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AMF 2012 Annual Report on Corporate Governance and Executive Compensation

11 October 2012

Autorité des marchés financiers
17, place de la Bourse 75082 Paris cedex 02
Tél. : 01 53 45 60 00 – Fax : 01 53 45 61 00

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AMF Recommendation 2012-14
AMF 2012 annual report on corporate governance and executive compensation

Background legislation: Articles L. 225-37, L. 225-68, L. 225-102-1, L. 225-185, L. 225-197-1, L. 823-19 and L. 823-20 of the Commercial Code

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Executive summary

This report has been prepared in accordance with Article L. 621-18-3 of the Monetary and Financial Code. The Autorité des marchés financiers (AMF) has a statutory duty under the Code to draw up an annual report based on information on corporate governance, executive compensation and internal control published by corporate entities having their registered offices in France and whose shares have been admitted to trading on a regulated market. This is the AMF's ninth such report.

Aside from legal requirements arising from company law, the system for regulating corporate governance and executive compensation practices relies to a large extent on the implementation of codes drawn up by industry groups and on the "comply or explain" principle, as set out in Articles L. 225-37 and L. 225-68 of the Commercial Code[1]. While it plays an important role within the current framework, this principle is interpreted in many different ways. Assessing its scope and the adequacy of explanations provided by companies is therefore a key step in evaluating the quality of governance.

This report encompasses changes in a number of areas, in relation to both methodology and approach. In particular, the sample analysed consists of 60 listed companies that solely apply the corporate governance code drawn up by AFEP and MEDEF, as was the case for the July 2010 report[2], and more space is now dedicated to discussing the environment and current major topics of debate in relation to corporate governance in listed companies.

The governance structure of major listed companies continues to evolve. It can be noted that there is an increasing preference for a "unified" structure (i.e. with a board of directors), with 80% of companies in the sample having a board of directors and almost three quarters of those having combined the duties of chairman of the board and chief executive.

This year, the AMF has once again noted certain improvements in terms of information provision and changes in practices, particularly as regards the findings arising from the 2010 report in respect of 2009 disclosures by a sample of similar companies.

For example, as regards corporate governance, the AMF has noted a reduction in the number of companies not providing detailed explanations of changes in governance structure occurring during the year (down from three in 2009 to one in 2011), a significant increase in the representation of women on boards (up from just under 10% at end 2009 to 20% at end 2011), an increase in the proportion of directors holding only one directorship, whether executive or non-executive (with the proportion for executive directors rising from around 13% to 36%), and an increase in the proportion of audit and compensation committees chaired by independent directors (up from 88% to 93% for audit committees and from 79% to 86% for compensation committees). Meanwhile, the overall proportion of independent directors on boards (55% at end 2009 and 54% at end 2011) and audit committees (just over 70% in both 2009 and 2011) is relatively stable but high, while the proportion of companies disclosing the results of board assessments has fallen slightly (from 87% to 81%).

Conversely, the AMF notes a degree of standardisation in the explanations put forward for changes in governance structure, and considers that such explanations should be more specific and tailored to each company's particular circumstances. Similarly, it does not appear appropriate to choose not to apply the directors' independence criterion relating to the holding of directorships for more than 12 consecutive years solely on the basis of the director's competence or experience. The AMF also considers that the fact that a particular company has a long business cycle is not a sufficient reason for directors' terms of office to exceed four years, in light of the very reason for limiting the term of directorships. Furthermore, companies within which a single committee is responsible for both compensation and appointments should refrain from appointing the current chairman to that committee.

[1] For companies with boards of directors and companies with management and supervisory boards respectively.
[2] AMF 2010 annual report on corporate governance and executive compensation, published on 12 July 2010.

On the issue of transparency in relation to executive compensation, the AMF's observations over the past three years, as set out in this report, suggest that the AFEP/MEDEF code and the AMF's own recommendations have resulted in positive changes in practice among major companies. Issuers have made significant efforts to improve transparency by centralising information on executive compensation and presenting summary compensation tables, as proposed by the AMF, or equivalent information (with 100% of issuers doing so in 2011, compared with only 70% in 2009). In 2011, every company in the sample disclosed its board's policies on concurrently holding an employment contract and corporate office and holding securities (with the proportion of companies disclosing their policy on the latter up from 74% of companies in 2010). Finally, virtually every company makes the exercise of stock options and the final allotment of all shares contingent upon performance criteria. Conversely, only a minority of companies make the final allotment of shares contingent upon both internal and external performance criteria. Moreover, with regard to variable compensation, while nearly all companies specify the nature of the quantitative criteria used, 30% give no details of qualitative criteria – a proportion that has remained unchanged since 2009. Finally, the AMF notes that the provision of itemised information on defined benefit pensions is still relatively incomplete (with 37% of companies providing satisfactory information in 2011, compared with 30% in 2009).

The AMF also notes the introduction in 2011 of arrangements not covered by the provisions of the AFEP/MEDEF code: pension schemes, sundry allowances, retention plans, deferred conditional compensation, cash incentives (synthetic shares etc.), "ad hoc" variable compensation, etc. The AMF therefore encourages industry groups to update their codes to cover forms of compensation and benefits not specifically covered by any recommendation, while retaining current principles governing total compensation.

Finally, the AMF is disappointed to note that industry groups have, to date, given little consideration to its "areas for discussion". More fundamentally, the AMF has questions as to the process by which corporate governance codes are prepared, and believes that both the credibility and the scope of such codes could be improved by involving all stakeholders.

1. Corporate governance: findings, recommendations and areas for discussion

1.1 Findings

1.1.1 The governance system and the role of the chairman of the board of directors

- Of the 60 companies in the sample, 48 (80%) have a “unified” structure with a board of directors (compared with 73% in 2011), with only just over a quarter of these (27%) separating the functions of chairman and chief executive.
- Of the eight companies that made changes to their governance structures in 2011 or the first half of 2012, only **Carrefour**, which merged the functions of chairman and chief executive, gave no explanation.
- Of the 13 companies that separate the functions of chairman and chief executive (27% of the sample excluding companies with a dual structure), five provide an explanation of the chairman’s specific role of representing the company.
- **BNP Paribas** provides the most detailed information on the duties assigned to the chairman of the board over and above those laid down by law.

1.1.2 Independent directors and conflicts of interest

- The average proportion of independent board members is 54%, and 60% for CAC 40 companies; the lowest proportion for any company is 16.7%.
- Thirteen companies expressly state that they do not comply with the recommendations of the AFEP/MEDEF code on the minimum proportion of independent directors (either 50% or one third, depending on the specific situation).
- With one exception, every company gives a partial or complete definition of director independence. Seventeen companies, or 29% of the sample, expressly choose not to apply certain definition criteria laid down in the code. The criterion most frequently set aside (by 15 companies) – usually on the basis of individual directors’ experience – is that relating to the holding of directorships for more than 12 years. Neither **LVMH** nor **Publicis** provide adequate explanations on this subject.
- The chairman of the board of directors of **CNP Assurances** is described as independent “as defined in the AFEP/MEDEF reference code”; this situation is not compliant with the criterion set out in the code under which those holding corporate office cannot be independent directors.
- Twenty-two companies – i.e. 37% of the sample – provide explanations as to how they apply the selected independence criteria, and in particular the criterion pertaining to business relationships. Some companies attempt to put forward objective criteria to demonstrate the non-materiality of such relationships by providing more or less detailed and quantified explanations.
- Only two companies make no specific comment as to real or potential conflicts of interest involving board members. Forty companies, or two thirds of the sample, confirm that their directors are subject to specific rules intended to prevent or manage conflicts of interest.
- Of those 40 companies, eight do not state that they have implemented a rule under which a member involved in a conflict of interest is not allowed to take part in the vote when the board deliberates on the matter in question.

1.1.3 Multiple directorships and directors’ terms of office

- Only two companies state that they have put in place a procedure under which executive directors must obtain prior authorisation from the board before accepting a new corporate office with a company outside the group.

- 48% of executives holding corporate office fulfil only their executive duties. 21% of executive directors hold at least three directorships and 10% hold at least four directorships.
- Two cases of multiple directorships are non-compliant with the AFEP/MEDEF code: those held by the chairman and chief executive of **EDF** (six directorships, including one with a foreign company), for which no detailed explanation is provided, and those held by the chairman and chief executive of **Bolloré** (11 directorships, seven of which are with foreign companies), which the company fails to state are not compliant with the code.
- Ten companies fail to apply the four-year term of office recommended by the code. Only **Publicis** fails to declare this non-compliance, while **Natixis** provides more of a description than an explanation.

1.1.4 Boardroom diversity

- At 31 December 2011, the average proportion of female directors was 20% for the sample as a whole and 22.3% for CAC 40 companies (25.2% following 2012 general meetings). Following 2012 general meetings, 42 companies had reached the 20% minimum ratio laid down in law for 2014. The proportion of female directors thus continues to rise.
- Thirty-four companies – i.e. 57% of the sample – state that they have diversification targets. **Hermès International** gives a particularly detailed description of the selection process it intends to use to achieve the 40% legal threshold by 2017.
- The average proportion of foreign directors (for those companies that report directors' nationality) is virtually unchanged relative to 2011, at 20%.
- Nine companies have included a factor related to nationality or international experience within their boardroom diversification targets.

1.1.5 Non-voting board members

- Nineteen companies, representing almost one third of the sample and including 13 CAC 40 companies, between them have a total of 32 non-voting board members. Three companies each have three non-voting members.
- Seven companies detail the duties assigned to non-voting board members.
- Around one third of all non-voting board members are former members of their company's board of directors or management board.

1.1.6 Audit committees

- **Bolloré** is the only company not to have a single specialised committee – a situation in respect of which it fails to provide an adequate explanation.
- Fifty-four companies – i.e. 92% of the sample – provide some explanation of the competence of audit committee members. Audit committee members are specifically identified by 47 companies (78% of the sample).
- The average proportion of independent directors is over 70%, while the audit committee is chaired by an independent member in 55 companies (93%).
- Twenty-three companies (40%) do not meet the ratio laid down in the AFEP/MEDEF code under which at least two thirds of the audit committee's members should be independent. Three companies – **Areva**, **CNP Assurances** and **EDF** – fail to report this non-compliance.

1.1.7 Compensation and appointments committees

- Fifty-nine of the 60 companies in the sample have a compensation committee, with 61% of those committees also acting as appointments committees.
- Three companies have neither a "mixed" nor a separate appointments committee, with two of those – **Bolloré** and **Iliad** – providing no explanation as to why not.
- The average proportion of independent directors is 71.9% for compensation committees and 65% for (separate) appointments committees.
- The chairman of the compensation committee is considered independent in 86% of cases.
- Thirteen companies choose not to apply the code's recommendation under which a majority of directors should be independent. **Icade** provides no explanation as to the non-compliance of its compensation and appointments committees.
- Two companies – **Icade** and **CNP Assurances** – fail to provide an adequate explanation as to why the chairman of their board is a member of the (mixed or separate) compensation committee – a practice the AFEP/MEDEF code aims to outlaw.

1.1.8 Social and environmental responsibility (SER) committees

- Fourteen companies have specialised committees tasked with examining social and environmental issues. Some other companies have assigned certain responsibilities relating to sustainable development to their audit committees.

1.1.9 Evaluation of the work of the board

- Fifty-seven companies say they conducted an evaluation of their board either in 2011 or in the first quarter of 2012. Of the 81% of those 57 companies that provide information on the outcome of their evaluation, just under half describe the desired improvements, while eight companies provide more specific information about implemented or planned measures.
- Three companies expressly choose not to apply part or all of the recommendation on board evaluations set out in the AFEP/MEDEF code. While not expressly setting aside the recommendation, **CNP Assurances** provides no information on its board evaluation.

1.2 Recommendations and areas for discussion

The AMF wishes to encourage issuers to continue to apply the recommendations previously put forward in its annual reports on corporate governance, executive compensation and internal control, consolidated in Recommendation 2012-02, and to adopt the new recommendations put forward in this report.

1.2.1 Recommendations

1.2.1.1 Implementation of the "comply or explain" principle

To ensure that the "comply or explain" principle is implemented more effectively, the AMF recommends that companies include in their registration documents a **summary table of any recommendations in the AFEP/MEDEF code that they have opted not to apply**, together with associated detailed explanations.

1.2.1.2 Independence criteria for directors

The AMF recommends that, where companies choose not to apply the definition of independence relating to the holding of directorships for more than 12 years, this **should not be on the basis of the director's experience or competence alone**.

1.2.1.3 Directors' terms of office

The AMF recommends that **a particular company having a long business cycle should not be considered a sufficient reason for directors' terms of office to exceed four years** (the term recommended by the AFEP/MEDEF code), since such a justification appears **inadequate in light of the very reason for limiting the term of directorships**. As set out in the AFEP/MEDEF code, the reason for reducing directors' terms of office is to provide shareholders with more frequent opportunities to appoint and reappoint directors; this does not necessarily compromise the actual period over which a director may hold office.

1.2.1.4 Non-voting board members

The AMF recommends that companies that have put in place one or more non-voting board members **describe in detail how they are appointed, as well as the nature of their duties and prerogatives**, for example in the section describing the board's activities and the evaluation of the work of the board.

1.2.1.5 Appointments and compensation committees

The AMF wishes to reminds issuers that, in accordance with the recommendation of the AFEP/MEDEF code under which the majority of members of the compensation committee should be independent directors, independent directors must account for **strictly more than half** of all committee members (particularly in the case of committees with four members), and that reasons should be given where this is not the case.

The AMF recommends that companies within which a **single committee** is responsible for both compensation and appointments should **refrain from appointing the current chairman of the board to that committee**; under the AFEP/MEDEF code, the chairman of the board may only be appointed to an appointments committee where this is separate from the compensation committee.

1.2.2 Areas for discussion

The AMF wishes to reiterate the areas for discussion put forward to industry groups in its annual reports published since 2009. It also wishes to propose the following additional areas for discussion.

The AMF considers that the AFEP/MEDEF code would do well to clarify the concept of "controlled company", perhaps by referring to Article L. 233-16 of the Commercial Code, which defines de jure and de facto, sole or joint control.

The AMF has questions as to whether a director who has business, banking or consultancy relationships through interlocking directorships may be considered independent. It would be appropriate for industry groups, perhaps within their corporate governance codes, to **set out, as a minimum, the qualitative criteria used to determine whether or not such business relationships are material, as well as those situations in which a director may not be considered independent**.

Finally, the AMF wishes to encourage AFEP and MEDEF to **initiate discussions on the appropriateness of applying to non-voting board members certain rules applicable to directors**, including in particular rules on independence, declarations of interest and multiple directorships.

2. Executive compensation: findings, recommendations and areas for discussion

2.1 Findings

With regard to the application of the AFEP/MEDEF corporate governance code in relation to executive compensation, this report focuses on the following points.

2.1.1 Presentation of information on compensation

- The AMF notes that every company in the sample presents Table 10 of the AMF recommendation or equivalent information.
- Furthermore, in accordance with the AMF's recommendation, nine companies – **Alcatel, Air Liquide, Bouygues, Hermès International, Lafarge, Peugeot, Vinci, Safran and Schneider** – summarise exceptions to the AFEP/MEDEF code, in either a dedicated paragraph or a table.

2.1.2 Concurrently holding an employment contract and corporate office

- Of the 60 companies in the sample, 15 state that some or all of their executive directors concurrently hold an employment contract and corporate office.
- Of those 15 companies, one states that it will review the relevant executive's situation when his term of office comes up for renewal, four say that they have terminated the relevant executives' employment contracts or will do so when their current terms of office come up for renewal, and ten have decided to maintain their executive directors' employment contracts. Of those ten companies, seven base their decision on the relevant executive's length of service with the company and personal circumstances.

2.1.3 Compensation paid to executive directors leaving office in 2011

- Eight companies in the sample saw executive directors leave office in 2011.
- Four companies – **Accor**, **Areva**, **Gecina** and **Michelin** – paid compensation when their executive directors left.
- Two companies – **Carrefour** and **Gecina** – explain that their executive directors continued to qualify for stock options and performance shares when they left the company.

2.1.4 Supplementary pension schemes

- The AMF notes that 44 out of 60 companies have introduced supplementary defined benefit pension schemes for their executive directors.
- Fifteen companies provide comprehensive information on individual entitlements (up from 14 in 2010). One company – **Alcatel** – states that its executives are not bound by a continued service requirement in order to qualify for the pension scheme. Twenty-nine companies do not provide any itemised information on supplementary defined benefit pension schemes to which their executives might be entitled. However, of those 29 companies, 15 indicate the percentage or maximum amount of baseline compensation represented by executive directors' pension entitlements.
- **Furthermore, the AMF notes that, excluding supplementary defined benefit pension schemes, some companies pay their executives amounts intended to be invested solely in pension schemes**.

2.1.5 Variable executive compensation

- The AMF notes that 59 of the 60 companies in the sample state that they pay variable compensation to their executive directors.
- Fifty-eight companies set out the applicable performance criteria. One company – **Bolloré** – gives no indication of these criteria. Twenty-two companies do not define the qualitative criteria used, while 46 detail the quantitative criteria applied.
- Five companies indicate the extent to which they expect these quantitative targets to be met. Nine companies say that, while they have established the exact extent to which they expect quantitative targets to be met, this information will not be made public for confidentiality reasons. Thirty-six of the 58 companies concerned indicate the percentage of variable compensation driven by each performance criterion.

2.1.6 Stock options and performance shares

- The AMF notes that 35 of the 60 companies in the sample granted stock options or performance shares in 2011. Four companies – **Accor, Edenred, Icade** and **JC Decaux** – did not link the granting of some or all stock options to performance criteria.
- Furthermore, the AMF notes that the vast majority of companies make the final allotment of performance shares or the exercise of stock options contingent upon the fulfilment of either internal or external performance criteria. Conversely, only a minority of companies make the final allotment of performance shares or the exercise of stock options contingent upon both internal and external performance criteria.
- Finally, the AMF notes that every company in the sample that has granted stock options or performance shares specifies that its executives are required to hold the resulting shares for a compulsory period.

Furthermore, the AMF notes that some issuers have introduced various forms of incentive: sundry allowances, retention plans, deferred conditional compensation, cash incentives (synthetic shares etc.).

2.2 Recommendations and areas for discussion

Based on its main findings, the AMF concludes that companies have made genuine progress in improving transparency in relation to executive compensation. **The AMF further notes that, excluding supplementary defined benefit pension schemes, some companies pay their executives amounts intended to be invested solely in pension schemes. The AMF also notes that some issuers have introduced various forms of incentive: sundry allowances, retention plans, deferred conditional compensation, cash incentives (synthetic shares etc.). These various mechanisms are not currently covered by a specific recommendation within the AFEP/MEDEF code.**

2.2.1 Recommendations

The AMF wishes to reiterate its previously published recommendations and areas for discussion[3], which remain relevant for some issuers.

[3] AMF Recommendation 2012-02 on corporate governance and executive compensation for companies applying the AFEP/MEDEF code – Consolidated presentation of recommendations contained in AMF annual reports– 9 February 2012.

Furthermore, **the AMF recommends**:

- That all information on compensation and benefits of all kinds due or paid to executives by all group companies be updated. Where this information is not available within the group at the date on which the registration document is submitted, the AMF recommends that the company in question subsequently publish a press release[4] or an updated version of its registration document to ensure that the full extent of information is made public.
- The percentage of variable compensation driven by each performance criterion be presented clearly and accurately.

2.2.2 Areas for discussion

The AMF has noted that schemes have been introduced that are not covered by the provisions of the AFEP/MEDEF code: pension schemes, sundry allowances, retention plans, deferred conditional compensation, cash incentives (synthetic shares etc.), "ad hoc" variable compensation, etc.

The AMF wishes to suggest new areas for discussion on the following themes:

- The AMF considers that the various components set out above – deferred conditional compensation, negotiated compensation, retention plans, exceptional pensions, cash incentives (synthetic shares etc.) and "ad hoc" variable compensation – constitute compensation and benefits for executive directors. **As such, these forms of compensation should be taken into account when applying the key principles in the AFEP/MEDEF code used to determine compensation** (exhaustiveness, achieving a balance between the various components of compensation, benchmarking, consistency of applicable rules, and clarity). The AMF wishes to encourage industry groups to update their codes to cover forms of compensation and benefits not currently covered by a specific recommendation, while retaining current principles governing total compensation.
- The concept of an **extended group of beneficiaries** of supplementary defined benefit pension schemes should be clarified in light of the wide variety of situations observed.

[4] Where appropriate, a press release confirming that the registration document is available.

I. REPORT METHODOLOGY AND SUMMARY OF APPLICABLE LEGISLATION AND REGULATIONS

1. Purpose and methodology

1.1 Changes in approach and report structure

1.1.1 A necessary overhaul

The 2011 report covered corporate governance, executive compensation and internal control. For the first time, the sample included companies that applied the AFEP/MEDEF code of corporate governance (hereinafter referred to as the "AFEP/MEDEF code") and the Middlenext code as well as companies that did not apply any code.

Since that report was released in December 2011, the AMF has published a **single document**[5] combining AMF recommendations and areas for discussion in relation to corporate governance and executive compensation in companies applying the AFEP/MEDEF code. That document, which was issued in response to strong demand among stakeholders, facilitates access to the AMF doctrine. It does not contain any explicit recommendations on internal control or risk management, referring instead to an AMF recommendation issued on 22 July 2010 on the reference framework for internal control and the guide applicable to small and mid cap companies.

A review of the report's approach and structure drew on debate within the AMF's Board and the relevant Consultative Commissions, and **led the Board to agree to a number of changes in both the form and the substance of the report in order to improve the visibility of the most important messages**.

1.1.2 The new approach

Compared with previous reports, the approach and structure of this report have changed as follows:

- The sample now consists of **60 companies that exclusively apply the AFEP/MEDEF code**, like the report published in July 2010[6]. Companies that apply the Middlenext code will be covered by a specific report issued every two years, with the next edition to be published in 2013.
- More space is dedicated in the second part of the report to discussing the environment and current major topics of debate in relation to corporate governance in listed companies.
- Information on statistical and compliance analysis now covers topics considered "permanent" by virtue of their foundational nature – the organisation and work of the board, independent directors and the management of conflicts of interest, board composition (multiple directorships and diversification), specialised board committees and the evaluation of the board's work – while some topics are likely to be explored on a more ad hoc basis or only every few years. This is the approach adopted in respect of **non-voting board members** in this report, while the practice of having a lead director, which was reviewed in the 2010 and 2011 reports, is not covered this year.
- **Adherence to the "comply or explain" principle**, laid down in Articles L. 225-37 and L. 225-68 of the Commercial Code[7], is assessed rigorously so that this principle is accorded its full importance (see below).

[5] AMF Recommendation 2012-02 on corporate governance and executive compensation for companies applying the AFEP/MEDEF code – Consolidated presentation of recommendations contained in the AMF annual reports.
[6] AMF 2010 annual report on corporate governance and executive compensation, published on 12 July 2010.

- **Internal control and risk management are no longer covered** as part of statistical analysis of the sample. Instead, they will be examined in greater detail at a later stage via a more qualitative ad hoc study to be published by the end of 2012.
- Finally, when highlighting best and worst practice among issuers, the **issuers in question will now be named** rather than remaining anonymous. With regard to worst practice, in accordance with the "comply or explain" principle, the report will name those companies that fail to implement a recommendation of the code or an AMF recommendation and/or provide no explanation or only an insufficiently detailed or inadequate explanation. **Those companies found to represent examples of worst practice were informed in advance**, before this report was published, of the information to be included in the report. However, this new approach makes no claim to be exhaustive.

1.2 Purpose and sample

1.2.1 Purpose of the report

The purpose of the AMF's annual report on corporate governance and executive compensation is to provide an overview of the extent to which major listed companies comply with the recommendations of the AFEP/MEDEF code, to report on observed best practice in this area and to foster the spread of best practice by putting forward recommendations and "areas for discussion".

All the information contained in this report was **publicly disclosed** by issuers in their registration documents or annual reports published in 2012 and covering financial year 2011.

1.2.2 The sample

The sample upon which this report is based consists of 60 companies listed on Segment A of Euronext Paris, broken down as follows:

- Thirty-five French companies forming part of the **CAC 40 index** at 31 December 2011. The three CAC 40 companies that have their registered offices outside France and the two companies that have non-standard financial years are out of scope.
- **The next 25 companies with the largest market capitalisations**, based on figures at 31 December 2011[8].

This sample, **which claims to be neither representative nor exhaustive**, is therefore materially different from that used for the AMF's last report, published in December 2011, which consisted of 90 companies[9] that applied either the AFEP/MEDEF or Middlenext code or no code at all. However, it is **similar to the sample used for the July 2010 report**, which also consisted of 60 companies included in the SBF 120 index (34 of which were also included in the CAC 40) and solely applying the AFEP/MEDEF code. The main differences arise from changes in the composition of the CAC 40 and the hierarchy of other companies by market capitalisation.

[7] Paragraph 7 of Article L. 225-37 of the Commercial Code stipulates that *"Where a company voluntarily applies a corporate governance code drawn up by industry groups, the report stipulated in this Article shall also identify any provisions the company has chosen not to apply and give the reasons for doing so. The report shall also state where the code can be consulted. Where a company does not apply a corporate governance code, the report shall indicate the rules that are applied in addition to statutory requirements, and explain why the company has chosen not to apply any of the provisions of the relevant corporate governance code."*
[8] Listed in the Annex to this report.
[9] Made up of 40 companies listed on Segment A (35 of which were CAC 40 companies), 20 listed on Segment B and 30 listed on Segment C.

1.3 Analysis method and structure

1.3.1 Analysis method

This report has been prepared on the basis of information contained in registration documents published by the companies in the sample. Analysis is based on both quantitative and qualitative factors, using an analysis matrix that combines certain recommendations of the AFEP/MEDEF code with best practice in relation to corporate governance and executive compensation. The analysis matrix is regularly updated to reflect regulatory changes, changes to the code, the latest debates on corporate governance, and the economic climate. Certain issues may be highlighted as a result.

With regard to executive compensation, a comparative analysis has also been carried out covering specific issues in respect of CAC 40 companies.

When preparing the 2011 report, no direct contact was made with issuers during the data analysis or report writing phases. Conversely, under the new approach of naming those companies whose practices fail to comply with the reference corpus, AMF staff **informed the issuers in question in advance**, from as early as mid-June, of the observations and factual information they planned to include in this report.

For the purposes of analysing board composition and diversity[10], draft resolutions published by sample companies in BALO[11] were also reviewed, as were the websites of companies in the sample.

1.3.2 Reference standards and report structure

On the basis of Article L. 621-18-3 of the Monetary and Financial Code[12], this document reports on changes in corporate governance practices among major listed companies in light of **three sets of reference standards**:

- **Legislative provisions**, including in particular those relating to the "comply or explain" principle, multiple directorships, balanced gender representation, audit committees and information in the management review on compensation paid to corporate officers (see below).
- Self-regulation, via the **recommendations of the AFEP/MEDEF code**, which all companies in the sample claim to implement. However, when assessing a company's governance, shareholders and stakeholders are not bound by the code applied by that company.
- **Consolidated AMF Recommendation 2012-02**, referred to above, which brings together most of the recommendations put forward in previous reports and applicable to listed companies that claim to apply the AFEP/MEDEF code, and the recommendation dated 22 July 2010 on the report by the working group on audit committees.

The way in which companies implement these recommendations is assessed using the following structure, which is followed in each part of this report:

- a summary of applicable legislation, provisions of the AFEP/MEDEF code and recommendations put forward by the AMF in previous years;
- general statistical findings and observed key trends;
- a survey of best and worst practice, including the names of companies representing the most significant examples;

[10] See section 2, "Organisation of the board's work" in part II, "Corporate governance".

[11] *Bulletin des Annonces Légales et Obligatoires*, the official French gazette.

[12] This Article stipulates that "corporate entities having their registered offices in France and listed on a regulated market shall publish the information required by paragraphs 6, 7 and 9 of Article L.225-37 of the Commercial Code as well as paragraphs 7, 8 and 10 of Article L.225-68 and Article L.226-10-1 of that same Code, under the terms set out in the AMF's General Regulation. **The AMF shall prepare an annual report based on this information, and may approve any recommendations it deems necessary.**"

- further AMF recommendations, and areas for discussion proposed to industry groups, where applicable.

2. Applicable legislative and regulatory framework

The applicable legislative and regulatory framework consists of both European and domestic legislation and regulations.

2.1 European legislation and regulations

The following **European** provisions in particular should be noted:

- European Commission Regulation 809/2004/EC of 29 April 2004 stipulates the information to be included in prospectuses prepared by companies planning a public offering or the listing of their securities on a regulated market. The content of this regulation also applies to registration documents prepared annually by some listed companies.

- European Commission recommendations:
  - Recommendation 2004/913/EC of 14 December 2004 fostering an appropriate regime for the remuneration of directors of listed companies.
  - Recommendation 2005/162/EC of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board.
  - Recommendation 2009/385/EC of 30 April 2009 complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies.

It should also be noted that the European Commission held a public consultation in 2011 on its **Green Paper on the EU corporate governance framework**, responses to which (including the AMF's response) were the subject of a Feedback Statement published on 15 November 2011.

2.2 Domestic legislation and regulations

At a **domestic** level, the main applicable legislation and regulations are as follows:

- Article L. 621-18-3 of the Monetary and Financial Code, pursuant to which the AMF has prepared this report (see above).
- Article L. 225-37 of the Commercial Code, which stipulates that, where a company voluntarily applies a corporate governance code drawn up by industry groups, the chairman's report should identify any provisions that have been set aside and give the reasons for doing so. Furthermore, where a company does not apply a corporate governance code, the report should indicate the rules that are applied in addition to statutory requirements, and explain why the company has chosen not to apply any of the provisions of the relevant corporate governance code.
- Article L. 225-18-1 of the Commercial Code, introduced by Act 2011-103 of 27 January 2011 on balanced gender representation on boards of directors and supervisory boards and equal opportunities in the workplace, which establishes the minimum proportion of female directors on boards, in two phases (with effect from 1 January 2014 and with effect from 1 January 2017).
- Article L. 225-21 of the Commercial Code, which stipulates that an individual may concurrently hold a maximum of five directorships with listed companies (outside the group) having their registered offices in France.
- Article L. 225-102-1 of the Commercial Code, which sets out references to executive compensation to be included in the management review presented to shareholders at general meetings. The content of this Article also applies to registration documents.

- Articles L. 225-185 and L. 225-197-1 of the Commercial Code, which require executive directors to retain certain categories of shares.
- Article L. 823-19 of the Commercial Code, which makes it mandatory to set up a specialised committee of the board of directors or supervisory board whose statutory duties include the following:
  - monitoring the process of preparing financial disclosures;
  - monitoring the effectiveness of internal control and risk management systems;
  - monitoring statutory audits of the annual financial statements and, where applicable, the consolidated financial statements, carried out by the statutory auditors;
  - monitoring the independence of the statutory auditors[13].

- In terms of **regulations**, Article 221-1 of the AMF's General Regulation stipulates that regulated information should include – in addition to the annual and interim financial reports and quarterly financial disclosures – the reports referred to in Article 222-9 of the General Regulation concerning the conditions for preparing and organising the work of the board of directors or supervisory board and the internal control and risk management procedures put in place by issuers.

3. The AFEP/MEDEF corporate governance code and positions expressed by various bodies and associations

3.1 The AFEP/MEDEF code

In December 2008, AFEP and MEDEF published a corporate governance code for listed companies combining the corporate governance principles arising from the consolidation of the AFEP/MEDEF report published in 2003 with their January 2007 and October 2008 recommendations on executive compensation in listed companies. This code was **updated on 19 April 2010** to include a recommendation on the representation of women in the boardroom (Articles 6.1 and 15.2.1).

3.2 Recommendations by the Institut Français des Administrateurs (IFA)

The national institute of directors (*Institut Français des Administrateurs* – IFA) has put forward various proposals on the role of independent directors, audit committees, internal audit and conflicts of interest, which have been published, in particular, in the following:

- report by the IFA's Commission on Ethics: "Independent directors: definition and analysis matrix" – 4 December 2006;
- IFA report: "100 best practices for audit committees" – January 2008;
- report by the IFA and the *Association pour le Management des Risques et des Assurances de l'Entreprise* – June 2009 (Corporate Risk and Insurance Management Association): "The role of the director in risk management" – June 2009;
- IFA report: "Audit committees and external auditors" – November 2009;
- briefing note by the IFA's Commission on Ethics: "Directors and conflicts of interest" – November 2010;
- IFA report: "What information does a director need?" – January 2011;
- IFA report: "The appointments committee: governance and best practice" – September 2011;
- IFA report: "Governance in France: an asset for developing our companies" – 30 May 2012.

At the beginning of 2012, the IFA also formed a **working group on the "comply or explain" principle**. The topics reviewed included the following:

- quality and accuracy of disclosures;

[13] Article L. 823-20 of the Commercial Code stipulates the circumstances under which exemption may be granted to the obligations set out in Article L. 823-19.

- shareholders likely to be involved in checking the information disclosed (statutory auditors, rating agencies, etc.);
- the role of directors, board committees and certain shareholders (financial analysts, secretary of the board of directors, etc.);
- how the quality of explanations should be assessed and, in particular, whether or not companies that fail to comply with a provision of the reference code should be required to explain how their alternative practice meets the good governance objectives laid down by that code;
- investor behaviours that might hinder adherence to this principle.

3.3 Recommendations by the Association française de la gestion financière (AFG)

In January 2012, the *Association française de la gestion financière* (French Federation for Financial Management – AFG) published the tenth version of its "Recommendations on corporate governance". The Association also runs a monitoring programme that aims to draw its members' attention to draft general meeting resolutions drawn up by companies included in the SBF 120 index that fail to comply with these recommendations, and encourages members to actively participate in general meetings. It should be noted that Article L. 533-22 of the Monetary and Financial Code stipulates that asset management companies must exercise the rights associated with the shares they manage in collective investment schemes, report on their voting practices as laid down in the AMF's General Regulation and, where voting rights are not exercised, explain why not.

II. THE NEED FOR CHANGE: THE ENVIRONMENT AND RECENT DEBATE

1. Renewed debate on stricter governance in listed companies

1.1 Learning from the AMF's working group on general meetings

The working group on general meetings held by listed companies, formed by the AMF in May 2011 and chaired by Olivier Poupart-Lafarge, a member of the AMF's Board, published its final report in early July 2012 after making an initial version available for public consultation between 7 February and 31 March 2012. Naturally, the group did not aim to address all aspects of corporate governance; in particular, it did not look at the balance of powers between shareholders and the decision-making body, or questions as to the role of specialised board committees and dual governance structures.

While the members of the working group and various experts consulted by the group expressed a positive opinion on the functioning of general meetings in France, the group's work nevertheless confirmed that a **more rigorous approach to governance also entailed ongoing dialogue between issuers and shareholders, a wider range of voting options** (particularly for non-resident shareholders), **greater transparency** and **an improved process for approving regulated agreements**.

As such, a number of proposals made by the working group could have an impact on corporate governance, not by significantly changing governance structures but by institutionalising greater transparency in dealings with shareholders. Examples might include the following:

- the introduction of ongoing dialogue both before and after general meetings to identify and iron out potential sources of disagreement;
- an improvement in shareholders' ability to add items or draft resolutions to the agenda, including in particular the ability for companies to specify their own filing thresholds that fall below the regulatory thresholds;
- greater clarity in respect of the use of financial authorisations;
- a reduction in the time taken to release general meeting summary reports and minutes;

- the implementation within companies of an internal charter governing the criteria used to classify agreements, which would be subject to the procedure for regulated agreements and publicly disclosed;
- the requirement for boards to give reasons for authorising regulated agreements by explaining the benefit to the company of any such agreements and the associated financial conditions.

1.2 Proxy advisory firms: an increasing role in Europe and the subject of much debate

Proxy advisory firms (commonly referred to as "proxy advisors") analyse draft resolutions put forward at general meetings and publish voting recommendations for their clients – in particular professional investors and fund managers – in line with either a predefined policy or one that is tailored to each investor's profile. **As such, they can play an important role in monitoring and driving changes in governance** in listed companies, and are an increasing focus of attention among both issuers and regulators.

1.2.1 Domestic and European context

On 18 March 2011, the AMF published its **Recommendation 2011-06 on proxy advisory firms**, which underlined the importance of institutional investors exercising their voting rights and set out recommendations aimed at fostering transparency, dialogue and integrity. The recommendation covered four topics: establishing and issuing the voting policy, establishing and issuing voting recommendations to investors, communicating with listed companies ahead of general meetings and preventing conflicts of interest. In this recommendation, the AMF also expressed its wish for a similar initiative to be adopted at European or international level, given the increasingly cross-border nature of share ownership and voting.

The European Commission addressed this issue in its **Green Paper** on the EU corporate governance framework, which was published in April 2011 and submitted to public consultation. In particular, it considered the appropriateness of potential legislation which would, for example, require greater transparency, limit potential conflicts of interest and/or require companies to apply a code of conduct. The Feedback Statement, published in November 2011, revealed that **the majority of respondents were in favour of supervision**, via European standards if necessary. The Commission's assessment was, however, challenged by some Member States, who considered it overly positive, while many responses were, in reality, more ambiguous or uncertain.

The European Commission did not specify which direction it intended to take in respect of any future regulation of proxy advisors. It did, however, indicate that it would propose **guidelines by the end of 2012**, as part of its response to the aforementioned consultation on the corporate governance framework and the consultation on the future of European company law.

1.2.2 ESMA work in progress

In July 2011, the European Securities and Markets Authority (ESMA) began a piece of work looking at the future of proxy advisors. After completing a fact-finding mission and gathering information from stakeholders, ESMA published a **discussion paper** at the end of March 2012, which was submitted to public consultation until 25 June. Around sixty responses were received.

The paper included detailed descriptions of the functions, market and organisation of proxy advisors and set out the applicable legal framework in Europe and the United States. It covered major issues such as board impartiality, conflicts of interest, transparency in relation to proxy advisors and their influence on investors' voting behaviours. It also set out a comparison between proxy advisors and other key financial agents such as rating agencies, auditors and analysts. It considered a scale of **four options for future regulation**:

- no action at European level;
- formal or informal incentives for the industry or Member States to introduce standards;

- a relatively formal high-level framework leaving room for manoeuvre at a domestic level, in the form of ESMA guidelines or a "comply or explain" type principle laid down in a European standard, as is the case for governance in listed companies (see below);
- finally, EU legislation that would place the priority on transparency and the management of conflicts of interest, but which could leave room for a system of authorisation by Member States or ESMA.

The paper adopted a broad and neutral stance, considering the entire spectrum of regulation options and setting out the advantages and disadvantages of each. A feedback statement is due to be published during the fourth quarter of 2012 setting out ESMA's position on the appropriateness and nature of regulatory action.

1.3 European Commission consultation on gender imbalance in corporate boards

From 5 March to 28 May 2012, at the initiative of Viviane Reding, commissioner responsible for justice, fundamental rights and citizenship, the European Commission carried out a **public consultation on gender imbalance in corporate boards**. This topic was already explicitly covered by the Green Paper on the EU corporate governance framework, in its section on board composition[14].

In support of this consultation, the Commission drew on a wide range of research, a survey and the **observation that change was slow and there were significant national disparities** in relation to access by women to senior management positions.

For example, it noted that, in 2011, **barely 14%** of board members in Europe's largest listed companies were women, compared with 12% in 2010, and that only 3% of EU boards were chaired by women – virtually the same proportion as in 2009. It also noted that some Member States, including France[15], had already passed legislation establishing quotas to ensure a fair gender balance on boards, while others[16] applied regulations to ensure an appropriate gender balance in the governing bodies of public corporations.

The purpose of the Commission's consultation, then, was to determine whether the proportion of female board members could be increased either through self-regulation or via binding rules at European level, accompanied by sanctions if necessary. The consultation consisted of **eight questions** covering the effectiveness of self-regulation, the nature and legal scope (obligation or recommendation) of any additional action, the economic benefits expected to arise from the increased presence of women on boards, the percentage targets that should be set (with the Commission suggesting targets ranging from 20% to 60%), the scope of companies and boards that should be covered, and the appropriateness of applying sanctions to companies that fail to meet the targets set.

The text of the consultation was accompanied by a progress report entitled "Women in economic decision-making in the EU", which provided an overview of the situation in Europe and assessed the progress made between October 2010 and January 2012. **This report emphasised that the most marked improvement had taken place in France**, with the proportion of women on boards in French companies listed on the CAC 40 increasing by ten percentage points from 12.3% in October 2010 to 22.3% in January 2012. This change – which was, according to the report, due to the introduction of legally binding quotas – represents more than 40% of the total change in the EU as a whole over the same period.

[14] To the question of whether listed companies should be required to improve the gender balance on their boards, and if so how, the AMF answered that France had recently passed legislation on this issue. It also reiterated its commitment to maintaining the right balance in relation to board composition, taking into account the need to ensure independence, expertise and diversity in the broadest sense of the term.
[15] Together with Belgium, Spain, Italy and the Netherlands.
[16] Austria, Denmark, Finland, Greece and Slovenia.

1.4 A stringent interpretation of the "comply or explain" principle

1.4.1 A strict but inconsistently applied principle

The "comply or explain" principle now lies **at the heart of the corporate governance regulation system, the effectiveness of which is largely dependent upon it**. Its value lies in its flexibility – since it constitutes an intermediate step between self-regulation and supervised disclosure – and its ability, by ensuring transparency, to meet investors' expectations and highlight best practice.

However, it remains open to **differing interpretations** which, depending on how formal or informal they are, can lead to specific situations becoming set in stone or, on the other hand, can facilitate a process of convergence towards best practice. Similarly, it does not in itself offer any incentive to further develop standards or the reference code. The quality and appropriateness of the explanations provided is therefore a determining factor in evaluating any governance system; however, assessing that quality and appropriateness can be a difficult and subjective task.

The European Commission devoted a substantial amount of space in its aforementioned **Green Paper** to a discussion of this principle. It recognises its **advantages**, including in particular its adaptability to specific situations faced by companies and its contribution to encouraging companies to take responsibility. It also recognises its **shortcomings**; a study carried out by RiskMetrics on behalf of the Commission and published on 23 September 2009[17] showed that explanations provided in cases of non-compliance were most often – in more than 60% of cases – of insufficient quality, with companies either merely stating that they had departed from the relevant recommendation or offering only an overly general and limited explanation.

Starting from the observation that *"many of the present difficulties are due to misunderstanding of the nature of the explanations required"*, the Commission proposed that more detailed requirements be introduced for the information to be published by companies, citing as an example the **Swedish code**, under which each company is required to state clearly which code rules it has not complied with, explain the reasons for each case of non-compliance and, above all, **describe the solution it has adopted instead**.

The Commission also covered the issue of **monitoring** corporate governance statements published by companies, and proposed that, within each Member State, a body (a market regulator, market undertaking or other authority) be authorised to check whether the available information is sufficiently informative and comprehensive[18], without, however, interfering with the content of the information disclosed or making judgements on the solution chosen by the company. The AMF notes that, in publishing this report and periodically reviewing individual registration documents, it is de facto playing this role.

1.4.2 Interpretation adopted in the United Kingdom by the Financial Reporting Council

Like Sweden, **the United Kingdom tends to adopt a strict interpretation of this principle**. The UK Corporate Governance Code, published by the Financial Reporting Council (FRC) in June 2010 and revised in September 2012, states that *"It is recognised that an alternative to following a provision may be justified in particular circumstances **if good governance can be achieved by other means**. A condition of doing so is that the reasons for it should be explained clearly and carefully to shareholders, who may wish to discuss the position with the company and whose voting intentions may be influenced as a result. In providing an explanation, the company should aim to illustrate **how its actual practices are both consistent with the principle** to which the particular provision relates and contribute to good governance."* Companies are required to apply the five general principles set out in the code[19], but may depart from a particular recommendation as long as they provide a detailed explanation.

[17] "Study on monitoring and enforcement practices in corporate governance in the Member States"
[18] If appropriate, by defining the corporate governance statement as regulated information within the meaning of Article 2 of Directive 2004/109/EC (the "Transparency Directive").
[19] These principles are summarised in five terms: "leadership", "effectiveness", "accountability", "remuneration" and "relations with shareholders".

After forming a working group, **the FRC also published a report in February 2012** explaining this interpretation[20]. In particular, in contrast to the proposal put forward by the European Commission, the FRC emphasises that the explanations provided under this principle are aimed first and foremost at investors and the market, and that it is therefore not up to any regulator to monitor their implementation. The report sets out various criteria for assessing the quality of explanations:

- Explanations should be specific to the company's position;
- Explanations should answer the questions "how and why";
- To be considered meaningful, explanations should set the context and historical background, give a convincing rationale for the action taken and **describe mitigating action to address any additional risk and maintain conformity with the general principle of the code**;
- Explanations should indicate whether any deviation from a given recommendation is limited in time **and when the company intends to return to compliance** with the code's recommendation;
- Explanations should be understandable, relevant and persuasive.

The members of the FRC working group suggested that shareholders' associations might produce an annual report giving examples of what constituted good or bad explanations.

1.4.3 The AMF's preferred interpretation

The AMF believes that if this "soft law" principle is to be credible and effective, its application must be assessed strictly. Application of the reference code is therefore assessed carefully against each of the code's provisions, compliance with which must be full and not partial.

Above all, this principle must be implemented **in a manner that encompasses all the dimensions described above**, including in particular specific reasons for any exceptions and an explanation of the alternative action taken. Specifically:

- Non-compliance with a provision of the code must be explicitly and clearly set out in the annual report.
- Companies not complying with part or all of the code **must provide comprehensive and detailed explanations**, rather than making across-the-board, "multi-purpose" statements or appeals to principle. A company should state that it complies with a code on the basis not that it intends to apply that code, but that it has analysed the application of each of that code's provisions in concrete terms. **Any decision by a company to exempt itself from a provision must be balanced by a reasoned explanation for doing so**. This means that each exemption must be supported by a factual description of the specific situation supporting it. This dimension is covered in the aforementioned AMF Recommendation 2012-02.
- More substantially, and to ensure that the "explain" dimension is accorded its full importance, the AMF considers that **companies that fail to comply with a recommendation of the code should nevertheless explain how they achieve the general objective targeted by that recommendation**. The "comply or explain" principle thus implies that **companies should comply with the governance principles that underpin the code's recommendations, if necessary by other means**. Since a uniform approach to the code is not suitable for every company, this principle reflects a "customised" approach to generally accepted corporate governance standards.
- **Any company that fails to apply such alternative solutions should explain the steps taken and the likely implementation timescale** to achieve full compliance with the relevant provision of the reference code or to implement such alternative measures.

1.5 Increasing the code's scope and credibility without abandoning a form of self-regulation

Article L. 225-37 of the Commercial Code stipulates that companies listed on a regulated market may or may not apply a governance framework, and that, where such a framework is applied, it may only be drawn up by "industry

[20] "What constitutes an explanation under 'comply or explain'?" – Report on discussions between companies and investors

groups". Under the "comply or explain" principle, any company that explicitly applies a corporate governance code must specify any provisions from which it departs. **The corporate governance code is thus the cornerstone of a "soft law" system** that seeks to be effective, empowering and adaptable to different categories of company.

In practice, however, both codes (the AFEP/MEDEF code and the Middlenext code) are drawn up by industry groups – i.e. by those required to apply them – with the result that their content is sometimes challenged by certain investors who have developed their own frameworks. Of course, as noted by the aforementioned AMF working group on general meetings in listed companies, many issuers have already developed ongoing, constructive dialogue – not necessarily linked to general meetings – with their investors. In particular, such dialogue can help reduce the number of challenges to proposed resolutions and provide shareholders with explanations.

However, the fact remains that if market frameworks – which are currently divided between issuer-driven codes on the one hand and codes drawn up by investors on the other – could be decompartmentalised, this would undoubtedly help improve dialogue and make it both more effective and more sustainable.

Furthermore, the key benefit of this "soft law" approach is that, while the content of a code requires a degree of stability over time in order to be applicable, such codes can be regularly updated to reflect new best practice or observed abuses that need to be supervised. In reality, **codes are rarely updated**, even though the AMF every year sets out areas for discussion in its annual report on corporate governance, with the aim of encouraging industry groups to update the contents of their codes in relation to certain specific topics (e.g. duties and compensation for non-executive chairmen, lead directors' powers, banning option hedges, etc.). **Since 2009, very little notice has been taken of these areas for discussion**.

Consideration should therefore be given to widening the circle of stakeholders involved in drawing up corporate governance codes, in particular to include investors, so that such codes become more representative of market requirements.

2. Increased international pressure from shareholders and investors

2.1 Demanding voting policies

2.1.1 Greater involvement by management companies

French institutional investors are seeking to strengthen their commitment as shareholders and their vigilance in respect of corporate governance practices, where applicable by using the services of proxy advisory firms. **This commitment is not based on a "stewardship code"** – such as the one drawn up in the United Kingdom by the Financial Reporting Council in July 2010 – defining the rules applied by investors in relation to dialogue with issuers and transparency in respect of voting policy.

In accordance with an interpretation of the "comply or explain" principle laid down in Article L. 533-22 of the Monetary and Financial Code, **management companies must, however, exercise the voting rights associated with securities held by the funds they manage and, where those rights are not exercised, explain why not**. In addition, Articles 314-100 and 314-102 of the AMF's General Regulation require management companies to draw up a document entitled "voting policy". A survey carried out by the *Association française de la gestion financière* (AFG) in early 2012 identified the following trends in 2011:

- Management companies' participation in general meetings increased by 20%.
- Both dialogue and the quality of communication with issuers improved. This process is extending to European and third country issuers, with a growing number of issuers informing fund managers of their proposed resolutions.
- At more than 80% of French general meetings, management companies voted against at least one resolution. Across all nationalities of issuer, "votes against" represented 18% of all votes.

- Institutional clients are increasingly interested in management companies' voting policies and exercise of voting rights.

2.1.2 An example of a strict voting policy: ERAFP "guidelines"

Independently of asset managers, some institutional investors stand out from the crowd for their willingness to put in place strict voting policies. This is particularly true of the ***Etablissement de retraite additionnelle de la fonction publique*** **("civil service supplementary pensions organisation"/ERAFP)**, which published its "Provisional guidelines on shareholder commitments" on 15 March 2012[21].

In these guidelines, the ERAFP reaffirms its commitment to the United Nations principles for responsible investment, transparency in company disclosures on environmental, social and governance practices, and compliance with international law and a number of United Nations conventions. The ERAFP delegates the management of its investments to third parties. As such, it reiterates that it does not directly exercise the voting rights associated with securities held in its portfolios, and sets out the reporting requirements to which the companies that manage its investments are asked to adhere. Finally, the document sets out the organisation's voting principles and the **criteria used to determine whether negative voting recommendations are issued**.

The ERAFP states that it is opposed to the following **governance** practices:

- **The election** of new board members "**en bloc**"; shareholders at general meetings must be able to vote on each candidate separately.
- The ERAFP does not support the continued enforcement of regulated agreements that have previously been approved but do not comply with its voting policy.
- The following, in particular, may not be classed as **independent directors**:
  - employees and former employees within the previous five years;
  - shareholders holding less than 3% of voting rights and their representatives;
  - persons receiving specific material compensation in respect of services supplied to group companies, the group's controlling shareholder or its executives;
  - persons involved in major strategic transactions (transfers of assets, mergers, etc.) within the past three years;
  - investment bankers, executives of major financial institutions and former executives of banks within the past three years or still receiving benefits granted by the institutions they helped manage;
  - persons holding political office;
  - directors who have held office or otherwise been present within the company or group for at least 12 years.
- The **holding of the offices of chairman and chief executive by the same person**.
- The holding of "an excessive number of directorships" or executive (within a listed company) and non-executive directorships outside the group, as well as direct and indirect cross-directorships.

The main issues highlighted in respect of **compensation** policy are as follows:

- The payment of directors' attendance fees must mainly be contingent upon **actual attendance** at board and committee meetings.
- It is "generally not desirable" to **grant bonus shares or stock options to non-executive directors**, except in SMEs under certain conditions. Similarly, major listed companies should no longer award stock options to their executives.
- **The organisation does not approve of the principle of so-called "chapeau" supplementary pension schemes** funded solely by companies, and in particular defined benefit schemes, **or of "golden parachutes"** and termination payments not meeting certain criteria.
- The ERAFP encourages companies to take into account indicators relating to the management of environmental, social and governance issues when determining executive compensation.

[21] According to the ERAFP, these guidelines will be amended in light of feedback from general meetings held in 2012; a final version will be approved by its board of directors in December 2012 and will enter into force with effect from 2013.

- The allocation of performance shares to executives must be subject to transparent and demanding performance criteria measured over at least three years.
- Where annual salary increases are limited for employees or a company has to implement a significant redundancy plan, executive compensation should set the example – i.e. there should be no increase in fixed compensation, no annual bonuses, no stock options or bonus shares and only a limited increase in variable compensation.
- The maximum socially acceptable total annual compensation paid to an executive should correspond to **100 times the French minimum wage ("SMIC")**. Total variable compensation should not exceed three times fixed compensation.
- In the absence of any legal obligation, the ERAFP supports all efforts to introduce "say on pay" policies.

2.1.3 Greater transparency in relation to proxy advisors' voting policies

Proxy advisors, which increasingly influence investors' decisions, claim to promote a strict approach to corporate governance. Some proxy advisors **publicly disclose the principles and arguments underpinning their voting policies**, either of their own accord or at the request of the regulator, and in particular the AMF[22]. For example, Proxinvest's voting policy, which is set out in a document of around 30 pages that can be accessed via the firm's website, is based around five principles. In particular, Proxinvest adopts a strict and detailed interpretation of the definition of independent directors. Another firm, ISS, publishes a summary of its European voting policy at the end of each year.

2.2 More marked opposition at general meetings on matters relating to compensation

In a number of countries, 2012 has seen increasing protests against certain compensation practices, sometimes referred to by observers as a "shareholders' spring". **This kind of protest has been more marked in the United States and the United Kingdom than in France**, and may also be linked to a highly uncertain economic environment, which tends to make shareholders more sensitive to the coherence of executive compensation and its proportionality to actual company performance.

This appears to be a relatively new trend, not so much by dint of the number of companies affected as by the symbolic significance of those companies and a breaking away from the previous trend. The compensation policies of several American and, in particular, British companies have been challenged by a **majority or a large minority of shareholders** under the "say on pay" banner (Citigroup – see below, Barclays, Prudential, Xstrata, Trinity Mirror, etc.), in some cases leading to the resignation of an executive (e.g. Aviva chief executive Andrew Moss).

In France, it was the government, in its capacity either as majority shareholder or as an influential minority shareholder, **that adopted the most symbolic stance** by encouraging shareholders to vote against regulated agreements put forward at general meetings by **Air France** (in respect of non-compete compensation owed to its former chief executive) and **Safran** (in respect of early termination compensation and an additional supplementary pension scheme for its former chairman and chief executive).

Other SBF 120 companies have also had one or more of their resolutions rejected, particularly in relation to capital increases without pre-emptive rights (Edenred, Ingenico, Legrand and Publicis) and awards of stock options or bonus shares (Arkema, Carrefour and Ingenico). According to a survey published by Capitalcom on general meetings held by CAC 40 companies[23], a clear majority (61% in 2012, compared with 24% in 2011) of resolutions considered "sensitive" – i.e. having garnered a majority of less than 75% – had to do with governance and regulated agreements relating to components of compensation, followed by capital increases without pre-emptive rights (18%).

[22] In particular, the aforementioned AMF Recommendation 2011-06 requires that *"all proxy advisors publish their general voting policy on their website. This recommendation also applies to all partial or complete updates of the voting policy. In this event, it is recommended that, no later than December, the proxy advisor publish a consolidated version of its voting policy applicable to general meetings for the following year, and not just the updated or revised sections."*
[23] "*7e bilan des assemblées générales 2012*" – press release dated 20 July 2012

Above all, such refusals to ratify agreements have a limited effect to the extent that they have no legal power to retroactively overturn commitments given and approved by boards. However, like the consultative “say on pay” procedure (see below), they illustrate pressure from shareholders that boards often cannot ignore, and are an incentive for boards to discuss and **negotiate the acceptability of certain resolutions with key shareholders ahead of time**. In its aforementioned survey, Capitalcom states that in 2012, half of the companies making up the CAC 40 offered their shareholders an exhaustive review of the compensation policy applicable to their corporate officers.

3. “Say on pay”: what role should shareholders play in determining compensation policy?

The debate on shareholders’ influence on executive compensation policy, which is neatly captured by the expression “say on pay” and resurfaced in 2010 as a result of the Dodd-Frank Act, has intensified in recent months, especially in France.

3.1 Current regulations in the United States

3.1.1 New regulations applicable with effect from 21 January 2011

The new Section 14A of the Exchange Act, introduced by Section 951 of the July 2010 Dodd-Frank Act, requires listed companies, at their general meetings held on or after 21 January 2011, to hold a **shareholder advisory vote** on executive compensation (the “say on pay” requirement) and exceptional financial compensation (“golden parachutes”) awarded when events occur that affect the structure of the company[24] (mergers, acquisitions, disposals, consolidations, etc.) The Act also stipulates that such votes must be held at least once every three years.

The Securities and Exchange Commission (SEC) has refined these requirements, in particular by restricting their scope to **listed companies with a market capitalisation in excess of $75 million**. Companies falling beneath this threshold have an extra two years to comply, and will therefore not be bound by these regulations until 21 January 2013[25]. Voting must cover all forms of compensation (fixed and variable compensation, stock options, bonus shares, bonuses, etc.) awarded to the chief executive, the finance director and the three highest-paid managers in the company during the previous financial year.

Companies are required to disclose, both to the SEC and in their annual reports, **the outcome of the vote, as well as whether or not they have acted on shareholders’ opinions**. However, no procedures are laid down to amend compensation packages if shareholders vote against them, though companies can decide to make the outcome of periodic votes binding.

3.1.2 The situation two years on

An initial review shows that very few compensation packages have been rejected, affecting only 1.6% of relevant companies[26], i.e. **44 companies included in the Russell 3000 index in 2011** (one of which was Hewlett-Packard) and **55 companies at 12 July 2012**. With the exception of five companies, every company in respect of which shareholders voted against compensation arrangements in 2011 had its compensation plans approved in 2012, perhaps suggesting that the majority of these companies revised their compensation policies from one

[24] The vote must be held before compensation is paid.
[25] Furthermore, the Jumpstart Our Business Startups Act (the “JOBS Act”), which was passed on 5 April 2012 and is designed to facilitate fund-raising by emerging growth companies, stipulates that such companies wishing to go public and generating annual sales of less than $1 billion are not bound by the “say on pay” requirement for the first five years following their initial public offering, provided that they do not exceed the €1 billion threshold.
[26] Source: 2011 and 2012 tables published on the *www.sayonpay.com* website.

year to the next in order to avoid another negative vote. Furthermore, companies that had achieved an approval ratio of 50-70% in 2011 saw this ratio increase by an average of 14 percentage points the following year.

The **only company in the banking sector to record a negative vote in 2012 was Citigroup**, with 55% of votes against its proposed compensation arrangements[27]. Bank of America, Goldman Sachs and Morgan Stanley have been able to avoid negative votes by planning sometimes substantial reductions in their chief executives' compensation (35% in the case of Lloyd Blankfein, chief executive of Goldman Sachs). JP Morgan's plan, which included maintaining the compensation paid to chief executive Jamie Dimon and head of the bank's London subsidiary, Ina Drew, was approved by 90% of those voting, though this was before it was announced that the London subsidiary had posted significant losses as a result of being overexposed to the credit default swap market. The company later announced that the bonuses payable under the plan might be clawed back.

3.2 European questions

In a recommendation dated 14 December 2004, the European Commission recommended, without prejudice to the role and organisation of bodies tasked with determining directors' pay, that (i) compensation policy and any material change in that policy be clearly included on the agenda at annual general meetings, and (ii) **the statement on compensation be put to the vote at the annual general meeting**, on either a binding or an advisory basis.

In its aforementioned Green Paper, the European Commission explicitly considered the issue of voting by shareholders, asking, in particular, the following question: *"Should it be mandatory to put the remuneration policy and the remuneration report to a vote by shareholders?"*. In theory, the Commission should set out its conclusions and lines of action on this subject by the end of 2012.

Rather than waiting for this initiative to come to fruition, numerous countries in Europe and around the world have already put in place arrangements under which executive compensation must be put to a vote by shareholders. The aforementioned 2009 RiskMetrics survey clarified that shareholders in a number of Member States vote on either compensation policy (ex ante) or a remuneration report (ex post).

The outcome of such votes may be **binding**, as in the Netherlands, or merely **advisory**, as is currently the case in the United States (see above) and the United Kingdom, where the practice was introduced in 2002. Belgium and Germany also adopted the same measure in 2011. In **Switzerland**, eight companies voluntarily put their remuneration reports to a vote by shareholders in the first quarter of 2012. Novartis's shareholders voted in 2010 to amend the company's Articles of Association to include the principle of a three-yearly vote, except where material changes are made to the compensation system.

The United Kingdom, which often appears to lead the way in Europe in this area, could soon update its regulations by amending its Enterprise and Regulatory Reform Bill. On 20 June 2012, the Secretary of State for Trade and Industry announced that he was considering introducing a **binding annual vote** by shareholders on total compensation paid to executive directors.

3.3 Options available in France

3.3.1 Fragmented and inconsistent shareholder involvement

Following a gradual tightening of legal requirements in recent years, listed companies disclose increasingly detailed information on executive compensation. **This transparency has not, however, prevented recurring controversy in this area**, in spite of the commitment shown by boards and compensation committees.

[27] On 17 April 2012, Citigroup's shareholders rejected a total compensation package for its chief executive, Vikram Pandit, amounting to $14.8 million (consisting of fixed and variable compensation, a cash bonus, stock options and shares), believing this level of compensation to be unwarranted in an environment where the share price was falling and the bank had yet to return to pre-crisis profitability levels.

Meanwhile, shareholders' real role in relation to compensation remains relatively limited. They can exercise certain powers at annual general meetings, though these are fragmented. They consist of the following:

- an a priori vote on **total directors' attendance fees** to be awarded by the board;
- an a priori vote on the maximum amount of **stock options and bonus shares** allotted to employees and executives, with the percentage allotted to executives to be decided by the board;
- the a posteriori ratification, under the rules governing **regulated agreements** approved by the board, of commitments entered into by the company for the benefit of executive directors *"corresponding to components of compensation, allowances or benefits due or likely to be due as a result of or subsequent to the termination of or changes in those duties"*[28]. **In particular, these rules cover termination payments and so-called "chapeau" supplementary pension schemes**, which must be approved by shareholders at a general meeting via a specific resolution for each beneficiary. Moreover, the payment of termination payments is subject to criteria linked to the beneficiary's performance, assessed in light of the company's performance. Agreements not approved by shareholders continue to have effect with respect to third parties, unless they are annulled for fraud[29].

In this context, **both institutional and minority shareholders may have felt that they were excluded from a sensitive discussion** that is institutionalised in other European countries, in spite of the European Commission's making shareholder votes on executive compensation a central theme in its discussions on corporate governance within the EU (see above for the June 2011 Green Paper). This explains why some shareholders are insistent in expressing their desire to see voting on executive compensation introduced in France, as indicated by several respondents to the public consultation on the report by the AMF's working group on general meetings.

3.3.2 Towards "say on pay" à la française

An overhaul of corporate governance, particularly as per executive compensation, was one of the new government's first topics of communication, and is likely to be the subject of an upcoming bill. A communiqué issued by the Council of Ministers on 13 June states as follows:

"In accordance with the commitment made by the President of France, the government will take care to ensure that executive compensation in public corporations is exemplary. […]

"In accordance with the new wage restraint rules, ***compensation paid to executive directors will be capped at 20 times the average value of the lowest salaries paid by key public corporations****. Approval of individual compensation by the Minister for the Economy will ensure that this limit is adhered to and that compensation does not converge on the maximum permitted amount, taking into account each corporation's specific circumstances.*

The required regulations will be enacted as soon as possible and the new rules will be applied to existing directors when executive compensation is next ruled on by the board of directors, such that, within the space of a year, all compensation has been reviewed in accordance with the rules laid down. Compensation paid to the corporate officers of public corporations will be publicly disclosed.

As well as public corporations, steps will be taken to restrict those executive compensation arrangements that have given rise to the most shocking excesses and to strengthen governance and control in relation to compensation. ***Following a consultation phase, the government will put forward a bill in the autumn to ban or restrict certain practices and overhaul corporate governance in private companies so as to strengthen control over compensation****."*

In this regard, the Directorate General of the Treasury held a public consultation between mid-August and mid-September broadly covering executive compensation and raising the question of the role of general meetings in setting compensation.

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[28] Article L. 225-42-1 of the Commercial Code
[29] The only sanction, even in the absence of fraud, lies in the requirement for the relevant parties to bear any harmful consequences to the company of such agreements, which assumes that legal proceedings for damages are initiated.

Without detailing all the aspects of a "say on pay" system *à la française*, it appears that any legislative reform of the existing system will need to build on the board's role in proposing and determining compensation and the work of the compensation committee. Any such reform should also, in particular, address the following:

- The **scope of companies** subject to the new rules: all listed companies traded on a regulated or organised market, or only the largest companies exceeding a predefined economic or market capitalisation threshold.
- The **scope of affected individuals**: an extended group of executives (executive committee), members of the board of directors, management board or supervisory board, or executive directors as defined in Article L. 225-18 of the Commercial Code[30].
- The **scope of compensation and benefits** to be put to the vote: fixed and/or variable compensation, stock options and bonus shares, and deferred compensation (including termination payments, non-compete compensation, negotiated compensation and supplementary pensions), under either a separate or a combined approach.
- The **frequency** of voting: annual, every three years or, following the example of the American system, at a frequency proposed by the board and ratified by the shareholders at a general meeting.
- The **purpose** of the vote: for example, shareholders could vote on an overall report covering compensation policy (including a sufficiently detailed description of the performance criteria applied to executives and the results to which variable pay is linked), the structure of compensation paid to executive directors (submission of the combined amount of fixed and variable compensation), the total individual compensation paid to each executive or a maximum total amount of compensation within which the board would retain some room for manoeuvre.
- The **scope and consequences** of the vote: a compulsory ex ante vote that would be binding upon the board and executives or an optional vote (either ex ante or ex post) that would mainly serve as an incentive. In the case of a binding vote, the consequences of shareholders voting against measures already agreed by the board of directors would need to be clarified. This would be the case, for example, of a binding vote on a report detailing executive compensation, the scope of which appears to be complex to determine.

The introduction of such a system will necessarily raise questions as whether to maintain **existing arrangements governing regulated agreements** applicable to deferred compensation, and on the **role of compensation committees**. It should be noted that the law currently requires major financial institutions to have compensation committees[31]; however, like other committees, they are not invested with decision-making powers, which remain a collective prerogative of the board.

As it had the opportunity to point out in its July 2011 response to the European Commission's consultation on the aforementioned Green Paper, **the AMF is in favour of consideration being given to an advisory shareholder vote on compensation policy for executive directors**.

[30] Defined as the chairman of the board of directors, the chief executive, deputy chief executives, members of the management board and the statutory manager(s) of limited companies.
[31] Article L. 511-41 A of the Monetary and Financial Code, introduced by Article 65 of Act No. 2010-1249 of 22 October 2010 on the regulation of banking and finance.

CORPORATE GOVERNANCE

As stated above, the AMF's December 2011 report was based on a sample of 90 companies admitted to trading on Euronext. Of these companies, 59 applied the AFEP/MEDEF code, 19 applied the Middlenext code and 12 did not apply any corporate governance code. Accordingly, it should be borne in mind that **comparisons** between this report, which is limited to a new sample of 60 companies that apply the AFEP/MEDEF code, and the findings of the 2011 report, **are skewed**.

At the end of 2011, the AMF noted material progress in the transparency of disclosures and governance practices: greater diversity in board composition, an increase in the number of companies disclosing information about the review of the board's activities and an increase in the proportion of independent directors. **However, further improvement was expected** in implementing the "comply or explain" principle, particularly where companies opted not to apply certain independence criteria.

As it had done the previous two years, the AMF put forward various **recommendations** and new **areas for discussion** while lamenting the fact that its areas for discussion, which form the basis of dialogue as to how to develop the content of codes drawn up by industry groups, had as yet received little or no buy-in.

This report is based around the key governance issues covered last year, and continues the AMF's efforts to **promote best practice** by once again proposing a number of recommendations and areas for discussion.

Firstly, the AMF wishes to reiterate that, under the terms of Article L. 225-37 of the Commercial Code, listed companies are legally required to include a **statement on corporate governance** in their annual reports. This statement must include a reference to a corporate governance code to which the company voluntarily submits, disclose any provisions of that code that are not applied, together with the reasons why they are not applied, and, where appropriate, explicitly state if the company does not apply any code, explain why not, and set out the alternative actions taken. In order for companies to be able to apply the "comply or explain" principle, it is essential that they accurately disclose all relevant information on the application of recommendations contained in the corporate governance code they choose to apply, either in their registration documents or in their annual reports.

By way of introduction, the AMF would like to **highlight one best practice in relation to the application of the "comply or explain" principle**, implemented by eight companies in the sample, which consists of including a table in the registration document summarising any recommendations of the AFEP/MEDEF code that the company has opted not to apply and the corresponding explanations.

Recommendation:
In this regard, to ensure that the "comply or explain" principle is implemented more effectively, the AMF recommends that companies include in their registration documents a summary table of any recommendations of the AFEP/MEDEF code that they have opted not to apply, together with associated detailed explanations.

1. Organisation and activity of the board

Boards of directors and supervisory boards of companies in the sample have an average of almost **14 members** (13.72, compared with 11 in 2010). The smallest board has six members and the largest 22[32], giving a maximum difference of 16.

[32] Including elected directors representing employees and employee shareholders.

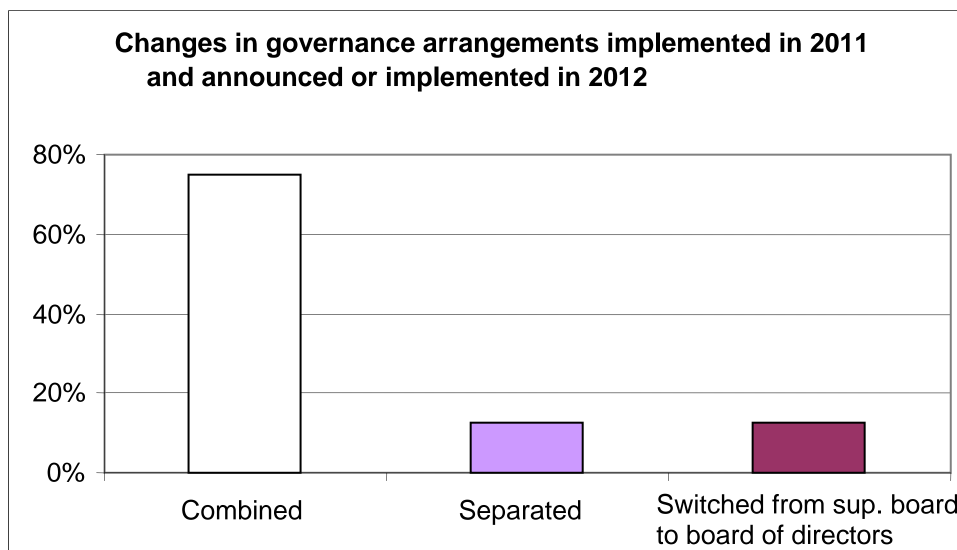
1.1 Board structures

1.1.1 Trends in governance systems

80% of companies in the sample (compared with 73% in 2011) **have a board of directors**, while 20% have a dual structure consisting of both a management board and a supervisory board. These proportions are the same among CAC 40 companies (with 28 out of 35 companies having a board of directors). **The duties of the chairman of the board of directors and those of the chief executive have been combined in 73%** of the 48 companies in the sample with a board of directors (up from 67% in 2011). The equivalent proportion among CAC 40 companies is 79% (22 out of 28 companies).

In practice, taking into account all companies irrespective of whether they have a unified or a dual governance structure, more than 58% of companies in the sample are run by an individual who functions as both chairman of the board and chief executive officer. This increase of almost ten percentage points relative to 2011 illustrates a **continuing trend towards combining the functions of chairman and chief executive** – a situation which was already three times more common in 2011 than having separate chairman and chief executive roles in companies with boards of directors. This trend is sometimes described as being cyclical and linked to a crisis environment, in the sense that it enables companies to be more responsive and effective in the way they manage strategy and change.

Six companies **changed their governance structure** in 2011, and another two did so in the first half of 2012. Of these eight changes (13.3% of the sample), **six companies combined the functions** of chairman of the board of directors and chief executive in 2011, one separated the two functions and another switched from a dual to a unified structure.



Source: AMF

1.1.2 Disclosures on changes in governance systems

1.1.2.1 Summary of applicable provisions

Recommendation 3.2 of the AFEP/MEDEF code specifies *that "it is essential that shareholders and third parties be fully informed as to whether the company opts to separate or combine the functions of chairman and chief*

executive officer", and that *"the medium through which* ***the board must explain the reasons and justifications for its choices*** *to shareholders is the annual report"*.

In its consolidated Recommendation 2012-02, the AMF also recommended that *"companies that have made changes to their governance systems* ***provide a detailed and specific description and explanation of those changes*** *and clarify the steps taken to avoid potential conflicts of interest" and that "they present any specific steps taken, where applicable, to* ***ensure a balance of powers*** *within the board when the functions of chairman and chief executive officer are combined"*.

1.1.2.2 Findings

With the exception of **Carrefour**, which combined the functions of its chairman and chief executive, all the companies in question provided more or less detailed explanations as to the changes in governance they had implemented. This constitutes progress relative to 2011.

Carrefour's registration document simply states that *"at its meeting on 21 June 2011, the Board decided to recombine the functions of Chairman of the Board of Directors and Chief Executive Officer"*. Although shareholders are indeed informed of this change, this reference is purely descriptive; no explanation or justification of this decision is provided, nor is there any explanation of steps taken to avoid potential conflicts of interest.

Similarly, the explanations provided by **Gecina** in relation to a similar decision to combine functions are relatively unsubstantiated and thus do not appear to be in line with the "comply or explain" principle. The company's registration document describes the change rather than genuinely explaining it, stating that *"the separation of the functions of Chairman of the Board of Directors and Chief Executive Officer, implemented by the Board of Directors at its meeting on 5 May 2009, remained the company's governance arrangement until 4 October 2011. At that date, the Board of Directors, having relieved Christophe Clamageran of his duties as Chief Executive Officer, proceeded to combine the functions of Chairman of the Board of Directors and Chief Executive Officer and to appoint Bernard Michel, Chairman of the Board of Directors, as Chief Executive Officer. Christophe Clamageran having been relieved of his duties with immediate effect, the appointment of Michel Bernard as Chief Executive Officer served to ensure continuity and stability in the company's management."* However, in its 2012 interim financial report published on 24 July 2012, **the company said it intended to continue** ***"to reflect on the change in its governance arrangements****, particularly with a view to once again separating the functions of Chairman of the Board of Directors and Chief Executive Officer"*.

Beyond these specific examples, the reasons given for combining the functions of chairman and chief executive – a change that represents three quarters of all reported changes – highlight **three types of argument**:

- greater responsiveness in managing and running the group;
- facilitating succession planning and simplifying the decision-making process;
- adapting to the company's specific circumstances and ownership structure.

In the single case in which a company opted to **separate** the two functions, the company in question considered that this governance approach would ensure that there was a clear distinction between its strategic, decision-making and supervisory functions, which fall within the remit of the board of directors, and its operational and executive functions, which fall under the responsibility of the chief executive.

Finally, in the single case in which a company switched to a **unified governance structure**, the company in question explained that this choice of refocused governance arrangement would enable it to be more responsive in its investment and growth decisions and considered it better suited to meeting the new challenges faced by the group in a changing economic, financial and competitive environment. This change appears all the more substantive since the company opted to combine the functions of chairman and chief executive at the same time. The AMF notes, however, that **this decision to combine the two functions is not specifically explained** by the company: the reasons put forward, to do with refocusing and responsiveness, apply to the new governance system as a whole.

Generally speaking, **the AMF notes a degree of standardisation in the explanations put forward**, particularly where the two functions have been combined, and considers that such explanations could be more specific and

tailored to each company's particular circumstances. Similarly, **most of the explanations are lacking with regard to indicating the steps taken to ensure that powers are appropriately balanced and to avoid potential conflicts of interest**.

The AMF therefore wishes to reiterate its 2011 recommendation, referred to above, on the need to provide specific and detailed explanations and the fact that, where specific action is taken to ensure that powers are balanced appropriately within the board when combining the functions of chairman and chief executive, action should also be set out.

1.2 The role of the chairman of the board of directors in companies in which the functions of chairman and chief executive are separated

1.2.1 Summary of applicable provisions

1.2.1.1 Legal provisions

Article L. 225-51 of the Commercial Code stipulates that *"The chairman of the board of directors shall organise and direct the work of the board and report on it to shareholders at the annual general meeting. He shall see to it that the company's bodies operate smoothly and, in particular, that the directors are able to fulfil their duties."*

1.2.1.2 AMF recommendation

In its Recommendation 2012-02, the AMF recommends that *"companies which have separated the roles of chairman of the board of directors and chief executive officer should* ***describe the chairman's duties in detail***[33]*"*.

1.2.2 Findings

The AMF notes that the functions of chairman of the board of directors are separate from those of the chief executive in **13 of the companies in the sample** (27% of companies excluding those with a dual governance structure). The equivalent proportion in the 2011 report was 24%.

It is worth reiterating that the remit of the chairman of the board is clearly defined by law (see above). Furthermore, with regard to the status and role of non-executive chairmen, the AMF previously suggested in its 2010 and 2011 reports that **consideration be given to corporate governance arrangements**, including in particular questioning the status and role of chairmen in companies having a board of directors. In particular, such an approach means reviewing the following:

- the nature of the duties assigned to a non-executive chairman of the board;
- the body that assigned those duties to the chairman and, where appropriate, the procedure followed (e.g. appointment on the advice of a committee);
- the limitations applied to those duties, particularly as regards the powers of the chief executive;
- the way in which the scope and fulfilment of those duties are taken into account when the board sets the various components of the chairman's compensation.

In this regard, it is important that **the amount of compensation awarded be proportionate to the duties assumed by the chairman**, in so far as those duties do not contravene the principle of separation of executive and non-executive functions.

[33] For the record, the AFEP/MEDEF corporate governance code considers that a non-executive chairman of the board of directors falls into the category of "executive directors": "The term 'executive directors' refers here to the chairman, chief executive and deputy chief executive(s) of companies having a board of directors, the chairman and members of the management board of companies having a management board and supervisory board, and statutory managers of limited stock partnerships."

The following tables show the total amount of compensation due and paid in 2011 to non-executive chairman – i.e. 14 chairmen – broken down by quartile.

The AMF notes that compensation **paid** to these 14 chairmen in 2011 ranged from zero to €1,084k.

Total compensation paid in 2011	**Number of chairmen**
€0 - 174k	**4**
€174k - €460k	**3**
€460k - €694k	**3**
€694k - €1,084k	**4**

Source: AMF

The AMF further notes that compensation **due** to these 14 chairmen in 2011 ranged from zero to €1,174k.

Total compensation due in respect of 2011	**Number of chairmen**
€0 - 174k	**4**
€174k - €445k	**3**
€445k - €679k	**3**
€679k - €1,174k	**4**

Source: AMF

The AMF notes that, in addition to fixed compensation:

- two chairmen of the board of directors received variable compensation in 2011;
- two chairmen of the board of directors were awarded performance shares;
- one chairman of the board of directors was awarded stock options.

One of these companies specifies in its registration document that the chairman of its board of directors, who received variable compensation, stock options and performance shares, would no longer be receiving these components of compensation in 2012.

The AMF notes that **85%** of the companies in question (i.e. 11 companies) strictly adopted the functions defined by law pertaining to the organisation of the board's work and to ensuring that the company's bodies operate smoothly.

However, as in 2011, the AMF notes that five companies in the sample, three of which are CAC 40 companies, provided further explanations as to the non-executive chairman's specific role, acting on the authority of the board where appropriate, of representing the company or group in its dealings with:

- public authorities, institutional authorities and economic agents;
- key partners or customers of the group;
- the company's shareholders.

For example, the board's rules of procedure within one company comprehensively stipulate that the chairman of the board of directors is responsible, in particular, for *"helping ensure that the Company is properly represented and maintaining ongoing dialogue with key customers, governments, regulatory authorities, the media, shareholders, investors and the general public so as to contribute to the Group's success"*.

Furthermore, the AMF notes that, with regard to relationships between the chairman and the chief executive, four out of five companies specify that the company is represented in high-level relationships "in close coordination", "in cooperation" or "in agreement" with executive management.

Of these companies, the AMF notes that **BNP Paribas** provides the most detailed explanation of the duties assigned to its non-executive chairman, which go beyond those laid down in law:

"[…] *In close coordination with executive management, the Chairman may represent the Group in its high-level relationships, particularly with key customers and public authorities, at both a domestic and an international level. The Chairman supports the teams responsible for covering large corporates and international financial institutions; he also helps develop the activities of the board of BNP Paribas, in particular by providing assistance in completing major corporate finance transactions. He provides support to the company's executive management or, at the latter's request, represents the Bank in its dealings with domestic and international financial and monetary authorities. He actively participates in debate on regulatory and public policy changes affecting BNP Paribas and the banking sector more generally. The Chairman helps promote the values and image of BNP Paribas both within and outside the Group. He communicates about the guiding principles of BNP Paribas, particularly in relation to professional ethics. He contributes to the Group's reputation by holding positions of responsibility in a personal capacity on domestic or international public bodies. These responsibilities put the Chairman's time to use in the service of the group. The initiatives he adopts and the actions he takes to bring those initiatives to completion are taken into account by the Board of Directors when assessing the Chairman's performance and determining his compensation."*

BNP Paribas also provides information on the way in which the duties fulfilled by the chairman are defined by the board of directors: *"At its meeting on 1 December 2011, the Board of Directors confirmed the duties fulfilled by the Chairman in accordance with certain provisions of the board's rules of procedure not exclusively relating to the organisation and operation of the Board or the responsibilities fulfilled by the Chairman pursuant to legal provisions."* **BNP Paribas** annexed to its chairman's report on corporate governance and internal control an extract from the board's rules of procedure covering the duties of the chairman.

However, given the generally broad scope of duties assigned to the chairman of the board, which in some respects appear to resemble executive functions, **BNP Paribas** reiterates, in particular, that *"these duties are contributory in nature and do not confer any executive powers upon the Chairman. They in no way limit the powers of the Chief Executive Officer, who assumes sole operational responsibility for the Group."*

In light of these examples, the AMF wishes to reiterate its recommendation referred to above, and as such considers that, where a company decides to assign duties to its non-executive chairman that go beyond those strictly laid down in law, it should provide information on the exact role assigned to the chairman and the precise scope of the powers conferred upon him.

1.3 Activity of the board

1.3.1 Summary of applicable provisions

Recommendation 10 of the AFEP/MEDEF code stipulates that *"The number of meetings of the board of directors and of board committees held during the past financial year should be stated in the annual report, which should also provide shareholders with **any relevant information pertaining to directors' attendance** at such meetings. The frequency and duration of meetings of the board of directors should be such that they allow matters falling within the board's remit to be reviewed and discussed in depth* [...]*."*

1.3.2 Findings

The AMF notes that:

- **all of the companies in the sample state the number of board meetings held** in their 2011 annual financial reports;

- **three companies** in the sample, two of which are CAC 40 companies, provide **no information in respect of their review of the board's activities**.

The average number of board meetings in the year across the sample is almost **nine** (8.82), ranging from 2 to 22 meetings per year.

The average attendance rate across all companies is **89%**. The AMF also notes that **11 companies** in the sample, including eight CAC 40 companies, provide attendance rates at board and/or committee meetings for each individual director. In **91%** of cases, this information is set out in the form of a table.

The AMF wishes to encourage this practice, which makes it easier to see how regularly directors attend meetings and how much time they dedicate to their duties.

2. Independent directors and conflicts of interest

2.1 Number of independent directors

2.1.1 Summary of applicable provisions

2.1.1.1 AFEP/MEDEF code

Recommendation 8.2 of the code stipulates that *"Independent directors should account for **half** the members of the board in widely-held corporations with no controlling shareholders. In companies **with a controlling shareholder**, **at least one third** of board members should be independent directors."*

2.1.1.2 AMF recommendation

Consolidated Recommendation 2012-02 recommends that companies *"clearly identify which members of the board have been classified as independent by the board, regardless of whether those directors are members of specialised committees."*

2.1.2 Findings

All companies in the sample have at least one independent board member (100% of CAC 40 companies in 2010). The average proportion of independent members is **54%** (compared with 52% of the sample in 2011) and 60% for CAC 40 companies (up from 59% in 2011), which is satisfactory. However, this proportion varies widely from company to company, with one company having only 16.7% of independent board members.

Thirteen companies expressly state that they do not comply with the recommendations of the AFEP/MEDEF code on the proportion of independent board members. The explanations put forward are based on the following points:

- the existence of **specific legal and regulatory provisions**[34], applicable in particular to public corporations or those in which the government is a major shareholder, governing the composition of the board of directors, for example by requiring that representatives of the government and/or employees be appointed to the board;
- the presence of a majority shareholder or of two shareholders exercising **joint control**, for whom seats on the board are reserved;

[34] In particular, Act No. 49-985 of 25 July 1949 authorising appropriations and expenditure commitments in respect of the 1949 general budget and Act No. 83-675 of 26 July 1983 on public sector democratisation.

- the presence of a **major shareholder**, which puts the company in an intermediate position between being controlled and being widely-held;
- the specific characteristics of **mutual organisations** (not referred to as such), within which the majority of seats on the board tend to represent local entities, reflecting (sometimes in a higher proportion) their equity interest in the parent company;
- the ownership structure and stipulations set out in **agreements** between certain shareholders (who may be either public or private), which are liable to shape the way in which corporate governance is organised;
- traditions under which **employee shareholders** or third party entities in which the company holds a significant equity interest are represented on the board.

Of the explanations provided, one piece of **best practice** is worth highlighting since it complies with both the letter and the spirit of the "comply or explain" principle, given the detailed arguments put forward and the action taken to improve compliance with the code.

Legrand acknowledges that, with only 30% of independent board members, *"the composition of the Board of Directors of the Company, which is no longer controlled by major shareholders, does not comply with the corporate governance code, which recommends that, in non-controlled companies, at least half of board members should be independent directors"*. The company explains its non-compliance – at least in relation to the past – on the basis of its ownership structure and the existence of a shareholders' agreement mainly intended to shape the governance of the company. However, it reports that **steps are being taken to bring it into compliance with the code**: two independent directors were proposed at the general meeting held on 25 May 2012. The AMF considers that the company should continue with this approach as far as possible: at 42%, the proportion of independent directors following the aforementioned general meeting still falls short of the code's recommendation for non-controlled companies.

Conversely, one company provides the following explanation, which may be judged both **ambiguous and insufficient**: *"given that the company is controlled by two major shareholders, around one third of Board members are independent directors, as laid down in the recommendations of the AFEP/MEDEF Corporate Governance Code."* While it is clear that these two major shareholders do indeed jointly control the company, holding almost 60% of voting rights, **this explanation suggests that the board's composition complies with** the code's recommendation applicable to controlled companies; in fact, at 26.7%, the proportion of independent directors remains less than the one third required by the code.

Finally, the AMF considers that the AFEP/MEDEF code would do well to clarify the concept of "controlled company", for example by referring – as do many accounting, tax and company law provisions and certain recommendations of the code – to Article L. 233-16 of the Commercial Code, which defines de jure and de facto, sole or joint control.

2.2 Director independence

2.2.1 Summary of applicable provisions

2.2.1.1 AFEP/MEDEF code

Section 8 of the AFEP/MEDEF code, which is dedicated to independent directors, stipulates that *"A director is independent when he or she* ***has no relationship of any kind whatsoever with the company, its group or the management of either that might colour his or her judgement****." Accordingly, an independent director is to be understood not only as a non-executive director – i.e. one not performing management duties within the company or its group – but also as one devoid of any particular bonds of interest (significant shareholder, employee or other) with them."* […]

The **criteria** to be reviewed by the committee and the board in order for a director to be considered independent and to prevent the risk of conflicts of interest between the director and the management, the corporation, or its group, are as follows:

- the director must not be a corporate officer of the company or an employee or director of its parent or one of its consolidated subsidiaries, nor must he/she have held such a position at any time in the previous five years;
- the director must not be a corporate officer of a company in which the company holds, either directly or indirectly, a directorship, or in which an employee of the company designated as such or a current or former corporate officer of the company (going back five years) holds a directorship;
- the director must not be a customer, supplier, or corporate or investment banker that is material for the company or group, or for a significant proportion of whose business the company or group accounts;
- the director must not have any close family ties with a corporate officer;
- the director must not have been an auditor of the company at any time in the previous five years;
- the director must not have been a director of the company for more than 12 years.

2.2.1.2 AMF recommendation

In its consolidated Recommendation 2012-02, the AMF recommends that companies:

- *"specify whether they comply with the criteria in the AFEP/MEDEF code on director independence and, where they do not apply certain of the code's criteria, provide precise reasons for not doing so."*
- *"provide detailed information every year explaining how the board of directors or supervisory board has determined whether or not any business relationships between board members considered independent and the company of which they are directors or supervisory board members are material. In this regard, the AMF recommends that companies describe in detail the contents of any commitments by which the directors concerned might be bound if they are to continue to be considered independent, together with the consequences of violating any such commitments."*

2.2.2 Findings

2.2.2.1 Independence criteria and implementation of the "comply or explain" principle

With the exception of one company not belonging to the CAC 40, all the companies in the sample (compared with 86% in respect of 2010, and 100% of the CAC 40 companies in the sample) **provide a partial or complete definition of director independence**, evenly split between those companies that refer to all the criteria in the definition laid down in the AFEP/MEDEF code (29 companies; 49% of the sample) and those that either give a partial definition or simply refer to the code or the general definition given in it (30 companies; 51% of the sample).

Seventeen companies (29% of the sample) **expressly set aside certain criteria** forming part of the definition laid down in the code, and all of these provide explanations containing a greater or lesser degree of detail.

The AMF notes, however, that **CNP Assurances** considers the chairman of its board of directors *"an independent director as defined in the AFEP/MEDEF reference code"*, in spite of this situation not complying with the criterion in the code under which those holding corporate office cannot be independent directors.

As in 2010, the criterion that was most often set aside – by 15 companies – was that relating to the **holding of directorships for more than 12 years**. Similarly, as in previous years, the most common explanation put forward for not applying this length of service criterion relates to the relevant director's experience, competence or perspective within a long-term business or one with long-term investment cycles. The AMF wishes to reiterate that **such explanations can only be considered satisfactory**, in light of the "comply or explain" principle, where they are sufficiently detailed and appropriate to the company's specific circumstances.

Generally speaking, however, **an explanation based solely on the director's experience or competence does not appear sufficient with respect to the concept of independence**. Firstly, such an explanation, as highlighted by a number of companies, has no direct link to independence. Secondly, it appears more often as a "counterpoint" to the decision not to apply a definition criterion than as a genuine guarantee of independence, with the potential loss of independence arising from the decision not to apply this criterion somehow being "offset" by a director's greater experience.

Moreover, two explanations that fall short of the "comply or explain" principle, and were already noted in the 2011 report, are even more lacking or elliptical and deserve to be highlighted:

- **LVMH** refers to the "personal circumstances" of two directors (as a result of which they are considered independent), without providing any further details.
- **Publicis** feels that the 12-year limit is "not appropriate for supervisory boards, the role of which is fundamentally different from that of boards of directors, for which these criteria were defined", in so far as the supervisory board is not responsible for managing the company, but for setting its direction and supervising it.

Recommendation:
The AMF recommends that, where companies choose not to apply the definition of independence relating to the holding of directorships for more than 12 years, this should not be on the basis of the director's experience or competence alone.

2.2.2.2 Information about the way in which companies apply the selected criteria

Twenty-two companies – i.e. 37% of the sample – provide detailed explanations as to how they apply the selected independence criteria, particularly as regards the criterion pertaining to **business relationships**[35].

In its July 2012 report, the AMF drew companies' attention to the need to provide detailed and sufficiently clear evidence so that the materiality of relationships falling into the categories referred to by the code may be properly assessed. In its December 2011 report, the AMF expressed the opinion that:

- Assessing a director's independence requires careful analysis and comprehensive disclosure as to why relations between the company and its suppliers should not be considered material. In this regard, it noted that the level of detail in the explanations put forward by companies was highly variable.
- It might be useful to list the company's directors by professional experience, as some companies did in respect of 2010.
- There were grounds to question the independence criteria applied by other companies.

Some companies attempt to put forward objective criteria to demonstrate the non-materiality of business relationships between directors and the company by providing explanations with a greater or lesser level of detail. For example, some companies refer to a table setting out transaction flows between the company and companies belonging to the group of which the director in question is a corporate officer, to a "materiality test" for business relationships, to an analysis of banking and consultancy relationships based on a number of criteria, or to an internal "policy" covering behavioural rules applicable to any directors who may be investment bankers. **Other companies merely state that such relationships are not material**, without providing any supporting evidence.

The AMF considers that that the closeness of commercial relationships and financial services between a company and another company of which one of its directors is an executive or a director, to the extent that those relationships and services affect the company's economic model and financial position, is **necessarily a key factor in assessing potential conflicts of interest**, and hence the independence of the director in question. Beyond assessing individual directors' independence, analysing such business relationships helps clarify the extent to which the company is dependent on its financial and commercial partners.

The AMF, however, has questions as to whether a director who has business, banking or consultancy relationships may even be considered independent. As an "area for discussion", it would therefore be appropriate for industry groups, perhaps within their corporate governance codes, to set out, as a minimum, the qualitative criteria used to determine whether or not such business relationships are material, as well as those situations in which a director may not be considered independent.

[35] "The director must not be a customer, supplier, or corporate or investment banker that is material for the company or group, or for a significant proportion of whose business the company or group accounts."

Similarly, the AMF laments the fact that, for the time being, **few companies have followed its recommendation** that companies describe in detail the contents of any commitments by which directors indirectly involved in business relationships might be bound if they are to continue to be considered independent, together with the consequences of violating any such commitments.

2.3 Managing conflicts of interest

2.3.1 Summary of applicable provisions

2.3.1.1 AFEP/MEDEF code

Article 17 of the AFEP/MEDEF code, entitled "Directors' code of conduct", stipulates that all directors should consider themselves bound by a number of obligations, including the following: *"directors are required to advise the board of **any conflict of interest – including potential conflicts of interest** – and should refrain from voting when the board deliberates on the matter in question".*

2.3.1.2 AMF recommendation

Reiterating a recommendation put forward in the 2011 report, Recommendation 2012-02 *requires "companies applying the AFEP/MEDEF code, whose recommendations expressly lay down rules governing the declaration and management of conflicts of interest involving members of the board of directors or supervisory board, (to) **provide information on the management of such conflicts** within the board"*.

2.3.2 Findings

All the companies in the sample address the matter of conflicts of interest in some form or other, either in their registration documents or in another document (e.g. their board rules of procedure or directors' charter), and **only two companies make no specific comment** as to real or potential conflicts of interest involving board members.

Two thirds of the sample, or 40 companies, confirm that their directors are bound by specific rules intended to prevent or, where appropriate, manage conflicts of interest involving board members. However, the level of detail provided in relation to such rules is highly variable. For example, it may be noted that:

- 93% (37 companies) state that they have put in place a requirement for directors to **declare conflicts of interest** to the board, the chairman of the board or the chief executive.
- For 60% of companies (24 companies), these rules are set out in the board's rules of procedure, a charter or a code of conduct;
- 80% (32 companies) state that they have implemented a rule under which a member involved in a conflict of interest is **not allowed to take part in the vote** when the board deliberates on the matter in question. **It can thus be seen that this provision of the AFEP/MEDEF code has not yet been fully implemented**, at least not on the basis of the information provided by issuers.
- In 48% of cases (19 companies), the director in question is **not allowed to take part in the associated debate and discussion either**. Just over 20% of these companies (four companies) explain that it is up to the board or its chairman to decide whether or not the director in question should be excluded from the debate.

The AMF wishes to reiterate its aforementioned recommendation, and once again calls on those companies that as yet provide no information on their internal rules for preventing and managing conflicts of interest **to step up their communication on this subject or, where applicable, to introduce such rules**.

3. Multiple directorships

3.1 Summary of applicable provisions

3.1.1 Legal provisions

Article L. 225-1 of the Commercial Code stipulates that "***No one individual may simultaneously hold more than five directorships in public limited companies having their registered offices in France****. Notwithstanding the provisions of paragraph 1, this number shall not include directorships or supervisory board memberships held by the individual in question in companies which are controlled, within the meaning of Article L. 233-16, by the company of which that individual is a director. As regards enforcement of the provisions of this article, directorships of companies whose securities are not admitted to trading on a regulated market and which are controlled, within the meaning of Article L. 233-16, by the same company shall count as one directorship, provided that the number of such directorships does not exceed five* [...]*."*

3.1.2 AFEP/MEDEF code

Recommendation 17 of the code, in the section covering the code of conduct for directors, goes beyond the minimum legal requirements, stipulating in particular that *"The director should apply to his or her duties the necessary time and attention. If performing executive duties, he or she should not, in principle, agree to hold more than four other directorships in listed companies,* ***including foreign companies****, not affiliated with his or her group."*

3.1.3 AMF recommendation

Consolidated Recommendation 2012-02 includes the following points, reiterated from the July 2010 report:

"The AMF recommends that companies specify whether the directorships in question are held outside the group and whether the companies in which they are held are listed.
The AMF also reminds companies that particular attention should be paid to complying with the AFEP/MEDEF recommendation on multiple directorships, or explaining non-compliance."

Furthermore, in its July 2010 report, the AMF put forward the following "area for discussion", reiterated in its Recommendation 2012-02:

"The question may be posed as to whether the recommendation of the AFEP/MEDEF code pertaining to multiple directorships should be tightened. In this context, and in line with any practical arrangements that may already have been made, consideration could be given to the question of ***whether an executive director in the strict sense of the term*** *(chairman and chief executive, chief executive, deputy chief executive, chairman of the management board, member of the management board or statutory manager of a limited partnership)* ***should obtain prior approval from the board before accepting a new directorship in a listed company****. Finally, in terms of multiple directorships, another possibility worth considering is that the board be able to make specific recommendations regarding the non-executive chairman, taking into account the particular duties that might be assigned to him."*

3.2 Findings[36]

3.2.1 Multiple directorships held by executive directors across the sample

All the companies in the sample provide information about directorships held by their executives in other companies. 57% of companies in the sample (34 companies) expressly specify whether directorships held by their corporate officers outside the group are held in listed companies.

As illustrated by the following table, almost half of executive directors (48%) held no directorships other than their primary executive roles. However, **21% of executive directors held at least three directorships, and 9% held at least four**. Although the equivalent proportions were higher for non-executive directors, at 36%, 44% and 28% respectively, this can also be explained by the fact that non-executives have relatively less demands on their time than their executive counterparts.

With regard to best practice, it should be noted that **only two companies – Hermès and Lafarge – state that they have put in place a procedure under which executive directors must obtain prior authorisation from the board** before accepting a new corporate office with a company outside the group. Another company expressly states that the chairman of its board and the chairman of its appointments and compensation committee are **informed** whenever a director wishes to accept another directorship in a listed company.

Multiple directorships among executive and non-executive directors

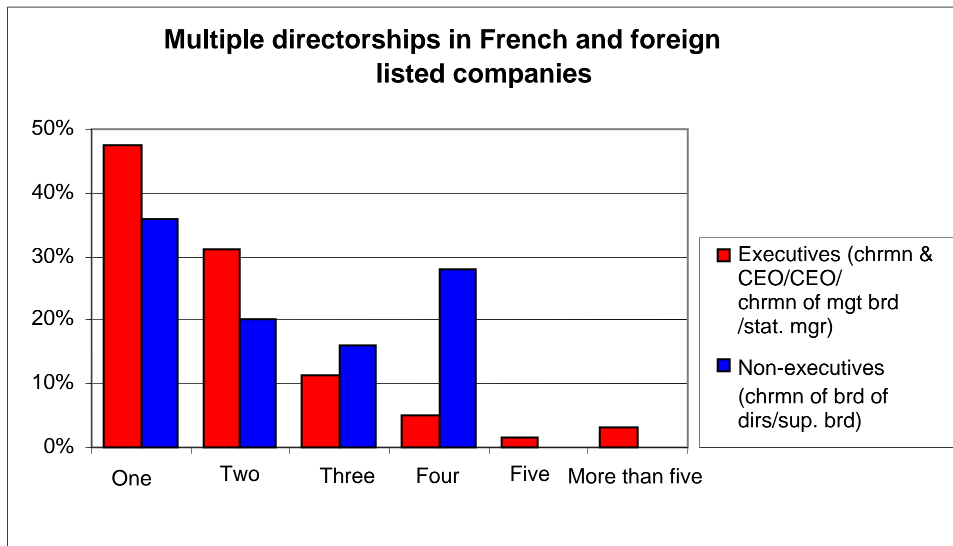
Number of directorships	Executive directorships		Non-executive directorships	
	Number of directors	Proportion (%)	Number of directors	Proportion (%)
One directorship	29	48%	9	36%
Two directorships	19	31%	5	20%
Three directorships	7	11%	4	16%
Four directorships	3	5%	7	28%
Five directorships	1	2%	0	0%
More than five	2	3%	0	0%
Total	61	100%	25	100%

Source: AMF

Executive directorships: chairman and chief executive, chief executive, statutory manager or chairman of the management board.

Non-executive directorships: chairman of the board of directors or chairman of the supervisory board.

[36] The following findings are based on directorships held by (i) non-executive chairmen (chairman of the supervisory board and chairman of the board of directors where the roles of chairman and chief executive are separate) and executive directors (chief executive, chairman of the management board, chairman and chief executive, and statutory manager of a limited stock partnership). Directorships which came to an end in the course of 2011 are not taken into account.



Source: AMF

3.2.2 Multiple directorships not complying with the AFEP/MEDEF code

There are still two cases of directorships that do not comply with the code.

As in 2010, **EDF** states that it does not comply with the recommendation of the AFEP/MEDEF code on multiple directorships. After reiterating the provisions of the Commercial Code and the AFEP/MEDEF code applicable to multiple directorships, **EDF** declares that its chairman and chief executive is also a director of **five listed companies**, including one foreign company[37]. This factual information about the circumstances of an executive director with respect to the non-application of a recommendation **does not constitute an explanation** within the meaning of the "comply or explain" principle.

Similarly, the chairman and chief executive of the **Bolloré** group holds **11 directorships in listed companies**, ten of which are outside the group under the nomenclature used in the registration document: two in French companies (Havas and Natixis), seven in foreign companies[38] and one in the parent company, Financière de l'Odet[39]. This non-compliance is not reported – let alone explained – in the company's registration document.

3.2.3 Multiple directorships within CAC 40 companies

Data on multiple directorships within CAC 40 companies[40] tends to confirm the above finding. **For example, it transpires that more than 83% of non-executive directors of CAC 40 companies hold only one directorship** within this scope. Seventy-four directors hold multiple directorships, with 80% of these (59 directors) holding only two directorships in CAC 40 companies. **Only one director holds five directorships in CAC 40 companies**.

[37] The companies in question are CNP Assurances, Dassault Aviation, Natixis, Veolia Environnement and Fomento di Construcciones y Contratas (a Spanish company).
[38] Generali, Mediobanca, Société des Caoutchoucs de Grand Bereby (SOGB), Socfinaf (formerly Intercultures), Socfin (formerly Socfinal), Socfinasia and Société Camerounaise de Palmeraies (Socapalm).
[39] According to Article L. 225-21 of the Commercial Code, a directorship in the parent company should be counted as a directorship outside the group; only directorships in controlled companies are not counted.
[40] The following calculations are based on **all CAC 40 companies** (at 31 December 2011) and not the 35 CAC 40 companies included in the sample used for this report. Furthermore, they only apply to non-executive directors; executive directors are covered in section 3.2.1.

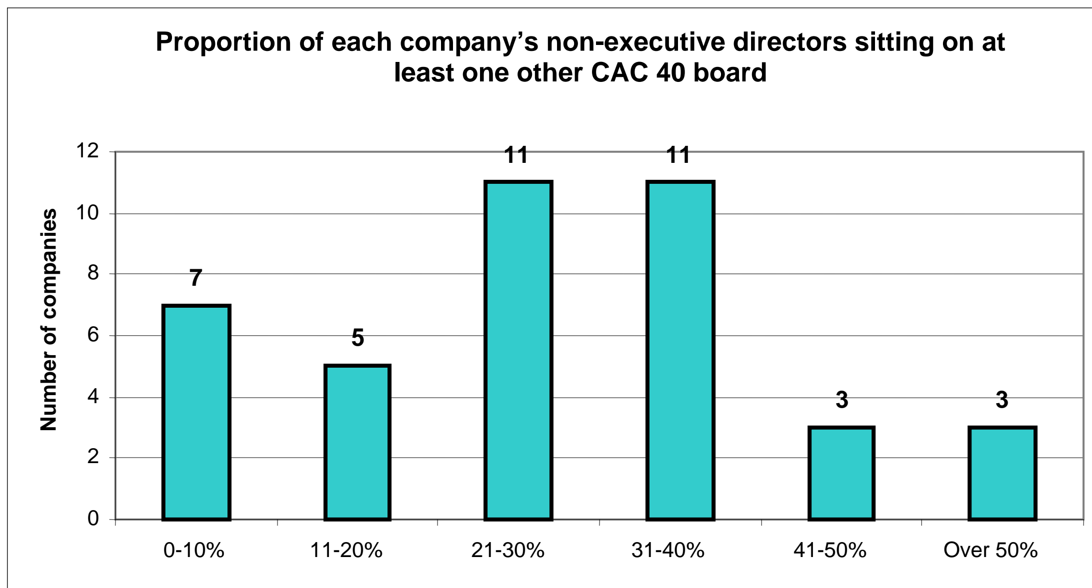
Multiple directorships within the CAC 40 in 2011 (excluding executive directors)

	One directorship	Two directorships	Three directorships	Four directorships	Five directorships	Total
Total no. of directors	373	59	10	Four	1	447
Cumul. %	83.4%	13.2%	2.2%	0.9%	0.02%	100%

Source: AMF

However, the need to continue efforts to diversify boards remains a major challenge, with only two companies having no directors in common with other CAC 40 companies. Of the other companies, 18 have two directors in common and six have three directors in common (in "pairs").

Finally, as illustrated in the chart below, **in more than half of CAC 40 companies** (22), **between 20% and 40% of non-executive directors also sit on the board of at least one other CAC 40 company**. In three companies, more than half of the non-executive directors sit on the board of at least one other CAC 40 company.



Source: AMF

4. Directors' terms of office

4.1 <u>Summary of applicable provisions</u>

4.1.1 Legal provisions

In respect of directors, Article L. 225-18 of the Commercial Code stipulates that *"their term of office is laid down in the Articles of Association,* ***but may not exceed six years****"*.

4.1.2 AFEP/MEDEF code

Recommendation 12 of the code stipulates, in particular, that:

*"Without affecting the duration of current terms, the duration of directors' terms of office, laid down in the Articles of Association, **should not exceed four years**, such that the shareholders have sufficiently frequent opportunities to elect directors.*

Terms should be staggered so as to avoid replacing the entire body at the same time and to favour the smooth replacement of directors."

4.2 Findings

While the AFEP/MEDEF code recommends that directors' terms of office should not exceed four years, the average actual term among companies in the sample is relatively high, at just over **six years**. Terms range from two years to 12.7 years, with the maximum term reached by two family-owned groups.

Ten companies, representing 16.7% of the sample, **exceed the four-year term of office** recommended by the code. Of these, **Publicis**, whose supervisory board members serve for a term of six years, is the only company to neither state that it does not comply with the code nor provide any explanation, either in its registration document or in its Articles of Association.

Natixis justifies its directors' six-year terms of office on the basis that they are *"compliant with the company's Articles of Association and in line with directors' terms of office within the BPCE group".* The AMF considers that this statement is purely descriptive, and in any event does not constitute an adequate explanation:

- either the requirements associated with listed company status on principle override the benefits afforded, in terms of internal group structure, by harmonising terms of office across the group's various entities;
- or the argument that all directorships within the group should have the same term of office is legitimate, in which case it should be put forward explicitly, particularly in light of the inherent constraints that apply to mutual groups.

Two other companies stand out by providing more detailed explanations, with one of them also describing the process by which it intends to achieve compliance:

- **Aéroports de Paris** reiterates that the members of its board of directors serve a five-year term, thus exceeding the maximum term set out in the AFEP/MEDEF code, but points out that this is required under specific legislative and regulatory provisions[41].
- **Peugeot** has initiated a process intended to bring it into compliance, with the company's registration document explaining that the board was due to propose to shareholders at the general meeting on 25 April 2012 that the terms of the two directors to be appointed be reduced to four years.

Recommendation:
More generally, the AMF recommends that a particular company having a long business cycle should not be considered a sufficient reason for directors' terms of office to exceed four years, since such a justification appears inadequate in light of the very reason for limiting the term of directorships.

As set out in the AFEP/MEDEF code, the reason for reducing directors' terms of office is to provide shareholders with more frequent opportunities to appoint and reappoint directors; this does not necessarily compromise the actual period over which a director may hold office (though it does, admittedly, make it a little less certain). The term of office is thus a compromise between "shareholder democracy", which contributes to directors' legitimacy, and the relative stability of the company's strategic direction.

[41] Article 7 of Decree 83-1160 of 26 December 1983 implementing Act 83-675 of 26 July 1983 on public sector democratisation

5. Boardroom diversity

5.1 Balanced gender representation

5.1.1 Summary of applicable provisions

5.1.1.1 Legal provisions

Act 2011-103 of 27 January 2011 on balanced gender representation on boards of directors and supervisory boards and professional equality added a new article to the Commercial Code (Article L. 225-18-1) stipulating that *"the proportion of directors of either gender may not be less than **40%** in companies admitted to trading on regulated markets; the same applies to companies which, following the next general meeting at which shareholders are due to vote to appoint directors, have an average of at least 500 permanent employees and net sales or total balance sheet assets of at least €50 million for the third consecutive financial year. Within these same companies, where the board of directors has fewer than nine members, the difference between the number of male and female members may not be greater than two […]"*. This provision is due to enter into force **as of 1 January 2017**.

Furthermore, the Act stipulates that, in companies whose securities are admitted to trading on a regulated market, the proportion of directors or supervisory board members of either gender may not be less than **20%** after the first ordinary general meeting following 1 January of the third year following the year in which the Act was published – i.e. **1 January 2014**.

Finally, where one gender was not represented on the board of directors or supervisory board at the date on which the law was published, at least one representative of that gender had to be appointed at the next ordinary general meeting at which shareholders were due to vote to appoint directors or supervisory board members[42].

5.1.1.2 AFEP/MEDEF code

Recommendation 6.3 of the code, updated in April 2010, stipulates that "[…] *each board should consider what would be a desirable balance within its composition and that of board committees, particularly as regards gender representation and diversity of skills, and should take appropriate action to assure both shareholders and the market that its duties are performed with the necessary independence and objectivity. In order to achieve such a balance, the objective is that each board should achieve and maintain a proportion of at least 20% of women within a period of three years and at least 40% of women within a period of six years, with effect from the date on which this recommendation is published or the date on which the company's shares are admitted to trading on a regulated market, whichever is later. Permanent representatives of legal entities holding directorships and directors representing employee shareholders are counted when establishing these percentages; directors elected by employees are not. Where a board has fewer than nine members, the difference between the number of male and female members at the end of the six-year period may not be greater than two.*

Furthermore, those boards that do not presently have any female members must nominate a female director at the latest upon the second general meeting following the date on which this recommendation is published, either as a new director or to replace a director whose term of office has expired […]."

5.1.1.3 AMF recommendation

The July 2010 report stipulated that *"The AMF recommends that companies that have adopted an objective of increasing boardroom diversity by having more female directors disclose this fact, as some companies already do, when reporting on the "areas for improvement" identified in the board evaluation. The AMF wishes to remind companies that have chosen to apply the AFEP/MEDEF code that they will, in future, have to justify their*

[42] Article 5 of the 27 January 2011 Act

practices with regard to female directors in light of new recommendations incorporated into the code in April 2010."

5.1.2 Findings

5.1.2.1 Findings at 31 December 2011

The average proportion of female directors is **20%** for the sample as a whole[43] and **22.3%** for CAC 40 companies (15% at 31 December 2010).

The AMF notes that:

- **half** of the sample – 30 companies, **20** of which belong to the CAC 40 – have at least 20% of female board members;
- **just one CAC 40 company** – **Publicis** – already exceeds the 40% threshold for the proportion of female board members (seven out of 16 members);
- the board of **one company** in the sample consists solely of men.

Furthermore, **57% of companies in the sample** (34 companies) **report having boardroom diversity targets**, stating, among other things, that they are seeking more balanced gender representation so as to comply with the 27 January 2011 Act. It should be noted that some companies, which have already met the first threshold of 20% of female board members laid down in the Act, make no mention of targets to increase the number of female directors this year.

Conversely, a few companies, most of which have already met the threshold of at least 20% of female board members, report on the process put in place to increase this proportion over the next few years:

- One company explains that its corporate governance and appointments committee has proposed that the board initiate a selection process to prepare future proposals to be put to the vote at a general meeting.
- Another company says that, with a view to achieving a target of 40% of female directors, potential candidates will be presented to the board before being put to the vote at a general meeting at the appropriate time.
- One company says that a gradual increase in the proportion of female board members could be considered at the recommendation of its selection and compensation committee.
- One company says that its appointments and governance committee is pursuing a selection process for future members in order to change the composition of the supervisory board.

In terms of best practice, **Hermès International** gives a very detailed description of the process used to select board members, setting out the three stages followed by its compensation, appointments and governance committee to reach the target proportion of at least 40% of board members of each gender. The stages in question are defining a "target supervisory board", pre-selecting individuals likely to meet identified needs and establishing a timetable for changing the board's composition.

However, it transpires that few companies provide detailed and transparent information about the **selection process** for board members.

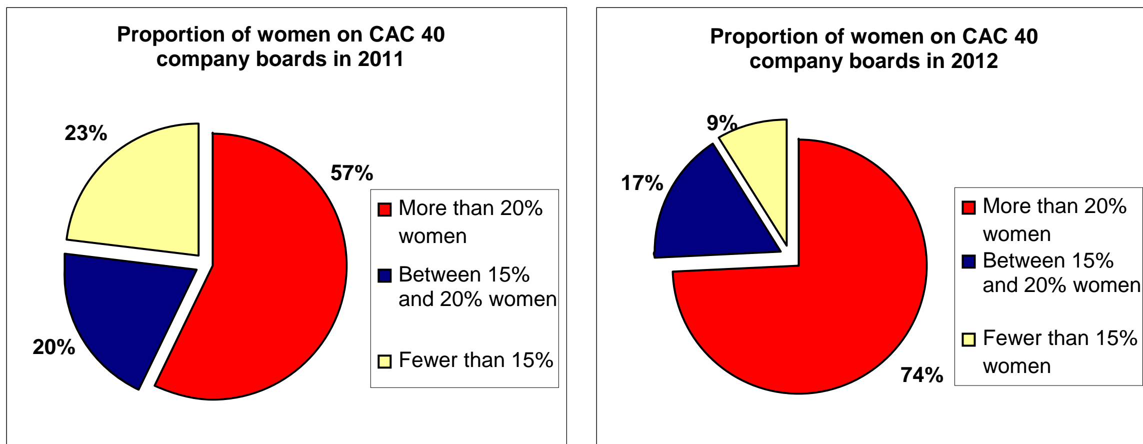
[43] Not including directors elected by employees.

5.1.2.2 Proposals to appoint women at 2012 general meetings

The proportion of companies proposing to appoint women to their boards of directors or supervisory boards at 2012 annual general meetings has also been reviewed[44].

The overall ratio of women on the boards of CAC 40 companies has risen from more than **22%** in 2011 to more than **25%** in 2012. For companies in the sample not belonging to the CAC 40, this proportion has risen from **16%** to **20%**.

Following their 2012 general meetings, **26 CAC 40 companies** had met the threshold of at least 20% of female board member (compared with 20 in 2011). A total of **42 companies, representing more than two thirds** of the sample, had met the threshold of at least 20% of female board members, compared with half in 2011. However, there are still **three CAC 40 companies** with fewer than 15% of female board members.



Source: AMF

Following their 2012 general meetings, **all the companies in the sample** had at least one female board member.

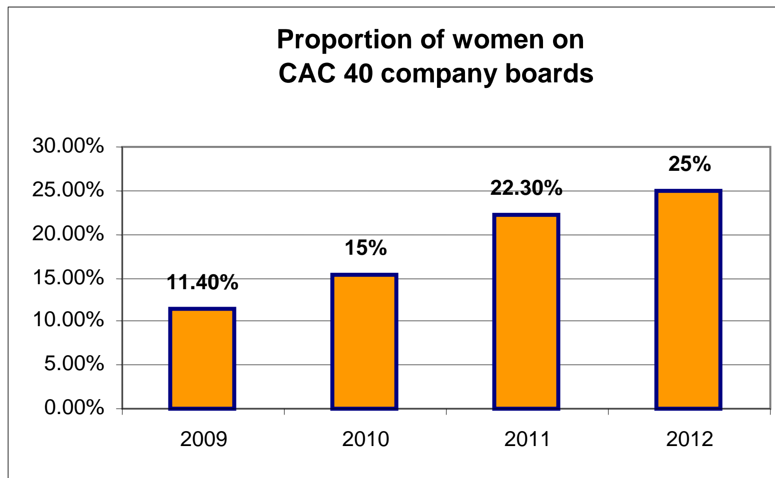
Twenty-three companies – 38% of the sample – had appointed at least one woman at their 2012 general meetings. Across the sample, 30 women were appointed out of a total of 58 appointments.

Of those companies appointing women:

- one, whose board consisted solely of men in 2011, proposed at its general meeting that three women be appointed;
- five appointed two women;
- seventeen appointed just one woman.

It should be noted that **seven companies** that had already met the threshold of at least 20% of women in 2011 proposed that a women be appointed at their 2012 general meetings.

[44] The statistics that follow have been calculated on the basis of information contained in registration documents filed by companies in the sample and draft resolutions submitted to shareholders at 2012 annual general meetings, as published in the *Bulletin des Annonces Légales Obligatoires* (BALO – the official gazette).



Source: AMF

The AMF notes that the proportion of female board members is continuing to rise among large cap companies. Following their 2012 general meetings, 68% of companies in the sample (74% for the 35 companies belonging to the CAC 40) had achieved a proportion of at least 20% of female board members – two years ahead of the 1 January 2014 deadline – compared with only 50% in 2011 (57% for CAC 40 companies).

5.2 Foreign representation on boards

5.2.1 Summary of applicable provisions

In its Recommendation 2012-02, the AMF recommended as follows:

- *"that companies that have adopted an objective of increasing boardroom diversity by having more female, foreign or internationally experienced directors disclose this fact when reporting on the areas for improvement identified in the board evaluation;*
- *"that companies not providing any information on the nationality or international experience of their directors do so."*

5.2.2 Findings

72% of companies in the sample state the nationality of their directors. Among these companies, the average proportion of foreign board members stands at around **20%**, as it did in 2011.

Furthermore, **nine companies** have included a factor related to nationality or international experience within their boardroom diversification targets:

- One company explains that its board is considering what would be a desirable balance, particularly in relation to international representation, to ensure that the board performs its duties independently and objectively.
- One company says that it is pursuing a selection process for future members in order to change the composition of its supervisory board so as to increase international representation and diversity of skills among its members.
- One company says that it gives consideration every year to what would be a desirable balance for its board, in particular by seeking to further diversify directors' skills and nationalities, given the diversified and global nature of the group's business.

- Three companies proposed foreign female candidates as directors at their general meetings, in line with their goals of increasing the proportion of female directors and international representation.
- One company recommended that its shareholders take into account the aims of increasing international representation, increasing the proportion of female board members and reducing the average age of board members when voting on the co-optation and appointment of various members at its 2012 general meeting.
- One company's board evaluation reveals that it is seeking to increase the number of female, independent and foreign directors.
- One company says that its supervisory board has reviewed its composition with a view to increasing the proportion of female and international members.

5.3 Non-voting board members

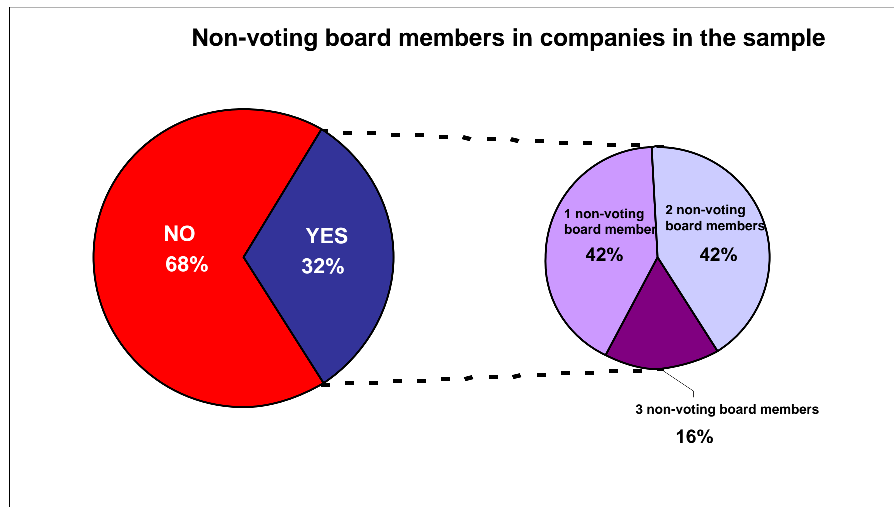
5.3.1 Applicable provisions

The AFEP/MEDEF code does not address the issue of non-voting board members. The duties and prerogatives of non-voting board members are usually laid down in companies' Articles of Association.

5.3.2 Findings

Nineteen of the companies in the sample (32%), **13** of which belong to the CAC 40, say they have one or more non-voting board members. A breakdown of these companies, which between them have **32** non-voting board members, is as follows:

- Three companies (16%) each have three non-voting board members.
- Eight companies (42%) each have two non-voting board members.
- Eight companies (42%) each have a single non-voting board member.



Source: AMF

With regard to the **number of non-voting board members**, companies' Articles of Association cater for various scenarios:

- In five companies, the Articles of Association allow for the possibility of appointing "*one or more non-voting board members*" or a "*college of non-voting board members*".
- One company points out that it is up to the board to decide how many non-voting members it wishes to have.

- Finally, the number of non-voting board members is limited in most companies. One company, however, sets this limit at a high level, specifying that the number of non-voting board members *"shall not exceed nine"*.

Few companies report the criteria used to select non-voting board members. However, it may be noted that:

- one company simply states that its non-voting board members are *"chosen from among the shareholders on the basis of their skills"*;
- one company states that its non-voting board members, who may be either legal or natural persons, are chosen from among the shareholders;
- another company applies the following criteria: non-voting board members must be employees of the company or another company in the group and members of a company investment fund;
- one company explains that its non-voting board members may or may not be shareholders, but that, should the government's equity interest in the company fall below 10%, the government would automatically have the right to appoint a non-voting board member.

Only seven companies, representing 37% of the subset, **mention the duties assigned to non-voting board members**. One company states that the conditions under which non-voting board members perform their duties are laid down by the board of directors. Generally speaking, however, descriptions of non-voting board members' duties remain too generic and unsubstantiated.

For example, some of the duties assigned to non-voting board members are as follows:

- ensuring that the Articles of Association are strictly adhered to;
- sharing their observations at board meetings;
- presenting observations at general meetings;
- giving their views and providing information on the group's divisions or brands to inform non-executive directors and the board more generally (with non-voting board members selected from among the executives of group subsidiaries or company divisions);
- performing specific duties assigned by the board.

With regard to the **prerogatives** of non-voting board members, **74%** of companies (14 out of 19) explain that their non-voting board members can take part in the board's deliberations on an advisory basis, while **37%** (seven out of 19 companies) state that their non-voting board members attend meetings of board committees.

In **68%** of cases, the characteristics, duties and prerogatives of non-voting board members are defined in the company's Articles of Association. One company describes them in its board rules of procedure.

However, **no company provides information on the outcome of any review of the activities of its non-voting board members**.

Terms of office for non-voting board members vary from company to company, and may be shorter than those of directors. Among the companies in the sample, they vary from one to six years.

Moreover, among the 32 non-voting board members in the sample, it may be noted that:

- **28%** of them (nine out of 32) have been members of the company's board in the past;
- in one company, the two non-voting board members are both former members of the management board;
- one company is proposing to appoint three non-voting board members at its next general meeting; in one company, following its 2012 general meeting, **the non-voting board member became a board director and a director took his place as a non-voting board member**;
- **9%** (three non-voting board members) **are women**, well below the overall proportion of female board members (see above);
- one company points out that the age limit laid down in its Articles of Association has been scrapped.

85% of listed companies report having non-voting board members, and **41% of those non-voting board members (11 out of 27) hold at least one other board position in another listed company**.

Recommendation:
The AMF recommends that companies that have put in place one or more non-voting board members describe in detail how they are appointed, as well as the nature of their duties and prerogatives, for example in the section describing the board's activities and the evaluation of the work of the board.

Furthermore, the AMF wishes to encourage AFEP and MEDEF to initiate discussions on the appropriateness of applying to non-voting board members certain rules applicable to directors, including in particular rules on independence, declarations of interest and multiple directorships.

6. Specialised committees

6.1 Existence of committees

6.1.1 Summary of applicable provisions

Section 13 of the AFEP/MEDEF code, which covers board committees, stipulates that *"The number and structure of any committees are determined by each board. However, it is recommended that the following tasks* ***be subject to preparatory work by specialised committees*** *of the board of directors:*

- *reviewing the financial statements*
- *monitoring internal audit*
- *selecting statutory auditors*
- *defining compensation policy*
- *appointing directors and executive directors."*

6.1.2 Findings

With the exception of **Bolloré**, all the companies in the sample have specialised board committees. However, the reason given by Bolloré for not having such committees appears inadequate since it is based on the fact that directors perform their duties collectively – something that cannot be considered specific to that company alone.

6.2 Audit committees

6.2.1 Summary of applicable provisions

6.2.1.1 Legal provisions

Article L. 823-19 of the Commercial Code defines the scope, composition and tasks of the audit committee as follows:

"In entities whose securities are listed on a regulated market, as well as in credit institutions referred to in Article L. 511-1 of the Monetary and Financial Code, insurance and reinsurance undertakings, mutual insurers governed by Volume II of the Mutual Insurance Code and provident institutions […]*, a specialised committee acting under the responsibility of the board of directors or the supervisory board, as applicable, shall monitor issues relating to the preparation and review of accounting and financial information.*
The composition of this committee is determined by the board of directors or the supervisory board, as applicable. The committee must be composed entirely of non-executive members of the board of directors or the supervisory

board. At least one member must have special skills in the area of finance or accounting and must be independent, as defined by specific criteria publicly disclosed by the board of directors or the supervisory board.
Without prejudice to the powers of the board of directors or the supervisory board, the committee shall, in particular, be responsible for monitoring the following:
(a) the financial reporting process;
(b) the effectiveness of internal control and risk management systems;
(c) statutory audits of the company's annual and, where applicable, consolidated financial statements;
(d) the independence of the statutory auditors;
It shall issue a recommendation on the statutory auditors to be proposed for appointment by shareholders at a general meeting or other body with a similar function.
It shall regularly report to the board of directors or supervisory board on the performance of its duties, and shall immediately inform the latter of any difficulties it encounters."

6.2.1.2 AFEP/MEDEF code

Section 14 of the AFEP/MEDEF code, which covers accounts committees, stipulates as follows:

"Each board should form an accounts committee whose role cannot be separated from that of the board of directors, which is legally required to sign off the statutory annual financial statements.
*"**At least two thirds** of the members of the accounts committee should be independent directors, and none of its members should be executive directors*[45]*."*

6.2.1.3 AMF recommendation of 22 July 2010 arising from the working group on audit committees

AMF recommendation

"The AMF recommends that all companies listed on regulated markets refer to the report by the working group on audit committees. Companies are encouraged to state in the chairman's report on internal control and risk management procedures whether they have applied the working group's recommendations. Companies that have applied only some of the report's recommendations should clearly state which ones they have applied."

Text of the working group report

"[…] *The working group is in favour of **audit committee members, beside the expert member, having a minimum level of competence in finance and accounting**, even if they are not experts. For this purpose, the board should ensure that the other audit committee members can show a minimum level of competence before they are appointed. The law also requires the board to disclose the special competence and independence criteria used to select at least one audit committee member. The working group recommends that **these criteria should be disclosed** in the company's registration document or in the chairman of the board's report on governance and encourages disclosure of the identity of the relevant member or members."*

"[…] *If a company decides to attribute the powers of the audit committee to the board, no special provisions govern the composition of the board in its capacity as the audit committee. More specifically, the law does not require the presence of an independent and competent member in such cases, nor that the chairman of the board have non-executive status. **However, the working group recommends that the body performing the functions of the audit committee should include at least one independent member with at least some special competence in finance and accounting. The working group also recommends that when the chairman of the board is an executive director, he should refrain from attending when the board meets as the audit committee.** However, an executive chairman may be invited to attend part of the meeting. Since there is no chairman for this meeting, the working group encourages boards meeting as audit committees to choose the person designated as competent and independent to chair the meeting. The board should explain its position in the registration document and/or the Chairman's report on governance."*

[45] As defined in the AFEP/MEDEF code, "The term 'executive directors' refers here to the chairman, chief executive and deputy chief executive(s) of companies having a board of directors, the chairman and members of the management board of companies having a management board and supervisory board, and statutory managers of limited stock partnerships."

6.2.1.4 Other AMF recommendations

In its December 2010 report, the AMF recommended that companies *"should indicate whether or not they have formed a formal audit committee and should explicitly refer, as applicable, to point 4 of Article L. 823-20 of the Commercial Code if they have decided to assign the duties of the specialised committee to their boards (board of directors or supervisory board). The AMF also wishes to reiterate that the committee may only consist of board members. It also recommends that companies that have opted to assign the duties of the audit committee to their boards provide a detailed description of the rules governing the operation of the board when it meets as the audit committee. In this regard, the AMF wishes to reiterate that its working group on audit committees, whose report was the subject of an AMF recommendation dated 22 July 2010, recommended that when the chairman of the board is an executive director,* ***he should refrain from attending*** *when the board meets as the audit committee[46]".*

Finally, consolidated Recommendation 2012-02 includes the following, taken from the AMF's December 2011 report:

"With regard to companies that have formed an audit or accounts committee separate from the board, the AMF recommends that their members and chairman all be clearly identified. It also recommends that, in the paragraph presenting board members, ***specific information be provided on the areas of competence of the audit committee's members****. With regard to the composition, operation and tasks of the audit committee, the AMF refers to the conclusions of its working group on audit committees dated July 2010 and its Recommendation of 22 July 2010."*

"The AMF also recommends that companies ***improve their disclosures about whether the chairman and chief executive officer attends meetings of the board when it meets as the audit committee, if applicable****. It wishes to reiterate that the working group on audit committees recommended that when the chairman of the board is an executive director, he should refrain from attending such meetings. It also recommended that, since there is no chairman for such meetings, boards meeting as audit committees choose the person designated as competent and independent, within the meaning of Article L. 823-19 of the Commercial Code, to chair the meeting."*

Finally, the AMF put forward the following "**area for discussion**" in its 2010 report:

"With regard to the composition of committees, and in particular of audit committees, the AMF urges companies to appoint independent directors to chair such committees, and to increase the proportion of independent directors on such committees generally. The AMF also encourages companies to avoid, as far as possible, having executive directors as members, much less chairmen, of such committees."

6.2.2 Findings

6.2.2.1 Information on committee activities and members' areas of competence

With the exception of **Bolloré** (see above), all the companies in the sample have an audit or accounts committee that is separate from the board. **Bolloré** relies on Article L. 823-20 of the Commercial Code referred to above, which exempts controlled persons and entities (as defined in Article L. 233-16 of that same code) from the requirement to form an audit committee where the controlling person or entity is itself subject to that requirement. The audit committee of **Financière de l'Odet**, a listed parent company, fulfils this function for Bolloré.

However, the AMF wishes to reiterate that, in the aforementioned report by its working group on audit committees, it **recommended that this exemption should only apply to small and mid cap companies and that controlled companies should therefore, as a matter of good governance, form audit committees** so as to best protect the interests of minority shareholders.

[46] However, an executive chairman may be invited to attend part of the meeting.

All but two companies provide **attendance rates** at committee meetings, which average out at **94%**. Similarly, every company but one provides a **review** of the committee's activities. Some of these reviews go into particular detail about either agenda items at meetings held in the year or the various topics addressed.

Fifty-four companies (92% of the sample) **provide some explanation of audit committee members' areas of competence**. Two thirds of these (35 companies) provide relatively detailed descriptions of those areas of competence, while 78% (47 companies) specifically identify the committee member(s) in question. Some companies, in which all members of the audit committee are described as having competence in finance and accounting, either point out that they exceed the requirements of Article L. 823-19 of the Commercial Code or nominate one of the members as a "financial expert" so as to meet those requirements more specifically.

Companies highlight the following **criteria used to determine directors' competence**, in order of priority:

- **Expertise, experience and/or career path**: some companies describe these in summary or in detail within the paragraph on the audit committee, while others include cross-references to biographical information about directors. The most commonly cited areas of expertise relate to financial management and reporting, accounting disciplines (with some companies specifically mentioning knowledge of IFRS) and internal control. Where committee members' professional experience is detailed directly within the paragraph on audit committee members, some companies focus specifically on finance and accounting experience (e.g. positions as finance director, chief accountant, auditor, banker, member of another audit committee or member of the management committee of a financial institution), while others provide more general information on executive roles (chairman and chief executive, chief executive or executive of a bank or non-financial company).
- **Academic qualifications**: companies also highlight this aspect, though to a lesser extent, often linking it to committee members' experience and career paths. Where qualifications are highlighted in detail, the explanations provided refer in particular to chartered accountancy and business school qualifications awarded by French and international institutions.
- **The status of financial expert, as defined in the US Sarbanes-Oxley Act of 2002**: a few companies highlight this point.

6.2.2.2 Proportion of independent directors on audit committees

The average proportion of independent directors serving on the audit committees of the 59 companies in question is high, standing at **70.3%** across all companies, compared with 64% of the sample used for the 2011 report. The average number of members is just above four (4.22).

In 55 of the 59 companies (93%), including 32 of the 35 CAC 40 companies in the sample, this committee is chaired by an independent director. **This means that the audit committee is chaired by a non-independent board member in only four companies, three of which are CAC 40 companies**.

In 18 companies, the committee consists solely of independent directors. However, **23 companies** (40% of the sample) **do not meet the requirement of the AFEP/MEDEF code under which at least two thirds of the audit committee's members should be independent**, irrespective of whether the company is controlled. Of these companies, **six provide no explanation**, thereby failing to adhere to the "comply or explain" principle:

- Three companies whose audit committees have 60% of independent members state that they fall short of the two thirds required by the code, and that they therefore fail to comply with its recommendation, but give no explanation.
- **Another three companies fail to report their non-compliance with the code** and thus provide no explanation: **Areva** (50% of independent directors), **CNP Assurances** (40%) and **EDF** (17%).

As one would expect, the explanations provided by the remaining 17 companies relate to the specific composition of the board and a proportion of independent directors that is less than or only slightly more than 50%, thus leaving less room for manoeuvre. The explanations put forward are thus similar to those relating to non-compliance with the overall proportion of independent directors, including in particular the following:

- the special status of public corporation, which can require boards to include government and employee representatives who are, by definition, not independent;

- the distribution of the company's share capital and the expertise of the committee's members;
- control by one or more major shareholders, who may be bound by a shareholders' agreement and acting in concert;
- the ownership structure, stipulations in shareholders' agreements and the resignation of an independent board member.

6.3 Appointments and compensation committees

6.3.1 Summary of applicable provisions

6.3.1.1 Legal provisions

Under company law, there is no requirement for listed companies to have compensation and/or appointments committees. However, Article L. 511-41-1 of the Monetary and Financial Code stipulates that the **decision-making body of key financial institutions** (credit institutions, investment firms and venture capital firms) must form "**a specialised compensation committee** to help it prepare its decisions". Where the company that is subject to this requirement is part of a group, it is governed by the same rules as those that apply to the audit committee and the board, and can therefore decide *"to apply the compensation policy of the company by which it is controlled as defined it Article L. 233-16 of the Commercial Code"*.

This committee *"**mainly consists of independent members** who are competent to analyse the company's policies and practices in respect of compensation, including in light of the company's risk policy". It carries out an annual review of the following:*

"1. The principles of the company's compensation policy.
*2. Compensation, indemnities and benefits of any kind granted to the company's **corporate officers**.*
*3. The **compensation policy** in respect of employees who manage collective investment schemes* […] *and employees who are financial market professionals and whose activities are liable to have a material impact upon the company's risk exposure."*

In addition, *"the committee may be assisted by the company's internal control teams or by outside experts. It shall regularly report on its work to the decision-making body."*

Companies subject to this obligation *"shall include in the report presented at their general meeting information on compensation policy and practices established by decrees issued by the Minister with responsibility for the economy"*.

6.3.1.2 AFEP/MEDEF code

Recommendation 16.1 of the AFEP/MEDEF code stipulates that *"the compensation committee should **not include any executive directors**, and should **have a majority of independent directors**"*. Recommendation 16.3 stipulates that *"the compensation committee should help ensure that the board of directors or supervisory board is in the best possible position to determine the full range of compensation and benefits accruing to executive directors; all decisions fall within the responsibility of the board of directors or supervisory board."*

Section 15 of the code is dedicated to the selection or appointments committee. Its introduction states that *"the appointments or nominations committee plays an essential role in shaping the future of the company, since it is responsible for the future composition of its executive bodies". Accordingly, **each Board should appoint, from among its members, a committee to appoint or nominate directors and executive directors**, which may or may not be separate from the compensation committee."* Recommendation 15.1 stipulates that *"when the appointments or nominations committee is **separate from the compensation committee**, the recommendations relating to the latter's composition and mode of operation are also applicable to it. However, contrary to the rules applicable to the compensation committee, the **current board chairman shall be involved in the work of the appointments or nominations committee**."*

6.3.2 Findings

6.3.2.1 Existence of compensation and appointments committees

With the exception of Bolloré, all the companies in the sample (including all the CAC 40 companies) **have a compensation committee**. In 61% of cases (36 companies), this committee also acts as the appointments committee. **This means that 21 companies have an appointments committee that is separate from the compensation committee**.

Only **three companies in the sample – Aéroports de Paris, Bolloré and Iliad – have neither a combined appointments committee** nor one that is separate from the compensation committee.

Bolloré and **Iliad** provide no explanation, thereby failing to adhere to the "comply or explain" principle. However, **Aéroports de Paris** provides a clear and specific explanation based on its special status referred to above: Act No. 83-675 on public sector democratisation requires that two thirds of the members of the board of directors be appointed by decree or elected by the company's employees.

It should also be noted that, of those companies that have a compensation committee and, where applicable, a separate appointments committee, only one does not state the **number of meetings** held. The average number of members is 3.97 for compensation committees and 4.29 for appointments committees that are separate from the compensation committee.

The vast majority of companies give **average attendance rates** – only four companies fail to provide this information in respect of their compensation committees – which average out at 94% for compensation committees and 92% for separate appointments committees. Finally, all companies but one state that they carry out a **review of the activities** of their compensation and/or appointments committees.

6.3.2.2 Proportion of independent directors

The average proportion of independent directors is high, at 71.9% for compensation committees (some of which also act as appointments committees) and 65% for separate appointments committees. In 17 out of 58 companies (29%), including 13 CAC 40 companies, the compensation committee consists solely of independent directors; this proportion is lower among companies with a separate appointments committee (three out of 21 companies).

Of those companies with a compensation committee, 22% (**13 companies**) **do not apply the code's recommendation on having a majority of independent directors**, with most of them giving reasons similar to those put forward in relation to failure to adhere to the two thirds proportion for audit committees: control by major shareholders, agreements defining the balance of power between two major shareholders, agreements between public and private shareholders, or ownership structure more generally. One company highlights the expertise of its compensation and appointments committee's members and the casting vote held by its chairman, who is an independent director.

The AMF also notes that in **eight companies**, **half** of the committee consists of independent directors – a proportion which, while coming close to the code's requirements, **does not constitute a majority**. Of these companies, three do not state that they fail to adhere strictly to the code – implying that they consider that they apply it – while the other five admit that they do not apply this recommendation and explain why.

Recommendation:
The AMF wishes to reiterate that the recommendation of the AFEP/MEDEF code requires that independent directors account for strictly more than half of all committee members (particularly in the case of committees with four members), and that reasons should be given where this is not the case.

Finally, the number of independent directors on **Icade**'s compensation and appointments committee (one out of three) falls significantly short of the code's requirements; the company neither reports nor explains its failure to comply with this recommendation.

6.3.2.3 Executives serving on compensation committees

The chairman of the compensation committee is considered independent in 86% of cases or 50 companies (including 29 of the 35 CAC 40 companies in the sample), and in 57% of cases (12 companies) for separate appointments committees. In the sample used for the 2011 report, the equivalent proportions were 79% (for only those companies applying the AFEP/MEDEF code) and 58%.

In two companies, the chairman of the board is a member of the compensation committee (as a single committee also responsible for appointments), in contravention of recommendation 16.1 of the AFEP/MEDEF code. The explanations provided are insufficient and fail to explain what alternative action the companies have taken to ensure that the compensation committee is impartial:

- Although **Icade** has a single committee responsible for both compensation and appointments, it justifies the fact that its chairman and chief executive sits on that committee by citing compliance with the recommendations of the AFEP/MEDEF code on compensation committees alone. In fact, the code establishes a clear difference between single (combined) committees and separate compensation committees, specifying that the chairman of the board may only sit on the latter. The company's registration document, however, explains that this executive *"does not take part in any deliberations in respect of his fixed or variable compensation".* While such abstention might mitigate the company's non-compliance with the code, it does not remove the fact that the chairman and chief executive is likely to exert significant influence and sway over the committee.
- **CNP Assurances** explains the fact that the chairman of its supervisory board sits on its compensation and appointments committee by describing it as *"appropriate since his special relationship with the company's executive management means he is in a position to clarify the management of the company's activities to the committee's members"*. The company's registration document also states that *"the board of directors, which nominated the committee's members, nevertheless believed that current operating conditions enable the committee and the board to perform their duties with the necessary efficiency, objectivity and independence of judgement so as to be able to give fair consideration to the interests of all of the Company's shareholders"*.

Recommendation:
The AMF therefore recommends that companies within which a single committee is responsible for both compensation and appointments should refrain from appointing the current chairman of the board to that committee; under the AFEP/MEDEF code, the chairman of the board may only be appointed to an appointments committee where it is separate from the compensation committee.

6.4 Corporate social and environmental responsibility (SER) committees

The AFEP/MEDEF code contains no particular recommendations in relation to the formation of SER committees by boards of directors or supervisory boards.

In **14 of the companies** in the sample (including ten CAC 40 companies), a specialised board committee is tasked with reviewing social, environmental and societal issues.

Such committees are **referred to in a variety of ways**, including the following:

- social responsibility committee;
- strategy, development and sustainable development committee;
- HSE and sustainable development committee;
- ethics, environment and sustainable development committee.

These committees perform a relatively large number of duties, some of which are better substantiated than others. The following examples are particularly noteworthy:

- *"Regularly review the company's and the Group's environmental performance and strategic policies intended to promote environmental management, protect natural resources and limit the environmental impact of the company's and the Group's activities."*
- *"Determine the main areas in which the Group can continuously improve its HSE performance and regularly compare the progress achieved by the company with that of other companies in the industry."*
- *"Review the Group's main environmental risks and opportunities in light of the challenges specific to its mission and activities; review the Group's social policies, stated targets and achieved performance; review all non-financial information published by the Group, particularly in relation to social and environmental issues; conduct an annual review of a summary of ratings awarded to the Company and its subsidiaries by sustainability rating agencies; and verify that the ethical rules defined by the Group are properly applied."*
- *"The Ethics and Sustainable Development Committee reviews and assesses the following: sponsorship policies and activities undertaken by the Group; health and safety policies put in place, together with associated targets and performance; and risk management policies and systems in respect of social and environmental responsibility and sustainable development."*
- *"Assess the research and development and sustainable development strategies and policies put forward by Company and Group senior management, and advise the board of directors of its opinion. It is informed of all priority programmes and actions that are initiated, and assesses their results."*

In addition, one company has, since 2010, given **one member of its board** specific responsibility for monitoring sustainable development and social issues on behalf of the board and acting as an internal advisor on sustainable development (by analysing sustainable development policies and programmes via interviews with various managers).

Furthermore, two companies whose SER committees have a wider remit covering areas such as development and strategy **report little or no action on sustainable development** within the information they provide about those committees.

A few companies with no corporate social responsibility committee **have tasked their audit committees with duties related to sustainable development**, such as the following:

- reviewing the sustainable development report and the risks associated with sustainable development;
- ensuring that the company's activities are based on compliance with individual and collective values;
- being aware of policies in force in respect of sustainable development and environmental protection;
- drawing up and communicating a charter of values.

To reflect this dual role, two companies have adopted the names "audit, risk and sustainable development committee" and "audit, risk and ethics committee".

Finally, in early 2012 one company's board approved a proposal to form a sustainable development committee. The company in question reiterates that the committee's duties are currently performed by the audit committee.

7. Evaluation of the work of the board and its committees

7.1 Summary of applicable provisions

7.1.1 AFEP/MEDEF code

Section 9 of the AFEP/MEDEF code, which covers the evaluation of the board of directors, includes the following provisions:

"For sound corporate governance, the board of directors should evaluate its ability to meet the expectations of the shareholders who have granted it authority to direct the company, by ***reviewing from time to time its composition, organisation and operation*** *(which entails a similar review of the board's committees). Accordingly, each board should consider what constitutes a desirable balance in its composition and that of its committees, and should from time to time consider whether its organisation and operation are suited to the performance of its duties. This evaluation should have three aims: to review the board's operating procedures, to check that suitable preparation and debate is afforded to important matters and to measure each director's actual contribution to the work of the board as a result of his or her particular areas of competence and involvement in deliberations. This evaluation, which should preferably be undertaken annually, should be carried out as follows:*
- Once a year, the board of directors should devote an agenda item to a debate on its mode of operation.
-A formal evaluation should completed at least once every three years. This may be carried out with the help of an external consultant, potentially under the supervision of an independent director.
- Shareholders should be informed each year, in the annual report, of the completion of these evaluations and, where applicable, any action taken as a result […]*."*

7.1.2 AMF recommendation

In its December 2011 report, the AMF recommended that, when disclosing information about the results of board evaluations and desirable changes discussed as part of those evaluations, companies include the content of discussions held on the issue of boardroom diversity.

7.2 Findings

95% of companies in the sample claim to have conducted an evaluation of their board either in 2011 or in the first quarter of 2012 in respect of 2011.

81% of them (46 companies) provide information on the results of that evaluation. **49%** of those companies that communicate on the results of the evaluation describe the desired improvements.

Three companies expressly decline to apply some or all of the code's recommendation on board evaluations:

- One company does not meet the requirement to measure each director's contribution to the work of the board, believing that its board is, by nature, a collegial body, and that such an assessment is therefore neither possible nor desirable.
- One company has not conducted an evaluation of its board, since the latter was only formed in 2011; it explains that the board will evaluate its activities one year after its formation, i.e. in 2012.
- Finally, one company explains that its board has not yet conducted an evaluation of its operation because of the group's capital structure and highly concentrated ownership.

With regard to this last explanation, the link between highly concentrated ownership and non-compliance with this recommendation is not clear.

While **CNP Assurances** has not expressly declined to apply the code's recommendation on board evaluations, the company's registration document makes no mention of any board evaluation. Given the lack of any clear statement on this subject and of any detailed explanation in the registration document, this situation appears not to adhere to the "comply or explain" principle. A review of previous registration documents shows, however, that the company did conduct a relatively formal evaluation in 2010.

Areas for improvement considered by board members include the following:

- that the board should expand its work in relation to certain categories of risk;
- that workload should be more evenly split between the board and its committees;
- that the board should be more involved in matters of strategy;

- that more comprehensive information on strategy should be requested, and that proper monitoring tools should be put in place;
- that information on risk management and internal control should continue to be developed;
- that information on the company's competitors should be improved (e.g. via continuous competitor mapping);
- that board members should be proactive in seeking to understand R&D and production (e.g. through site visits);
- that compensation should be examined in greater detail;
- that summary information should be provided on the work of the executive committee;
- that the board's composition should be improved in terms of skills and diversity (more female directors and greater representation of emerging countries);
- that the board should devote more time to social, ethical and social responsibility issues.

Furthermore, **eight companies report on actions already implemented or planned** in response to requests to make improvements. Examples include the following:

- longer board meetings;
- an annual plan covering key strategic issues drawn up by the chairman and chief executive and approved by the lead director;
- institution of an annual strategy seminar;
- appointment of female directors to diversify the board's composition;
- submission at each board meeting of an executive summary of key risks;
- awareness-raising in relation to key technological challenges faced by the group.

In terms of best practice, the AMF notes that **Bureau Veritas** provides **detailed information about the implementation of its 2012 action plan** in response to requests for improvements following the board's evaluation. This plan, which was put forward by the appointments and compensation committee and approved by the board of directors, will cover the format of information on the business market, the format of reports submitted to the board by committees and the organisation of an annual directors' meeting on business and strategy.

III. EXECUTIVE COMPENSATION

Based on the main findings from its annual reports on corporate governance and executive compensation published since 2009, the AMF concludes that major companies have made genuine progress in improving transparency in relation to executive compensation.

In the conclusions of these reports, the AMF put forward a number of recommendations aimed at improving implementation of the code as well as areas for discussion, which have been consolidated into a single document[47].

With regard to executive compensation, the 2012 report has focused on monitoring certain recommendations of the AFEP/MEDEF code and recommendations issued by the AMF. In particular, the AMF has assessed the adequacy of explanations provided by issuers when they choose not to apply a recommendation of the code. These recommendations cover the following areas:

- presentation of the various components of compensation (centralised information and the use of standard tables as set out in the AMF Recommendation of 22 December 2008[48] ("the Recommendation"); presentation of total compensation paid by group companies;
- holding an employment contract at the same time as holding corporate office that is phased over time, depending on the reappointment of directors whose directorships expired in 2011 or early 2012;
- termination payments: the method used to calculate termination payments and the terms under which such payments were made where an executive director left office in 2011 or early 2012;
- stock options and bonus share awards: application of performance criteria, types of criteria applied and compulsory holding periods;
- variable compensation: accurate and explicit definition of quantitative and qualitative criteria used and performance levels set to determine variable compensation;
- methods used to calculate benefits and comprehensive information on defined benefit pension schemes.

As in previous years, a comparative analysis has also been carried out in relation to certain components of executive compensation in CAC 40 companies.

[47] AMF Recommendation 2012-02 of 9 February 2010 on corporate governance and executive compensation for companies applying the AFEP/MEDEF code – Consolidated presentation of recommendations contained in AMF annual reports.
[48] AMF recommendation on information on executive compensation to be disclosed in registration documents – 22 December 2008

1. Breakdown of compensation by category of executive

Total compensation due and paid in 2011 (due in respect of 2010), detailed below, includes fixed compensation and, where applicable, variable compensation, exceptional compensation, directors' fees and benefits in kind.

Total compensation does not include stock options, performance shares or pension benefits. In the remainder of this report, references to **overall compensation** include total compensation as defined above, together with stock options and performance shares measured in accordance with IFRS.

This information is taken from registration documents prepared by companies in the sample, and, more specifically, the tables set out in the AFEP/MEDEF corporate governance code and the **Recommendation**. These tables are used by the vast majority of companies in the sample.

1.1 Aggregate sample

The quartile distribution of compensation paid in 2011 and due in respect of the 2011 financial year to the 119 executive directors in the sample, excluding non-executive chairmen, is set out below[49].

➢ Breakdown by quartile of 2011 compensation for the roles of chairman and chief executive, chief executive, chairman of the management board and statutory manager (62 executives in all)

The AMF notes that compensation **paid** to these 62 executives in 2011 fell into the following quartiles:

- €217k - €1,341k
- €1,341k - €1,773k
- €1,773k - €2,416k
- €2,416k - €4,532k

The AMF notes that compensation **due** to these 62 executives in 2011 fell into the following quartiles:

- €384k - €1,383k
- €1,383k - €1,917k
- €1,917k - €2,388k
- €2,388k - €4,547k

➢ Breakdown by quartile of 2011 compensation for management board members and deputy chief executives (57 executives in all)

The AMF notes that compensation **paid** to these 57 executives in 2011 fell into the following quartiles:

- €173k - €794k
- €794k - €1,097k
- €1,097k - €1,695k
- €1,695k - €6,938k

The AMF notes that compensation **due** to these 57 executives in 2011 ranged from €173k to €10,614k[50]:

- €173k - €767k
- €767k - €1,021k
- €1,021k - €1,600k
- €1,600k - €10,614k

[49] Compensation paid to the 14 non-executive directors in the sample is set out in Section III. 1.2.
[50] The highest compensation was paid to an executive of Vivendi.

1.2 CAC 40 companies

➢ Breakdown by quartile of 2009, 2010 and 2011 compensation for the roles of chairman and chief executive, chief executive, chairman of the management board and statutory manager in CAC 40 companies

The AMF notes that compensation **paid** in 2011 ranged from €719k to €4,532k.

Total compensation paid in 2009	Total compensation paid in 2010	Total compensation paid in 2011
€0 - €1,033k	€591k - €1,189k	€719k - €1,538k
€1,033k - €1,543k	€1,189k - €1,620k	€1,538k - €2,096k
€1,543k - €2,564k	€1,620k - €2,497k	€2,096k - €2,959k
€2,564k - €4,023k	€2,497k - €4,048k	€2,959k - €4,532k

The AMF notes that compensation **due** in 2011 ranged from €709k to €4,547k.

Total compensation due in respect of 2009	Total compensation due in respect of 2010	Total compensation due in respect of 2011
€0 - €1,113k	€719k - €1,659k	€709k - €1,743k
€1,113k - €1,903k	€1,659k - €2,421k	€1,743k - €2,219k
€1,903k - €2,697k	€2,421k - €2,897k	€2,219k - €2,951k
€2,697k - €3,999k	€2,897k - €4,500k	€2,951k - €4,547k

➢ Breakdown by quartile of 2009, 2010 and 2011 compensation for management board members and deputy chief executives of CAC 40 companies

The AMF notes that compensation **paid** in 2011 ranged from €631k to €6,938k.

Total compensation paid in 2009	Total compensation paid in 2010	Total compensation paid in 2011
€0 - €518k	€347k - €671k	€631k - €1,010k
€518k - €799k	€671k - €842k	€1,010k - €1,266k
€799k - €1,491k	€842k - €1,485k	€1,266k - €1,766k
€1,491k - €5,428k	€1,485k - €5,432k	€1,766k - €6,938k

The AMF notes that compensation **due** in 2011 ranged from €621k to €10,615k.

Total compensation due in respect of 2009	Total compensation due in respect of 2010	Total compensation due in respect of 2011
€0 - €620k	€360k - €834k	€621k - €969k
€620k - €872k	€834k - €1,266k	€969k - €1,115k
€872k - €1,523k	€1,266k - €1,701k	€1,115k - €1,903k
€1,523k - €5,412k	€1,701k - €5,572k	€1,903k - €10,615k

2. Presentation of information on executive compensation

2.1 Summary of applicable provisions

2.1.1 European regulations

By way of background, companies are required when preparing their registration documents to comply with various sections of the European "Prospectus Regulation"[51], covering the presentation of compensation:

- Paragraph 15 of Annex I on the presentation of compensation, and paragraph 15.2 on the total amount provisioned or recognised by issuers or their subsidiaries for the purposes of paying pensions or other benefits.
- Paragraph 16.4 of Annex I, which stipulates that registration documents must, in particular, include a statement as to **whether or not the issuer complies with corporate governance rules in force** in its home country. Where the issuer does not comply with such rules, the statement must be accompanied by an explanation.
- Paragraph 19 on the presentation of relationships between related parties.

2.1.2 AMF recommendation

To improve the clarity and comparability of information on executive compensation, AFEP and MEDEF recommend that listed companies follow the standard presentation and group their tables together in a specific section of the annual report covering executive compensation.

The AMF set out details of how this information should be presented in its aforementioned **Recommendation**, which stipulates, in particular, that issuers should:

- centralise their information and tables in the section of their registration document on executive compensation, or, where a company wishes to avoid duplicating information, insert explicit cross-references to other sections of the document where the relevant information is provided;
- make particular use of Table 10[52] of its **Recommendation** summarising information on employment contracts, termination payments, non-compete compensation and defined benefit pension schemes;
- include a paragraph or table setting out a summary of exceptions to the AFEP/MEDEF code and associated explanations;
- present all compensation and benefits due from and paid by group companies.

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[51] (EC) Commission Regulation 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council on information contained in the prospectus, the structure of the prospectus, the incorporation of information by reference, publication of the prospectus and dissemination of promotional communications.

[52]

Executive Directors	Employment contract (1)		Supplementary pension scheme		Payments or benefits due or liable to be due as a result of termination of duties or change of role		Compensation in respect of a non-compete clause	
	Yes	No	Yes *(2)*	No	Yes *(3)*	No	Yes *(4)*	No
Name 1 Role 1 Start date 1 End date 1								

2.2 Findings

2.2.1 *Updated and centralised information*

The AMF recommends that information on compensation be updated. Where this information is not available within the group at the date on which the registration document is submitted, the AMF recommends that the company subsequently publish a press release[53] or an updated version of its registration document to ensure that comprehensive information is publicly disclosed.

Of the 60 companies in the sample, 53 (88%) centralise information on executive compensation in the compensation section of their registration document or annual financial report. Most of the remaining companies include cross-references to other sections of their registration document or annual financial report, such as the chairman's report or special reports on the allotment of stock options or performance shares.

2.2.2 *Presentation of the summary compensation table pertaining to stock options, performance shares and share subscription warrants*

The AMF also notes that every company in the sample presents Table 10 of the AMF recommendation or equivalent information. This table summarises information on employment contracts, termination payments, non-compete compensation and defined benefit pension schemes. It transpires that:

- **Fifty-three companies, including 34 CAC 40 companies, present Table 10 of the AMF recommendation;**
- **Seven companies provide equivalent information.**

2.2.3 *Summary presentation of compliance with the recommendations of the AFEP/MEDEF code*

The AMF notes that, in accordance with its recommendation, nine companies – Alcatel, Air Liquide, Bouygues, Hermès International, Lafarge, Peugeot, Safran, Schneider and Vinci – summarise exceptions to the AFEP/MEDEF code either in a dedicated paragraph or in a table.

2.2.4 *Compensation and benefits due from and paid by group companies*

The Commercial Code[54] stipulates that the financial review of the consolidated financial statements by management must indicate the amount of compensation and benefits of any kind paid to executives by companies which are controlled pursuant to Article L. 233-16. There are various different interpretations of this article, which requires companies to prepare consolidated financial statements *"where they exclusively or jointly control or exercise significant influence over one or more other companies[55]."*

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[53] Where appropriate, a press release confirming that the registration document is available.

[54] Article L. 225-102-1 of the Commercial Code: *"The report referred to in Article L. 225-102 shall set out the total compensation and benefits of any kind paid in the year to each corporate officer. This shall include benefits in the form of equity securities, debt securities or securities giving access to equity or entitling the holder to receive an allocation of debt securities in the company or companies referred to in Articles L. 228-13 and L. 228-93.*
It shall also set out the amount of compensation and benefits of any kind received by each of the corporate officers in the year from companies which are controlled within the meaning of Article L. 233-16 or from the company which controls, within the meaning of that same Article, the company in which the office is held […]."

[55] Article L. 233-16 of the Commercial Code: *"Commercial companies shall prepare and publish each year, under the responsibility of the board of directors, management board or statutory manager(s), as the case may be, consolidated financial statements together with a group financial review by management, whenever they exclusively or jointly control or exercise significant influence over one or more other companies as defined below.*
II. - Exclusive control by a company shall result from:

The AMF's position has always been that this reference is intended to cover all companies consolidated by the parent. Accordingly, where a listed company belongs to a group, the AMF recommends, in particular, that information on executive compensation should cover amounts paid in connection with the office held in the listed company, **by all companies in the chain of control and those over which the parent exercises significant influence**.

Consequently, the AMF asks listed companies to include in their summary tables compensation and benefits of all kinds due or paid to corporate officers in connection with their office by all group companies.

JC Decaux SA points out that, in addition to amounts paid by the listed company, compensation paid to its executives includes that paid by the controlling holding company and foreign subsidiaries. The company includes a table setting out this information for each executive.

Furthermore, while reviewing registration documents, the AMF noted that certain executive directors were only paid by the issuer's holding company under the terms of an assistance agreement between the parent and its affiliate. In such circumstances, the AMF asks that issuers:

- set out, in the tables dedicated to executive compensation, all amounts paid by holding companies in respect of compensation; and
- where the amount of services invoiced exceeds the amounts paid in respect of executive compensation, specify earlier, in accordance with point 19 of Annex I of the European "Prospectus Regulation", the nature of other activities or services covered by that assistance and consultancy agreement, together with all associated amounts.

3. Concurrently holding an employment contract and corporate office

3.1 Summary of applicable provisions

The AFEP/MEDEF corporate governance code states that *"Where a senior executive is appointed a corporate officer, it is recommended that his or her employment contract with the company or with a company affiliated to the group be terminated, either using the 'termination by mutual agreement' procedure or via his or her resignation".*

This recommendation applies to directorships commencing after 6 October 2008 – the date on which the recommendation was made public – and when renewing directorships commencing prior to that date, as assessed by the board of directors or supervisory board.

This provision applies only to the roles of chairman of the board of directors, chairman and chief executive, chief executive in companies with a board of directors, chairman of the management board, sole chief executive of companies with both a management board and a supervisory board, and statutory manager of a limited stock partnership. Accordingly, deputy chief executives and members of the management board fall outside the scope of this recommendation.

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1. Either direct or indirect ownership of the majority of voting rights in another company.
2. That company having appointed, for two consecutive years, the majority of members of the board of directors, management board or supervisory board of another company. The consolidating company shall be presumed to have made these appointments if it has, in the course of that period, directly or indirectly held more than 40% of the voting rights and no other associate or shareholder has directly or indirectly held a greater proportion than that held by it.
3. The right to exercise a dominant influence over a company by virtue of an agreement or clauses in the Articles of Association, where allowed by applicable law.
III. - Joint control is shared control of a company operated jointly by a limited number of associates or shareholders, such that decisions are made by mutual agreement.
IV. - Significant influence over a company's management and financial policy is presumed to exist where a company directly or indirectly holds at least one fifth of the voting rights in that company."

On the issue of holding an employment contract concurrently with corporate office, the AMF considers that a company is in compliance with the code if it explains that it is maintaining an executive's employment contract **because of that executive's length of service as an employee and personal circumstances**[56].

3.2 Findings

The AMF has reviewed the policy adopted by the 60 companies in the sample, which includes 35 CAC 40 companies, in 2011 and early 2012 when they reappointed executive directors holding an employment contract. These companies appear to apply a range of different policies:

- Some review the situation when a director's current term of office is due to expire.
- Some terminate the employment contract.
- Some maintain the employment contract.

At 1 January 2011, 15 companies (25% of the sample), including eight CAC 40 companies, explicitly state that some or all of their executive directors held both an employment contract and corporate office.

3.2.1 Reviewing the situation when reappointing a director

One of these 15 companies, **SEB**, states that, since its chairman and chief executive was reappointed on 13 May 2008, the board of directors will review the situation in 2012, when his current term of office is due to expire.

3.2.2 Termination of the employment contract

Four companies, including three CAC 40 companies, explicitly state that they have terminated executives' employment contracts or plan to do so when their current terms of office expire:

- One company states that it terminated the employment contracts of its chief executive and a deputy chief executive on 1 December 2011.
- Another issuer explains that it plans to terminate its chief executive's employment contract when his term of office expires following the company's 2012 annual general meeting.
- One company states that an employment contract between the chairman of its management board and another group company was terminated when his 2008-2011 term of office expired on 31 December 2011 and he decided to step down from his role as chairman and chief executive of the group company in which he held that position.
- One company states that its chairman and chief executive's suspended employment contract has never been amended, and therefore reflects neither his compensation nor his length of service as chairman and chief executive. The company explains that in 2011, the board of directors authorised the transfer of his employment contract from the listed company to another group company, as it also did for other senior executives who, like him, qualified for the former entity's pension and insurance scheme. The chairman and chief executive points out in the company's registration document that, if he were to be reappointed to his current position he would, at his own initiative, permanently terminate his employment contract and request that his pension benefits be liquidated.

One of these four companies, BNP Paribas, having decided to terminate its executive directors' employment contracts, made up for the loss of certain benefits associated with employee status. BNP Paribas states that, when determining the fixed compensation paid to its chief executive, it took into account the loss of social protection and supplementary pension benefits that were previously provided under his employment contract. The company also committed to make up for the retirement bonus associated with its

[56] AMF report on corporate governance and internal control – 12 July 2010

former chief executive's employment contract. Under the terms of a collective agreement, he would have received this bonus upon retiring from the group.

3.2.3 Maintenance of the employment contract

Nine companies, including four CAC 40 companies, **decided to maintain their executive directors' employment contracts when those directors' terms of office expired.**

3.2.3.1 Executive directors' length of service

Seven companies decided to maintain their executive directors' employment contracts on the basis that the loss of benefits associated with their status as salaried executives appeared unwarranted in light of their long experience as employees of the group.

For example, one company, **Lafarge,** states in its registration document that it decided in 2011 to maintain its chairman and chief executive's employment contract in light of his 29 years' service with the group (and the 24 years for which that contract had run until it was suspended when he was appointed chief executive in 2006) and the company's internal promotion policy, under which it seeks to "appoint as corporate officers experienced senior executives with a thorough knowledge of the industry and markets in which Lafarge operates, and for whom the loss of benefits associated with their employment contracts and length of service (such as contractual redundancy pay) would be an obstacle".

The AMF wishes to reiterate that it considers that a company is in compliance with the code if it explains that it is maintaining an executive's employment contract because of that executive's length of service as an employee and personal circumstances[57]. The explanations provided by these seven companies for maintaining their executives' employment contracts thus appear satisfactory.

3.2.3.2 Other reasons

The AMF notes one special case associated with the specific circumstances of the company in question: **Rexel** explains that the suspended employment contract held by the chairman of its management board was not terminated when he was reappointed in 2011 because the company wanted him to be able to continue to work for the group for an unlimited period after his term of office expired on 13 February 2012 so as to facilitate the transition to a new chairman of the management board. The former chairman stepped down from the management board with effect from 13 February 2012.

Furthermore, another company, **Hermès International**, states that its supervisory board considered that its statutory manager "did not need to terminate his employment contract upon being appointed statutory manager, given that his unlimited term of office may be revoked at any time and that he had been a successful employee for a long time prior to being appointed to corporate office". **The AMF considers that this explanation relating to the ability to revoke a corporate officer's office is not specific, and therefore falls short of the "comply or explain" principle.** In a press release dated 31 August 2012, the company stated that the statutory manager in question had waived his employment contract in a letter dated 16 July 2012 in order to comply with the corporate governance code.

3.2.3.3 Special cases: groups of companies

Contrary to the AFEP/MEDEF code, the AMF considers that the rule under which corporate office may not be held concurrently with an employment contract also applies to staff holding a position as an executive director in a listed company and an employment contract with another group company, either in France or abroad. The AMF has proposed an area for discussion on this issue with the aim of updating the AFEP/MEDEF code.

[57] AMF report on corporate governance and internal control – 8 December 2009

The chairman of the management board of **Klépierre**, a listed subsidiary of listed group **BNP Paribas**, holds an employment contract with an unlisted sub-subsidiary, **SÉGÉCÉ**, in which he serves as statutory manager. The company's registration document appears to accurately describe the circumstances of the executive in question. Until 2011, this executive only received compensation in respect of his employment contract with **SÉGÉCÉ**; he served as **SÉGÉCÉ'S** statutory manager and chairman of the management board on an unpaid basis. **Klépierre** states that this employment contract was suspended in 2011 after the company observed that the associated duties had, at that point, been absorbed into the role of chairman of the management board to a greater extent than was originally the case. Since then, the executive in question has received compensation from the company in his capacity as chairman of the management board and continues to serve as **SÉGÉCÉ'S** statutory manager on an unpaid basis.

4. Benefits paid to executive directors

4.1 Summary of applicable provisions

4.1.1 Legal provisions

Paragraph 15.2 of Annex I of the European "Prospectus Regulation" stipulates that issuers must set out the total amount provisioned or recognised by themselves or their subsidiaries in respect of pensions or other benefits for each member of the board of directors, management board or supervisory board and each general partner, founder or chief executive whose name might be mentioned as evidence that the company has the appropriate expertise and experience to manage its own affairs.

Furthermore, in its recommendation dated 30 April 2009[58], the European Commission states that "termination payments should not exceed a fixed amount or fixed number of years of annual remuneration, which should, in general, not be higher than two years of the non-variable component of remuneration or the equivalent thereof".

Under the "TEPA" Act[59], compensation or benefits due or that may be due to executives upon or following their termination or a change in their duties are subject to the same procedure as regulated agreements, and must also be contingent upon criteria linked to the beneficiaries' performance. Commitments entered into by listed companies in this area are also subject to approval at a shareholders' general meeting via a specific resolution for each beneficiary, and no payment may be made until the board of directors or supervisory board has confirmed that the criteria laid down have been met.

The requirements arising from the "TEPA" Act apply to commitments entered into with effect from 22 August 2007, the date on which the Act was published. For commitments already entered into at that date, affected companies were given 18 months to comply (i.e. by February 2009 at the latest).

4.1.2 AFEP/MEDEF code

The AFEP/MEDEF code sets out additional criteria governing the awarding of termination payments to executive directors:

- Termination payments may only be paid where executives are forced to leave as a result of a change of control or strategy; accordingly, such payments may not be paid where an executive elects to leave the company, moves to another post within the same group or is eligible to receive pension benefits in the near future.
- Performance criteria should be "demanding".

[58] European Commission Recommendation complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies
[59] Act No. 2007-1223 of 21 August 2007 in favour of labour, employment and purchasing power

- Termination payments should be capped at two years' fixed and variable compensation, including any non-compete compensation.
- Any artificial inflation of compensation in the period prior to leaving office should be prohibited.

4.1.3 AMF recommendation

In its consolidated Recommendation 2012-02, the AMF recommends that companies:

- set out in detail in their registration documents the rules governing termination payments for each executive director, and the terms under which such payments are paid;
- explicitly state that termination payments may only be paid where executives are forced to leave as a result of a change of strategy, and that accordingly, such payments may not be paid where an executive elects to leave the company, moves to another post within the same group or is eligible to receive pension benefits in the near future.

4.2 Termination payments to executive directors

The AMF has reviewed the conditions under which executives left office in 2011 or early 2012.

Eight companies fall within the scope of this analysis.

Of these, two did not pay any termination payments:

- One company states that it did not pay any termination payment to its executive upon his resignation.
- Another issuer explains that its chairman and chief executive will not receive any termination payment when he leaves office. He may, however, exercise stock options and receive a final allotment of performance shares awarded under the company's 2009 and 2010 stock option plans. Moreover, this executive is bound by a non-compete clause, in return for which he will receive payment equivalent to just over one year's fixed compensation.

The AMF considers that two companies fail to provide clear and comprehensive information on termination payments:

- One company simply states that one of its executives received a termination payment upon retirement.
- Another company paid additional compensation to the chairman of its supervisory board upon his resignation "in recognition of his exceptional contribution to the development and growth of the company in which he served as chairman of the management board and subsequently chairman of the supervisory board, as well his help with the transition to a new chairman of the supervisory board".

Furthermore, four companies – Accor, Areva, Gecina and Michelin – state that they paid termination payments to executives. These four companies explain that the payments in question comply with the requirement not to exceed two years' fixed and variable compensation, and set out in detail the association conditions and payment terms. **All four companies paid termination payments upon the departure of executive directors once their boards of directors had confirmed that predefined performance criteria had been met:**

- **Accor** paid a termination payment upon the departure of its chairman and chief executive after confirming that the required performance criteria had been met; it also paid a one-off indemnity after the chairman and chief executive challenged the basis upon which he had been made redundant. This one-off indemnity was deducted from his contractual termination payment so that the total amount paid out did not exceed two years' non-variable compensation.
- **Areva** states that it paid termination payments to two out of three executives, with the third having waived any payment.
- Another issuer, **Gecina**, explains that it paid its chief executive a termination payment equivalent to one year's gross fixed and variable compensation in respect of 2010 after confirming that the required

performance criteria had been met, together with a monthly non-compete payment for a period of six months. The executive in question also retained his entitlement to stock options and performance shares awarded under earlier plans.
- **Michelin** states that it terminated one of its executives following a change in the group's strategy. In addition to a termination payment, the company also paid a one-off indemnity for terminating the executive's employment contract, which was reactivated upon his departure, as well as a non-compete payment. The executive in question lost his entitlements under the group's pension scheme but retained his right to exercise stock options awarded to him under earlier plans.

Furthermore, the AMF notes that one issuer, **Scor**, states that the termination payment paid to its chairman and chief executive consisted of (i) an indemnity equal to the gross annual fixed and variable compensation paid by the group in the two years' preceding his departure, (ii) **an indemnity to make up for the loss of his right to exercise stock options awarded before he left**, and (iii) **an indemnity to make up for the fact that he would not be entitled to receive a final allotment of performance shares**. On 26 July 2012, the company published a corrective statement on its website explaining that its board of directors had decided that, upon his departure, the chairman and chief executive would only receive an indemnity equal to the total amount of fixed and variable compensation paid to him in the 24 months preceding his departure from the group.

4.3 Special payments

- One company paid the chairman of its management board deferred conditional compensation totalling €16,187,800. The company states that this amount is due in respect of the chairman's commitment to perform his duties from 2003 until the end of 2011. It believes that this deferred conditional payment has from the outset served as an incentive for the chairman to remain with the company. Payment of this deferred compensation was subject to both performance and length of service criteria being met.
- One company points out that certain members of its management board will qualify for one-off bonuses in February 2013 on condition that they are still serving as board members at 31 December 2012.
- One company states that its chairman and chief executive could receive deferred compensation equivalent to no more than 20% of his gross annual fixed compensation, i.e. €[] gross. This deferred compensation could be paid to him in 2014, on the twin conditions that (i) he is still with the group at that time and (ii) the group has met the required performance criteria.

The special cases described above constitute compensation and benefits. As such, they should comply with the principles laid down in the AFEP/MEDEF code for determining executive compensation. The AMF wishes to encourage industry groups to update their codes to cover all forms of compensation and benefits not specifically covered by any recommendation, while retaining current principles governing total compensation.

5. Supervision of supplementary pension schemes

5.1 Summary of applicable provisions

5.1.1 Legal provisions (see section 4.1.1)

5.1.2 AFEP/MEDEF code

The recommendations of the AFEP/MEDEF code on supplementary pension schemes are aimed at ensuring that these pensions granted to executive directors are supervised so as to avoid abuse.

The AFEP/MEDEF code sets the following conditions for awarding defined benefit pension schemes, under which executives receive a pension calculated on the basis of a baseline salary:

- Beneficiaries must be corporate officers or employees of the company when they exercise their pension rights.
- The value of this benefit must be taken into account when determining compensation.
- The group of potential beneficiaries must be materially broader than the executive directors alone.
- The beneficiaries must meet reasonable criteria in relation to length of service with the company.
- The baseline period used to calculate benefits must be several years long, and any artificial inflation of compensation over this period should be prohibited.

5.1.3 AMF recommendation

Furthermore, in its consolidated Recommendation 2012-02, the AMF recommended that companies:

- state, in their registration documents, that total compensation paid to executives has, where applicable, been calculated taking into account supplementary pension benefits;
- disclose comprehensive information on individual potential entitlements, including the method used to determine and calculate pension benefits for each beneficiary (baseline salary period and amount, potential annual entitlement as a percentage of baseline compensation, cumulative potential annual entitlement at the end of the period, maximum potential entitlement, and conditions in relation to length of service and continued service within the company).

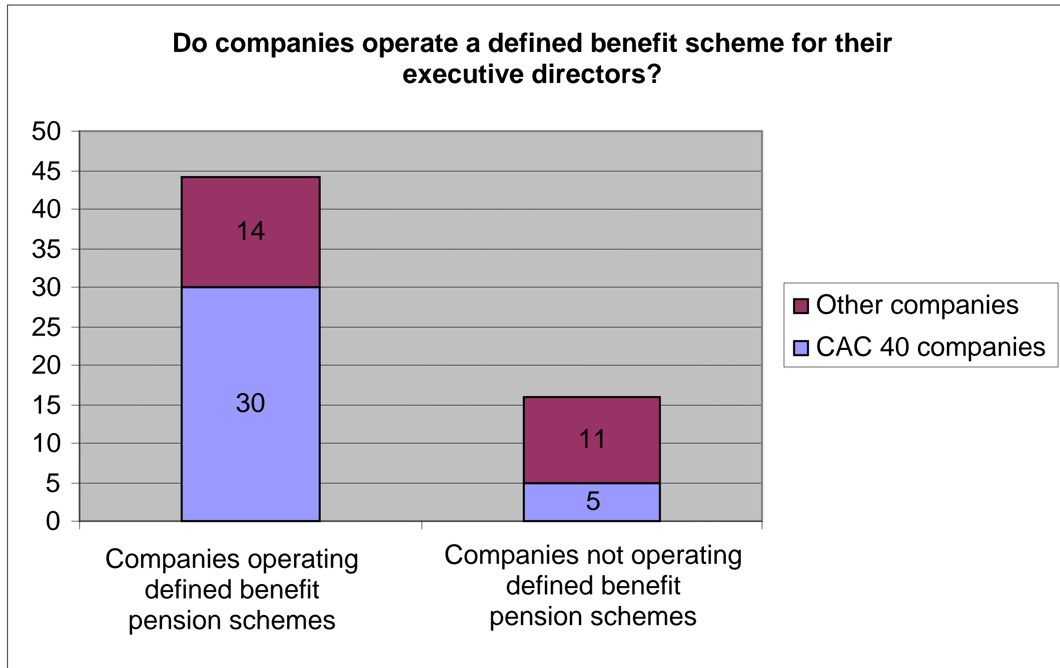
5.2 Findings

5.2.1 General findings

Forty-four out of 60 companies – i.e. 73% of companies in the sample – say they operate a defined benefit pension scheme for some or all of their executives. This figure is higher than that observed in respect of 2010 (66%), though the sample is not the same.

Among these 44 companies, 30 of the 35 CAC 40 companies state that they operate a defined benefit pension scheme.

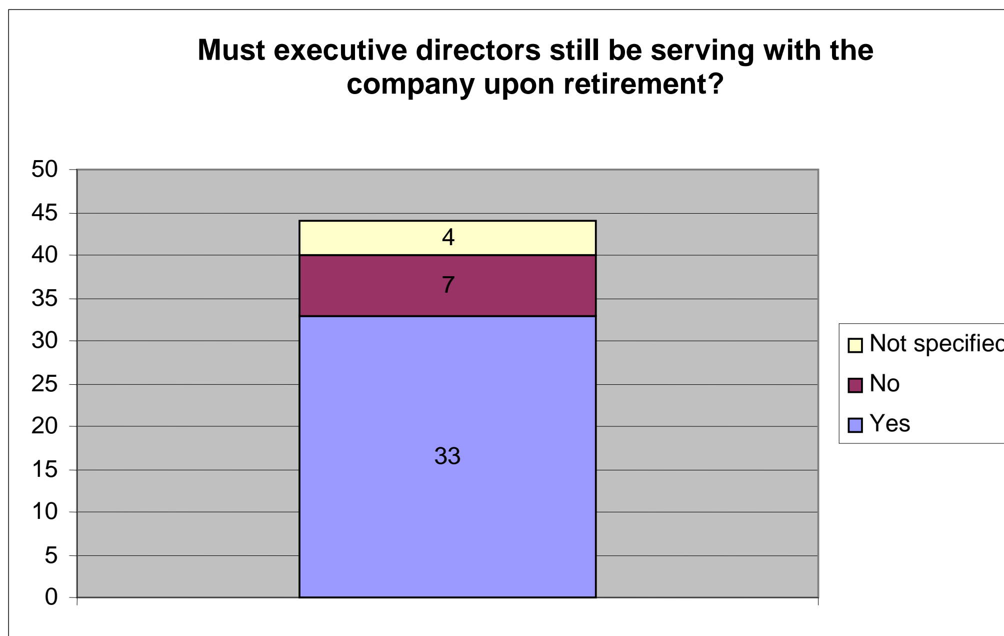
One company, **BNP Paribas**, states that all the defined benefit pension schemes operated for the benefit of senior executives of the group's various entities have been converted into supplementary pension schemes. All amounts allocated to beneficiaries were frozen when the old schemes were closed.



Source: AMF

5.2.2 Continued service condition

Thirty-three out of 44 companies (including 23 CAC 40 companies), or 75%, say that beneficiaries must still be serving with the company when they exercise their pension rights. Four companies provide no information. However, the absence of any reference to a continued service condition cannot be assumed to indicate that beneficiaries would continue to qualify for the scheme if they left the company. The AMF notes that companies have, in general, made significant efforts to present this information more transparently.



Source: AMF

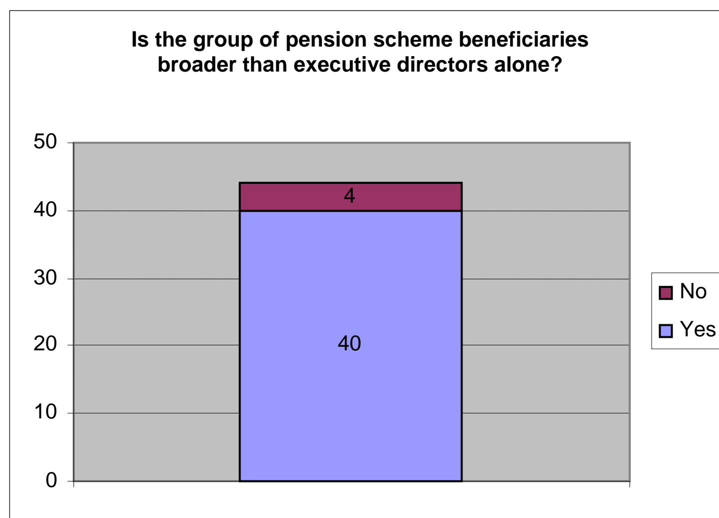
Even though the sample is not the same, this finding reflects a significant improvement in 2011: in 2009 and 2010, only 48% and 71% of companies respectively mentioned a continued service condition (based on differing samples).

One company, **Alcatel-Lucent**, states that its executives are not required to meet any continued service condition in order to qualify for its pension scheme. However, to make up for the absence of such a condition, the company states that it has introduced performance criteria governing the payment of pension benefits. **The AMF considers that the company fails to comply with the AFEP/MEDEF code on this issue, and that it does not provide a detailed explanation for this non-compliance**.

Several companies state that the continued service condition is not required where an executive is asked to leave the group after the age of 55 and does not work again until he or she begins to claim pension benefits. However, these companies fail to state that they are not compliant with the AFEP/MEDEF code or to provide detailed explanations. Conversely, one issuer, CGG Veritas, points out that it is not compliant with the AFEP/MEDEF code on this issue, and provides a detailed and comprehensive explanation. The company states that *"under very specific circumstances (such as death or invalidity) or so close to retirement as to make it difficult to secure another position (e.g. in the case of redundancy for reasons other than gross negligence or wilful misconduct after the age of 55 where no other position is subsequently held), given the length of service of certain beneficiaries of this scheme and their long and successful careers with the company, it would be unwarranted to withdraw their company pension benefits on the sole basis of their sudden departure"*.

5.2.3 Group of pension scheme beneficiaries

In 40 out of the 44 companies that operate defined benefit supplementary pension schemes (including 29 CAC 40 companies), the group of potential beneficiaries is materially broader than the executive directors alone.



Source: AMF

The group of potential beneficiaries can vary from company to company. In some cases, it might include a group's senior executives, while in others it might include members of the group's senior management committee or executive committee. In practice, as indicated in the 2009 report, it is not always a simple matter to determine whether the group of beneficiaries is "materially broader", as set out in the AFEP/MEDEF code.

The AMF is keen for industry groups to initiate discussions to clarify the scope of a broader group of beneficiaries.

In this regard, it may be noted that the AFG[60] recommends that *"at minimum, all executives (whether or not they are corporate officers) be identified as potential beneficiaries of any supplementary pension schemes put in place".*

Furthermore, the ERAFP[61] considers that *"the principle of supplementary pension schemes funded solely by companies, and in particular defined benefit schemes, is not approved. Given the amount of their compensation, executive directors should be encouraged to make their own pension arrangements rather than expecting the company and its shareholders to bear the entire cost."*

5.2.4 Required length of service to qualify for pension schemes

Thirty-four out of 44 companies – i.e. 77% – state the length of service requirements that must be met to qualify for a supplementary pension scheme, compared with 20 companies in 2010. Although the sample is not the same, the AMF notes an improvement in the information provided by companies on this point.

Twenty-one CAC 40 companies state the length of service requirements that must be met to qualify for a supplementary pension scheme, compared with 16 in 2010.

However, the lack of information in a number of companies' registration documents means that it is not possible to categorically conclude whether length of service criteria are applied.

For the 34 companies concerned, the required length of service in order to qualify for the pension scheme ranges from three to 15 years. The majority of these companies require a minimum length of service of between five and ten years. Some companies also require a certain number of years as an executive of the company in order to qualify for the pension scheme.

5.2.5 Baseline period used to calculate pension benefits

84% of the companies concerned – i.e. 37 companies – state that the baseline period for calculating benefits covers several years. This figure is equivalent to that recorded in 2010, albeit based on a different sample.

In 2011, 26 out of the 35 CAC 40 companies in the sample specified that the baseline period for calculations covered several years, compared with 23 companies in 2010.

Where the baseline period used to calculate benefits covers several years, it ranges from two to ten years. For the majority of companies, the baseline period is between three and six years. Where the baseline period is longer (ten years), benefits are calculated on the basis of the best three years in the period.

In almost all cases, benefits are calculated on the basis of both fixed and variable compensation.

5.2.6 Itemised information on supplementary pensions

Fifteen out of 44 companies – Air Liquide, BIC, BNP Paribas, Bouygues, CGG Veritas, Essilor, LVMH, Suez Environnement, Société Générale, Unibail, Saint-Gobain, CNP Assurances, Total, Vinci and **Vivendi – representing 34% of the companies concerned and including 11 of the 30 CAC 40 companies concerned, provide itemised information on their supplementary pension schemes, compared with 26% in 2010 and 30% in 2009 (albeit based on a different sample).**

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[60] AFG – "Recommendations on corporate governance" – January 2012

[61] "Provisional guidelines for shareholder engagement" – 15 March 2012

Pursuant to paragraph 15.2 of the European "Prospectus Regulation", five companies provide individual estimates of the cumulative amount of defined benefit supplementary pension entitlements accruing to some or all corporate officers:

- **LVMH** sets out in its registration document the cumulative amounts of retirement benefits accruing to its chairman and chief executive and its deputy chief executive.
- Another company, **Unibail**, states that one of the members of its management board qualifies for a defined benefit pension scheme and specifies the baseline salary used to calculated retirement benefits.

Ten companies provide an estimate of the annual amount of defined benefit supplementary pension entitlements accruing to each corporate officer. Two companies provide this information for only some of their executives.

Examples:

- One company, **CGG Veritas**, gives the total amount represented by the present value of the liability in respect of its executive directors.
- Another company, **Vivendi**, states the amount of the entitlement in euros accruing to the chairman of its management board in 2011, calculated as 1% of his capped baseline salary, and points out that this represents 0.73% of his gross salary.
- **Unibail** states the annual amount of these contributions in its summary compensation table.
- Three companies – **CNP Assurances, Essilor** and **Saint-Gobain** – set out these amounts in a separate table.

- **However, 29 companies, including 19 CAC 40 companies, provide no itemised information.**

The AMF notes, however, that 15 of these 29 companies, including 11 CAC 40 companies, indicate the percentage or maximum amount of baseline compensation represented by executive directors' supplementary pension scheme entitlements.

The AMF recommends that these companies indicate in their next registration document the amount represented by this percentage at the year-end.

Examples:

- **Cap Gemini** states that, given their length of service on retirement, its two corporate officers could be entitled to a pension representing a replacement rate of between 39% and 40% of their baseline salary.
- **Veolia Environnement** states that, upon retirement, its executive could receive a life annuity equivalent to 30% of his annual baseline compensation.

5.2.7 Special cases

The AMF notes that, excluding supplementary defined benefit pension schemes, some companies pay their executives amounts intended to be invested solely in pension schemes. These companies' registration documents appear to accurately describe the circumstances of the executives in question:

- For example, **Unibail**[62] says that, after carrying out market research and establishing that supplementary pension benefits for all the members of its management board were well below the median for CAC 40 companies, a decision was made in 2011 to pay each of them an additional annual pension contribution, the amount of which was fixed at that date for the chairman and the other members of the management board. These contributions are classed as compensation, and the beneficiaries are required to reinvest the entire amount, net of social security contributions and income tax, into a long-term investment vehicle intended to fund their retirement (such as a life insurance policy or a "PERP" retirement savings plan for French members) throughout their term of office with the group.

[62] In accordance with market practice in the Netherlands, one Dutch member of the company's management board qualifies for a defined benefit pension scheme, the details of which are itemised in its registration document.

- Another issuer, **PPR**, has decided to award one of its executives pension benefits in the form of a €3.568 million endowment to fund (transferable) retirement benefits at the full rate with effect from the date at which he reaches statutory retirement age, without any continued service condition, provided that:
  - the executive in question does not leave the group for personal reasons before 31 December 2014; and
  - that the performance criteria associated with his variable compensation in respect of 2009 and 2010 are met.

  The resulting capital would fund a target pension equivalent to 25% of his 2009 annual compensation, though this amount is not guaranteed.

- Similarly, one company, **Crédit Agricole**, awards its chairman an endowment enabling him to fund his retirement, accommodation and a vehicle. The company states the amount of the endowment in respect of each financial year.

- One company, **Publicis,** explains that, instead of putting in place supplementary pension schemes, it has committed to pay one of its executives a capped total amount in the form of successive annual cash payments for the period from 2009 to 2014. Part of this amount is directly dependent on the executive's continued service with the group over the period from 2009 to 2013, and could be reduced on a pro rata basis if he were to leave the group before the end of that period.

- When he resigned from his employment contract, the chairman and chief executive of **Société Générale** received compensation after waiving all supplementary retirement benefits accruing to him in respect of his previous service as an employee. The company states the amount of this compensation.

The special cases described above constitute compensation and benefits. As such, they should comply with the principles laid down in the AFEP/MEDEF code for determining executive compensation. The AMF wishes to encourage industry groups to update their codes to cover all forms of compensation and benefits not specifically covered by any recommendation, while retaining current principles governing total compensation.

6. Variable executive compensation

6.1 Summary of applicable provisions

6.1.1 AFEP/MEDEF code

The AFEP/MEDEF code governs the variable component of executive directors' compensation as follows:

- The variable component should be clear to shareholders and should be set by the board of directors or supervisory board for a specified period.
- The relationship between the fixed and variable components should be clear. The variable component should represent a maximum percentage of the fixed component, as appropriate to the company's business.
- The variable component should be governed by precise, predefined quantitative and qualitative criteria.
- The qualitative part of the variable component should be moderate and, where applicable, should be able to reflect exceptional circumstances.
- Quantitative criteria should be simple, few in number, objective, measurable and appropriate to the company's strategy.

6.1.2 AMF recommendation

In its Recommendation 2012-02, the AMF recommended that companies should:

- *"precisely and explicitly define the qualitative criteria they use to determine the variable component of compensation, with the exception of special cases in which companies may, as a minimum, indicate that certain specific, predefined qualitative criteria are not publicly disclosed for confidentiality reasons";*
- *"state the extent to which executive directors are expected to achieve quantitative targets in relation to variable compensation or, at the very least, explain that the required level of achievement has been determined precisely but is not publicly disclosed for confidentiality reasons".*

6.2 Findings

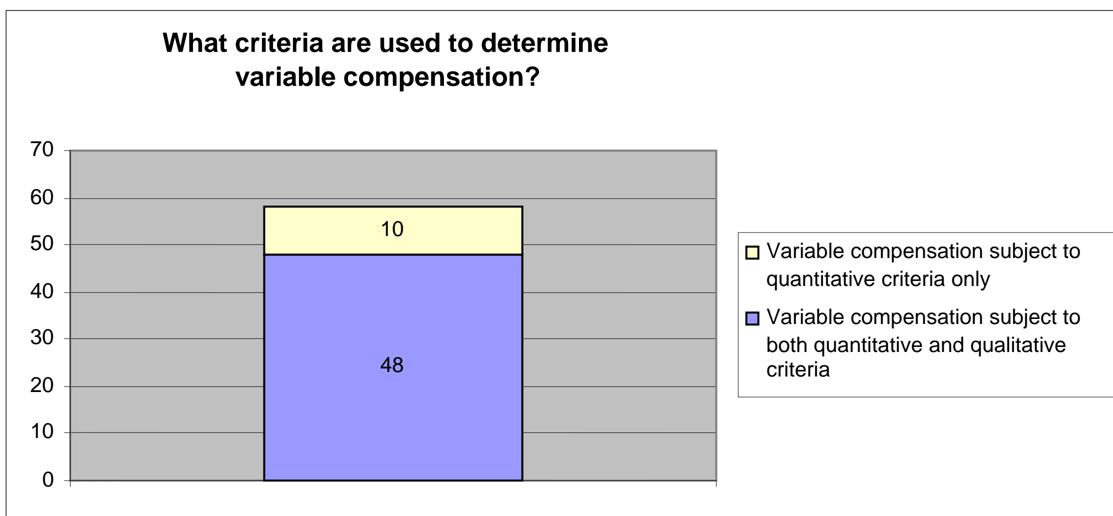
The AMF notes that 59 of the 60 companies in the sample (including all of the CAC 40 companies) state that they pay variable compensation to their executive directors. One company, **Iliad**, says that it does not pay any variable compensation.

The AMF further notes that, of the 59 companies that paid their executive directors variable compensation, 57 (including all of the CAC 40 companies) state that this variable compensation is capped. It transpires that:

- **Natixis** does not clearly state that variable compensation is capped in relation to fixed compensation.
- **Bolloré** provides no information on variable compensation.

Of the 59 companies that say they pay their executive directors variable compensation, 58 specify the performance criteria used to determine that variable compensation. One company, **Bolloré,** does not specify any criteria used to determine variable compensation.

Of the 58 companies that specify the criteria used to determine variable compensation, **48 apply both quantitative and qualitative criteria** (compared with 40 companies in 2010, albeit based on a different sample), while ten apply only quantitative criteria.



Source: AMF

With regard specifically to the 35 CAC 40 companies in the sample, six of them do not apply the relevant quantitative and qualitative criteria cumulatively.

6.2.1 Qualitative performance measurement criteria

The AFEP/MEDEF code recommends that qualitative criteria governing the variable component of compensation should be precise and predetermined. Furthermore, the AMF recommends that companies should precisely and explicitly define the qualitative criteria they use to determine the variable component of compensation, with the exception of special cases in which companies may, as a minimum, indicate that certain specific, predefined qualitative criteria are not publicly disclosed for confidentiality reasons.

On this subject, the AMF notes the following:

- Twenty-two companies, 11 of which belong to the CAC 40, do not define the qualitative criteria used in their registration documents, compared with 14, including six CAC 40 companies, in 2010, albeit based on a different sample.
- Eight companies (including six CAC 40 companies) define these criteria in very general terms.
- Eighteen companies, including 15 CAC 40 companies, **precisely define the qualitative criteria** used in 2011. The equivalent figure in 2010, albeit based on a different sample, was 21 companies.

Categories of criteria used:

The quantitative criteria used by companies may be divided into four distinct categories:

- criteria linked to the **implementation of group strategy** (development of company programmes and major projects, internal and external growth, foreign expansion, implementation of group values, etc.);
- criteria linked to each executive's **management skills** (ability to unite teams, communication skills, team leadership and motivation, overall leadership skills, etc.);
- criteria linked to **corporate social responsibility** (CSR), which cover social and environmental issues (employment-related parameters such as workplace security, employee training, talent development, and health, safety and the environment, together with environmental parameters such as sustainable development policy, energy consumption, carbon footprint, etc.).

Thirteen companies, including nine CAC 40 companies, use qualitative criteria linked to the company's CSR performance, compared with only seven companies in 2010. For example:

- One company, **ADP**, says it uses the following criteria: *"management of energy consumption and increasing diversity: ratio of vacancies awarded to people with disabilities, proportion of women recruited onto permanent contracts, etc."*
- One company, **France Telecom**, explains that it uses a *"composite indicator of social performance. This indicator is driven by the company's progress against five management indicators linked to human resources based on a half-yearly performance dashboard (for 50%) and five social themes measured via half-yearly surveys (for the remaining 50%)."*
- One company, **Crédit Agricole**, states that the qualitative criteria used to determine variable compensation are based on the following: (1) development of human capital, (2) value creation for external and internal customers and (3) social value creation in line with Crédit Agricole's mutual and solidarity-based identity.

Some of the companies in the sample provide little detail in relation to the qualitative criteria used:

- One issuer simply states that the qualitative criteria used to determine variable compensation are *"personal objectives related to his duties"*.
- Two companies say that the criteria used are *"personal objectives"*.

6.2.2 Quantitative performance measurement criteria

Categories of criteria used:

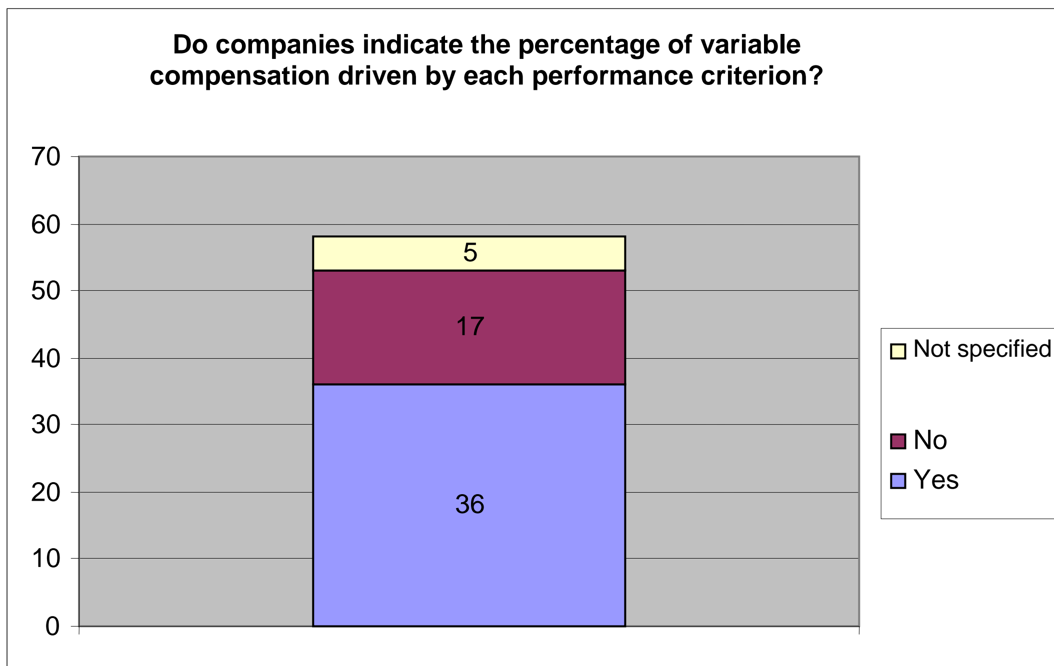
The quantitative criteria used by companies may be divided into **four distinct categories**:

- criteria based on a rate of return or financial indicators (ratio of EBITDA to total revenue, ROCE, free cash flow, etc.);
- development or growth criteria based on income statement aggregates (revenue growth, growth in net income, etc.);
- external criteria linked to a stock market index (e.g. CAC 40/SBF 120) or to the company's share price;
- criteria linked to a comparison with a sample of comparable companies.

Of the 48 companies that detail the quantitative criteria they use, 46 say that variable compensation depends on more than one criterion (ranging from 2 to 5 criteria). 12 companies apply only a single quantitative criterion, while Bolloré's registration document does not specify the criteria used to determine variable compensation.

Example:
- One company, **L'Oréal**, explains that it *uses "like-for-like sales growth versus budget, market share versus the group's main competitors, the contribution before advertising and promotion expenses, and net earnings per share cash flow versus 2011".*

Furthermore, the AMF notes that, with the aim of providing clearer information on variable compensation, 36 out of the 58 companies that provide information on variable compensation indicate the percentage of variable compensation driven by each performance criterion.



Source: AMF

Recommendation:
The AMF recommends that companies clearly and accurately describe the percentage of variable compensation driven by each performance criterion.

6.2.3 Achievement of quantitative criteria

Nine companies (including six CAC 40 companies) specify, in line with the AMF's recommendations[63], that while they have established the extent to which they expect quantitative targets to be met, this information is not publicly disclosed for confidentiality reasons.

Fifty-one companies provide no information on this subject. **However, five companies (including two CAC 40 companies) state the extent to which total variable compensation is driven by each criterion.** For example:

- **Capgemini** explains that half of its chief executive's variable compensation is due if consolidated group profit is in line with budget.
- **Gecina** refers to two quantitative criteria: recurring profit and EBITDA versus the target budget. It also provides a table showing how variable compensation is driven by each criterion.

Recurring profit (actual/budget)	Variable compensation	EBIDTA (actual/budget)	Variable compensation
> 102	%	> 101	%
> 98	Target 25%	> 99	Target 40%
> 96	15%	> 98	30%
> 94	10%	> 97	20%
< 94	0%	< 97	0%

- **Groupe Eurotunnel** states that "the chairman and chief executive's variable compensation is driven by the percentage achievement of the relevant budget target, as follows:
  - *50% of the maximum amount once the target is 80% achieved*
  - *60% of the maximum amount once the target is 85% achieved*
  - *80% of the maximum amount once the target is 90% achieved*
  - *90% of the maximum amount once the target is 95% achieved*
  - *100% of the maximum amount once the target is 100% achieved*
  - *110% of the maximum amount (exceptional bonus) once the target is 110% achieved*
  - *120% of the maximum amount (exceptional bonus) once the target is 120% achieved*

Finally, the AMF notes that five companies, including four CAC 40 companies, have put in place individual quantitative criteria for each executive. For example:

- One company says that different criteria are used for each individual: group sales, net profit, net cash flow from operating activities and inventory for the chief executive; and sales, operating profit and inventory levels for deputy chief executives.
- One company draws a distinction between the chairman of its board of directors, its chief executive and its deputy chief executives: *"Chairman and Chief Executive: growth in net earnings per share and gross group operating profit versus budget; Deputy Chief Executives: growth in net earnings per share, gross group operating profit versus budget, growth in pre-tax net profit from activities under their responsibility and gross operating profit versus budget for activities under their responsibility."*

<u>Special cases</u>

The AMF notes that one company states in its 2011 registration document that the chairman of its management board had waived his fixed compensation with effect from 2012, but that his variable compensation could amount to as much as €5 million. **Since this executive will no longer receive any fixed compensation, his variable compensation cannot be linked to his fixed compensation. However, this situation is not covered by the AFEP/MEDEF code.**

[63] AMF 2010 report on corporate governance and executive compensation – 12 July 2010

7. Additional rules on stock options and performance shares

7.1 Summary of applicable provisions

7.1.1 AFEP/MEDEF code

On this subject, the AFEP/MEDEF code aims to govern the granting of stock options and performance shares in order to avoid abuse. It sets out the conditions under which they may be granted, as well as conditions governing their price, exercise and compulsory holding periods:

- Stock options and performance shares should not represent a disproportionate percentage of the aggregate compensation awarded to each executive director.
- The board should determine a maximum percentage of stock options and performance shares that may be granted to executive directors as a proportion of the total amount agreed by shareholders.
- Executives should be prohibited from taking advantage of opportunities presented by bear markets. Stock options and performance shares should always be granted during the same calendar period each year.
- No discount should be applied when stock options or performance shares are awarded.
- Executive directors should not hedge their options. On this issue, the AMF suggested in its 2009 report on executive compensation that executives should give a formal undertaking not to hedge their options, and that this undertaking should be inserted into registration documents.

7.1.2 AMF recommendation

In its consolidated Recommendation 2012-02, the AMF recommends as follows:

- That the exercise of all stock options and the final allotment of all performance shares granted to executives should be contingent upon both internal and, where possible and appropriate, external performance criteria. The beneficiary's continued service within the company when options are exercised and performance shares are finally allotted cannot be considered a serious and demanding performance criterion.
- That companies confirm that, to the best of their knowledge, no options have been hedged.
- That information on the obligation to hold shares for a compulsory holding period, laid down in Articles L. 225-185 and L. 225-197-1 of the Commercial Code and clarified in the AFEP/MEDEF code, be set out in registration documents. The obligation to hold bonus shares and shares arising from the exercise of stock options should be sufficiently restrictive such that the company's long-term performance has a genuine impact on compensation.

7.2 Findings

In 2011, of the 60 companies in the sample, 35, or 58% (including 14 of the 35 CAC 40 companies in the sample), granted stock options and/or performance shares to their executive directors.

	Performance shares granted in 2011	Stock options granted in 2011	Stock options and performance shares granted in 2011	2011 total
Number of executives	54	43	26	71
Number of companies	27	24	15	35[64]

Source: AMF

Stock options and performance shares granted by the 33 companies that made such grants in 2011 represent an average of 42% of aggregate compensation (fixed compensation, variable compensation, directors' fees, benefits in kind, stock options and performance shares[65]) due to executives in respect of 2011, compared with 32% in 2010 (albeit based on a different sample).

	Performance shares granted in 2011	Stock options granted in 2011	Stock options and performance shares granted in 2011	2011 total
Valuation of stock options and performance shares under method used for consolidated financial statements **(A)**	48,870,301	12,879,065	30,303,626	92,052,992
Total compensation (fixed, variable, directors' fees and benefits in kind) due in respect of 2011 **(B)**	56,195,531	25,101,346	47,128,661	128,425,538
Total compensation **(C)** = **(A)** + **(B)**	105,065,832	37,980,411	77,432,287	220,478,530
Valuation of stock options and performance shares as a proportion of total compensation: **(A)**/**(C)**	**47%**	**34%**	**39%**	**42%**

Source: AMF

7.2.1 Conditions for granting and setting the price of stock options and performance shares

Twenty-three (including 13 CAC 40 companies) of the 33 companies that grant stock options and/or performance shares **(70%) set an upper limit on the number of options and shares that may be granted to executive directors, as a proportion of the total number agreed by shareholders**.

The percentage of stock options and performance shares that may be granted to executive directors by each of these 23 companies varies between 5% and 35% of the total amount agreed by shareholders. Several companies apply an upper limit of 5%.

Of the 33 companies that granted stock options and performance shares in 2011, 23 **(73%) specify that their executives are not allowed to hedge their options** (compared with 75% in 2010 and 59% in 2009). In some cases, companies prohibit the hedging of options; in others, executives give formal undertakings not to hedge their options.

[64] One company, Alcatel, grants performance shares to the chairman of its board of directors and stock options to its chief executive.
[65] Excluding pension benefits

In accordance with the area for discussion put forward by the AMF in its 2009 report on executive compensation, **the executive directors of six CAC 40 companies (unchanged since 2010) gave formal undertakings in their companies' registration documents not to hedge their options throughout their terms of office**.

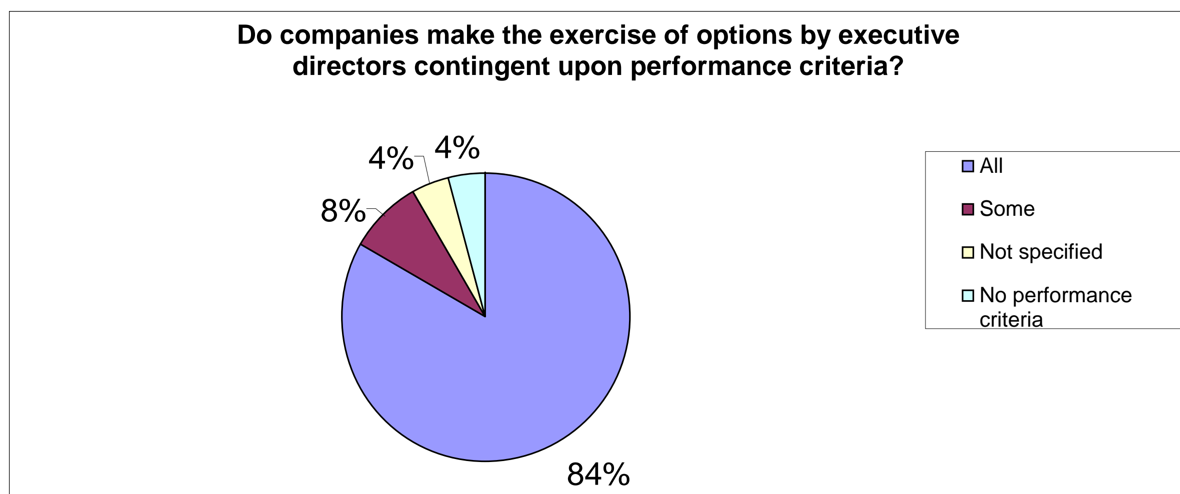
7.2.2 Exercise of stock options and final allotment of performance shares

7.2.2.1 Performance criteria determining the exercise of all stock options or the final allotment of all performance shares

Stock options

Twenty-four companies (including 14 CAC 40 companies) granted stock options to their executive directors in 2011.

Of these 24 companies, 20 (84%) state that the exercise of all stock options is contingent upon performance criteria.



Source: AMF

Four companies state that they do make the exercise of some or all stock options contingent upon performance criteria, without providing any detailed explanation:

- One company, **Edenred**, states that it is not in compliance with the AFEP/MEDEF code insofar as its board of directors has decided not to make the exercise of its chairman and chief executive's stock options subject to performance criteria.
- Another company, **JC Decaux**, states that the final allotment of stock options to one of the members of its management board is not contingent upon performance criteria. The allotment is subject to the existence of an employment contract providing for such allotment. The company simply states that its level of compliance with the recommendations of the AFEP/MEDEF code is sufficient to meet the objectives sought by those recommendations.
- One CAC 40 company, **Accor**, points out that it is not compliant with the recommendations of the AFEP/MEDEF code in this area, and states that "on the recommendation of the Compensation, Appointments and Corporate Governance Committee, the Board of Directors has decided to link the exercise of only 25% of all stock options granted to a performance criterion, considering that the Company's share price performance in itself constitutes a criterion governing the exercise of options".
- Another company, **Icade**, simply states that, with regard to stock options awarded to its executive directors in 2011, the exercise of only 65% of those stock options is subject to performance criteria.

Performance shares

Twenty-seven companies (including 17 CAC 40 companies) granted performance shares to their executive directors in 2011.

In particular, the AMF notes that one company, **Scor**, granted its chairman and chief executive performance shares under a “long-term incentive plan” as well as “traditional” performance shares. These shares will be finally allotted after a six-year vesting period, subject to performance criteria defined by the compensation and appointments committee. Once allotted, the shares may not be transferred for two years, after which time they will become available and freely transferable. The chairman and chief executive is required to hold 10% of the performance shares awarded in registered form until such time as he is no longer a corporate officer, and to buy on the open market a number of shares equal to 5% of those granted to him, as soon as those shares become transferable.

Almost all of the 27 companies that awarded performance shares in 2011 made the final allotment of all shares contingent upon performance criteria.

However, one of those 27 companies, **JC Decaux**, states that the final allotment of performance shares is subject not to performance criteria but to the existence of an employment contract providing for such allotment. **The AMF considers that the company does not provide a sufficiently detailed explanation.**

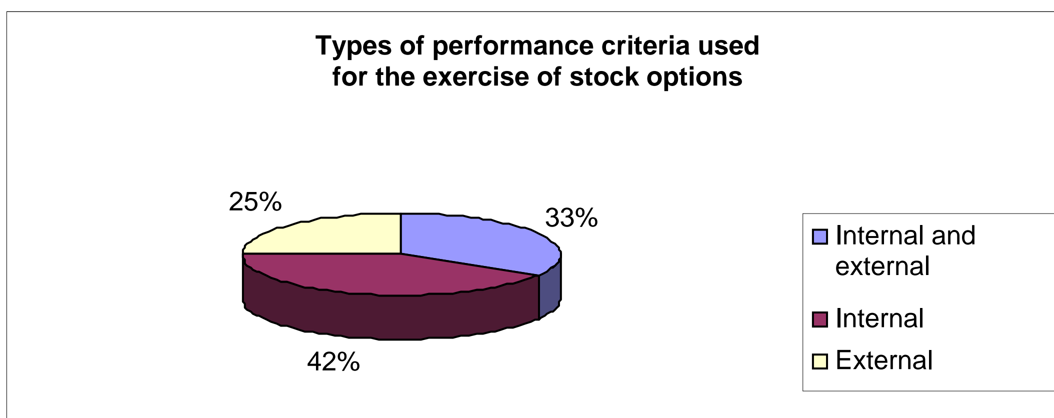
7.2.2.2 Types of performance criteria applied

Those companies that make the exercise of some or all stock options and/or the final allotment of performance shares contingent upon performance criteria apply the following:

- **internal** performance criteria: change in adjusted net income, cash flow, consolidated net operating income, ROCE (return on capital employed), profit before tax and non-recurring items, revenue, growth in the operating margin, share price performance or a combination of two or more of these criteria; and/or
- **external** performance criteria: share price performance or net operating income relative to a benchmark sector index or a given sample of companies representative of the competition faced by the group.

Of the 24 companies that say they subject the exercise of some or all stock options to performance criteria[66]:

- 8 apply both internal and external performance criteria;
- 10 apply only internal performance criteria;
- 6 apply only external performance criteria.

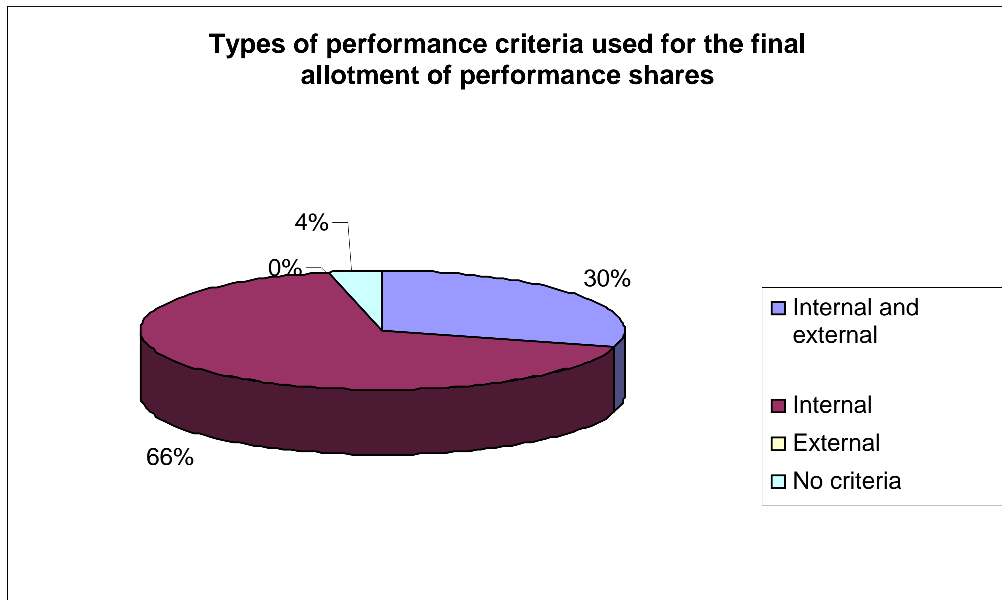


Source: AMF

[66] As stated in section 7.2.2.1, of the 20 companies that granted stock options in 2010, 2 did not state whether the exercise of those options was subject to performance criteria.

Of the 27 companies that say they make the final allotment of all performance shares contingent upon performance criteria:

- eight apply both internal and external performance criteria;
- eighteen apply only internal performance criteria;
- one, **JC Decaux**, applies a criterion linked to the existence of an employment contract. The AMF wishes to reiterate that continued service by a beneficiary cannot constitute a performance criterion, and therefore considers that the company fails to provide a sufficiently detailed explanation.



Source: AMF

The majority of companies make the allotment of performance shares contingent upon one of these two types of criteria. The AMF notes that few companies apply both internal and external performance criteria, and that there is a notable preference for internal performance criteria, with 66% of those companies that awarded performance shares in 2011 doing so on the basis of internal criteria alone.

Examples of criteria applied:

- Internal performance criteria:

One company states that it uses only internal criteria to determine the award of performance shares:

(1) Group free cash flow (net cash flow), before dividends and net income/expense from acquisitions/sales for the year in question, must be equal to one of the following:

- 85% of total group free cash flow, before dividends and net income/expense from acquisitions/sales, shown in the company's budget for the year in question, or
- group free cash flow (net cash flow), before dividends and net income/expense from acquisitions/sales, for the previous year, plus 10% of group operating profit for the year in question, must be equal to one of the following:
  - 85% of group operating profit shown in the company's budget for the year in question, or
  - group operating profit for the previous year, plus 10%.

- External performance criteria:

One company states that the award of performance shares is subject to an external performance criterion: "the company's performance relative to an index is recorded by comparing the percentage ratio of the company's average opening share price for each year in the compulsory holding period to its opening share price the

previous year with the percentage ratio of opening share prices for the index over the same periods. If the company's share price is found to have outperformed the index, the price at which the corresponding portion of options may be exercised remains unchanged. Conversely, if the company's share price has underperformed the index by 20 points or more, that portion of options subject to the performance criterion shall become null and void and may not be exercised. Furthermore, if the company's share price is found to have underperformed the index by less than five points, by between five and ten points, or by between ten and 20 points, the price at which the corresponding portion of options may be exercised shall be increased by 5%, 10% or 20% respectively."

- Both internal and external performance criteria:

One company, **Alcatel-Lucent**, sates that it makes the final allotment of performance shares contingent upon both internal and external criteria:

1) Leading the board of directors in its duty of defining the group's strategic direction.
2) Ensuring that the composition of the board of directors is in line with its duties and the recommendations of the AFEP/MEDEF code, and verifying that corporate governance within the company is coherently and efficiently evolving and adapting in line with developments in the sector.
3) The performance of the company's share price and that of other issuers is measured at the end of two one-year periods for all beneficiaries, after which it is either measured a third time at the end of a further two-year period, based on the company's share price performance on each anniversary of the award date (outside France), or a two-year compulsory holding period begins (compulsory in France). A multiplier of between zero and 100% is used to calculate the number of rights acquired in respect of each period, depending on the company's share price performance. Based on an annual analysis that is approved by a consultancy firm retained specifically for that purpose, the board of directors determines whether or not the performance criterion has been met.

7.2.2.3. Compulsory holding periods

Thirty-three companies – i.e. all of the companies that grant stock options or performance shares – state that their executives are required to hold onto a fixed number of shares throughout their terms of office.

These thirty-three companies apply a wide range of different policies:

- Requirement to hold a number of shares equivalent to a percentage of (i) the net (or, more rarely, gross) capital gain on acquisition or (ii) the number of shares allotted. This obligation to retain shares may be applied either to all allotments or to each individual allotment.
- Requirement for executives to hold a number of shares in the company corresponding to a multiple of their fixed or total (i.e. both fixed and variable) annual compensation. Some companies require their executives to hold shares from each allotment until the target number of shares is reached. In this way, reaching the target can only lead to a reduction in the percentage of shares that must be retained. For example, one company states that "when an officer holds shares with a total value equivalent to two or three times his fixed annual compensation (for the Deputy Chief Executives and the Chairman and Chief Executive respectively), the requirement [to retain shares] is reduced to 20% of net capital gains".
- Other companies simply state that their executives must have reached this target within a predetermined number of years.

The multiple of compensation to be reached varies according to the executive's position in the company and the type of compensation on which it is based (fixed compensation alone or fixed and variable compensation).

The AMF notes that two out of the eight companies whose executives left office in 2011 state that they voluntarily dropped the continued service condition in relation to the exercise of options and/or the final allotment of performance shares:

- One company states that its chairman and chief executive *"will be exempted from the continued service condition stipulated in the Performance Stock Option Plans dated 17 June 2009 and 16 July 2010 and the Performance Share Plan dated 16 July 2010; all other conditions in the aforementioned plans, including in particular performance conditions, shall remain fully applicable"*.

- Another company also explains that *"the chief executive will continue to qualify for the stock options granted to him by the Board of Directors at its meetings on 22 March and 9 December 2010 and the performance shares allotted to him by the Board of Directors at its meeting on 9 December 2010, since the Board of Directors has exempted him from the continued service requirement set out in the plan rules governing those awards; all other conditions applicable to awards under those plans remain unchanged"*.

7.3 Other arrangements

The AMF also notes that some issuers have introduced new systems:

- *"In 2011, the company's corporate officers received neither stock options nor performance shares. In order to ensure that the group's executives have an interest in the company's long-term progress, the Board of Directors has introduced a fully conditional compensation system based on the share price over a period of five years, under the terms of which executives have no choice as to when to exercise their options and the potential gains are capped if the share price rises significantly. Under this system, no compensation will be paid under this arrangement if, in 2016, the share price has risen by less than 5% relative to 2011. Even if the share price has risen by more than 5% at that date, any compensation will be subject to a performance criterion linked to the company's share price each year. Under this condition, the corresponding portion of the allotment could be maintained, reduced or lost in any given year. The amount paid would depend on the rise in the share price over five years; it would increase less than proportionally to any such rise, and would be capped if the share price had risen significantly. Before agreeing to introduce this arrangement, which, in 2011, affected the chief executive and one deputy chief executive, the Board of Directors asked the Expert Committee to confirm that the planned system complied with the provisions of the AFEP/MEDEF corporate governance code."*
- *"Medium-term variable compensation is awarded in the form of GPUs ('Group Performance Units'), subject to performance criteria assessed over a three-year period. GPUs were introduced in 2005 with the aim of more closely linking compensation paid to corporate officers, members of the Executive Committee and the Group's 1,500 directors to the medium-term economic performance of the Group as a whole. GPUs are awarded annually by decision of the Board of Directors. At the end of a period of three years, beneficiaries receive compensation of €30 per unit awarded if the Group has met all stated targets for each of the three years in question. This compensation is reduced to €20 per GPU if these targets have only been met in two of the three years, and to zero if they have been met in only one or in none of the three years." "The aggregate amounts of multi-year compensation due to the Group's executive directors in 2011 are as follows (based on the value of GPUs awarded):*
  - *Chairman and chief executive: €1,500k*
  - *Deputy chief executive: €840k*
  - *Deputy chief executive: €900k"*

- *"A long-term incentive programme aimed at building up a capital amount which will be released gradually, variably and in line with specific performance criteria when the executive in question leaves office, and for which that executive will only qualify if he or she completes his or her full term of office (apart from in exceptional circumstances). Under this programme, for each of the four years of his or her term of office, each executive in question will be awarded an amount corresponding to (a) 16,600 times the value of one share in the company provided that the ROCE, adjusted to exclude minority interests where they exceed 33.33%, exceeds 6%, and (b) 41,500 times the rise in the company's share price over a period of one year provided that the company's share price has outperformed that of a panel of at least ten European companies in the construction and infrastructure concession sector by at least 5%. If performance is below these levels, the amount of the annual endowment under (a) will be reduced, and will fall to zero if ROCE is less than 5%, and the amount of the annual endowment under (b) will be reduced, and will fall to zero if the company's share price underperforms that of the panel by more than 5%."*

Compensation under these medium- to long-term plans is based on the share price but is paid in cash, subject to performance criteria being met. What these arrangements have in common is that they are all contingent upon performance criteria and are not covered by the AFEP/MEDEF code.

The special cases described above constitute compensation and benefits. As such, they should comply with the principles laid down in the AFEP/MEDEF code for determining executive compensation. The AMF wishes to encourage industry groups to update their codes to cover all forms of compensation and benefits not specifically covered by any recommendation, while retaining current principles governing total compensation.

APPENDIX

Alphabetical list of companies in the sample

CAC 40 companies	Other companies
ACCOR	AEROPORTS DE PARIS
AIR LIQUIDE	AREVA
ALCATEL LUCENT	ARKEMA
AXA	ATOS
BNP PARIBAS	BIC
BOUYGUES	BOLLORE
CAP GEMINI	BUREAU VERITAS
CARREFOUR	CASINO GUICHARD
CREDIT AGRICOLE	CGG VERITAS
DANONE	CNP ASSURANCES
EDF	DASSAULT SYSTEMES
ESSILOR INTERNATIONAL	EDENRED
FRANCE TELECOM	EUROTUNNEL
GDF SUEZ	GECINA
LAFARGE	HERMES
LEGRAND	ICADE
L'OREAL	ILIAD
LVMH	JC DECAUX
MICHELIN	KLEPIERRE
PSA PEUGEOT CITROËN	NATIXIS
PPR	REXEL
PUBLICIS GROUPE	SCOR SE
RENAULT	SEB
SAFRAN	SUEZ ENVIRONNEMENT
SAINT GOBAIN	THALES
SANOFI-AVENTIS	
SCHNEIDER ELECTRIC	
SOCIETE GENERALE	
TECHNIP	
TOTAL	
UNIBAIL-RODAMCO	
VALLOUREC	
VEOLIA ENVIRONNEMENT	
VINCI	
VIVENDI	