review on an annual basis.

As an example of best practices, one company gives a fairly high level of detail on what is involved in this review, indicating in particular that it consists of "*analysing the performance appraisals of key executives prepared by management with the assistance of an independent firm of consultants. The [Compensation and Appointments] Committee has held very instructive discussions with these consultants that have enabled it to appreciate the quality of their work*".

Two companies provided a fairly high level of detail about their succession plan in a dedicated section of their registration document. They stated that they had developed a plan to anticipate a not too distant departure, as well as an unplanned or sudden departure:

- **Michelin** provided information not only on those involved in defining the succession plan, the time horizons considered and the frequency with which this issue is reviewed by the supervisory board, but also on the content of the discussions within the Compensation and Appointments Committee: "*measures to give potential candidates considerable exposure, in order to better assess their abilities, particularly in areas outside their current positions and in relation to the business's global scope*", "*systems to track their progress in acquiring the skills needed for their potential future position*" as well as "*assessments of their progress in tackling the types of real life situations that they would be faced with in their potential future position*".

- Similarly, **Sanofi** set out in detail the five key stages of the process for developing and monitoring the succession plan as implemented by the Appointments and Governance Committee: coordination with the board to ensure its work is consistent with the company's strategy; discussions with the Compensation Committee; collaboration with the chief executive officer, in particular to ensure support for potential candidates; meetings with members of the management team; and, lastly, consultation with the chief executive officer to plan for his own succession.

3.1.2.1.3 Use of a consulting firm and involvement of the current corporate officer in the board's reflection process

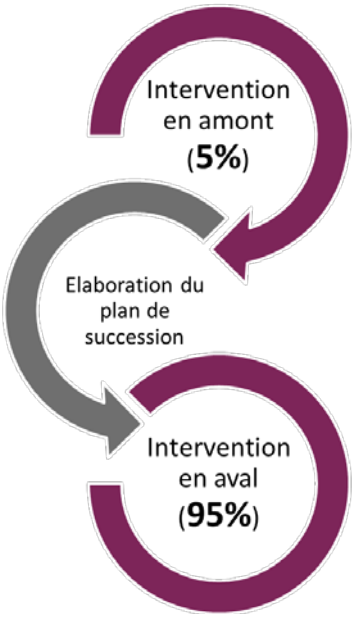
Use of a consulting firm

The AMF found that the use of a consultant meets a specific need and allows the board of directors to expand the scope of its searches, in particular to add an international dimension, or to help it find a candidate with a specific background (experience, availability, nationality, etc.). Conversely, some companies will not necessarily use a third-party agency insofar as the corporate officer's succession process is fully insourced. This is the case, for example, for family-owned or controlled companies where the goal is to maintain management continuity through the founding family.

The AMF notes that 21 companies in the sample that have drawn up a succession plan stated explicitly that they may use or have used the services of a consultant in their succession plan reflection and development process. This percentage rises to 86% among the seven companies that already seek contact with a stakeholder within the board.

Four companies stated that the consultant or external agency is brought in, where applicable, before the succession plan is developed while the 17 remaining companies do not provide detailed information on this topic. Information about how the work of the competent committee is coordinated with that of the third-party agency is therefore generally limited. It is, however, helpful to understand how assistance from a third-party agency is incorporated into the board's work and how it informs the overall approach to succession planning.

Stage at which the consultant or external agency is brought in



Source: AMF

Involvement of the corporate officer in the recruitment process

Some companies decided to involve their corporate officer in this process on the grounds that, for example, this ensures that "*the plan is consistent with the Company's own practices and market practices*" or that "*high-potential internal prospects receive appropriate support and training*".

Within the sample, 17 companies said that their corporate officer was involved in defining and/or implementing the succession plan in different ways. Thus:

- Six companies stated that the executive corporate officer was "*included*" in the work of the committee responsible for developing the succession plan;
- Three companies consulted with the executive corporate officer, in particular to seek his opinion on the succession choices made;
- Eight companies involved the corporate officer then in office by including the succession plan in the list of performance criteria for annual variable compensation:
    - These companies all defined the succession plan as a qualitative performance criterion within a category that is more broadly dedicated to "*the quality of management and entrepreneurship*" or "*change in governance*";
    - It is therefore difficult to accurately assess the weighting of this criterion. Three companies provided details on whether this performance criterion had been met, either stating that, "*having observed that [he] had examined this issue in detail with continuous input from the members of the Compensation and Appointments Committee, the Committee rated his performance in relation to the objective as good*", or citing "*changes in the Executive Committee*" or the "*implementation of organizational changes in the management teams* " which led to the definition of succession plans.
- Two companies included close collaboration by the corporate officer with the nominations committee and consideration of the succession plan in the performance criteria for annual variable compensation.

An executive corporate officer's involvement in planning for his or her own succession is a topic that can legitimately be discussed within the board of directors or supervisory board. As this person leads the company, his or her contribution to the board's work on this issue can be a great asset when evaluating internal candidates and whether their profile is aligned with the company's strategy. However, the board of directors or the supervisory board, as the body responsible for monitoring leadership's management and/or, in the board of directors' case, determining the company's strategic directions, needs to be able to ensure that its decisions are made independently and objectively. Each company therefore decides whether to involve the executive corporate officer in planning for his or her own succession based on its own context and specific challenges, provided this decision is clear to investors. In line with one of its existing recommendations[65], the AMF therefore recommends that companies clearly explain the roles and responsibilities of the current executive corporate officer and how his or her work is coordinated with that of the nominations committee and/or the board of directors or supervisory board in terms of succession planning.

3.1.2.1.4 Conclusion

To ensure that the market is fully informed, the AMF believes it is important to provide information on the structure of the succession plan for key executive corporate officers. The AMF thus found that, without revealing in detail the entirety of their plans, companies can provide useful clarifications on the decision-making process associated with the development of the plans, such as the role of the competent committee, the time horizon for which the plan has been developed, the frequency with which it is reviewed, and the procedures for potentially involving the executive in question.

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65 § 1.1.11 on restrictions on the powers of the chief executive officer, Corporate governance and executive compensation in companies referring to the AFEP-MEDEF code – Consolidated presentation of the recommendations contained in the AMF annual reports (DOC-2012-02), November 2017.

Recommendation

AMF recommends that companies explain the decision-making process associated with the development of the plans, such as the role of the competent committee, the time horizon for which the plan has been developed, the frequency with which it is reviewed, and the procedures for potentially involving the executive in question.

3.1.3 Changes in the functioning of the board resulting from the expiration of terms of office

The theme selected this year proved particularly useful for a broader analysis of companies' practices at the board of directors or supervisory board level and for an assessment of the extent to which the decisions made regarding the reappointment or change of executive corporate officer are reflected in the governance choices, for example:

- changes in board membership, in terms of independence and/or profiles recruited;
- management model: whether or not the roles of chief executive officer and chairman of the board of directors are separated;
- the appointment of a lead director with the aim of preventing potential conflicts of interest and any lack of checks and balances on the board;
- the setting of new priorities after an evaluation of the board's work.

Some of the findings and measures set out below are therefore not directly related to the theme selected this year for the report but are nonetheless instructive when viewed from the perspective of the work of the board of directors or supervisory board on succession plans.

3.1.3.1 Change in management structure

The expiration of a executive corporate officer's term of office at a company offers an opportunity to examine, if not change, its management structure, potentially affecting the balances established by the other governance structures, namely the board of directors and supervisory board.

The AMF was therefore interested in companies that chose to change their management structure when the executive corporate officer was replaced or reappointed.

Of the 43 companies in the sample, 37 have a board of directors structure:

- 17 companies have separated the roles of chairman of the board and chief executive officer;
- 20 companies have not separated these roles.

Since their 2017 general meetings, 11 companies have changed the organisation and/or composition of their executive committee. Three specific instances of changes in executive committee or within the management board are worth highlighting:

- for **JC DECAUX**, this is a recurring change since the chairman of the executive board is appointed for one year; Jean-François Decaux and Jean-Charles Decaux alternate as chairman;

- for some companies, the change occurred in the context of a planned transition that is clearly explained in the registration document, as was the case for **CAPGEMINI**, which decided to appoint two new deputy CEOs, and **RENAULT**, which appointed a chief operating officer in February 2018;

- for other companies, the change in the company's governance followed an unexpected or sudden departure:

  - accordingly, at **TELEPERFORMANCE**, the resignation of the chief executive officer in October 2017 led the board of directors to appoint its chairman and founder to the position of chairman and chief executive officer. In 2011, the company had made a commitment to separate the positions of

chairman and chief executive officer, which at the time were held by the founder; as a result, a chief executive officer was appointed in 2013 and the founder stayed on as chairman of the board of directors. In its October 2017 press release announcing that the positions would be recombined, the board of directors stated that it had "*unanimously decided to adjust the Group's governance structure on the top of the strengthening of its organization, in a bid to speed up decision-making and enable action to be taken more quickly*". The company stated that the board of directors would review this decision every year.

It would also appear that several companies took the expiration of their chairman and chief executive officer's term of office as an opportunity to consider whether or not these roles should be separated. Of the 17 companies where the chairman and chief executive officer was up for reappointment, five decided to change their governance and separate the roles of chairman and chief executive officer (unlike the example cited above). They cited a variety of reasons:

- "*to accelerate the company's transformation*" and improve its "*agility*";
- to comply with "*best governance practices*";
- "*to differentiate between the role of the Chairman of the Board and that of Chief Executive Officer, who leads the company, proposes the strategy, implements it and reports to the Board of Directors*".

Lastly, three companies considered whether to continue to combine the roles when it was time to renew their chairman and chief executive officer's term and disclosed the outcome of their review:

- one company specified that the chairman of the Nomination and Remuneration Committee discussed this matter with each director and that "*almost all of the Directors favoured combining the roles*";

- one company, after explaining why it decided to continue to combine these roles, noted the counter-balances within the board of directors which are intended to provide "*all the guarantees necessary to the exercise of this form of governance in accordance with best governance practices*";

- similarly, another company noted that the decision to maintain this structure resulted from regular conversations within the board of directors and that this system "*remains the one best suited to the Company's circumstances*".

More generally, the AMF found, via the explanations that may have been provided in the registration document, that the decision to separate usually arose from a concern to adapt the organisational structure to specific circumstances or senior managers rather than a long-term strategy. Where applicable, it is therefore essential that clear and detailed disclosures be made in the registration document so that shareholders can understand the board's motivations for choosing one system of governance over another[66]. Similarly, when a company chooses to continue to combine the roles of chairman and chief executive officer or to switch to this system, planning a regular review of the pros and cons of the organisational model selected can help explain the rationale for this decision, in particular to investors.

3.1.3.2 Parallel dynamics within the board of directors and supervisory board

The AMF then decided to examine changes made at the board of directors or supervisory board level in the same year as the expiration of the executive corporate officer's term. It focused specifically on changes in the balance of power, an issue that is central to the relationships between a company's various governance bodies.

3.1.3.2.1 Formats for presenting information about the board

Generally speaking, it is particularly useful to be able to compare changes in the board of directors or supervisory board with changes in executive committee or the management board. As in previous years, the AMF therefore

[66] § 1.2.4 on changes to and the consistency of listed companies' governance models, Corporate governance and executive compensation in companies referring to the AFEP-MEDEF code – Consolidated presentation of the recommendations contained in the AMF annual reports (DOC-2012-02), November 2017.

recommends the inclusion of a table summarising the changes that have occurred in the board's membership[67], such as departures, nominations, and reappointments, and showing any changes that reflect greater diversity (in terms of percentage of women directors, nationality and international experience).

The AMF found that presenting the membership of the board of directors or supervisory board in table form provides an overview of the changes that occurred or are expected when the executive corporate officer's term is renewed or a new person is appointed.

All companies thus followed the AMF's recommendation to create a summary table listing the identity of the directors as well as the date their term ends, the date they were first appointed to the board of directors and, where applicable, the date their term was last renewed. This information was also included in the director biographies. Companies provided details on the composition of the board to help identify each director's experience, skills and availability.

3.1.3.2.2 Directorships held within and outside the group

It is worth noting that, within the sample, the average number of directorships held by executive corporate officers[68] stood at 1.63 directorships at listed companies. Recommendation 18.2 of the AFEP-MEDEF Code is therefore respected by all sampled companies. This figure is up to 5.75 when directorships at unlisted companies are included, whether or not these companies belonged to the group of the company under review.
The AMF notes, however, that about 10% of companies in the sample do not provide clear information on directorships held, either because they do not specify which companies belong to the group or because they state only that the executive is a corporate officer of several group subsidiaries without providing the exact number. It would therefore be preferable for companies to state this information clearly to allow for an assessment of the extent to which the company follows recommendation 18.1[69] of the AFEP-MEDEF code on the number of directorships held by directors and corporate officers.

The AMF also looked at the percentage of companies that have specific rules on holding multiple directorships for the chairman of the board of directors or supervisory board. It is important to ensure the chairman's availability, given that he or she has numerous responsibilities that are more time-consuming than those of a director. In this regard, one company in the sample has included recommendation 18.3 of the AFEP-MEDEF code in its internal rules, whereby "*With regard to non-executive officers, the Board may draw up specific recommendations on this issue, taking into account the individual's particular situation and the specific tasks conferred on him or her*", although it has not yet made use of this option.

3.1.3.2.3 Checks and balances within the board

The AMF found that the issue of checks and balances within the board is no longer a topic that companies discuss in their registration document only when the roles of chairman and chief executive officer are combined. Some companies include a paragraph explaining the mechanisms used to guarantee the independence and objectivity of the board in cases where a two-tier board structure has been selected or, in the case of a one-tier board structure, when the roles of chairman and chief executive officer functions have been separated. Twenty-one companies in the sample thus provided explanations about the mechanisms in place to ensure checks and balances while only 10 of these companies are headed by a chairman and chief executive officer. Notably, three companies have chosen to appoint a lead director to their board and two of them also stressed that a high rate of independence had been maintained within the board.

The AMF found that some companies go beyond its recommendation that "*companies present the specific measures taken, where applicable, to ensure that there are checks and balances within the board when the roles of chairman and chief executive officer are held by the same person*".

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[67] § 1.1.4 on membership of the board, Corporate governance and executive compensation in companies referring to the AFEP-MEDEF code – Consolidated presentation of the recommendations contained in the AMF annual reports (DOC-2012-02), November 2017.

[68] Whether or not their term of office expires this year.

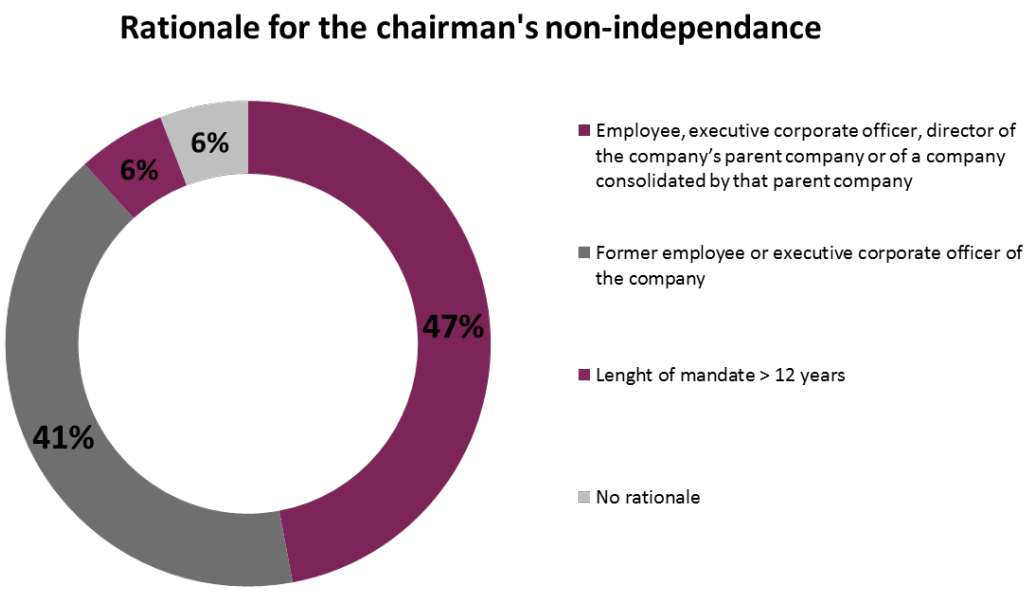
[69] Recommendation 18.1: "*Directors should devote the necessary time and attention to their duties*".

The tasks of the chairman of the board and executive sessions

As corporate governance determines the procedures used to run and oversee businesses, as well as the relations between the management of a company and its board of directors, it is vital to have broad transparency on the tasks and powers of chairmen of boards of directors and supervisory boards to ensure the effective operation of the governance bodies, including the one of executive corporate officer[70].

Therefore, within the sample, of the 22 companies that have adopted a two-tier board structure, or a single-tier (board of directors) structure but with the roles of chairman and chief executive officer separated, only five companies described the chairman of their board of directors or supervisory board as independent. The AMF found that all the companies, with one exception, provided explanations to justify the description used as well as details about the tasks performed by the chairman:

- Eight companies said their chairman was not independent because he or she is an employee, executive corporate officer or director of the company's parent company or of a company consolidated by that parent company;
- Seven companies said their chairman was not independent due to his or her status as a former employee or executive corporate officer of the company. It is worth noting that some companies are more exacting in their assessment of the five-year period and choose to continue to describe their chairman as not independent even when his or her prior roles as executive corporate officer date back more than five years;
- One company said its chairman was not independent because his term had exceeded 12 years; two companies also applied this criterion in combination with another criterion;
- One company did not explain why it does not consider its chairman of the board to be independent.



Source: AMF

[70] § 1.2.6 on the status and role of the non-executive chairman, Corporate governance and executive compensation in companies referring to the AFEP-MEDEF code – Consolidated presentation of the recommendations contained in the AMF annual reports (DOC-2012-02), November 2017.

As such, and as with the chairman of the board of directors, the AMF recommends that public limited companies (*sociétés anonymes*) which have an executive board and a supervisory board and which consider their chairman of the supervisory board to be independent provide a substantiated explanation that is adapted to the company's particular situation[71].

Similarly, and in accordance with recommendation 3.2 of the AFEP-MEDEF code[72], a description of the tasks and powers assigned to the chairman of the board is important information for evaluating checks and balances within the board. However, the AMF found that, of the 17 companies that do not have an independent chairman, more than one-third (i.e., six companies) do not describe the tasks and powers given to the chairman.

As in previous years, the AMF notes that the chairman's most common tasks are to represent the board and to organise and oversee its work, in accordance with the tasks and powers conferred on the chairman by law[73]. To that end, the chairman sets the agenda of board meetings, maintains a regular dialogue with management and with directors, and ensures that directors are able to carry out their tasks. Lastly, the chairman coordinates the work of the board of directors or supervisory board with the work of the specialised committees.

Other mechanisms for checks and balances can also be put in place, for example, meetings of the board of directors held outside the presence of the executive corporate officers, a practice known as executive sessions, as advised in AFEP-MEDEF recommendation 10.3[74].

This practice is widespread as 38 companies (88% of the sample) have held such meetings. These executive sessions are an opportunity to discuss, outside the presence of the interested parties, the performance of the directors and corporate officers and their compensation. Of the five companies that have not formally established this type of meeting, three nonetheless stated that discussions were held on the performance and compensation conditions of directors and executive corporate officers outside their presence, which seems consistent with the spirit of recommendations 10.3, 17.3 and 24.1.1 of the AFEP-MEDEF code[75]. However, one company complied neither with the letter nor the spirit of the AFEP-MEDEF code. **BIOMERIEUX**'s registration document references non-compliance with recommendation 10.3 of the AFEP-MEDEF code and specifies that the members of the board deemed the implementation of such meetings to be "inappropriate, believing that directors attending Board meetings are able to speak freely and discuss issues openly", which does not appear to be a sufficient explanation, particularly as the roles of chairman and chief executive officer have not been separated.

AMF also noticed another company where "*The Chief Executive Officer attended all meetings [of the Board of Directors], thereby enabling the Board members to hear his opinion on important issues and to ask him any questions that they deemed to be relevant*" while "*The Chief Executive Officer is not present at the part of the Board Meeting regarding the determination of his compensation and performance*". However, irrespective of its usefulness, the participation of an executive corporate officer at all meetings of the board of directors, although in this case he is not one of its members, would seem to compromise the objectivity of the board of directors' work with respect to some of its tasks, as defined in the company's internal rules. This concerns, in particular, the tasks of ensuring that effective managers ("*dirigeants effectifs*") implement the supervisory mechanisms.

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<u>The appointment and tasks of the lead director</u>

71 § 1.1.13 on the chairman of the board, Corporate governance and executive compensation in companies referring to the AFEP-MEDEF code – Consolidated presentation of the recommendations contained in the AMF annual reports (DOC-2012-02), November 2017.

72 Recommendation 3.2: "*In the event of the separation of the offices of Chairman and Chief Executive Officer, any tasks entrusted to the Chairman of the Board in addition to those conferred upon him or her by law must be described*".

73 See Art. L. 225-51 and L. 225-81 of the Commercial Code, respectively, for the chairman of the board of directors and the chairman of the supervisory board.

74 Recommendation 10.3: "*It is recommended that a meeting not attended by the executive Officers be organised each year*".

75 Recommendation 10.3: "*It is recommended that a meeting not attended by the executive Officers be organised each year*". Recommendation 17.3: "*When the report on the work of the compensation committee is presented, the Board should deliberate on issues relating to the compensation of the company officers in the absence of the latter*." Recommendation 24.1.1: "*The Board must debate the performances of the executive officers in the absence of the interested parties*".

The nomination of a lead director is one interesting arrangement for preventing potential conflicts of interest and any lack of checks and balances on the board, in particular when the roles of chairman and chief executive officer are combined. While the November 2016 version of the AFEP-MEDEF code recommended that the lead director be independent[76], the version of the code amended in June 2018 further emphasised that this director may be appointed "*from among the independent directors*"[77].

Within the sample, 20 companies, i.e., just under half, decided to appoint a lead director to the board. This director is described as independent, pursuant to recommendation 8.5 of the AFEP-MEDEF code, at 18 companies, i.e., more than 90% of the time. It is also worth noting that a lead director is appointed at companies where the roles are combined 65% of the time, i.e., at 13 companies. Of the companies that have not appointed a lead director, the AMF notes that at seven companies, the roles are combined.

A significant percentage of companies that have another governance model thus thought it would be useful to appoint someone with this status. Five companies appointed a lead director even though the roles of chairman and chief executive officer have been separated. One of the companies stated in its registration document that it decided to appoint a lead director simultaneous with its decision to separate the roles of chairman and chief executive officer in July 2017 as "*the Board resolved to appoint a Lead Independent Director, as it felt that this would ensure balanced relations between the directors, the Chairman of the Board and executive management*"; it should be noted that the company does not consider the chairman of the board to be independent.

Two companies with a two-tier board system also appointed someone to this role. One of these companies explained, for example, that the senior independent member is "*responsible notably for leading the group of independent members and organizing meetings of this group*" while the other company assigns the lead member fairly broad duties, whether this involves "*[acting] in a precautionary manner to raise awareness about conflicts of interest*" or responding to shareholders' requests and making himself or herself available to meet with them.

The AMF also identified one company in the sample that terminated the position of lead director, created in 2016, following its decision to separate the roles of chairman and chief executive officer in 2017. It named the former lead director to the role of chairman of the board of directors.

These different examples show that companies have a great deal of flexibility in addressing the issue of conflict of interest prevention. Although the appointment of a lead director is not required and companies are free to decide whether or not creating this position is the right choice for them, it is nonetheless important for the board to justify its decision, in accordance with recommendation 3.3 of the AFEP-MEDEF code.

When it comes to the lead director, the AMF urges the utmost caution regarding failure to comply with certain independence criteria as defined in the AFEP-MEDEF code and regarding the selection of a lead director who is not independent, mainly because he or she may have to carry out conflict of interest management tasks. The AMF thus found that:

- one company decided to appoint a director who is not independent (since he represents a main shareholder) as lead director since he has "*extensive experience in retail and in governance*". This explanation is insufficient given the potential conflict of interest this director may face and the tasks assigned to him in accordance with the internal rules (i.e., "*examining situations where there is a real or potential conflict of interest, which could concern Directors or the Chairman of the Board of Directors in respect of the Company's interests, whether this relates to operational projects, strategic management or specific agreements*");

- similarly, the lead director of **Vinci**, who is admittedly not considered independent, had maintained a significant business relationship with the company until the 2018 general meeting for consultancy

[76] Recommendation 6.3: "*It is recommended that the Lead Director be independent*".

[77] Recommendation 3.2: "*The Board may appoint a Lead Director from among the independent directors, particularly when it has been decided to combine such offices*".

work billed at €300,000 per year. This compensation would seem to be at odds with some of his duties as lead director, including the management of conflicts of interest within the board. Furthermore, the very nature of his duties under this services agreement led the AMF to raise questions about the potential conflict of interest that could arise, as well as about the similarity to the duties of non-executive chairman, since these duties consisted mainly of supporting the executive committee in the "*representation of its interests in France and abroad"*, and *"offering advice to the Group's operational staff in order to assist them with their sales activities*". As the resolution to approve the services agreement was rejected by the general meeting of shareholders, the company stated in a press release[78] dated 1 August 2018 that this agreement had been terminated.

In light of some of the tasks regularly assigned to the lead director, it seems reasonable that the lead director should not be faced with potential conflicts of interest. The AMF notes that companies have assigned the lead director roles and responsibilities relating to:

- the operation of the board:
  - ensure compliance with the internal rules and the proper operation of the governance bodies;
  - manage conflicts of interest;
  - oversee or assist in supervising the annual evaluation of the board;
  - call meetings of the board under "exceptional" circumstances or add an item to the agenda;
  - hold executive sessions;
  - serve as the main point of contact for independent directors.

- interactions with other stakeholders:
  - organise meetings for directors with the company's senior managers;
  - serve as a point of contact for shareholders.

Regarding the role the lead director plays in shareholder dialogue, this seems to meet a growing expectation on the part of investors, as the HCGE stated in its November 2017 annual report[79]. A report published in December on the shareholder/director dialogue also came to the same conclusion[80]. While the practice of shareholder dialogue is widespread in the United Kingdom and the United States due to their less restrictive legal environments, in 2017 the HCGE alerted companies to several precautions they could take to ensure that this practice is easily incorporated into the French legal framework. Noting that "*it is up to each board to consider the mechanism for dialogue*", the HCGE stated that it may be entrusted to a lead director and stressed that the director responsible for this dialogue should report to the board on the performance of his or her duties.

More generally, the AMF notes that all the companies in the sample that had appointed a lead director clearly disclosed all of his or her duties and prerogatives. However, only seven companies, or one-third of the companies in question, reviewed the lead director's activities in a separate paragraph and reported on the tasks he or she carried out during the year. The aim of such transparency is mainly to be able to assess the nature of the work and tasks carried out in this context and the use the lead director has made of his or her prerogatives. Companies may have good reason to express reservations about publishing details about this director's activities insofar as some topics demand confidentiality and discretion (for example, the proper operation of the governance bodies). However, it should be possible to indicate the extent of the lead director's work on each of his or her tasks without calling into question the confidentiality of their content. As specified in its above-mentioned consolidated recommendation[81], the AMF believes that the review of the lead director's activities should be featured more prominently in the registration document, to ensure that comprehensive information is provided on this very specific role within the board.

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[78] More specifically, the Vinci group stated that it had been informed by its partners of an IT glitch within the banking network that caused an error in calculating the exercisable voting rights for the Shareholders' General Meeting of 17 April 2018. Because of the resulting upward adjustment to the quorum, the twelfth resolution concerning the approval of a services agreement was rejected.

[79] §3.5 on the role of directors in shareholder dialogue, HCGE annual report, November 2017.

[80] Report of the director/shareholder dialogue commission, Le club des juristes, December 2017.

[81] § 1.2.6 on the lead director, Corporate governance and executive compensation in companies referring to the AFEP-MEDEF code – Consolidated presentation of the recommendations contained in the AMF annual reports (DOC-2012-02), November 2017.

Some companies stated that the lead director was invited to present his activities at the general meeting of shareholders, which is a useful way to supplement the presentation in the corporate governance report.

Board composition and diversity

As highlighted in recommendation 6.1 of the AFEP-MEDEF code, "*The quality of a Board of Directors can be seen in the balance of its membership as well as in the skills and ethics of its members*". Each board is therefore invited to consider "*what the desirable balance of its membership and that of the Board committees should be, particularly in terms of diversity (gender representation, nationalities, age, qualifications, professional experience, etc.)*[82]".

Regarding the level of independence of the board, recommendation 8.3 of the AFEP-MEDEF code states that "*The independent directors should account for half the members of the Board in widely held corporations without controlling shareholders. In controlled companies*[83]*, independent directors should account for at least a third of Board members*". It also specifies that "*Directors representing the employee shareholders and directors representing employees are not taken into account when determining these percentages*".

Within the sample, the AMF found that the average independence rate for boards of directors and supervisory boards was 61%[84] while the median was 58%:

- the independence rate remained constant for 19 companies compared with the rate in the previous year;
- the independence rate improved at 15 companies due to the expiration of one or more terms of office; for five of these companies, the percentage of independent directors improved from 23% to 31%;
- it declined for seven companies, with the decrease ranging from 6% to 16%; these companies nonetheless remained in compliance with recommendation 8.3 of the AFEP-MEDEF code.

The AMF also notes that, in terms of gender balance within boards, the average percentage of women on the board was 45% within the sample[85].

As in past years, there is still a wide gap, within the same company, between the increase in the number of women on the board, which is required by law, and the number of women in the most senior positions:

- the average percentage of women on the executive committees of companies in the sample is 17%;
- the average percentage of women falls to 7% when looking at the population of executive and non-executive corporate officers in the sample:
  - the boards of two companies are chaired by a woman;
  - two companies have appointed a woman to the position of executive corporate officer.

As recommended in the AFEP-MEDEF code, it may fall to the board of directors or supervisory board to ensure gender balance within the governing bodies[86].

82 Recommendation 6.2 of the AFEP-MEDEF code.

83 Within the meaning of Article L. 233-3 of the Commercial Code.

84 Independence rate as presented in the registration documents for the financial year ended 31 December 2017.

85 Law no. 2011-103 of 27 January 2011 on gender balance on boards of directors and supervisory boards and on workplace equality (the "Copé-Zimmerman" law) required that the percentage of directors of each gender at companies whose shares are admitted for trading on a regulated market be at least 40% at the close of the first ordinary general meeting held after 1 January 2017.

86 Recommendation 1.7: "*It* [the board] *also ensures that the executive officers implement a policy of non-discrimination and diversity, notably with regard to the balanced representation of men and women on the governing bodies*".

3.1.3.2.4 Conclusion

As the various findings showed, changes within management are generally also factors in changes at the board of directors and supervisory board level. The challenge for these boards is therefore to ensure checks and balances and balanced relations with their executive corporate officer(s).

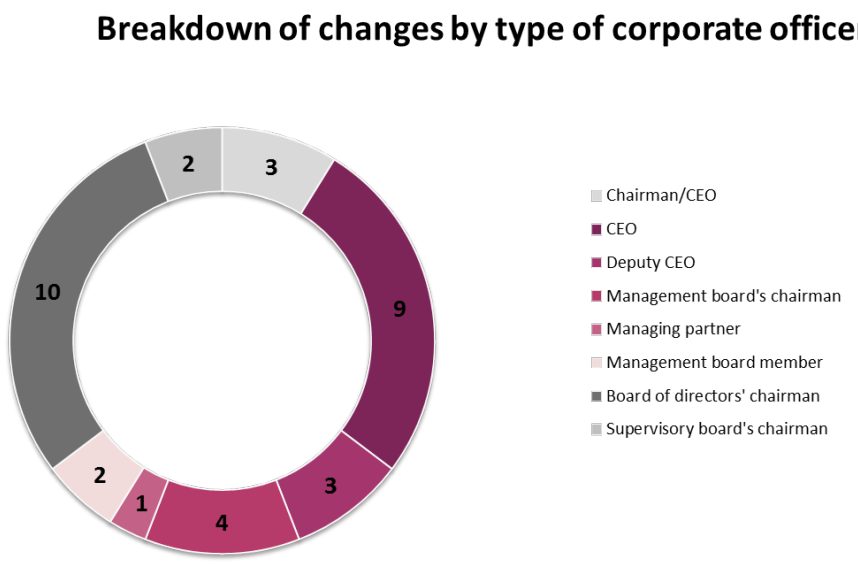
It is worth noting that many companies do in fact pay close attention to explaining how checks and balances are ensured within the board. Common practices include appointing a lead director and holding sessions outside the presence of the executive corporate officers. The AMF nevertheless found that companies have room to improve their transparency about the activities carried out by the lead director during the past year.

3.2 DETERMINATION OF COMPENSATION AT THE TIME OF CHANGES IN EXECUTIVE CORPORATE OFFICER

3.2.1 Determination of compensation at the time of a corporate officer's appointment

In this section, an appointment is defined as a change in executive corporate officer as well as the election to the board of directors or supervisory board of a new corporate officer, with the new member having been recruited internally (change of role) or externally.

Within the sample selected, 34 corporate officers were appointed at 20 companies. The senior manager positions they hold break down as follows:



Source: AMF

When a corporate officer is appointed, the board of directors or supervisory board, based on a proposal from the remuneration committee, determines all the components of compensation and ensures that they comply with the code that the company follows. The analysis presented below was conducted in relation to the recommendations in the AFEP-MEDEF code, which all the companies in the sample follow with the exception of **DBV TECHNOLOGIES**. The board must therefore verify that these components of compensation are consistent with the company's compensation policy[87], determine whether to pay a signing bonus[88], and decide whether to maintain the employment contract[89] and what compensation might be owed if the individual leaves the company[90].

[87] Recommendation 3.4.1
[88] Recommendation 3.4.2
[89] Recommendation 3.4.3.
[90] Recommendation 3.4.4.

3.2.1.1 Compliance with the compensation policy

The law of 9 December 2016, known as the Sapin II law, which introduced say on pay, calls for an annual vote in the general meeting on the principles and criteria for compensation of certain new corporate officers[91] when they take up their new position (see § 4.2.1). The law now requires that executive compensation[92] be determined in accordance with the principles and criteria approved by the general meeting[93].

A review was therefore conducted to determine whether the compensation policy adopted in 2017 could be applied to the new corporate officers in the sample or, when this was not the case, what approach the relevant companies took.

One of the 20 companies where there was an appointment before the general meeting was excluded from the analysis as the compensation policy had not been approved.

For the 19 other companies, the AMF notes that:

- 32% (six companies) did in fact apply the compensation policy adopted in 2017 to their new senior manager. In four cases, the new senior managers had the same duties as the previous senior managers. The 2017 compensation principles and criteria were applied, the same categories of compensation were awarded to the new senior managers, and the AMF even found that the amounts owed and paid were comparable to, if not less than, the amounts that would have been owed to the previous senior manager.

  Another company, which separated its positions during the year, paid the new chief executive officer the same components of compensation as those initially anticipated for the chairman and chief executive officer. The aggregate amount of compensation owed and paid to the new chief executive officer and to the new chairman of the board was lower than the amount of compensation for the former chairman and chief executive officer**.** The company thus did not wish to award compensation that was inconsistent with the amounts it had announced. This company explicitly stated that the components of compensation paid in 2017 were determined in accordance with the compensation principles and criteria approved by the 2017 general meeting.

  At one last company, when the roles of chairman of the board of directors and chief executive officer were merged during the year, the compensation of its chairman of the board of directors, who became its chairman and chief executive officer, was left unchanged in 2017. Adjustments were then made to his compensation, including an increase in the variable component, under the 2018 compensation policy. The deputy chief executive officer, who was appointed on 13 October 2017, did not receive any compensation for his position in 2017 (this role had not previously existed within the company). His compensation as chief financial officer was thus presented but not submitted to the vote on compensation =.

- 68% of the companies in the sample (i.e., 13 companies) gave an effective date for the appointment of their new corporate officer that was after the close of 2017, so that they would benefit from the new compensation policy submitted to the general meeting in 2018. Five of these companies gave an effective date that was after the date of the general meeting at which the new compensation policy was approved. Two companies appointed their senior manager before the general meeting with an effective date after the general meeting. In **Natixis**'s case, as the change in management was

[91] For companies with a board of directors, the company must hold a vote on the compensation policy applied to chairmen, chief executive officers and deputy chief executive officers, and for companies with a management board, to members of the management board or supervisory board and to the sole chief executive. For companies with a management board and supervisory board, they must hold a vote on the compensation policy that applies to members of the management board, or to the sole chief executive, and to members of the supervisory board.

[92] Article L. 225-37-2 of the Commercial Code.

[93] More specifically, Article L. 225-37-2 of the Commercial Code states that: "If no principles and criteria have been approved, remuneration shall be determined in accordance with the pay awarded for the previous financial year or, failing that, in accordance with existing practice within the company".

announced just before the meeting, the company published a supplement to the board of directors' report on corporate governance to adjust the compensation policy for the new corporate officer.

Lastly, in the case of one company in the sample where the departure of the former corporate officer had been expected, although the name of his successor was not known at the time of the 2018 general meeting, the company anticipated this change with a compensation policy that was fairly specific in terms of total compensation, stating that this compensation was determined in comparison with the median of 12 comparable French and international companies whose names were disclosed. Few details were subsequently provided on the structure of this policy.

3.2.1.2 Signing bonus

When the executive corporate officer comes from a company outside the group, the board of directors or supervisory board also decides whether to award a signing bonus. Recommendation 24.4 of the AFEP-MEDEF code thus states that "*Benefits for taking up a position may only be granted to a new executive corporate officer who has come from a company outside the group. The payment of this benefit, which may take a number of different forms, is intended to compensate the executive for the loss of the entitlements from which he or she previously benefited. It must be explicitly indicated and the amount must be made public at the time it is determined, including in the event of periodic or deferred payment*".

Only one company in the sample planned to pay this type of bonus, in the amount of €250,000, to its new chief executive officer. It provided the following explanations in its registration document: this bonus was "*intended to compensate for expenses and losses relating to moving from the USA and settling in France, together with the loss of the benefits he would have enjoyed in his previous position, which will not be totally compensated for by the conditions governing his new position*". The company added that "*this allowance will be paid on the decision of the Board of directors ruling on the basis of justifications provided to the Company*". These explanations appear to be satisfactory given the specific context and the amount paid.

3.2.1.3 Continuation of the employment contract

When an employee becomes an executive corporate officer of a company, the AFEP-MEDEF code recommends "*[terminating] his or her employment contract with the company or with a group company, whether through contractual termination or resignation*[94]*".* It also specifies that "*This recommendation applies to the Chairman and Chief Executive Officer or Chief Executive Officer in corporations with Boards of Directors, to the Chairman of the Management Board, to the sole Managing Director in companies with a Management Board and a Supervisory Board and to the statutory managers of partnerships limited by shares*"[95].

The AMF states in its recommendation DOC-2012-02[96] that "*The seniority of the executive as an employee of the company and his personal circumstances may justify maintaining his employment contract. However, the AMF believes that a generic reference to seniority and personal circumstances is not a sufficient explanation under the "comply or explain" principle. It is recommended that the company provide substantiated explanations of the personal circumstances of the executive in question. In that case, the AMF recommends that the company provide justifications suited to the specific situation of each executive (length of service, description of benefits associated with the employment contract)*".

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[94] Where the employment contract is continued, it will be suspended in accordance with applicable legislation.

[95] The AMF, unlike the AFEP-MEDEF code, states in its recommendation DOC-2012-02 that the rule on not concurrently holding a corporate office and an employment contract should also apply to employees that perform executive corporate officer tasks in a listed subsidiary and that have entered into an employment contract with the parent company of this subsidiary. It seems reasonable for the director of the listed subsidiary to also be subject to the code and for the issuer to explain, if applicable, the reasons behind its decision to maintain the employment contract with the parent company, in accordance with the "comply or explain" principle. In this case, it seems appropriate for the director holding an employment contract not to be granted termination benefits if he remains an employee of the group.

[96] AMF Recommendation DOC-2012-02 - Corporate governance and executive compensation in companies referring to the AFEP-MEDEF code – Consolidated presentation of the recommendations contained in the AMF annual reports.

In 2015, the HCGE had indicated that it agreed with the AMF, subject to the explanations provided, and specified that "*The best solution is still the one adopted by some companies, which have amended the employment contracts of the parties in question in order to make them compliant with the terms of the code*".

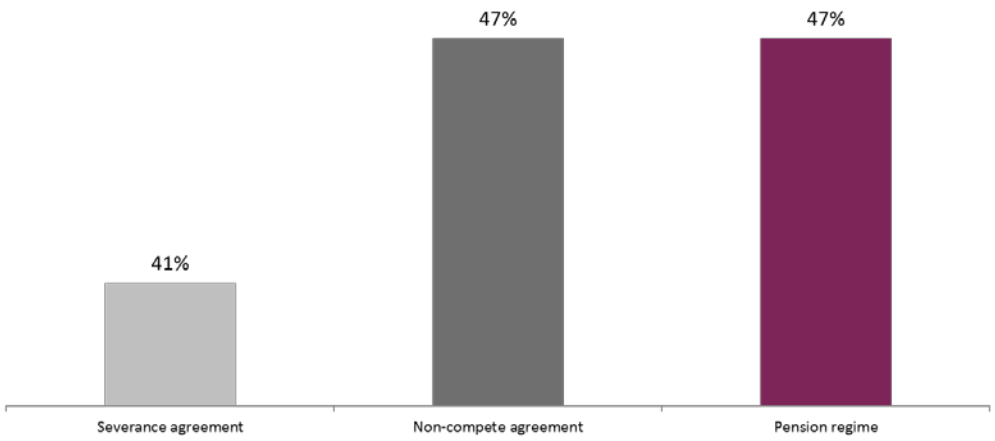
For the companies in the sample, the AMF found that 11% of new senior managers who would have had to terminate their employment contract were able to maintain it by suspending it [Eurazeo, Fnac, Neopost]. The companies justified this failure to comply with the code on the basis of the new senior manager's length of service within the company (11, 18 and 19 years, respectively). One company added that "*the option of terminating the employment contract by contractual termination or resignation was not adopted. It seemed unfair to the Compensation and Appointment Committee to threaten the social welfare benefits (pension) enjoyed by the senior manager since he joined the company*".

Despite the justifications provided, this percentage of non-compliance with the code remains fairly high. The AMF notes that the HCGE had stated in its Annual Report for 2015 that explanations of the benefits procured by maintaining an employment contract should be provided to "*enable shareholders to be sure that maintaining it does not generate non-compliances with the other provisions of the Code*," specifically when it comes to termination payments.[97] However, the companies in the sample did not always provide these clarifications in their registration document.

3.2.1.4 Approval of commitments made to corporate officers

The board of directors makes a number of commitments to corporate officers at the time of their appointment. These relate mainly to the components of compensation likely to be owed at the time of or after departure and, more rarely, to services agreements. Depending on the type of compensation, between 41% and 47% of new corporate officers at companies in the sample are therefore concerned[98].

Proportion of corporate officers benefiting from post-mandate agreements



Source: AMF

[97] 2015 Annual Report of the High Committee on Corporate Governance, p. 20. Article L. 225-22-1 of the Commercial Code also specifies that, in the event of the appointment to the duties of president, general manager or assistant general manager of a person bound by an employment contract to the company or any controlled company or a company that controls it as defined in II and III of Article L. 233-16, the provisions of the said contract corresponding, if necessary, to elements of remuneration, compensation or benefits due or likely to be due as a result of the termination or change in these duties, or subsequent to these duties, are subject to the regulated agreement regime set out in Article L. 225-42-1 of the Commercial Code and must therefore be submitted to the general meeting for approval.

[98] Senior managers are defined in this section as chairmen, chief executive officers, deputy chief executive officers and members of the management board.

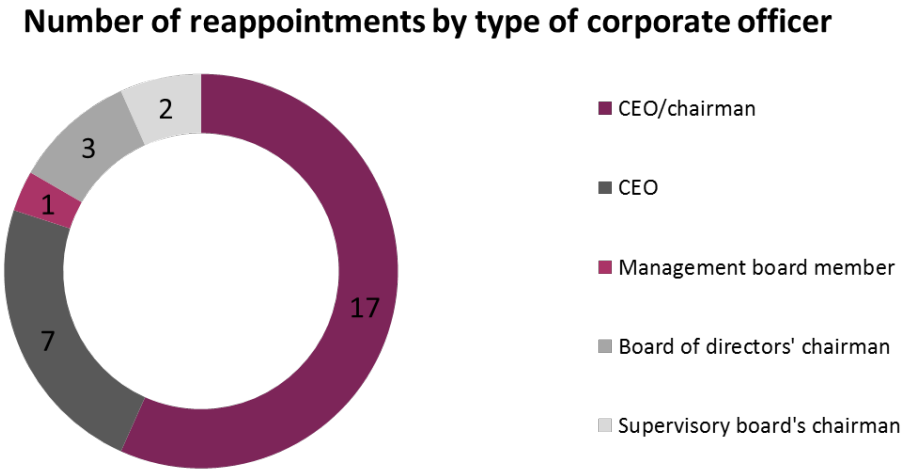
The AMF notes that there are a number of provisions governing the components of compensation likely to be owed at the time of or after departure, given that they can potentially be quite significant (see Appendix 3). Compliance with the code is analysed in detail in the section on departures.

One of the questions asked when deciding on the termination benefit is whether such a benefit can be anticipated and in what amount, in the event of a forced departure, over a two-year period, insofar as recommendation 24.5.1 of the AFEP-MEDEF code specifies that "*The performance conditions set out by the Board for these benefits must be assessed over at least two financial years*". However, within the companies in the sample, 14 new senior managers likely to receive a termination benefit could be entitled to it in the event of a forced departure within two years of their appointment. These benefits, the amount of which is, however, generally progressive, do not appear to comply with the code as regards new senior managers.

3.2.2 Compensation at the time of corporate officers' reappointments

In this section, a reappointment is defined as the request that a term of office be confirmed either as a corporate officer or as a board member (while being also a corporate officer).

Within the sample, 30 reappointments were identified at 27 companies in 2018. Two corporate officers belonging to two companies in the sample have open-ended terms and are therefore not subject to this reappointment procedure. The corporate officers in question are as follows:



Source: AMF

The AMF found that:

- Executive compensation changed very little at the time of reappointment;
- Article L. 225-42-1 of the Commercial Code requires, when each term of office is renewed for chairmen, chief executive officers, deputy chief executive officers and members of the management board, that the general meeting re-approve the termination benefits and the defined-benefit pension commitments falling under Article L. 137-11 of the Social Security Code.

  Four companies in the sample merely submitted the statutory auditors' report for approval by the shareholders' meeting, and did not seek specific approval for the termination benefits and pension commitments, as required under Article L. 225-42-1 of the Commercial Code.

Other companies, however, go beyond the legal provisions, since every year they submit the regulated agreements related to the compensation of the most important senior managers, including when these agreements have not been amended or renewed, to the board of directors and general meeting for their approval. This is the case, for example, with **BOUYGUES**, which every year submits the services agreement entered into with its parent company to shareholders and the board of directors;

- When commitments such as termination benefits, pensions and non-compete benefits continue for several years, the board will have to review this compensation on a regular basis and determine whether these components are compliant every year. If changes are made to the AFEP-MEDEF code, some commitments that complied with the previous version of the code might not comply with the new version, although there may be no requirement that they do so.

  In its application guide for the AFEP-MEDEF code, the HCGE specified, for example, that the recommendation stating that the board must include a provision that authorises it to waive the application of the senior manager's non-compete agreement does not apply to agreements entered into after 16 June 2013. Similarly, for defined-benefit pensions, the new code published in 2018 specifies that "*Except where its purpose is to offset the loss of potential entitlements in respect of which the benefit has already been subject to performance conditions, the award of entitlements or compensation intended to constitute a supplementary pension scheme is subject to such conditions. This recommendation applies to the schemes set up as from the publication of the revised code in June 2018*".

  In that case, the company would have to consider whether it is possible and advisable to comply with all the provisions of the new code. When corporate officers are reappointed, this compliance is particularly important as the general meeting's approval is also required every time the chairmen, chief executive officers, deputy chief executive officers and members of the management board are reappointed.

  As part of the "comply or explain" approach presented in its report on corporate governance, **the board of directors would also have to systematically explain all departures from the current version of the code, specifying, where applicable, why the company has not decided to ensure the compliance of a commitment made before the entry into force of the new provisions of the code. With no such explanation, the information provided would be fragmented and not comparable from one company to the next.**

Recommendation

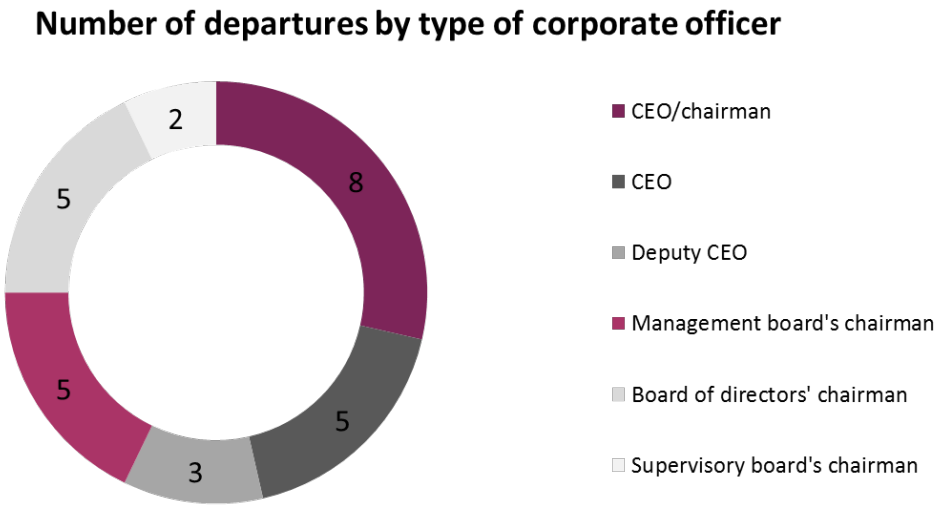
The AMF recommends that the board regularly review the components of compensation likely to be owed at the time of or after departure and that it consider whether it is possible and advisable to comply with the new provisions of the code.

As part of the "comply or explain" approach presented in its report on corporate governance, the board of directors or supervisory board would also have to systematically explain all departures from the current version of the code, specifying, where applicable, why the company has not decided to ensure the compliance of a commitment made before the entry into force of the new provisions of the code.

3.2.3 Amounts paid at the time of corporate officer departures

A departure is a critical time in terms of compensation and communication by a company, as this is when the commitments the company has previously made to the corporate officer materialise. This is also when a determination is made as to whether the amounts paid truly comply with the provisions of the code and in particular whether they were sufficiently understandable in the previously published registration documents.

Within the companies in the sample, the terms of office of 27 directors and corporate officers at 20 companies were terminated. The senior manager positions they held break down as follows:



Source: AMF

3.2.3.1 Information at the time of departure

Recommendation 24.5.2 of the AFEP-MEDEF code states that when a corporate officer leaves the company, the financial conditions relating to his or her departure must be set out in detail and published. The AMF recommends, in addition, that this information be made public in a press release distributed fully and effectively within the meaning of Article 221-3 of the AMF General Regulation[99].

The content of the information is specified in the recommendation in the above-mentioned code: "[*…] when a company officer leaves the company, the financial conditions relating to his or her departure must be set out in detail. The information that is to be published comprises:*

- *the fixed compensation paid in respect of the current financial year;*
- *the way in which the annual variable compensation will be calculated for the current year;*
- *if applicable, any extraordinary compensation;*
- *how the following will be dealt with:*
  - *ongoing multi-annual or deferred variable compensation plans;*
  - *stock options that have not yet been exercised and performance shares not yet vested;*
  - *the payment of any termination or non-competition benefits;*
  - *benefits from any supplementary pension schemes*".

The AMF also recommends that this information include a valuation of the components of compensation awarded to the executive but not yet paid[100].

While all the companies in the sample published a press release to explain changes in governance, only 35% (i.e., seven companies) published a press release on the financial conditions relating to a departure. Thus, 13 companies believed that there was no need to communicate.

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99 AMF Recommendation DOC-2012-02 - Corporate governance and executive compensation in companies referring to the AFEP-MEDEF code – Consolidated presentation of the recommendations contained in the AMF annual reports.

100 AMF Recommendation DOC-2012-02 - Corporate governance and executive compensation in companies referring to the AFEP-MEDEF code – Consolidated presentation of the recommendations contained in the AMF annual reports.

The AMF found that this concerned departures of non-executive corporate officers or situations in which the corporate officer(s) who left the company did not receive termination or non-compete benefits[101]. In fact, only three companies paid a termination benefit and four paid a non-compete benefit. The AMF notes that the code applies to the departure of all directors and corporate officers. And, even when no benefit is paid at the time of or after a departure, the company had to make certain decisions, such as the decision to not pay these benefits. It is important for the market to know this. It is similarly important to communicate on pension entitlements (see §3.2.3.6 of this report) and to justify the payment of long-term variable compensation (see § 3.2.3.3).

The AMF notes that when a press release is distributed, its content most often complies with the recommendation in the code. However, a valuation of the components awarded but not yet paid to senior managers is not provided. This press release is distributed in two stages: at the time of the board's decision taking note of the departure, and then after the general meeting that approved the amount of variable compensation, thus making it possible to calculate the termination benefits and the pension amounts owed. It is, however, often difficult to find on companies' websites and is not systematically distributed fully and effectively. **The AMF therefore reminds companies that it is important to issue a press release at the time of departure and to distribute it fully and effectively. If no press release is distributed, then this information is provided only in the registration document, sometimes several months after the departure.**

3.2.3.2 Forced departure

The reasons for departures that the companies in the sample gave in their press releases announcing changes in governance included retirement (five companies), changes in governance (four companies), "*personal reasons*" (four companies) and decisions by the board or management board (three companies). Some did not provide any details.

Recommendation 24.5.1 of the AFEP-MEDEF code specifies that "*It is not acceptable that directors whose company has failed or who have personally failed may receive benefits upon departure. The payment of any termination benefits to a company officer must be excluded if he or she elects to leave the company in order to hold another position or is assigned to another position within the same group or is entitled to benefit from his or her pension rights*". This same recommendation specifies that "*The performance conditions [...] must be demanding and may not allow for the indemnification of a director, unless his or her departure is imposed, regardless of the form of this departure*".

The code therefore stipulates that no termination benefit is owed when the departure is voluntary or when the senior manager has failed. A corporate officer may, however, receive a termination benefit in the case of a forced departure.

The interpretations of this concept of forced departure, when the corporate officer is not assigned another position within the same group, vary by company and circumstances. With respect to executive corporate officers who left their positions to become a director or member of the supervisory board, one company viewed this as a forced departure while another company did not.

Avenue of discussion

In a context in which the gradual exit of a corporate officer may help ensure a management transition, the AMF invites the AFEP-MEDEF code and/or the HCGE to clarify the concepts of forced departure and of assignment "*to another position within the same group*", while specifying the circumstances under which

[101] Information on the payment of termination benefits and defined-benefit pension commitments that meet the criteria for the schemes referenced in Article L. 137-11 of the Social Security Code, is, however, always publicly disclosed as provided for by law and by decree. Article L. 225-42-1 of the Commercial Code specifies that "No payment, of any kind whatsoever, may be made before the board of directors has noted, during or after the termination or effective change in the duties, accordance with the specified conditions". This decision is made public on the company's website, as provided for in Articles R. 225-34-1 and R. 225-90-1 of the Commercial Code, no later than five days after the meeting of the board of directors or supervisory board at which it was made. It shall be available on the website at least until the next ordinary general meeting. Any payment made in breach of these provisions shall be automatically void.

payment of a termination benefit may be justified while the corporate officer continues to play a non-executive role within the group.

To ensure that the market is fully informed and to supplement the interpretations that may be provided by the AFEP-MEDEF code and/or the HCGE, the AMF believes it would be useful for companies to clearly show the nature of the corporate officer's departure. All the contextual information needed to assess the compliance of the components of compensation paid at the time of the corporate officer's departure should also be presented.

With regard to registration documents published before a departure, few companies described in detail the potential total of various benefits and payments for each departure scenario. Some companies have nevertheless made an effort to provide more understandable information. **Sanofi's**[102] presentation is very clear as it describes the benefits corresponding to different departure scenarios (voluntary departure, removal from office, forced departure and retirement):

Summary of benefits awarded to the Chief Executive Officer on leaving office

The table below presents a summary of the benefits (as described above) that could be claimed by the Chief Executive Officer on leaving office depending on the terms of his departure. The information provided in this summary is without prejudice to any decisions that may be made by the Board of Directors.

	Voluntary departure / Removal from office for gross or serious misconduct	Forced departure	Retirement
Termination benefit[a]	/	24 months of fixed compensation as of the date of leaving office + 24 months of most recent individual variable compensation received[d] – Amounts received as non-compete indemnity	/
Non-compete indemnity[b]	12 months of fixed compensation as of the date of leaving office + 12 months of most recent individual variable compensation received prior to leaving office	12 months of fixed compensation as of the date of leaving office + 12 months of most recent individual variable compensation received prior to leaving office	/
Top-up pension[c]	/	/	(Years of service x 1.5%[e]) X 60 x the French social security ceiling effective as of the retirement date
Stock option and performance shares not yet vested	Forfeited in full	Rights retained in prorata to period of employment within Sanofi[f]	Rights retained[f]

Excerpt from Sanofi's 2017 annual report on Form 20-F

Recommendation

The AMF recommends that companies specify in the press release distributed at the time of departure all the information needed to determine whether the amounts owed and paid at the time of a senior manager's departure comply with the AFEP-MEDEF code and that companies also provide appropriate explanations, where applicable. Companies should take a forward-looking approach and present the payments and benefits potentially owed in each different departure scenario (voluntary departure, forced departure and retirement) in their registration document and compensation policy.

3.2.3.3 Compliance with performance conditions for compensation paid over the long term

The code notes that the law gives shareholders a major role by subjecting termination benefits, paid on termination of the corporate officer's appointment, to the regulated agreements procedure. It demands total

[102] Page 165 of the 2017 Annual Report on Form 20-F.

transparency and makes termination benefits conditional upon performance conditions. The code specifies that "*The performance conditions set out by the Board for these benefits must be assessed over at least two financial years. They must be demanding and may not allow for the indemnification of a director, unless his or her departure is imposed, regardless of the form of this departure*".

With regard to long-term variable compensation, recommendation 24.5.1 of the AFEP-MEDEF code also notes that "*In the event that a company officer leaves before the completion of the term envisaged for the assessment of the performance criteria for the long-term compensation mechanisms, continued entitlement to all or part of the long-term compensation benefit and its payment must be evaluated by the Board and the reasons for its decision must be indicated*".

Compliance of long-term compensation with the code

At the time of departure, companies' practices with regard to maintaining and accelerating the payment of long-term variable compensation for which the performance criteria assessment period has not expired were relatively uniform within the sample. Seven companies stated that the corporate officer was still entitled to this compensation; in general, the predefined performance conditions were maintained but not accelerated. One company applied the pro-rating rule, which is considered to be a good practice.

The code does not specify under what circumstances, or under what conditions, continued entitlement to the payment of multi-annual variable compensation is acceptable. It states that its payment "*must be evaluated by the Board and the reasons for its decision must be indicated*". However, in its 2015 report, the HCGE had considered that "*[...] this payment should only correspond to the periods when the executive director is actually present in the company, for which the performance to which he or she has contributed through his or her actions can be measured, excluding any lump sum remuneration or offsetting of the sums laid down in respect of the years after he or she has left*".

As this recommendation by the HCGE predates the current wording of the code[103], the AFEP-MEDEF code and/or the HCGE's application guide should clarify whether it has been retained.

The AMF reminds companies that not only must they disclose their decision to continue a corporate officer's entitlement to long-term variable compensation when he or she leaves the company, but they must also explain specifically why the entitlement has been continued, as the corporate officer will no longer be in a position to influence the management of the company.

In its 2014 annual report, the AMF had stated that it is "*understandable that the retirement of a director or corporate officer should not entail the systematic loss of all deferred or multi-annual variable remuneration. In such cases, companies may wish to consider a pro-rata vesting mechanism. However, in the case of removal from office, non-reappointment or resignation (unless the reason for the non-reappointment or resignation is retirement or disability), any payment of deferred or multi-annual variable compensation should in principle be ruled out unless it can be shown that there are exceptional circumstances that are justified by the board and publicly disclosed*".

In terms of market disclosures, it is important for companies to clearly state whether they have changed the conditions for awarding this long-term compensation and in particular whether they have eliminated the performance condition.

Evaluation of the benefit awarded

[103] The wording of the code was at the time more restrictive than the current wording. The Code established the principle that "in the event that an executive director leaves before completion of the term envisaged for assessment of the performance criteria, the payment of the variable part of the remuneration must be ruled out, unless there are exceptional circumstances which can be justified by the Board". The new article simply states that the payment must be evaluated by the Board and that the reasons for its decision must be indicated.

The AMF recommends that "*when the board of directors or supervisory board decides, upon the departure of an executive, to exempt him from the continued presence condition provided for in a bonus share plan or stock option plan, the exact number of options or shares to which the executives are entitled under these plans should be noted and the amount of the benefit awarded should be evaluated*"[104]. None of the seven companies in question evaluated the benefit awarded.

3.2.3.4 Compliance with the termination benefit ceiling

Recommendation 23.5 of the AFEP-MEDEF code states that "*The termination payment must not exceed, where applicable, two years of (annual fixed and variable) compensation.* [...] *This two-year ceiling also covers, where applicable, any benefits relating to termination of the employment contract*".

While the departures observed in the sample complied with this ceiling, questions nonetheless arose about the procedure for calculating this ceiling and the inclusion of exceptional bonuses agreed to at the time of departure[105]. In its 2015 annual report, the HCGE recommended "*ensuring that, if the executive officer's departure coincides with or follows soon after the performance of the operation motivating the extraordinary remuneration, it does not deviate from the rules laid down by § 23.2.5 for the termination payment (with which public opinion will certainly equate it), particularly the limit of two years' fixed and variable remuneration*."

While most of the exceptional bonuses agreed to at the time of departure must be included in the calculation of the ceiling, this was not necessarily the case for bonuses paid to compensate a senior manager for staying on to manage a transition.

It is also important not to "surprise" investors with the payment of significant unexpected bonuses, such as a payment in lieu of notice for the termination of an appointment at a subsidiary even though no compensation had been reported for that position.

3.2.3.5 Non-compete benefits

Recommendation 23 of the November 2016 version of the AFEP-MEDEF code specified that "*The purpose of concluding a non-competition agreement is to restrict the freedom of a company Officer to hold a position at a competitor. It is an instrument designed to protect the company and justifies a financial compensation for the party to the agreement*". It also added that "*In accordance with the procedure governing related parties agreements, the Board must authorise the conclusion of the non-competition agreement, the length of the requirement for non-competition and the amount of benefits, taking into account the actual and effective scope of the non-competition requirement. The decision of the Board must be made public. When the agreement is being concluded, the Board must incorporate a provision that authorises it to waive the application of this agreement when the Officer leaves. Reasons must be given for the conclusion of a non-competition agreement at the time the company Officer leaves the company in cases where no such clause had previously been stipulated*".

Questions were occasionally raised about the legitimacy of paying such a benefit:

<u>Non-compete and retirement benefit</u>

For one company in the CAC 40, **CARREFOUR**, which awarded its former chairman and CEO a non-compete benefit upon his retirement, questions were raised about the legitimacy of combining the non-compete benefit with pension entitlements.

More specifically, the company's board of directors had introduced in 2012, and confirmed in 2015, a termination benefit for its chairman and chief executive officer and had made its payment subject to performance conditions and contingent on a non-compete commitment. On 18 July 2017, the board of directors found that these conditions had been met and, pursuant to Article L. 225-38 of the Commercial Code, authorised

[104] AMF Recommendation DOC-2012-02 - Corporate governance and executive compensation in companies referring to the AFEP-MEDEF code – Consolidated presentation of the recommendations contained in the AMF annual reports.
[105] And subject to the regulated agreements procedure.

the entry into a non-compete commitment preventing Georges Plassat from working for a competitor for 18 months following the termination of his term of office. This agreement was entered into after the board meeting of 18 July 2017 and was approved by the general meeting of 15 June 2018. Under this agreement, Mr Plassat was awarded a benefit in a gross amount of EUR 3,975,000, subject to compliance with the non-compete obligation.

In its press release of 15 June 2018, the High Committee on Corporate Governance raised questions about the "*procedures for determining the compensation of the group's senior managers and in particular the termination benefits for its former chairman and CEO, Georges Plassat. The HCGE believes that these represent significant departures from the AFEP-MEDEF code*[106]".

On 31 July 2018, the company explained that an agreement had been reached between the former senior manager and the group's executives under which he would refund the benefit; this involved entering into an agreement on the mutual revocation of the non-compete commitment.

The new AFEP-MEDEF code, published in June 2018, now strictly limits non-compete clauses to prevent circumvention. It explicitly excludes the possibility of combining the non-compete benefit with the pension payment: "*The Board must also make provision for no non-competition benefit to be paid once the officer claims his or her pension rights. In any event, no benefit can be paid over the age of 65*". It also rules out the principle of delayed approval of a non-compete benefit: "*There must be no possibility of concluding a non-competition agreement at the time when the company officer leaves in cases where no such clause had previously been stipulated*". Lastly, it stipulates that "*The non-competition benefit must be paid in instalments during its term*".

These amendments to the code could potentially affect all existing contracts. **CARREFOUR** thus ensured that the non-compete benefit for the new chairman and chief executive officer complied with the new provisions of the code[107].

Non-compete benefit when the senior manager continues to hold a position within the group

At two companies in the sample, the chief executive officer received a non-compete benefit even though his term of office had ended but he continued to play a non-executive role at the parent company or a major subsidiary. The AMF raised questions about the rationale for paying a non-compete benefit to a senior manager who could be subject to duties of confidentiality and/or loyalty because of the role he continued to play within a single group, and who could therefore not work for a competitor.

In this context, the code or the application guide for the AFEP-MEDEF code, as with termination benefits, should express an opinion on maintaining a non-compete benefit awarded on termination of a term of office to an individual who continues to play an executive or non-executive role within the group.

The AMF also reminds companies that it is important to accurately describe the scope of application of the non-compete clause as early as the drafting stage (clear definition of the "departure", the entities concerned and the duties performed).

The AMF also reminds companies that they must justify the payment of such a benefit even if the corporate officer continues to play an executive or non-executive role within the group insofar as this senior manager could still be subject to a general duty of confidentiality and/or loyalty based on the role that he or she continues to play within this group.

3.2.3.6 Pensions

Corporate officers may be entitled to a supplementary pension as part of a group benefits scheme or through an individual commitment made by the company. In that case, the company's commitment relates to the

[106] The new version of recommendation 23.4 in the June 2018 AFEP-MEDEF code now specifies that no non-compete benefit "[is] to be paid once the officer claims his or her pension rights. In any event, no benefit can be paid over the age of 65".
[107] Carrefour communication of 31 July 2018.

contribution amount[108] or to a predetermined pension amount as part of a defined-benefit scheme[109]. The company might also bear some or all of the cost of funding a policy taken out directly by the senior manager, generally with an outside entity. With regard to defined-benefit pension schemes in particular, which allow senior managers to receive an annuity calculated on the basis of a percentage of the reference salary, the law and the AFEP-MEDEF code have put a number of controls in place to prevent abuse.

This component of compensation may be significant.

In this context, it is important that companies state in the press release issued at the time of a corporate officer's departure whether he or she is entitled to a supplementary pension, with specific information on the benefits that have vested for the previous financial year, and that they justify any changes.

[108] Such as an "Article 83" scheme, referring to Article 83 of the General Tax Code on the salary tax, in which the employer and potentially the beneficiary pay fees to an authorised entity.

[109] Referred to as "Article 39" schemes allowed under the General Tax Code. If the company would like to benefit from the social security scheme provided for in Article L. 137-11 of the Social Security Code, the employee must be employed by the company at the time of retirement.

PART IV

SAY ON PAY

The AMF's examination of say on pay took into account all current or renewed terms of office. Corporate officers' departures and appointments were excluded to ensure the comparability of the scope of senior managers concerned. The review therefore covered 35 companies and 65 corporate officers.

4.1 GENERAL OVERVIEW OF SAY ON PAY

At companies listed on a regulated market, say on pay aims to encourage a dialogue between corporate officers and shareholders. The latter therefore have access to all the information about the compensation policy and about compensation paid and awarded.

This means, first, a disclosure regime; failure to implement such a regime may be sanctioned. If the report submitted to the general meeting does not include all the fixed, variable and extraordinary components that make up the compensation, as well as the commitments corresponding to the components of compensation and to payments and benefits owed or likely to be owed due to the termination or change in the duties of these officers, any interested party may ask the presiding judge ruling in summary proceedings to order, under penalty, the board of directors or management board, as the case may be, to provide this information[110].

Voting is also critical. In addition to the regulated agreement regime, the Sapin II law of 9 December 2016 introduced new requirements. The principles and criteria for determining, allocating and awarding the components of compensation granted to senior managers, by virtue of their position, are addressed in an at least annual resolution of the ordinary general meeting of shareholders (*ex-ante* say on pay). Unlike the regulated agreements regime which is an ex post ratification vote, the general meeting's approval of the principles and criteria for determining, allocating and awarding compensation is an ex ante vote. It is coupled with a binding vote by the shareholders' meeting on the compensation awarded to corporate managers for the previous financial year, known as *ex post* say on pay, which authorises the payment of variable and extraordinary compensation.

However, the consequences of a lack of vote and/or of a no vote by the general meeting on compensation vary by circumstance:

- if the general meeting does not approve the compensation principles and criteria (*ex-ante* say on pay), the law provides for application of the previously approved principles and criteria. If no principles and criteria have been approved, compensation is determined in accordance with the compensation awarded for the previous financial year or, failing that, in accordance with the existing practice within the company;
- for the approval of compensation paid and awarded for the previous financial year, the authorisation determines only the payment of the variable and extraordinary components;
- in the event of a no vote on the regulated agreements, the consequences of the rejected agreements, which may be damaging to the company, may be borne by the interested party and, potentially, by other members of the board of directors. Agreements approved by the meeting are effective against third parties, as are those it rejects, unless they are cancelled in the event of fraud (Article L. 225-41 of the Commercial Code).

It is therefore important for companies to clarify the consequences of a no vote. For example, as a result of an error in calculating voting rights discovered after the general meeting, one company in the sample stated that the resolution on a services agreement with one of the directors had been rejected. The company published a press release to clarify the consequences of this vote. It stated that the services agreement had been terminated.

4.2 THE *EX ANTE* VOTE ON THE PRINCIPLES AND CRITERIA FOR DETERMINING, ALLOCATING AND AWARDING COMPONENTS OF COMPENSATION (THE "COMPENSATION POLICY")

At companies whose securities are admitted for trading on a regulated market, the shareholders' vote on compensation principles and criteria (hereinafter "*ex ante* say on pay" or "vote on the compensation policy") is a

[110] Article L. 225-37-3 of the Commercial Code, which refers to Article L. 225-102 of that same code.

prerequisite for the vote on the compensation that is then awarded and paid[111]. For companies with a management board and supervisory board, although *ex ante* say on pay applies to all members of the board, only the chairman is also subject to the vote on compensation awarded and paid.

1.2.1 Scope of senior managers and compensation concerned

Companies concerned

Within the sample, only **Michelin** did not hold a vote on a resolution on compensation principles and criteria since the legal framework for the vote on compensation does not apply to limited partnerships with share capital. The company nevertheless very clearly presented the compensation policy applicable to its senior managers in its registration document. Similarly, it complied with the recommendation in the AFEP-MEDEF code which calls for the submission of a resolution to the general meeting to obtain shareholder approval for compensation paid and awarded to management.

Senior managers concerned

Companies with a board of directors must present the compensation policy applicable to chairmen, chief executive officers and, where applicable, deputy chief executive officers. Companies with a management board and supervisory board are required to submit to shareholder vote the compensation policies for members of the management board, members of the supervisory board, and the sole chief executive. In 2018, all the companies in the sample submitted the compensation policy for the corporate officers concerned to shareholders for their approval.

Compensation concerned

Articles R. 225-29-1 and R. 225-56-1 of the Commercial Code, introduced by Decree no. 2017-340 of 16 March 2017, specify the compensation that must be described in the compensation policy. This concerns, first, annual fixed, variable and extraordinary compensation, as well as benefits in kind. Also referenced are director's fees, stock options, bonus shares, signing bonuses, termination benefits, non-compete benefits, top-up pensions, and compensation owed under agreements entered into, directly or through an intermediary, by virtue of the position held, with the company in which the position is held or with a group company, as well as, in general, "*any other component of compensation that may be awarded by virtue of the position held*".

[111] Article L. 225-37-2 of the Commercial Code for companies with a board of directors and Article L. 225-82-2 of the Commercial Code for companies with a management board and supervisory board.

4.2.2 Information provided in the resolutions[112]

Number of resolutions

While Article L. 225-100 of the Commercial Code requires that separate resolutions be put to an ex post vote for each of the senior managers referenced, this requirement is not explicitly stated for resolutions put to an ex ante vote. After observing that some companies introduced just one resolution for all their directors and corporate officers even though their compensation policies may be substantially different, the AMF, in its consolidated recommendation[113], recommended that companies draft separate resolutions for each category of senior manager when the principles and criteria for determining, allocating and awarding components of compensation specific to these senior managers are distinct and/or the scope of the vote by shareholders is different.

Within the sample:

- 50% of companies introduced several resolutions, by category of corporate officer;
- 29% of companies, including seven in the CAC 40, introduced only one resolution because they have only one corporate officer;
- 21% of companies, including one in the CAC 40, introduced just one resolution even though they had several corporate officers.

The majority of companies with a board of directors thus introduced an individual resolution for the chairman and chief executive officer, the chairman of the board and the chief executive officer and then, where applicable one resolution for the deputy chief executive officers.

Drafting of the resolutions

When drafting their resolutions, the companies referenced the positions held by the corporate officer and, more rarely, also gave their names.

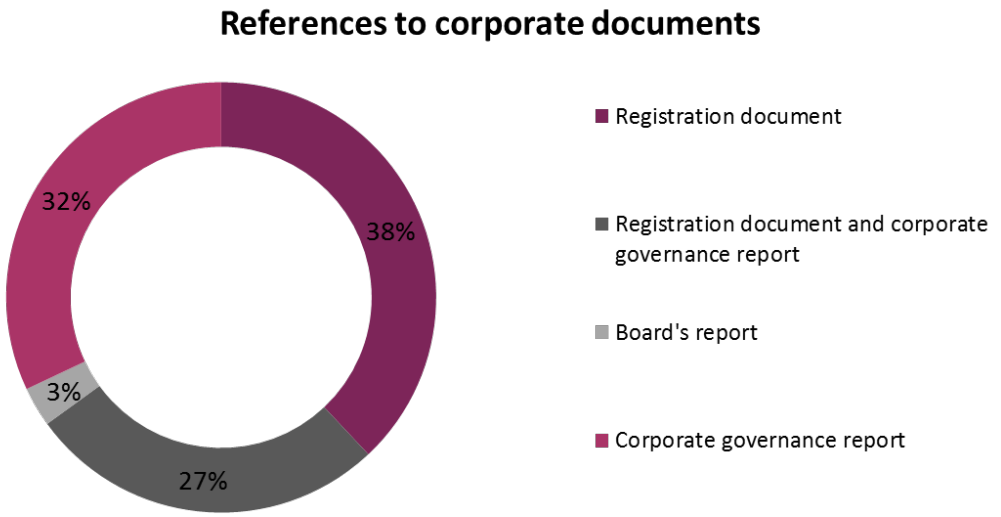
References to the information

When the general meeting resolution refers to a document presenting the components of compensation subject to a vote, the AMF recommends that companies provide an exact reference to ensure that shareholders have direct access to this information[114]. Most companies in the sample were found to refer to the registration document.

[112] The figures do not include **Michelin**, which did not introduce any resolutions.

[113] Corporate governance and executive compensation in companies referring to the AFEP-MEDEF code – Consolidated presentation of the recommendations contained in the AMF annual reports (DOC-2012-02), November 2017.

[114] Corporate governance and executive compensation in companies referring to the AFEP-MEDEF code – Consolidated presentation of the recommendations contained in the AMF annual reports (DOC-2012-02), November 2017.



Source: AMF

Starting with financial years beginning on or after 1 August 2017, references to the report on corporate governance are the logical result of the law that created this report[115] which is incorporated into the registration document. This report includes, in particular, the draft resolutions presenting the principles and criteria for determining compensation (see box below)[116].

Based on this reference, it should be possible to easily find the information in the registration document and/or corporate governance report. Accordingly, 65% of companies make a specific reference to the section or page of the document containing this information.

Focus on the presentation of executive compensation in the new board report on corporate governance

The law now requires that all information about executive compensation be consolidated in the board's report on corporate governance. This report is appended to the management report or, for companies with a board of directors, may be included as a separate section of the management report. If the issuer prepares a registration document, this information is included therein.

The report comprises:

- the draft resolutions presenting the principles and criteria for determining, allocating and awarding the fixed, variable and extraordinary components of total compensation and benefits in kind that may be awarded to the chairman, chief executive officers or deputy chief executive officers by virtue of their position;
- a breakdown of these components of compensation. It also specifies that the payment of the variable and extraordinary components of compensation is subject to the ordinary general meeting's approval of the components of compensation of the individual in question as provided for in Article L. 225-100 of the Commercial Code;
- total compensation and benefits in kind paid by the company to each corporate officer during the financial year, including in the form of an award of equity securities, debt securities or securities giving access to capital or entitling holders to a grant of debt securities. The report describes and differentiates between the fixed, variable and extraordinary components of this compensation and these benefits, as well as the criteria used to calculate them or the circumstances under which they were awarded;

[115] Pursuant to Articles L. 225-37 and L. 225-68 of the Commercial Code.
[116] Article L. 225-37-2 of the Commercial Code.

- commitments of any kind made by the company to its corporate officers, corresponding to components of compensation, payments or benefits owed or likely to be owed as a result of the assumption of, termination of or change in their duties, or subsequent to the performance thereof, in particular pension commitments and other lifetime benefits. The information provided should include, under the conditions and in accordance with the procedures set by decree, the specific procedures for determining these commitments and an estimate of the amounts likely to be paid in this respect. Except when done in good faith, payments and commitments made in breach of the provisions of this paragraph may be cancelled.

The report also includes the information required under Article L. 225-37-4 of the Commercial Code and, when a company voluntarily refers to a corporate governance code, the provisions from which it has departed and the reasons for this departure, as well as the place where this code may be consulted or, if the company does not refer to such a code, the reasons the company decided not to refer to it, as well as, where applicable, the rules that it applies in addition to legal requirements.

The ad hoc report of the statutory auditors (Article L. 225-235 of the Commercial Code) now covers only the information contained in the corporate governance report and no longer deals with information on internal audit and risk management procedures.

As far as the presentation of executive compensation in the corporate governance report is concerned, the companies in the sample divided their reports into several sections: (i) the general principles of the company's compensation policy; (ii) the 2017 compensation policy; and (iii) compensation paid in 2017 by presenting the information needed for the vote on compensation; as well as (iv) the tables required by the AFEP-MEDEF code for the presentation of certain components of compensation; and (v) the 2018 compensation policy submitted for the general meeting's approval. The report also includes the statement of compliance with the code to which the company has decided to adhere.

Voting frequency

The law requires that the general meeting vote annually on the compensation principles and criteria. If a change is made during the year, the meeting must vote again. A detailed analysis is presented above in the section on senior manager appointments.

4.2.3 Information provided in the registration document

4.2.3.1 Overview of the compensation policy

While the legal and regulatory provisions referenced above call for a description of the principles and criteria for determining, allocating and awarding compensation and specify the types of compensation that must be described in the compensation policy, they do not specify the level of detail.

Presentation of total compensation and the compensation structure

Most of the companies stated, first, that they were in compliance with the principles for determining compensation set out in the AFEP-MEDEF code (balance between short- and long-term components of compensation with or without performance conditions) and very clearly described the structure of their compensation policy.

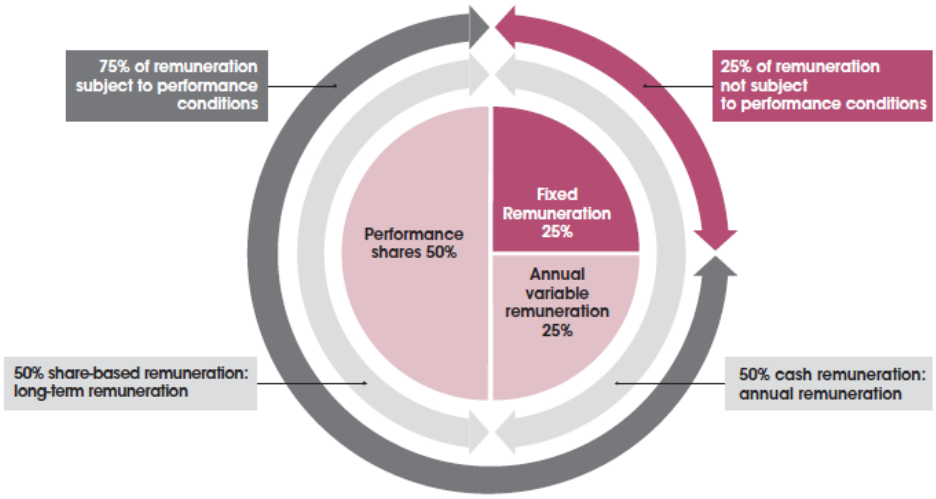
For example, **L'ORÉAL**[117] provided, for its chairman and chief executive officer, a diagram showing the balance between the different components of annual compensation which *"form a balanced whole with a breakdown that is approximately:*

- *50/50 between fixed and annual variable remuneration on the one hand and long-term remuneration (performance shares) on the other;*

[117] Page 88 of the 2017 registration document.

- *50/50 between cash remuneration and share-based remuneration;*
- *75/25 between remuneration subject to performance conditions and remuneration not subject to performance conditions*".

DIAGRAM SHOWING THE BALANCE BETWEEN THE DIFFERENT COMPONENTS OF ANNUAL REMUNERATION



Excerpt from L'Oréal's 2017 registration document

It has become common practice to refer to a panel or group of peers when determining the overall compensation policy. All of the companies in the CAC 40, with one exception, said that they used a comparative panel, generally put together by an outside firm, to develop their executive compensation policy.

The level of detail given about the panel varied by company. Two companies in the CAC 40 provided a list of the companies in the panel.

Temporal aspects of the compensation policy

While the companies have adopted long-term compensation policies in conjunction with their strategic plan, many of them focused their presentation on the annual compensation policy without putting it into perspective. Of the companies that did describe their longer-term approach, one company in the sample explained that, as part of a management transition, multi-annual variable compensation could be awarded to two deputy chief executive officers within one year, similar to what is envisaged for the company's other chief executive officers.

Presentation of the two compensation policies

The year 2018 was the second year of implementation of ex ante say on pay. The companies therefore presented their compensation policies for both 2017 and 2018 in their registration document. **However, very few companies clearly explained the differences between the approaches for these two years. For the sake of clarity, the AMF encourages companies to present and explain in a transparent manner any changes in the various components of the compensation policy**.

Presentation of the 2018 compensation policy in table form

A few companies presented the compensation principles and criteria for the next financial year using tables, similar to how compensation awarded for the previous financial year is presented. All components of compensation are shown, even when the senior manager does not receive them.

4.2.3.2 Breakdown by type of compensation in the compensation policy

Next, companies presented the criteria for determining and awarding different types of compensation. The level of qualitative information provided varied by issuer.

The criteria for determining fixed compensation

The criteria for determining fixed compensation were clearly explained by 35% of the companies in the sample. The most frequent justification was based on three criteria:

- skills and experience;
- the corporate officer's level of responsibility;
- "*external practices*", with reference to the above-mentioned comparative panel. Three companies in the CAC 40 thus explained that their fixed compensation policy was determined based on the level of fixed compensation of senior managers at comparable companies. One of these companies specified that its panel consisted of "*the top executives of CAC 40 companies*".

The exact amount of fixed compensation that they decided to award to their corporate officer for financial year 2018 was specified by 75% of the companies[118].

The AFEP-MEDEF code then recommends that fixed compensation awarded to corporate officers in principle be reviewed "*only [...] at relatively long intervals. If, however, the company opts for an annual increase in the fixed compensation, this increase must be modest and must respect the principle of consistency* […]. *In the event of any significant increase in compensation, the reasons for this increase must be clearly indicated*". The AFEP-MEDEF code also recommends that "*If, however, the company opts for an annual increase in the fixed compensation, this increase must be modest and must respect the principle of consistency set out in § 24.1.2*". The AMF also recommends that companies:

- *"state how often their executives' fixed remuneration is reviewed"* and
- *"present increases in their executives' fixed compensation with an indication of the percentage increase over the previous year and an explanation of the reasons for this increase if it is significant*".

These recommendations, which had been made in view of the compliance with the code of the compensation paid, also apply to the description of the compensation policy.

Within the sample, 23 of the 35 companies specified and, where applicable, commented on any changes in fixed compensation relative to the previous year. Of the 33 corporate officers concerned, 23 had stable fixed compensation, two saw a decrease in their 2018 compensation relative to 2017, and eight benefited from an increase in their fixed compensation.

In the eight cases where the corporate officer's compensation increased, it was by an average of 15.7%. A rationale was always provided for the four increases of more than 15%. The justifications given were the corporate officer's increased responsibilities and the disparities observed relative to the practices of comparable companies. For one corporate officer, the justification was based only on the external practices observed, as the company provided general information about the panel of companies used for comparison.

The criteria for determining multi-annual and annual variable compensation

The companies presented in their registration document the rationale behind their variable compensation policy, as well as the maximum ceiling and the performance conditions applied to awards of some or all of this compensation.

[118] This explanation was provided not in the compensation policy itself but in a paragraph explaining how it is implemented for the current financial year.

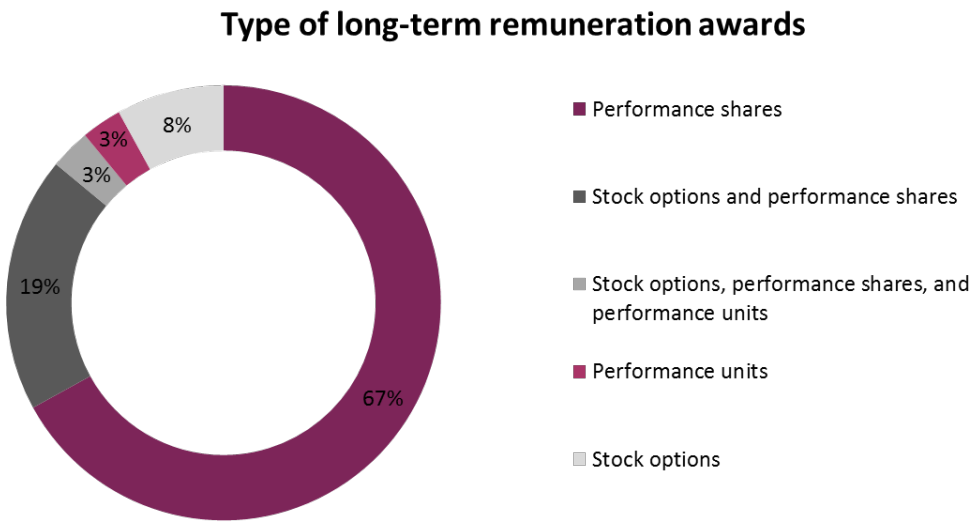
Ceilings: in 82% of the cases[119], the companies specified the ceiling on 2018 variable compensation relative to fixed compensation. In most cases, they also provided a target value. The study revealed an average ceiling applied to annual variable compensation in 2018 of 142% of fixed compensation for the CAC 40 companies and 129% for the sample as a whole.

Performance criteria: for reasons relating to business plan confidentiality, most of the companies did not disclose the exact performance criteria associated with 2018 variable compensation. Conversely, some companies described in detail the content and weighting of each performance criterion in a table. This format gives a clear idea of how variable compensation is calculated, without breaching business confidentiality.

Repayment clause: just one company in the sample stated that it had allowed for the possibility of requesting repayment of variable compensation. This clause would come into play in the event of accounting fraud (clawback).

Long-term variable compensation

It is possible for 68% of corporate officers to receive long-term variable compensation, the nature of which is as follows:



Source: AMF

Recommendation 24.3.3 of the AFEP-MEDEF code notes that "*Such plans are not restricted solely to executive officers, and all or a part of the company's employees may benefit from them*". However, the companies rarely specified what the categories of beneficiaries are (or will be).

Extraordinary compensation

The AFEP-MEDEF code states that "*Only highly specific circumstances may warrant the award of extraordinary compensation (for example, due to their importance for the corporation, the involvement they demand and the difficulties they present). Justified reasons for the payment of this compensation must be given, and the realisation of the event that gave rise to the payment must be explained*". Extraordinary compensation may be awarded to 66% of corporate officer (including five CAC 40 corporate officers) under certain "*specific circumstances*", which, in and of itself, is not particularly informative.

[119] For the senior managers concerned.

Director's fees

Practices for the allocation of director's fees vary widely. They were awarded to 32% of corporate officer. In detail, 28% of executive corporate officers and 64% of non-executive corporate officers received them.

Other compensation provided for by Decree no. 2017-340 of 16 March 2017 (Articles R. 225-29-1 and R. 225-56-1 of the Commercial Code)

Among the other components to be presented when the vote is held on the compensation policy, the decree also references signing bonuses, termination and non-compete benefits, top-up pensions, and compensation owed under agreements entered into, directly or through an intermediary, by virtue of the position held, with the company in which the position is held or with a group company, as well as, in general, "*any other component of compensation that may be awarded by virtue of the position held*". Companies chose to present details of the components resulting from long-term contracts both in the compensation policy and in components of compensation owed or paid for the previous financial year.

4.2.4 What information is provided on the actual implementation of the compensation policy?

While it is important to differentiate the compensation policy from its implementation, the AMF found that neither the section on the 2017 or 2018 compensation policy nor the corporate governance report as a whole provided a comprehensive view of how the companies implemented their compensation policy. Not all of the compensation awarded by the company prior to the last financial year – but not yet paid (long-term variable compensation, performance shares, stock options) – was presented insofar as this concerns the implementation of the compensation policy for prior years.

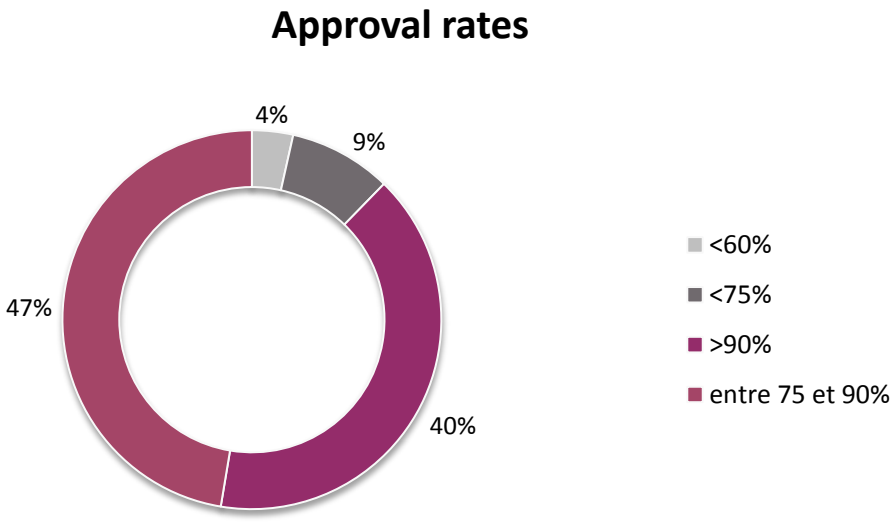
The corporate governance report also did not systematically present the compensation awarded and/or paid since the end of last year, to which the ex post vote did not yet apply.

Recommendation

The AMF therefore recommends that the corporate governance report and registration document include a comprehensive view of implementation of the compensation policy, in addition to the policy itself. For options, performance shares and long-term variable compensation, this may be done with a reference to tables 8, 9 or 10 of the AFEP-MEDEF code. These tables, which describe past awards, should set out the previously established performance conditions.

4.2.5 Approval rates

All the ex-ante resolutions on compensation policies were approved, with an average adoption rate of approximately 88%.



Source: AMF

The compensation policy for two chairmen and chief executive officers was, however, approved at a rate of less than 60%. Their 2017 compensation had also been approved with a score of less than 60%. One of these corporate officers had received a more than 15% increase in his fixed compensation.

Insofar as there is no provision in the law for a corporate officer who is a shareholder to abstain from voting, except in the case of a regulated agreement to which the corporate officer is party, the AMF notes that recommendation 1.5 of the AFEP-MEDEF code specifies, when a company is controlled by a majority shareholder (or a group of shareholders acting in concert), that "*the latter assumes a specific responsibility with regard to the other shareholders, which is direct and separate from that of the Board of Directors. They take particular care to prevent conflicts of interest and to take account of all interests*".

4.3 THE VOTE ON COMPENSATION PAID AND AWARDED IN 2017

Since November 2015, the AFEP-MEDEF code has included a say-on-pay recommendation. The year 2018 is the first in which the legal provisions on ex post say on pay apply.

There are two important differences between the systems.

The first is that of the consequences of a no vote. When an ordinary general meeting votes against compensation paid and awarded for the last financial year, the law provides for non-payment of the variable and extraordinary compensation while the code provides only for a review by the board. It thus specifies that "*If the ordinary shareholders' meeting issues a negative opinion, the Board must meet within a reasonable period after the shareholders' meeting and examine the reasons for this vote and the expectations expressed by the shareholders.*
Following this consultation and on the recommendations of the compensation committee, the Board will rule on the modifications to be made to the compensation due or awarded in respect of the closed financial year or the future compensation policy. It must then immediately publish information on the company's website indicating how it has responded to the vote at the shareholders' meeting and report on this at the next shareholders' meeting".

The second relates to the scope of compensation subject to the vote, about which the law is very specific (see section 4.3.2).

4.3.1 The companies and senior managers concerned

All the companies in the sample put the components of compensation paid or awarded to their corporate officers for the previous financial year to a shareholder vote. Pursuant to Article L. 225-100 II of the Commercial Code, a resolution is introduced for each corporate officer whose compensation is put to a vote.

Two companies that do not fall within the scope of the law voluntarily followed the recommendations of the AFEP-MEDEF code: **MICHELIN**, which is a limited partnership with share capital, and **ELIOR**, whose shareholders had previously voted against the compensation principles and criteria.

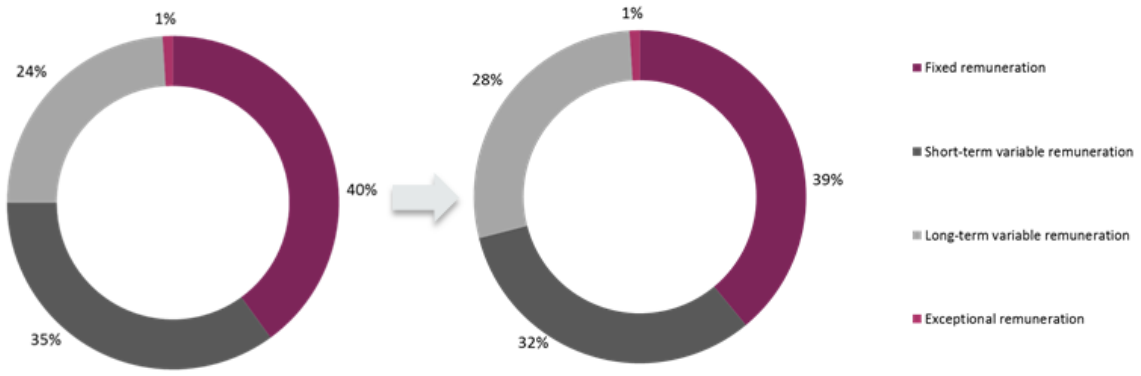
4.3.2 Compensation put to a vote

Compensation put to a vote

The same compensation as that subject to *ex ante* say on pay is put to a vote under the *ex post* say-on-pay framework. This includes total compensation and benefits in kind paid or awarded for the previous financial year, as well as certain components of compensation that could be owed without having been awarded or paid in the previous financial year in that they may have resulted from previously made commitments.

The changes in compensation paid at the companies in the sample are as follows:

Breakdown of remuneration components over 2016 and 2017



Source: AMF

The AMF found that fixed and variable compensation remained proportionally constant but that the share of long-term compensation increased. Exceptional compensation was marginal.

Multiple votes on certain types of compensation

Certain types of compensation are put to a shareholder vote two or even three times. Long-term variable compensation is thus put to a vote when it is awarded and then when it is paid, if the performance conditions have been met. Termination benefits and certain defined-benefit pension commitments are subject both to (ex-ante and ex post) say-on-pay votes and to the regulated agreements procedure. Lastly, some types of share-based compensation may be awarded only if another resolution allows for the issuance of such shares (options and/or performance shares, for example).

Compensation not submitted to a vote

Amounts not owed in respect of the position held are submitted to a vote. Two companies chose not to submit the compensation of certain senior managers (mainly the chairmen of the board of directors or supervisory board) for shareholder approval for several reasons, including where no compensation was awarded to the

senior manager for his duties, where the corporate officer stated that he would waive his compensation, and where the only compensation the corporate officer received was director's fees.

Focus on the compensation of deputy chief executive officers

Of the companies that have a deputy chief executive officer, 60% compensated him or her both for the office held and under an employment contract. This employment contract provides for compensation for technical duties, separate from those associated with the position of deputy chief executive officer. In the companies in the sample, compensation owed under the contract was greater than that owed for the office held. Some companies specified that the fixed and variable components of compensation received under the employment contract followed the same rules and criteria for determining, allocating and awarding compensation as those established for the compensation they are paid as a corporate officer. However, they only put to a vote the compensation owed for the office held.

4.3.3 Information provided by the companies

All the companies in the sample presented the information required in the board's report to the general meeting. Some also presented it in the corporate governance report incorporated into the registration document. What is important is to avoid duplicating the information within a single registration document.

Within the sample, 86% of companies used the template provided in November 2016 by the HCGE in its application guide for the AFEP-MEDEF code. This table includes a description (in qualitative terms and as an amount or accounting valuation) of the components of compensation owed or awarded for the previous financial year, separating out those that are or have been put to a vote at the general meeting under the procedure for regulated agreements and commitments:

Components of compensation owed or awarded for the previous financial year	Amounts or accounting valuation put to a vote	Description
Fixed compensation	**€x** **(amount paid or payable)**	Potential change
Annual variable compensation	**€y** **(amount paid or payable)** (including, where applicable, the deferred portion of this compensation)	Indication of the different quantifiable and/or qualitative criteria used to determine this variable compensation (subject to confidentiality constraints) Where qualitative criteria are used, indication of the limit set for the qualitative portion Where applicable, for the deferred portion of annual variable compensation, description of the mechanism and the different quantifiable and/or qualitative criteria to which payment is subject
Multi-annual variable cash compensation	**€0**	Description of the mechanism and different quantifiable and/or qualitative criteria to which payment of this multi-annual variable compensation is subject (subject to confidentiality constraints)
Stock options, performance shares or other share grants	**Options = €xx** **(accounting valuation)**	Number of options Indication of performance conditions to which the exercise of options or vesting of shares is subject Indication of the percentage of capital represented by the grant to the corporate officer Date of authorisation by the general meeting, resolution number and date the board decided to make this grant

	Shares = N/A **Other securities = N/A**	No grant
Extraordinary compensation	**N/A**	No extraordinary compensation
Director's fees	**N/A** **(amount paid or payable)**	The corporate officer does not receive director's fees
Valuation of benefits in kind	**€yy** **(accounting valuation)**	Car
Components of compensation owed or awarded for the previous financial year that are or have been put to a vote at the general meeting under the procedure for regulated agreements and commitments	**Amounts put to a vote**	**Description**
Termination benefit	**€0**	Indication of the terms and conditions of the commitment made by the company for the termination of the corporate officer's appointment Date of the board's decision, date of submission to the general meeting and resolution number in the case of the regulated agreements procedure
Non-compete benefit	**N/A**	There is no non-compete agreement
Supplementary pension scheme	€0	Description of the supplementary defined-benefit pension scheme Indication as to whether the scheme has been closed (date) Summary of the board's decision, date of submission to the general meeting and resolution number in the case of the regulated agreements procedure

The AMF found that:

- due to the entry into force of the Sapin II law on say on pay, companies must make sure to supplement this table with the other types of compensation required under Article R. 225-29-1 of the Commercial Code, such as compulsory and group pension and benefit schemes[120], the components of compensation and benefits in kind owed or likely to be owed under agreements entered into, directly or through an intermediary, by virtue of the position held[121], and any other component of compensation that may be awarded by virtue of the position held;
- companies must describe both the awards and the amounts actually paid because of these awards;
- information on pensions must be supplemented in order to meet other legal requirements (see box).

[120] Listed in Article L. 242-1 of the Social Security Code.

[121] This includes, as indicated above, agreements entered into with the company in which the position is held, any company controlled by it, any company that controls it or any company that is placed under the same control as it; the concept of control has the meaning defined in Article L. 233-16 of the Commercial Code.

New pension disclosure requirements

Due to the mixed nature of the supplementary pension schemes, the law of 6 August 2015 on economic growth, activity and equal opportunities, known as the Macron law, introduced the requirement to include "*pension commitments and other lifetime benefits*" in the management report. This information must detail the procedures for determining these commitments and include, for each corporate officer, an estimate of the benefit amounts that may potentially be paid in respect of these commitments and an estimate of the related fees.

For the 2018 reports on financial years beginning on or after 1 January 2017, Article D. 225-104-1 of the Commercial Code lists the information that the board of directors must provide to shareholders regarding the critical components of the pension commitments:

"*I. – The information provided by the company on pension commitments, other than basic pension schemes and compulsory supplementary pension schemes, and other lifetime benefits granted by the company to its corporate officers pursuant to the second sentence of subparagraph three of Article L. 225-37-3 shall specify the critical components thereof for each corporate officer, in particular:*
1) For pension and similar commitments and any other benefit paid for the termination of an appointment in whole or in part in the form of an annuity, where these obligations are borne by the company:
a) Name of the commitment in question;
b) Reference to the legal provisions used to identify the category of the corresponding scheme;
c) Conditions for joining the scheme and other eligibility conditions;
d) Procedures for determining the reference compensation established by the relevant scheme and used to calculate the beneficiaries' entitlements;
e) Vesting schedule;
f) Potential existence of a ceiling, and the amount and terms and conditions for determining that ceiling;
g) Terms and conditions for funding the benefit;
h) Estimated amount of the annuity at the end of the financial year;
i) Related taxes and social security charges borne by the company;
2) For other lifetime benefits:
a) Name of the lifetime benefit in question;
b) The estimated amount of the lifetime benefit, measured on an annual basis at the end of the year;
c) Terms and conditions for funding the lifetime benefit;
d) Related taxes and social security charges borne by the company.
"*II. – The estimated amount of the annuity at the end of the year referenced in I.1.h of this Article shall be determined as follows:*
– the annuity shall be estimated on an annual basis;
– it shall take into account the length of time the officer has held the position at the end of the financial year;
– where applicable, it shall be based on the compensation as recorded in the previous financial year(s);
– it shall be calculated, regardless of the conditions for fulfilling the commitment, as though the corporate officer could benefit therefrom as from the day after the end of the financial year;
– the estimate of the annuity shall differentiate, where applicable, between the share of the annuity awarded as part of a scheme referenced in Article L. 137-11 of the Social Security Code and the annuity paid as part of another scheme put in place by the company".

Article L. 225-37-3 of the Commercial Code specifies that, except when done in good faith, payments and commitments made in breach of these provisions may be cancelled. When the annual report does not include the required information, any interested party may ask the presiding judge, ruling in summary proceedings, to order, under penalty, the board of directors or management board, as the case may be, to provide this information.

4.3.4 Compliance of 2017 compensation with the AFEP-MEDEF code

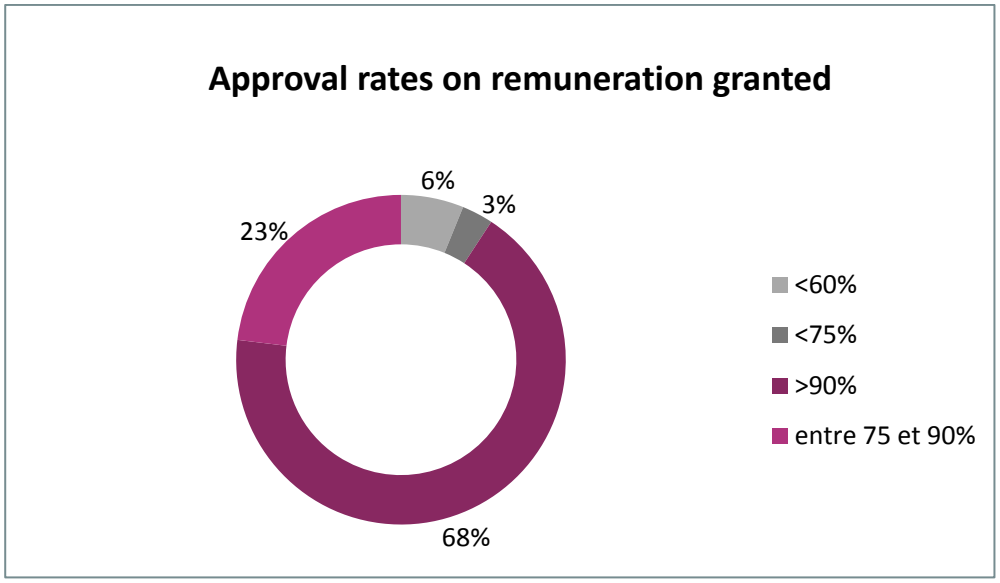
Compliance with the AFEP-MEDEF code calls for three comments on the compensation awarded or paid in 2017:

- One company in the sample established extraordinary compensation that would recur over several years. Recommendation 24.3.4 of the AFEP-MEDEF code specifies that "*Only highly specific circumstances may warrant the award of extraordinary compensation (for example, due to their importance for the corporation, the involvement they demand and the difficulties they present). Justified reasons for the payment of this compensation must be given, and the realisation of the event that gave rise to the payment must be explained*". The company must therefore explain, every year, the reasons for using this form of compensation, linked for example to significant acquisitions with integration challenges, instead of variable compensation. The AFEP-MEDEF code and/or the HCGE should confirm whether recurring extraordinary compensation complies with the code.

- With regard to performance conditions, the link between compensation and performance must be made. For variable compensation, the code specifies that companies must provide the explanations required in recommendation 25.2: "*Without jeopardising the confidentiality that may be linked to certain elements in the determination of the variable part of the compensation, this presentation must indicate the breakdown of the qualitative or quantifiable criteria on the basis of which this variable part is determined, their relative importance, how these criteria have been applied during the financial year and whether the individual targets have been attained*". It is important to provide this information for all compensation subject to performance conditions. For example, at one company in the sample, the senior manager did not receive variable compensation but continued to accrue pension entitlements. Insofar as the performance conditions were largely common to both components of compensation, the company should have made a special effort to explain why the pension entitlements continued to accrue.

4.3.5 Approval rate

All the ex post resolutions on compensation awarded were approved, with an average adoption rate of approximately 90.9%.



Source: AMF

The compensation of four senior managers was, however, approved at a rate of less than 60%. Of these four senior managers, three saw an increase in their total compensation between 2016 and 2017. Two of the increases were less than 15% and one was 80%. This last increase had been pre-announced by the company in its 2016 registration document as the prior compensation was below that of comparable companies.

The approval rate for the compensation policy for three of these senior managers had been high (more than 85% of the votes) at the 2017 general meeting while it had already been less than 60% for one of them.

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APPENDICES

APPENDIX 1 – LIST OF COMPANIES IN THE SAMPLE

CAC 40 companies (17 companies)	Other companies in the SBF 120 (26 companies)
AIR LIQUIDE	BIC
AXA	BIOMERIEUX
BOUYGUES	DASSAULT SYSTEMES
CAPGEMINI	DBV TECHNOLOGIES
CARREFOUR	EDENRED
LEGRAND	ELIOR
L'OREAL	EURAZEO
MICHELIN	FNAC DARTY
ORANGE	GECINA
RENAULT	GROUPE EUROTUNNEL
SAFRAN	GTT
SAINT-GOBAIN	ILIAD
SANOFI	IMERYS
SODEXO	JC DECAUX
TOTAL	NATIXIS
VEOLIA	NEOPOST
VINCI	NEXANS
	PLASTIC OMNIUM
	REMY COINTREAU
	SPIE
	TARKETT
	TECHNICOLOR
	TELEPERFORMANCE
	THALES
	VALLOUREC
	WENDEL

APPENDIX 2 – POSITIONS OF VARIOUS INSTITUTIONS ON THE ISSUE OF THE DIRECTOR AND CORPORATE OFFICER SUCCESSION PLAN

The AMF presents below a table summarising the positions set out in the voting policies for 2018 of three proxy advisors (**ISS, Glass Lewis and Proxinvest**), the **AFG** (the French Asset Management Association), and two institutional investors (**BlackRock and Amundi**) on the theme of succession plans as examined in this report.

The recommendations of other countries' governance codes on this topic are also provided:

- The **UK corporate governance code** prepared by the FRC (Financial Reporting Council), as revised in July 2018;
- The 7 February 2017 version of the **German corporate governance code**, referred to as the *Kodex*;
- The **Japanese corporate governance code** published by the Tokyo Stock Exchange and revised in June 2018.

POSITIONS OF VARIOUS INSTITUTIONS ON THE DIRECTOR AND CORPORATE OFFICER SUCCESSION PLAN
Positions set out by certain proxy advisors and institutional investors in their voting policy for 2018
■ Just one firm, Proxinvest, devoted a section to the subject of the succession plan as such. It noted that succession planning is essential, in particular for founder-led companies. It also stated that information on this subject must be included in the articles of incorporation, particularly with regard to the age limit for the chief executive officer and the chairman. It further stressed that it expects companies to present the succession process to the market at least two years before these age limits are reached. ■ BlackRock addressed this subject indirectly in a specific guideline for cases where it might not support the re-election of the chairman of the board or of all its members. The firm therefore noted that this guideline may be applied in cases where the board has not been able to adequately plan for the succession of members of the board of directors (which includes the succession of corporate officers who sit on the board) or of the supervisory board. ■ The AFG and Amundi noted that succession planning is a task that falls to the selection committee and that this work must cover both circumstances in which the term of office ends unexpectedly and those in which the term is expected to expire.
Positions set out in foreign corporate governance codes
■ The UK corporate governance code devotes one chapter to the composition, evaluation and succession process of the board in general. More specifically concerning executive corporate officers, Principle J of the code recommends that an effective succession plan be put in place. It is worth noting that this recommendation also refers to executive corporate officer, i.e., members of the executive committee or the first layer of management below board level. The board of directors is explicitly responsible for this task and, as such, is responsible for reviewing the pool of potential candidates. ■ The German corporate governance code addresses the topic of succession plans in the section on the tasks of the supervisory board and stresses that this board is responsible for ensuring the long-term succession of the members of the supervisory board and management board. ■ The Japanese governance code also addresses this topic in the section on the role of the board of directors. It is worth noting that the revised version of June 2018 strengthened recommendation 4.1.3 by stressing that the board must not only establish and proactively implement a succession plan for key executive corporate officers but also ensure that a pool of candidates is maintained. The previous version of the code only gave the board a role in supervising the succession plan in question.

APPENDIX 3 – FOCUS ON COMMITMENTS MADE TO SENIOR MANAGERS[122]

The AMF notes that, in addition to the recommendations of the AFEP-MEDEF code, there are a number of provisions governing the components of compensation likely to be owed at the time of or after departure[123], given that they can potentially be quite significant:

- There are laws governing their determination and implementation at companies listed on a regulated market. Accordingly, when they are entered into for chairmen, chief executive officers, deputy chief executive officers, or members of the management board, these commitments are always subject to the regulated agreements procedure. Most of these commitments, with the exception of non-compete benefits and group pension schemes, are also subject, pursuant to Article L. 225-42-1 of the Commercial Code, to additional conditions: in addition to a specific resolution for each beneficiary, these components of compensation are subject to performance conditions and the company must, no later than five days after the meeting of its board of directors, publicly disclose on its website the decision of the board that authorised the entry into these commitments[124]. While the companies in the sample did indeed post this information on their website, they did not go any further and did not communicate all of the components of compensation awarded to the new senior manager;

- The AMF has also made a number of recommendations likely to apply when these components of compensation are put to a vote (see box below).

Overview of the AMF's recommendations applicable to regulated agreements entered into with senior managers

The AMF has made a number of recommendations (Recommendation DOC-2012-05) on regulated agreements that are likely to apply to executive compensation. These recommendations are based on the proposals of the working group on general meetings of shareholders of listed companies published in July 2012.

With regard to voting, the AMF recommends subjecting "*any significant regulated agreement, authorised and concluded after the financial year-end, to the approval of the next meeting, on condition that the statutory auditors have been able to analyse the agreement in time for the publication of its report*" and, although the law does not include any specific provision, encouraging "*submission of a separate resolution to shareholder vote whenever the agreement is of a significant nature for one of its parties and that directly or indirectly involves a senior manager or shareholder, as required by law for certain deferred commitments for the benefit of executive corporate officer*".

In terms of disclosure, the AMF's recommendations are to:

- "*Have the board of directors give its reasons for authorising a regulated agreement by explaining how the company stands to benefit from the agreement and the related financial terms and conditions. These reasons would be recorded in the meeting minutes and bought to the attention of the statutory auditors when they are notified of the agreement*" (proposal 24);

[122] The rules set out below apply to agreements entered into since 2015.

[123] Such as termination benefits, non-compete benefits, defined-benefit pension commitments that meet the criteria for the schemes referenced in Article L. 137-11 of the Social Security Code, and commitments corresponding to compulsory and group pension and benefit schemes referenced in Article L. 225-42-1 of the Social Security Code, as well as all compensation, benefits and payments owed on termination of the appointment (for more details, see ANSA, legal committee, opinion no. 07-035). Article L. 225-22-1 of the Commercial Code specifies that, in the event of the appointment to the duties of president, general manager or assistant general manager of a person bound by an employment contract to the company or any controlled company or a company that controls it as defined in II and III of Article L. 233-16, the provisions of the said contract corresponding, if necessary, to elements of remuneration, compensation or benefits due or likely to be due as a result of the termination or change in these duties, or subsequent to these duties, are subject to the regulated agreement regime set out in Article L. 225-42-1 of the Commercial Code and must therefore be submitted to the general meeting for approval.

[124] Article L. 225-42-1 of the Commercial Code and Article R. 225-34-1 of the Commercial Code.

- "*Enhance the content of the information provided in the statutory auditors' special report so that shareholders can better appreciate the issues involved in agreements that have been concluded. In particular, any information that might enable shareholders to assess the merits of entering into agreements and commitments should be provided, especially in the case of service agreements with directors. Achieving this objective will be facilitated if the board of directors transmits a clear, precise document explaining why the agreement is in the company's interest*" (proposal 28);
- "*Specify the persons concerned by the agreements and state their function, including for ongoing agreements*" (proposal 28);
- "*Present the financial details of these agreements, making a distinction between income, expenses and commitments and specifying the amounts involved*" (proposal 28);
- "*Where the company prepares a registration document, the special report should be included so that shareholders can promptly access relevant information*" (proposal 31).

In the recommendation relating to disclosure of compensation of directors and corporate officers found in point 3.5 of the guide to compiling registration documents (Position-Recommendation DOC-2009-16), the AMF recommends that companies:

- "*where a services agreement has been entered into directly or indirectly between the listed company and a senior manager, indicate very clearly whether this agreement provides for services related to the senior manager's duties and indicate the amounts billed in that respect";*
- "*include in the compensation section of the registration document a reference to the statutory auditors' report where these agreements are described";*
- "*describe in their registration document each year the services actually provided under this services agreement and indicate the amount billed to the company for each of these services*".