AMF Recommendation 2013-18
AMF report on social and environmental responsibility information published by listed companies

Background legislation: Articles L.225-102-1, L.225-100 and L.225-100-2 of the Commercial Code
AMF General Regulation, Articles 212-7 and 212-13

EXECUTIVE SUMMARY

The Autorité des Marchés Financiers (AMF) has made **a new analysis of non-financial information published by listed companies**, in particular following the entry into force of the Grenelle 2 Act[1] of 12 July 2010 and its implementing decree of 24 April 2012[2] (the Grenelle 2 decree).

In light of this analysis, the AMF is publishing, as it did in December 2010, a report on the social and environmental information released by a sample of societies in their 2010 registration documents. The AMF has no plans to publish such a report every year.

This report is based on **60 companies** with securities admitted to trading on the NYSE Euronext regulated market. Note that the sample represents approximately 38% of the combined market capitalisation of French companies listed on Euronext Paris at 30 September 2013.

To provide a more representative view of the market, the sample has been broadened to include certain small and midsized enterprises (SMEs) and mid-tier companies for all the criteria analysed (in 2010, the same analysis covered a few specific items only).

Analytical approach

Companies have found it necessary to further organise their disclosures so as to better reflect issues relating to social and environmental responsibility (SER). This trend has been driven both by the need to comply with stricter regulations, in particular the entry into force of the Grenelle 2 framework, and by the need to meet the expectations of various stakeholders, especially investors.

Accordingly, the AMF has analysed the presentation of SER information published by listed companies, for the following reasons in particular:

- The framework introduced by the Grenelle 2 Act and its accompanying decree applies to companies with securities admitted to trading on a regulated market as from financial years beginning after 31 December 2011. In addition, the management reports in which this information has to be disclosed form part of registration documents registered or filed with the AMF.
- Some of this information must also be included in the Risk Factors section required by European Regulation 809/2004 of 29 April 2004 (the Prospectus Regulation) whenever its financial impact is potentially material.
- As indicated in Recital 10[3] of Directive 2006/46/EC on annual accounts, this subject also forms an integral part of corporate governance. In addition, on 16 April 2013, the European Commission published a draft directive calling for mandatory non-financial reporting[4].

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[1] Act no. 2010-788 of 12 July 2010 establishing a national commitment as regards the environment.
[2] Decree no. 2012-557 of 24 April 2012 on corporate transparency requirements in relation to social and environmental issues.
[3] Recital (10): Companies whose securities are admitted to trading on a regulated market […] should be obliged to disclose an annual corporate governance statement as a specific and clearly identifiable section of the annual report. That statement should at least provide shareholders with […] information about the corporate governance practices actually applied, including a description of the main features of any existing risk management systems and internal controls in relation to the financial reporting process. […] Furthermore, where relevant, companies may also provide an analysis of environmental and social aspects necessary for an understanding of the company's development, performance and position. […]
[4] This requirement is included in Article 46 of the Fourth Accounting Directive (on the annual accounts of companies with limited liability – 78/660/EEC) and Article 36 of the Seventh Accounting Directive (Directive 83/349/EEC on the consolidated accounts of companies with limited liability, Article 36 of which encourages companies to publish non-financial information where relevant).

- Investors increasingly factor non-financial, or sustainability, criteria into their investment decisions (this is particularly true of SRI funds[5], as well as some institutional investors).

As in 2010, the AMF's report mainly focuses on the presentation of information published by companies. As such, its purpose is not to assess the relevance or exhaustiveness of this information. Similarly, the report does not look at the quality of the data collected or at the way they are aggregated to form the summary information that companies ultimately publish.

Key findings

This report shows that French companies have made considerable efforts in relation to SER, notably as regards time, resources, cost and development of new tools. This is the case both for large companies and for SMEs and mid-tier companies.

Nevertheless, companies still need to familiarise themselves with the information required by the Grenelle 2 decree and to interpret it in light of their own specific challenges and, where relevant, the risks they identify, particularly through risk mapping. Companies still need to adopt a pragmatic approach so they can identify and prioritise the information to be included in their strategies and, ultimately, their reporting.

Half the sample consists of large companies[6], or LCs, (50% of which are included in the CAC 40 index), while the other half consists of SMEs and mid-tier companies[7]. Differentiated statistics have been calculated where possible. In addition, the sample of LCs is similar to that used in 2010 so as to enable certain data to be compared over time.

1. <u>Presentation of non-financial information</u>

- Every company in the sample presents SER information in its registration document.
- Many companies either follow the list set out in the Grenelle 2 decree or provide a table of cross-references to help readers identify more easily the topics covered by the decree.
- In practice, almost every company includes SER information in its management report.
- However, around half of all companies (and three quarters of LCs, unchanged since 2010) disclose SER information through media other than their websites (such as subject-specific reports and reports for analysts or fund managers). For that reason, the data is not always easy to identify and understand.
- A few companies expressly state that they have encountered difficulties in aligning their non-financial reporting timetables with their financial reporting schedules, often because their non-financial information is evolving and/or in the process of being structured.
- The number of pages contained in SER reports forming part of registration documents varies widely from one company to another. The average length is 24 pages[8], with a minimum of 2 and a maximum of 87 pages (11 for SMEs and mid-tier companies and 36 for LCs, compared with 28 pages in 2010).
- On average, SER information accounts for 9% of the total volume of information set out in registration documents published by sample companies (7% for SMEs and mid-tier companies and 11% for LCs); this percentage does not take account of corporate governance data set out elsewhere.
- No company presents the information in its registration document in the form of an integrated report setting out concisely and consistently the company's strategy, governance and current and future performance.

2. <u>Scope of information</u>

- Around three-quarters of the companies in the sample provided at least some details on the scope of their non-financial information (approximately 90% of LCs, the same as in 2010).
- In nearly all cases, companies provided non-financial information on a consolidated basis. However, they did not always expressly describe this scope, and the scope sometimes varied significantly depending on the data.

[5] Socially responsible investment

[6] Companies belonging to Segment A of NYSE Euronext – i.e. with a market capitalisation of more than €1 billion.

[7] Companies belonging to Segment B (companies with a market capitalisation of between €150 million and €1 billion) and Segment C (companies with a market capitalisation of less than €150 million) of NYSE Euronext.

[8] With a median of 19 pages and a standard deviation of 15 pages.

3. Information gathering

- About one-half of the companies in the sample specified how they collect non-financial information (around 70% of LCs, the same as in 2010).
- Most companies provided information about the people in charge of preparing and directing non-financial reporting.

4. Description of the ESR policy

- 83% of the companies analysed, and almost all LCs, provided information on their own and any subsidiaries' policies (i.e. initiatives and guidance) in the area of sustainable development and ESR.
- Some of the sample companies also state expressly that ESR was part of or integrated into their group strategy.

5. Use of one or more standards

- 37% of sample companies (60% of LCs) expressly said they used a standard, such as the Global Reporting Initiative or a sector standard.
- Three companies said they had created their own standard.

6. Presentation of non-financial indicators

- All the companies analysed published non-financial indicators, including environmental but also social indicators. In the AMF's 2010 report, only 90% of LCs did this.
- More companies in the sample presented quantitative non-financial indicators, and some stressed the material nature of certain indicators. Even so, the indicators presented in the reports are insufficiently standardised to allow companies to be compared.
- 14% of companies expressly said they had introduced new indicators since the last financial year.

As regards indicators themselves, an additional analysis covering the seven non-financial themes required under the Grenelle 2 decree (training, absenteeism, gender equality, occupational accidents, waste production, water consumption and CO_2 emissions) reveals that:

- companies are endeavouring to communicate across a broader reporting scope;
- indicators are relatively stable and comparable over time at individual companies, although a few companies provide some data for a single financial year only;
- the wide range of indicators used by companies in each area makes it difficult, as in 2010, to compare indicators across companies, although trends are crystallising in terms of the selection of certain indicators;
- the methods used to measure the same indicator may vary from one company to the next, although more and more companies are supplying specific information about the methodologies they use.

7. Publication of targets and areas for improvement

- 58% of companies in the sample published quantitative or non-quantitative ESR targets (85% of LCs, compared with 73% in 2010). In all, 27% of companies gave targets for 2013 while other companies looked ahead to 2015 and 2020.
- About one-half of the companies in the sample (23% of small SMEs and mid-tier companies, and 70% of LCs, compared with 50% in 2010) published quantitative targets.

8. Implementation of the "comply or explain" principle provided for in the decree

- The companies in the sample took various approaches to the "comply or explain" principle provided for in the abovementioned decree.
- The Decree of 24 April 2012 was not fully applied by all sample companies, especially by the smallest firms.

- Approximately 30% of the sample companies said they either not produce certain data requested by the decree and/or they did not feel the data were relevant. The results were basically the same for the SME/mid-tier and large company samples.

- Not all companies provided explanations for missing information and those that did sometimes couched their explanations in very general terms.
- Some companies provided additional details specifically linked to their business.
- More and more companies are providing forward-looking analyses, with quantitative or non-quantitative targets, assessments conducted internally or with the aid of an outside party, areas for improvement, constant improvement policy, and so on.

9. Social and environmental risks

- About 60% of companies in the sample provided a typology of the social and environmental risks to which they are exposed (about the same among SMEs/mid-tier companies and LCs, with the latter group's levels unchanged since 2010). 65% of companies at least briefly described their policy for managing these risks (internal policy, insurance, specialised external review, etc.).
- Virtually all the sample companies described the laws and regulations applicable to them. In 2010, two-thirds of LCs supplied this information.

10. Information reviewed by an independent third-party body

- 62% of companies in the sample (including 93% of LCs and 27% of SMEs/mid-tier companies) asked one or more independent third-party bodies to verify some or all of their non-financial indicators. In 2010, 43% of LCs (70% of CAC 40 firms) asked their statutory auditors to perform an in-depth audit of a selection of non-financial indicators.

11. The role of non-financial rating agencies

- Around one-quarter of companies in the sample (more than 40% of LCs, the same as in 2010) reported the rating that they had been awarded by one or more non-financial rating agencies.
- In addition to their rating activities, it should be noted that some agencies also specialise in social responsibility audits for companies and organisations.
- 32% of the companies in the sample said they are part of one or more indices, most of which have been created by non-financial rating agencies (including 55% of LCs, compared with 32% in 2010).

12. The role of ESR in governance

- One-quarter of LCs in the sample (all but one of which belong to the CAC 40) have set up a special committee of Board members to deal expressly with non-financial matters within the Board of Directors. In 2010, 27% of LCs had taken this step.
- 14% of companies in the sample expressly stated that for the 2012 financial year, they had linked part of the variable compensation of their directors and corporate officers to non-financial performance criteria (23% of LCs, compared with 17% in 2010).

Recommendations and areas for discussion

The AMF is repeating some of the recommendations made in December 2010 that it feels still apply.

For simplicity's sake, the recommendations that remain applicable are repeated in this document so that issuers do not have to go back to the 2010 report to check them. Some have been slightly reworded, in part to better reflect newly formulated observations and changes to standards since the AMF's 2010 report was published. The AMF is also issuing **four new recommendations and setting out three new areas for discussion.**

As in 2010, the recommendations for listed companies, whose scope and effective application should reflect the size and business of the company, essentially address the presentation of information provided by companies in the sample, especially social and environmental data, insofar as this information is needed to understand developments in the business, results and situation of the companies in question. The recommendations also apply to the presentation of risk factors, notably as regards the section included in the Prospectus Directive.

The AMF's observations also provide the basis for areas for discussion with industry groups and other stakeholders.

Recommendations for listed companies

1. Basic recommendation on implementing the "comply or explain" principle

Article R. 225-105 of France's Commercial Code requires companies to identify, from among the items of information mentioned in Article R. 225-105-1 of the same code, "information that, given the nature of the company's business or organisation, cannot be produced or does not seem relevant, providing appropriate explanations for this".

Accordingly, if information cannot be produced or seems irrelevant, the AMF recommends that companies provide detailed explications that are specific to the company's situation.

To make the information clearer, the AMF also recommends that companies include in their registration document a summary table of the information they are not publishing; they should separate information that cannot be produced from data that appear irrelevant, while providing the related detailed explanations.

2. Information materials

When information is divided between several parts of the registration document or is published on other media, such as the company's website, the AMF recommends that companies should make this clear (in their registration document, for instance) through cross-references to the chapters or materials in question, to provide readers with the most comprehensive view possible of the ESR policy conducted by each company.

To make the information easier to understand, the AMF also repeats its recommendation that companies should provide either a correspondence table, in the form they deem most appropriate, with cross-referencing to the information required by the decree, or an index introducing the ESR-related information. If this information is not presented in the registration document, a reference should be included to the relevant materials.

3. Methods used to present information

In terms of presentation, the AMF once again recommends that:
- companies should adopt a clear, precise presentation of their ESR policy, indicating the resources they allocate to it;
- in all cases, the scope of the information should be defined and stated as consistently as possible from one year to the next. This in no way rules out a particular focus on social and/or environmental matters in one or several subsidiaries, if the company considers that this information is particularly important and ought to be brought to the knowledge of the public.

In addition, for better understanding and internal structuring, the AMF repeats its recommendation that companies present the way in which they collect and consolidate non-financial information, and the limits of that collection (in the form of a methodology note, for example). The choice of the medium through which this information is presented is left to the company's discretion. However, if the information is not present in the registration document, reference should be included to the relevant materials.

4. Use of a standard

The AMF reiterates that, under Article R. 225-104 (amended) of the Commercial Code, when a company voluntarily complies with a national or international social or environment standard, the company's report may mention this, providing details about the standard's recommendations and the methods used. Further, the AMF again recommends that companies which have developed an internal standard should state this explicitly and give details.

5. Presentation of indicators

The AMF repeats its recommendation that companies making use of quantitative indicators should define them clearly and use them consistently from one period to another (insofar as the indicators still meet a need). In this respect, companies should be clear about the definitions and calculation methods they use.

It is also important that companies communicate on the data required under Article R. 225-104 of the Commercial Code, highlighting the most significant indicators for their activity, whatever their trends, to provide a true and fair view of performance in these areas.

6. ESR objectives highlighted by companies

The AMF once again recommends that companies communicating about objectives to measure the company's commitment to certain social and/or environmental aspects:

- should present clear, precise objectives that are well-argued and measurable; and
- should monitor these objectives in the reports for subsequent periods.

7. Social and environmental risks

Concerning the publication of social and environmental risks, companies are invited to refer to AMF Position/Recommendation 2009-16 (Guide to preparing registration documents).

The AMF also wishes to restate that its recommendation that companies should demonstrate the link between these risks, and notably those described in the "Risk Factors" section of the registration document, and the internal control procedures that are implemented, also applies to non-financial risks, in particular social and environmental risks. This link should make it easier to grasp the way in which the company understands, formalises and, ultimately, strives to control these risks. Companies are encouraged to introduce a system for identifying, analysing and addressing risks. It would seem logical that this should also include non-financial risks.

8. Link between non-financial risks and provisions in the accounts

The AMF encourages issuers to show the link, where one exists, between the non-financial risks to which the company is exposed and provisions in the accounts. If this link is not explicit, it would be good to include a reference to the accounts.

9. Non-financial rating

The AMF once again recommends that companies communicating about a non-financial rating result should also present the main criteria resulting in the said rating, or should refer to their own websites or that of the non-financial rating agency.

10. Report of the third-party body

For greater clarity, the AMF recommends companies to specifically identify the indicators for which the independent body has given assurances. This can be done, for example, by including a summary list in the body's report or mentioning the distinctive features of the relevant indicators in the SER report.
Further, where the independent third-party body's report provides both moderate and reasonable assurance about indicator selection, the company is urged to present visibly and separately the indicators that have received either type of assurance.

11. Presenting information in the committees or the board

Companies that have set up a special Board committee to deal with social and/or environmental issues should provide information about its membership, remit and links with other committees, as well as its findings.

More broadly, issues relating to sustainable development and social and environmental responsibility should be placed on the agenda of one or more Board committees or the Board itself (alternatively, a special purpose committee could be formed). Companies should be free to set the time periods for addressing these issues.

12. SER and senior management remuneration

Article L. 225-37 of the Commercial Code[9] states that the corporate governance report prepared by the chairman of the board of directors or the supervisory board should refer to the principles and rules adopted to set the remuneration of directors and corporate officers, as well as the benefits of any kind they may receive. In this respect, the AMF once again recommends that companies should stipulate precisely and explicitly any quantitative and qualitative criteria used to determine the SER-related variable component of remuneration.

Areas for discussion for various stakeholders

1. Taking greater account of CSR in corporate governance codes

As the AMF noted in its 2013 report on corporate governance and executive compensation in companies referring to the AFEP-MEDEF code (AMF recommendation 2013-15 of 10 October 2013), SER is an increasingly important component of corporate disclosure and should therefore be taken into greater account when determining how boards of directors operate and making objective assessments of executive performance. It would therefore be helpful if these aspects were incorporated into the AFEP-MEDEF and Middlenext codes.

Doubtless these codes could also lay down principles for how companies should apply the "comply or explain" principle to this issue, notably the requirement to provide sufficiently detailed and specific explanations when some of the information mentioned in Article R. 225-1051 of the Commercial Code is not divulged.

2. Better comparison of data in a business sector

The AMF calls on companies operating in the same business sector to agree – as some have already done, both in France and internationally – on ways of dealing with certain issues for which their investors, and in some cases their stakeholders, have high expectations. This would encourage the publication of clearer and more consistent information.

3. Better regulation of non-financial rating agencies

Non-financial rating agencies are not subject to a specific regulatory framework. For that reason, consideration should be given to drafting a French or European code of conduct or a European regulation that would establish guidelines on matters such as the prevention of conflicts of interest, transparency or rigorous methodology.

[9] For limited companies with a board of directors; Article L. 225-68 ibid applies to limited companies with a supervisory board.