AUTORITÉ
DES MARCHÉS FINANCIERS

AMF

AMF 2008 REPORT ON CORPORATE GOVERNANCE AND INTERNAL CONTROL

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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

EXECUTIVE SUMMARY

The Autorité des marchés financiers (AMF) is publishing its fifth report on the corporate governance and internal controls of companies making public offerings. The report is based on an analysis of disclosures made by a sample of 100 companies whose shares are traded on Euronext Paris.

This is the last report that will be based on a text that draws most of its substance from the Financial Security Act of 2003. Next year, companies will be required to draft their reports in accordance with the new European framework resulting from the transposition of Directives 2006/43/EC and 2006/46/EC. Under these circumstances, the AMF has chosen not to issue any new recommendations, aside from a remark concerning the reference framework and a recommendation on the transparency of various components of executive pay.

For clarity, as it did last year, the AMF has summarised at the end of each section the recommendations made in the four previous reports if they still apply today, so that companies will not have to refer back to them when preparing their 2009 reports. A summary of the principal legislative amendments enacted in 2008 are provided below, along with new AMF recommendations.

The AMF once again commends companies for their continued efforts to improve the quality of the information they provide to the market.

Scope

Pursuant to the Economic Modernisation Act, the draft administrative order reforming the framework for public issuance of securities[1] proposes that the requirement to provide shareholders with a report on corporate governance and internal control should be limited to French companies (limited-liability companies and limited partnerships with shares) listed on a regulated market.

Corporate governance

The Act of 3 July 2008 ("DDAC"), which amends various aspects of French company law in order to comply with EU law (and transpose Directive 2006/46/EC), provides that companies must identify the corporate governance code to which they refer and provide an explanation for any provisions they have chosen not to apply. If the company does not apply a code, it should give its reasons for this in the report and specify the rules that it applies in addition to statutory requirements. Companies should also provide information in their next report concerning its approval by the board of directors.

Companies should also comply with the provisions of the administrative order transposing Directive 2006/43/EC pursuant to the DDAC Act, and in particular the provisions relating to the establishment of audit committees. It should be noted that many French companies have largely anticipated this requirement, in some cases by several years.

Internal control

More than three-quarters of the companies in the sample provide information on the reference framework they use in developing and then implementing their internal control systems and/or in drafting their reports. Nearly three-fifths of these companies say they use the AMF reference framework.

While a progressive approach or the adoption of the entire AMF framework both appear satisfactory, a reference to the framework in only vague and general terms does not satisfy the goals set out by the AMF in its January 2007 recommendation, confirmed in January 2008

[1] Currently being drafted; the administrative order must be issued within six months of publication of the Economic Modernisation Act.

Furthermore, companies must take into account the requirement set forth in the DDAC Act whereby the chairman must also report on the company's risk management procedures.

Executive pay

Ninety-eight percent of the companies that issue a registration document disclose, at least summarily, the principles and rules used to determine executive pay. The AMF commends the efforts made by companies to improve transparency by presenting a special section in the chairman's reports devoted to the principles and rules set by the board to determine executive pay and benefits.

Nevertheless, the need for clear and accessible information on executive compensation calls for an overhaul of the legislation.

The requirements dealing with executive pay are defined and applied as follows:

- multiple sources (overlapping laws);
- sometimes different scopes;
- communicated in multiple forms (management reports, chairman's reports on corporate governance and internal controls, etc.);
- complemented by regulatory recommendations (recommendations for registration documents, recommendations for the chairman's reports on corporate governance and internal controls, and accounting recommendations), along with those of professional associations (AFEP, ANSA, MEDEF, AFG, etc.) and other specialised bodies (IFA).

Consequently, the existing framework should be simplified[2] to ensure uniform enforcement of the principle of transparency in compensation arrangements.

The AMF encourages companies to apply the recommendations formulated by AFEP and MEDEF in their report on executive pay published in October 2008. This document supplements the one published in January 2007 which the previous AMF report encouraged companies to apply. Accordingly the AMF wrote a letter inviting companies to disseminate and to post on their web-site the decisions adopted by their board in this respect by the 31 December 2008. Companies are also required to file the decisions of their board with the authority. The AMF will prepare a summary of published information as from the beginning of 2009, and monitor and report on their implementation within the AMF's next report.

More specifically, the AMF recommends that companies:

- indicate clearly whether they apply all the October 2008 AFEP/MEDEF recommendations, and if they apply only some of them, explain precisely on which points they have decided to differ;
- provide detailed explanations of the fixed and variable components of compensation and disclose whether benefits in kind are awarded;
- disclose whether compensation is calculated on a net or gross basis;
- present a table that displays clearly the fixed compensation, variable compensation, directors' fees, and benefits in kind awarded to each executive, along with a comparison of the compensation paid over several financial years;
- provide explicit information on the criteria used to determine the variable component of executive pay;
- describe clearly and satisfactorily the terms of the commitments extended individually to one or more executives, particularly for deferred compensation;
- ensure that the information provided in the body of registration documents or management reports is consistent with that contained in regulated agreements or the draft resolutions submitted to the general meeting;
- ensure that investors are informed of all provisions in employment contracts that can influence executive pay.

[2] In the report of the working group on small and medium capitalisation companies published in November 2007, the participants were already calling for the simplification of numerous requirements having multiple sources and different scopes. As an example, they cited the requirements on executive pay disclosures.

INTRODUCTION

This report has been prepared pursuant to Article L.621-18-3 of the Monetary and Financial Code, stemming from the Financial Security Act of 1 August 2003[3]. Under this article, the *Autorité des marchés financiers* (AMF) is required to compile an Annual Report on Corporate Governance and Internal Control based on information published by legal entities making public offerings. This report also discusses[4] "the principles and rules laid down by the Board of Directors or the Supervisory Board, as the case may be, for determining the compensation and sundry benefits granted to executives of companies whose securities are traded on a regulated market"[5]. Finally, the Act of 30 December 2006[6] authorises the AMF to "approve any recommendation that it deems helpful" in this regard.

The first section of this report deals with methodology and general statistical findings (1). The second and third sections provide an overview of French laws and regulations (2) and international developments relating to internal control and corporate governance (3). The remaining sections of the report focus on the AMF's findings from its analysis of companies' reports on corporate governance (4) and internal control (5), along with principles and rules laid down by the Board of Directors or the Supervisory Board for determining the compensation and sundry benefits granted to executives in 2007 (6). This last section also presents several findings relating to the application of the Act of 21 August 2007 for the promotion of work, employment and purchasing power ("TEPA" Act).

1. METHODOLOGY AND GENERAL STATISTICAL FINDINGS

1.1. Objectives and methodology

The purpose of this report is to assess the appropriateness of public disclosures concerning:

- the corporate governance and internal controls of publicly traded companies;
- the rules and principles relating to the compensation and sundry benefits granted to executives by companies whose shares are traded on a regulated market.

The report is based on documentary analysis and interviews with internal control officials of several companies included in the sample.

[3] Act 2003-706 of 1 August 2003, published in the Official Journal dated 2 August 2003: Article 122 (introducing article L.621-18-3 in the Monetary and Financial Code) as amended by Act 2005-842 of 26 July, Act 2006-1770 of 30 December 2006, and Act 2008-649 of 3 July 2008.

[4] Following the publication of the Act of 30 December 2006 on the development of profit-sharing and employee share ownership and various social and economic provisions.

[5] For simplicity, the terms "report on corporate governance and internal control" and "chairman's report" will be used in this report.

[6] Article 62-IV.

1.1.1. Sample and sub-samples

1.1.1.1. Overall sample

The overall sample covers 100 companies with shares are traded on Euronext Paris[7]:

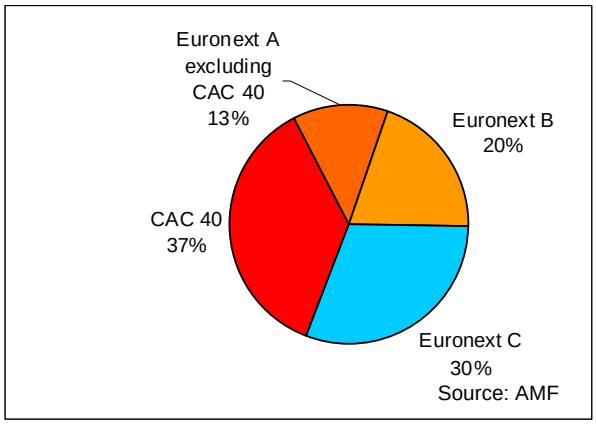
- 50 in segment A[8], including 37 companies that were in the CAC 40 index at 31 December 2007[9],
- 20 in segment B;
- 30 in segment C.

Half the companies in the sample were not in the sample analysed in last year's report. Nearly 80% of the new companies in the sample are traded in segments B or C of Euronext Paris. It should also be noted that this year's sample includes a larger number of companies in segment B (20 in 2008 compared with 3 in 2007).

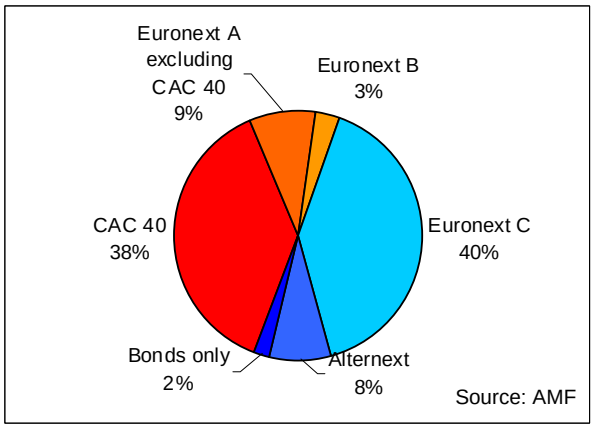
In contrast with the first four reports, this year's sample did not include any bond issuers; and in contrast with the two most recent reports, it did not include issuers trading on Alternext.

For practical reasons, since the reports were analysed between April and July, no company using a non-calendar financial year was included in the sample (apart from three in the CAC 40 index[10]).

Composition of the 2008 sample



Composition of the 2007 sample



1.1.1.2. Sub-samples

As with last year, a balance has been struck between companies with large market capitalisations and smaller companies in order to be able to refine the statistics by dividing the sample into two equal-size sub-samples.

Accordingly, the 2008 report contains three sets of statistics:

- the first set relates to all companies in the sample (see chart "Composition of the 2008 sample", above),
- the second set encompasses 50 companies in segment A of Euronext Paris (referred to hereafter as the Euronext A sub-sample or the Euronext A group),

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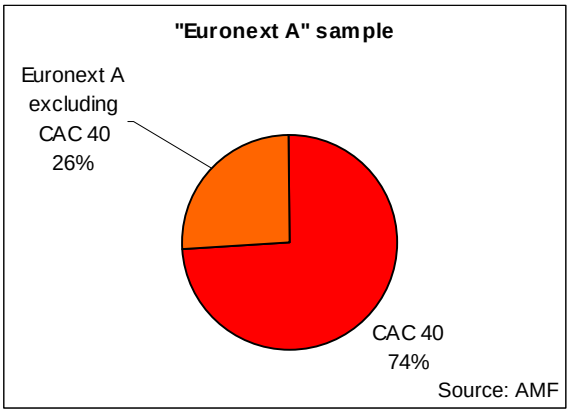
7 The merger of Euronext N.V. and the NYSE Group Inc. resulted in the creation of a new international brand: NYSE Euronext. To capitalise on this international reputation, Euronext decided to change the name Eurolist to Euronext, the European regulated market of NYSE Euronext. Consequently, since 1 January 2008, companies traded in Paris are identified as being traded on Euronext Paris.

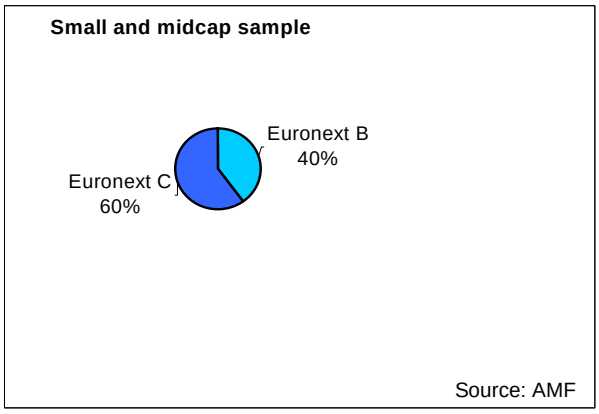
8 NYSE Euronext has organised the exchange into three segments based on market capitalisation:
Segment A – more than €1 billion
Segment B – between €150 million and €1 billion
Segment C – less than €150 million

9 The three companies that were in the CAC 40 at 31 December 2007 and that were not included in the sample are all non-French: Arcelor-Mittal, Dexia, and ST Microelectronics.

10 Of these companies, two end their financial years on 31 March and one on 30 June.

- the third set encompasses 50 issues in segments B or C (referred to below as the small and midcap sample or group [11]).





Because they were constructed differently, the sub-samples used in the AMF's 2007 and 2008 reports are not comparable. Last year, because the small and midcap working group had not completed its task by the time the data were analysed, a decision was made to define one sub-sample that included companies traded in Euronext segments A and B and a second sub-sample composed of companies traded on Euronext C and Alternext. This year, following the publication of the AMF's position on small and midcaps in January 2008, it seemed appropriate to work with a Euronext A sub-sample and a small and midcap sub-sample.

A list of the companies analysed can be found in the appendix.

1.1.2. Analytical procedure

The report was based on a documentary analysis and a series of informal interviews.

1.1.2.1. Documentary analysis

A matrix representing the main aspects of corporate governance and internal control was drawn up and expanded in relation to the four previous years to serve as the basis for the off-site statistical analysis of the reports published by the sample companies.

1.1.2.2. Interviews with issuers in the sample

The AMF supplemented its off-site analysis with direct discussions with seven sample companies[12] concerning their internal control systems. This additional step, based on concrete experience with the companies concerned, allowed the AMF to better analyse their investments in internal control, the measures taken to document, test, and evaluate their procedures, and the problems encountered.

A summary of these interviews is provided in section 5.3 of this report.

[11] This refers to the work done in 2007 by a working group, chaired by Yves Mansion, on small and medium market capitalisations. In the position published on 9 January 2008, the AMF defined small and midcap companies as companies having a market capitalisation of less than €1 billion, in order to align itself with the criteria already established by NYSE Euronext to define segments B and C of Euronext Paris.

[12] Three companies in the CAC 40, including one which is subject to the Sarbanes-Oxley Act, two in the SBF 120, one in segment B, and one in segment C.

1.1.3. Comparison of statistics with previous years and between sub-samples

Explicit mention will be made when the 2008 statistics differ substantially from the findings reported by the AMF in last year's report, or from those presented in the 2004, 2005, or 2006 reports. On the other hand, for the sake of brevity, no mention of the previous year's statistics will be made if there is no change. Specific mention will also be made when the analysis of the Euronext A or the small and midcap sub-samples gives results that differ substantively from those for the overall sample.

1.1.4. The AMF's recommendations

For clarity, the AMF will summarise the various recommendations made it its first four reports, if they are still applicable, so that companies do not have to refer back to them when preparing their 2008 reports in 2009. These recommendations will be supplemented with new recommendations, which will be identified as such.

1.2. General statistical findings

1.2.1. Report format

The number of pages in the reports varies from four to 25, not including cross-referencing to other sections of the registration document.

In general, banks and insurance companies, along with companies subject to the Sarbanes-Oxley Act, included longer and more detailed sections on internal control in their reports than did other companies. Companies that were delisted from the US market during the 2007 financial year do not necessarily appear to have reduced the amount of information disclosed in their reports.

1.2.2. Inclusion of reports in the registration document

Of the 100 companies in the sample, 94 submitted a registration document[13] to the AMF for the 2007 financial year. All 94 included the chairman's report in their registration document, usually in the body of the document (generally as part of the chapter on corporate governance, or, more rarely, at the end of the document or as an appendix).

1.2.3. References to other chapters of the registration document

Forty-three percent of the companies in the sample that published a 2007 registration document include cross-references to chapters of the document in the chairman's report.

When there is a cross-reference in the chairman's report dealing with the preparation and organisation of the Board's work, it usually relates to the chapter on "Board Membership and Practices", and more specifically to the sections covering the requirements in paragraphs 14 (administrative, management and supervisory bodies, and senior management) and 16 (board practices) of Annex I of European Regulation 809/2004 implementing the Prospectus Directive[14].

Cross-references dealing with internal control generally refer to the chapter on "Risk Factors".

Furthermore, some companies present the principles and rules set by the board for determining executive compensation and benefits in a section of the chairmen's report, while others provide a cross-reference to a section on compensation in their registration document, often entitled "Remuneration and Benefits" [15]. Even those companies that do not provide a cross-reference include such a section in their reference document.

[13] The six issuers in the sample that did not publish a registration document are distributed as follows: one foreign company in Euronext segment A, two French companies in segment B, and three French companies in segment C.

[14] Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC.

[15] Note that point 15 of Annex I of European Regulation 809/2004 is so titled.

The AMF stresses the need for clarity in the presentation of the report on corporate governance and internal control and recommends that, when the contents of the report are spread out over several sections of the registration document, the report should refer readers to these sections. Companies that publish their registration document in the form of an annual report should supplement the cross-reference table with such references.

1.3. Compliance with publication rules

The AMF is responsible for ensuring that statutory or regulatory publications are produced by companies making public offerings. It periodically verifies the publication of the report on internal control procedures and corporate governance. In this context, it may make public any information it deems necessary to keep the market properly informed.

As of 15 September 2008, 257 of the 765 companies surveyed[16], or 33,6% of the companies concerned, were not up to date on their corporate governance and internal control disclosures[17]. When only French companies traded on a regulated market are considered, the figures are 6 companies in Euronext segment A (or 4,5% of the French companies in this segment), 27 in segment B (or 15,5% of the companies in this segment), and 60 in segment C (or 23,7% of the companies in this segment).

A the end of October 2008, the AMF sent reminder letters to French companies whose shares are traded on Euronext or Alternext and that had not filed their reports on corporate governance and internal control. At 15 November 2008, 1,5% of the companies listed in segment A of Euronext, 5% of the companies listed in segment B, and 16,6% of the companies listed in segment C had still not filed.

By 31 December 2008, a new survey of delinquent filers will be conducted and a second letter will be sent informing them that unless they file immediately, they will be added to the list posted on the AMF's website.

This type of procedure was used successfully in 2007 to achieve a major reduction in the number of companies that had not met the publication requirements set out in Article 222-9 of the AMF's General Regulation (see below). On 8 April 2008, the AMF posted an online news release[18] naming the French companies listed on Euronext or Alternext that had missed the filing deadline for their internal control and corporate governance report.

This list comprised eight companies. Errors and omissions excepted, it provided a factual statement of failures to file the report within the legal time limit and to rectify the situation as of the date of publication of the news release. The AMF did not examine the causes of or reasons for the delays.

Companies are reminded that, following the transposition of the Transparency Directive into French law in January 2007, they are required to file their corporate governance and internal control reports with the AMF and to post the reports on their websites, along with the rest of the regulatory information specified in point 2 of Article 221-1 of the AMF General Regulation. They should also issue a news release announcing that the report is available.

As it did last year, the AMF will draw up and web-post a list of the issuers that have not met these publication requirements for the 2008 financial year.

[16] These statistics do not include companies that made a public offering that was not followed by a listing. Furthermore, only those companies that have been listed on Alternext or the *Marché Libre* through a public offering are concerned. The figures cover companies whose reports have publication dates no later than 15 September 2008. At this stage, the AMF has analysed the documents filed with it by the company or its publisher, along with registration documents that have been filed or registered.

[17] This does not necessarily mean that these companies had not produced a chairman's report on corporate governance and internal control or had not published it on their own website.

[18] Available at http://www.amf-france.org/documents/general/8270_1.pdf

2. FRENCH LEGISLATION AND REGULATIONS

Adopted on 1 August 2003, the legislative framework applicable to chairmen's reports was amended in mid-2005, at the end of 2006 and in 2008 (see summary table in Annex 2). It is therefore important to distinguish the provisions that apply to reports drawn up by companies for 2007 (point 2.1) from those applicable to reports for 2008 (point 2.2.).

2.1. French legislation, regulations, and recommendations applicable to 2007 reports

2.1.1. The legislative framework applicable on 1 January 2007

Article L.621-18-3 of the Monetary and Financial Code states that legal entities that make public offerings are required to publish information relating to the matters referred to in the last two paragraphs of Articles L.225-37[19] and L.225-68[20] of the Commercial Code, in accordance with the conditions set out in the AMF General Regulation. It states further that the AMF shall compile an annual report based on this information and may approve any recommendation that it considers useful.

In accordance with the second to last paragraph of Articles L.225-37 and L.225-68 of the Commercial Code, the chairman of the board of directors or the supervisory board of any limited-liability company (*société anonyme*) that makes a public offering must present a report to the annual general stockholders meeting on “the preparation and organisation of the board's work and the internal auditing procedures put in place by the company”. This report must also indicate “any restrictions that the Board of Directors has placed on the powers of the chief executive officer".

In accordance with the final paragraph of Articles L.225-37 and L.225-68 of the Commercial Code, introduced by Act 2006-1770 of 30 December 2006 on the development of profit-sharing and employee share ownership, "in companies whose securities are traded on a regulated market[21], this report shall present the principles and rules that set by the Board of Directors or the Supervisory Board for determining the pay and benefits of executives".

Furthermore, under Article L.225-235 of the Commercial Code, statutory auditors must present a report appended to the management report containing their observations on the report referred to in Articles L.225-37 and L.225-68 with respect to the internal control over financial reporting.

On the specific issue of executive pay, under the Article L.225-102-1 of the Commercial Code, the management report must list the names and individual amounts of compensation and sundry benefits paid to each executive during the year by the company, the companies it controls and the companies that control it. Since the passage of the Breton Act of 26 July 2005, the report must also describe the fixed, variable, and non-recurring elements of pay and benefits along with the criteria used to calculate them or the circumstances in which they were determined. The report must also report any and all commitments made by the company on behalf of its executives, corresponding to components of pay or benefits owed or likely to be owed as a result of executives taking up, leaving, or changing their functions, or following such events. The information provided must specify the methods used to determine these commitments.

[19] For limited-liability companies with boards of directors.
[20] For limited-liability companies with supervisory boards.
[21] The rest of the Article deals with companies that make public offerings.

2.1.2. Changes in the legislative framework: the TEPA Act of 21 August 2007

Pursuant to the TEPA Act of 21 August 2007, the report on corporate governance and internal control of companies whose securities are traded on a regulated market should set out the principles and rules for determining executive pay and benefits.

2.1.2.1. The new framework

Article 17 of the TEPA Act strengthens the control of "deferred compensation" associated with the termination or change in duties of the chairman or executives of companies listed on a regulated market. These commitments were already subject to the regulated-agreement procedure under Articles L.225-42-1 (for limited-liability companies with boards of directors) and L.225-90-1 (for limited-liability companies with management boards) of the Commercial Code resulting from the Act of 26 July 2005. Henceforth all forms of deferred compensation that are not contingent on the performance of the beneficiary with regard to the company he or she directs are prohibited.

This provision applies only to the chairman of the board of directors, the chief executive officer, executive vice presidents, and the members of the Management Board.

"Deferred compensation" refers to pay or benefits owed or likely to be owed either as a result of executives taking up, leaving or changing duties, or subsequent to such events. The new regime does not apply to non-compete benefits and supplemental retirement benefits provided under the Social Security Code[22]; these items are still subject only to the standard procedure for regulated agreements.

Article 17 also requires that, before any payment is made, the company must publish the prior authorisation of the Board of Directors or the Supervisory Board, along with a statement from the Board that the performance requirements have been satisfied.

The decree of 7 May 2008 (which introduced Articles R.225-34-1 and R.225-60-1 of the Commercial Code) requires these two decisions to be posted on the company's website within five days of the Board meeting that granted authorisation or made the statement. The authorisation must remain available on the website as long as the beneficiary occupies that position, and the statement that the beneficiary satisfies the performance requirements must remain available at least until the next ordinary general meeting.

Any payment made without a statement from the Board that the performance conditions have been satisfied, and/or the publication of such statement, will automatically be null and void.

The approval of the general meeting (under Articles L.225-40 and L.225-88 of the Commercial Code) should be given in a separate resolution for each beneficiary, which should be repeated each time the beneficiary's term of office is renewed.

The statutory auditors are legally responsible for specifically certifying the accuracy and truthfulness of the information on executive pay and benefits (Article L.823-10 of the Commercial Code)[23].

2.1.2.2. Effective dates

The details of entry into force are set out in section VI of Article 17 of the Act. A distinction should be drawn between two types of commitments:

[22] That is, the "defined-benefit retirement commitments having the characteristics mentioned in Article L.137-11 of the Social Security Code ("top-up pension plans"), and commitments having the characteristics of mandatory group retirement and benefit schemes, as referred to in Article L.242-1 of the Social Security Code".

[23] The statutory auditors already should produce the same certification under Article R.823-7 of the Commercial Code, and should also verify the general truthfulness and consistency of the information provided to shareholders.

- *Commitments made on or after 22 August 2007: immediate application*

The Act of 21 August 2007 applies immediately to commitments made on or after of the date of the Act's publication, i.e. from 22 August 2007.

The requirements for transparency (publication of the Board's authorisation decision and of its statement concerning the fulfilment of performance and payment conditions) apply immediately from the date of publication of the Decree of 7 May 2008 in the Official Journal, i.e. from 11 May 2008.

- *Commitments already in place on 22 August 2007: alignment with the provisions of Articles L.225-42-1 and L.225-90-1 of the Commercial Code within 18 months*

All commitments in place on that date should be brought into conformity with the new provisions no later than 18 months after the publication of the Act, i.e. by 22 February 2009 at the latest. This includes commitments that pre-date 1 May, since the Act applies to all "commitments in place".

Commitments that have not been brought into conformity within this time can be cancelled in accordance with the terms of Articles L.225-42 and L.225-90 if they would have "harmful consequences for the company".

The 3-year time limit for an action to void such commitments does not begin to run until the 18-month deadline has expired. The report of the statutory auditor must set out the circumstances in which the commitments were not brought into conformity.

Compliance with the new regime applies both to substantive provisions (conditions relating to performance and prior authorisation, and the statement that these conditions are satisfied) and to procedural provisions (special report of the statutory auditor, individual votes at the ordinary general meeting, publication formalities).

2.1.3. AMF regulations

Following transposition of the Transparency Directive, amendments were made to Title II of Book II of the AMF General Regulation and approved by the Minister for the Economy on 4 January 2007. The amendments mean that the report on corporate governance and internal control is now part of the regulatory disclosures governed by point d) of Article 221-1 of the AMF General Regulation.

Section I of Article 222-9 of the AMF General Regulation provides that: "limited-liability companies that make public offerings shall make public, in accordance with Article 221-3[24], the reports referred to in the last paragraph of Articles L.225-37, L.225-68, and L.225-235 of the Commercial Code no later than the day of filing of the report with the clerk of the commercial court mentioned in Article L.225-100 of the Commercial Code".

Other French and foreign legal entities that make public offerings must disclose information on the matters mentioned in the final paragraph[25] of Articles L.225-37 and L.225-68 of the Commercial Code under the same conditions as those mentioned above, if they are required to file their financial statements with the commercial court registry or, if such filing is not required, immediately after the annual financial statements for the previous year are approved.

These reports and this information must be posted on the legal entity's website and must remain there for at least five years.

[24] Article 221-3 provides that:
I. - The issuer shall ensure full and effective disclosure of the regulatory information defined in Article 221-1.
II. - The issuer shall post the regulatory information to its website as soon as it is disclosed. Such information shall be displayed for at least five years after the disclosure date.
If an issuer does not have any financial instruments traded on a regulated market, publication of the regulatory information on its website shall constitute full and effective disclosure for the purposes of Section I.

[25] The AMF General Regulation will be amended so that Article 222-9 of the General Regulation covers the two last paragraphs of Articles L.225-37 and L.225-68 of the Commercial Code.

Section II of Article 222-9 states that, when an issuer compiles a registration document in accordance with Article 212-13, the registration document shall include the reports and information mentioned in section I. In this case, the dissemination procedures defined in Section I shall not apply.

Henceforth, the chairman's report will not be disseminated on the AMF website, but will simply be filed with the AMF.

Furthermore, Article 222-3 of the AMF General Regulation provides that the issuer may include the chairman's report in its annual financial report. The issuer is therefore not required to publish this information separately.

2.1.4. Reference framework for the internal control systems of listed companies

In 2005, the AMF tasked a market advisory group with developing an internal control framework for use by listed companies[26].

The outcome of this work was submitted to public consultation at the end of October 2006. Hence in January 2007 the AMF published:

- a reference framework consisting of general principles for all of a company's internal control processes, including two questionnaires appended as annexes:
  - the first on internal accounting and financial controls,
  - the second on risk assessment and risk management.

- an "application guide for the internal control procedures relating to financial reporting"[27] consisting of principles and key points of analysis.

AMF recommendations:

- In January 2007, the AMF recommended that all companies making public offerings in France should use the internal control reference framework supplemented by the application guide for financial reporting for financial years beginning on and after 1 January 2007;

- In January 2008, the AMF once again recommended the use of the reference framework and the application guide, but this time the recommendation was confined to companies in segment A of Euronext, i.e. companies with a market capitalisation greater than €1 billion on 31 December 2007.

While this reference framework can already be adapted to the specific organisational structure of a company, the working group on small and medium capitalisation companies chaired by Yves Mansion wanted to provide additional guidance to such firms, in particular by proposing a simpler version of the general internal control principles and by scaling down the application guide to the two questionnaires in the annexes.

Consequently, further to the position issued on 9 January 2008, the AMF recommends that all companies other than those in segment A of Euronext Paris should use this simplified implementation guide[28].

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[26] This working group, co-chaired by Jean Cédelle and Guillaume Gasztowtt and composed of a Plenary Committee with 20 members, was tasked with developing an internal control reference framework for use by companies subject to the statutory requirements. The participants in the group were associations representing companies (AFEP, AMRAE, ANSA, IFA, IFACI, MEDEF, Middlenext), accounting institutes (CNCC, CSOEC), qualified expert members associated non-voting members (AMF, CCAMIP, CB, FBF, Trésor).

[27] Produced under the direction of Jean Cédelle and Michel Léger.

[28] Section 1.3 of the 9 January 2008 AMF Position stated that "in general, the simple fact that a company was in segment B or C on 31 December of year N will entitle it to benefit from the specific provisions for small and midcaps in drawing up its registration documents for year N+1 in year N+2. Exceptionally, companies that were in segments B or C on 31 December 2007, according to the list due to be published by Euronext during January 2008, will have small and midcap status and will be able to benefit from the adaptations proposed in point 2 when drawing up their registration document and their internal control report for the financial year ending 31 December 2007."

The complete reference framework, like the application guide intended primarily for small and midcaps, is not meant to be imposed on companies, which may be subject to a reference framework under other regulations. Nor is it intended to replace specific regulations in effect in certain business sectors, notably banking and insurance.

All companies are encouraged to state in the chairman's report whether they have relied on the reference framework or the application guide in drawing up the report. Companies that use the reference framework or guide only partially should clearly identify the key areas or internal control processes they have applied, taking into consideration their size, type of organisation and nature of business.

They should focus on the elements and information that are likely to have a material impact on their equity or earnings.

The same principles of transparency apply to the use of any other reference framework the company may choose or may be required to apply at the international level, and which therefore should be presented.

2.1.5. Recommendations and practical guides published by professional associations in 2007

Professional associations published a number recommendations and practical guides in 2007. Some elements of these publications are summarised below.

In January 2007, AFEP and MEDEF published "Recommendations concerning the compensation of executive directors in listed companies". This document, which incorporates, supplements and clarifies the recommendations of the AFEP/MEDEF Code on corporate governance and the recommendations of the MEDEF ethics committee, is intended for the boards of directors, supervisory boards and compensation committees of listed companies.

In its 2007 report, the AMF stated that it “encourages companies to follow the AFEP/MEDEF recommendations published in January 2007 with regard to transparency, so that companies provide shareholders with comprehensive information about the amounts of compensation paid to individual executives, as well as the total cost of their group’s senior executives, and the policy for determining their pay.”

2.2. Legislation, regulations and other measures aimed at supplementing the framework applicable to 2008 reports year

The Act of 3 July 2008 (“DDAC”), which includes miscellaneous provisions adapting company law and European law, transposed into French law Directive 2006/46/EC of 14 June 2006 amending the 4th and 7th Company Law Directives in the area of corporate governance (Title V, Articles 26 to 30). Title VI, Article 32 of this Act authorises the government to use administrative orders to adopt the legislative measures for transposing Directive 2006/43/EC of 17 May on statutory audits of annual accounts and consolidated accounts[29], which provides for the appointment of an audit committee.

2.2.1. Transposition of Directive 2006/43/EC

Article 32 of the DDAC Act authorises the government to adopt by administrative order the legislative measures necessary to transpose Directive 2006/43/EC[30] of 17 May 2006 on statutory audits of annual accounts and consolidated accounts. The Ministry of Justice is currently drafting a draft administrative order.

[29] This Directive, which provides for minimum harmonisation, should be transposed before 29 June 2008.
[30] Amending Directives 78/660/ EC and 83/349/EC of the Council, and repealing Directive 84/253/EC of the Council.

2.2.2. Transposition of Directive 2006/46/EC

Directive 2006/46/EC of 14 June 2006, amending the 4th and 7th Company Law Directives in the area of corporate governance, strengthens the transparency requirements for commercial firms, particularly regarding corporate governance practices and internal controls. French legislation (Articles L.225-37 and L.225-68 of the Commercial Code and Article L.621-18-3 of the Monetary and Financial Code) already imposes requirements in this area, relating to the chairman's report. However, some adjustments were necessary in order to accurately reflect the requirements imposed by EU texts (see Annex 2).

Thus Articles 26 and 27 of the DDAC Act supplement Articles L.225-37 and L.225-68 of the Commercial Code[31] by:

- extending the subject matter of the chairman's report to include the company's risk management procedures, including details on the procedures for generating and processing accounting and financial information for the individual company accounts and, if applicable, the consolidated accounts;

- supplementing the section of the report on corporate governance with:

  - a description of the composition of the Board;

  - an "comply or explain" statement with respect to a code of conduct for corporate governance drafted by a professional association:

    - if the company voluntarily applies a corporate governance code drafted by professional associations, the statement should identify any provisions it has chosen not to apply, give the reasons for doing so, and state where the code may be accessed;
    - if the company does not apply a code, it should indicate its reasons for choosing not to, and should still state in its report the rules that it applies in addition to statutory requirements;

  - a description of the specific mechanisms relating to the participation of shareholders at general meetings or a reference to the sections of the articles of incorporation that set out these mechanisms;

  - a reference to the publication of the information referred to in Article L.225-100-3 (items likely to have an impact in the event of a public offering).

They also state that the chairman's report should be approved by the Board and made public.

Article 28[32] of the Act states in the Commercial Code that limited partnerships with share capital (*sociétés en commandite par actions*) should also produce a report containing the same information; in other words, the principles and rules concerning remuneration are not extended to them.

Article 29 broadens the statutory auditor's assignment, as set out in Article L.225-235 of the Commercial Code, by requiring them to certify that the other information required by Articles L.225-37 and L.225-68 has been compiled.

2.2.3. Economic Modernisation Act of 4 August 2008

Article 152[33] of Act 2008-776 of 4 August 2008 on modernising the economy ("LME") authorises the government to adopt, by administrative order, the legislative measures necessary to modernise France's legal framework in order to reform the public issuance regime.

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[31] Article L.621-18-3 of the Monetary and Financial Code has been amended as a result (Article 30 of the DDAC Act).

[32] An Article L.226-10-1 has been inserted after Article L.226-10 of the Commercial Code. It reads:
"Art L.226-10-1.-When a company makes a public offering, the Chairman of the Supervisory Board shall draw up a report that shall be appended to the report referred to in Articles L.225-102, L.225-102-1 and L.233-26, containing the information mentioned in the seventh and ninth paragraphs of Article L.225-68." However, the tenth paragraph of Article L.225-68 of the Commercial Code, which states that the chairman's report shall present the principles and rules set by the supervisory board to determine the pay and sundry benefits granted to executives, is not covered.
"This report shall be approved by the Supervisory Board and made public."

The General Directorate of the Treasury and Political Economy (DGTPE) launched a public consultation, accessible via its website until 12 September 2008, on the proposed administrative order to reform the regime. One of the measures proposed in the text was to limit the requirement to publish a corporate governance and internal control report to legal entities whose registered office is in France and whose financial securities are traded on a regulated market. This corresponds to the scope set forth in Directive 2006/46/EC. On 10 October 2008, the DGTPE published a document summarising the results of its consultation, which showed a vast majority of contributors in favour of this limitation.

2.2.4. Publications of professional associations in 2008[34]

The French asset management association, AFG, updated its recommendations on corporate governance in January 2008. Among the principal new recommendations, the AFG insisted on the oversight and transparency of compensation. The purpose of these recommendations is to provide guidance for asset managers when exercising voting rights at general meetings. A monitoring programme will permit the AFG to call managers' attention to any resolutions voted at general meetings of SBF 120 companies that conflict with these recommendations.

In January 2008, the French directors' institute, IFA, published a report on audit committees, describing 100 best practices. These cover the essential tasks of audit committees, the criteria to be used in determining their composition, and the methods that enable a committee to be effective[35].

The audit and internal control institute, IFACI, recently issued two research reports:

- the first, published in February 2008, was entitled “Keys for implementing internal controls: how to use the AMF internal control reference framework”. It described how to establish an internal control system, highlighting the various methods available, the measures to be taken, and the problems most frequently encountered. These materials were based on the framework's five components;

- the second report, published in May 2008 under the title "Internal control and quality: integrated performance management", examined potential synergies between ISO 9001 and reference framework, as well as the arrangements that companies implementing a quality management system should establish or improve, where appropriate, to comply with the framework.

This research presents the practices used by companies, provides examples of systems, and testifies to the progress of certain companies in adopting the reference framework.

On 6 October 2008 AFEP and MEDEF published a document on the remuneration of executive officers, supplementing the one issued in January 2007. The new recommendations concern limiting the use of severance packages, prohibiting the practice of combining an employment contract with a directorship, placing strict performance conditions on employee stock option plans, and limiting supplementary pension regimes. These recommendations form an integral part of the AFEP/MEDEF corporate governance code.

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[33] Inserted in Chapter IV (Modernising the French financial marketplace) of Title IV (Mobilising financing for growth).

[34] Although published early in 2008, it can be assumed that some companies have already implemented some of the recommendations formulated by the professional associations in their chairman's reports for 2007.

[35] The IFA report stated that best practices are likely to be influenced by the transposition into French law of the European Directive on statutory audits (2006/43/EC).

3. INTERNATIONAL DEVELOPMENTS

3.1. Transposition of Accounting and Audit Directives

All Member States in the European Economic Area (EEA) are required to transpose these directives during 2008 in order to:

- require listed companies to set up audit committees (leaving Member States some flexibility in this area), whose minimum duties are set forth in the Directive (Directive 2006/43/EC)[36]
- provide for an annual statement on internal control and corporate governance (Directive 2006/46/EC)[37].

A progress report on the transposition of these directives by Member States may be included in the next AMF report on corporate governance and internal control.

3.2. Application of the Sarbanes-Oxley Act in the United States

Following the publication on 23 May 2007 of new SEC interpretations concerning compliance with Article 404, the FAQ available on the SEC's website was updated on 24 September 2007. Four questions (numbers 12 to 15) were added concerning the application of this Article by foreign issuers listed in the United States.

For their 2007 annual reports, smaller public companies are subject for the first time to the requirements of paragraph (a) of Article 404, which requires management to assess the company's internal control system and to disclose the results of the assessment in its report. In June 2007, the SEC published a practical guide to assist small companies in this process.

In a press release dated 20 June 2008, the SEC announced that it was extending the deadline for smaller public companies to comply with the requirement that management assessments of internal control systems be certified by the statutory auditors. These companies will be subject to paragraph (b) of Article 404 for financial years that close on or after 15 December 2009.

In the same release, the SEC announced that it had received the approval of the Office of Management and Budget to continue collecting data (through an on-line survey and interviews with companies), an exercise which began in February 2008 as part of a study of the costs and benefits of implementing Article 404. The emphasis has been placed on the consequences and impacts for smaller companies of auditor certification of internal control assessments. This study also provides an opportunity to assess the impact of the new interpretation rules issued by the SEC and the new Auditing Standard No 5 of the Public Company Accounting Oversight Board (PCAOB), adopted in May 2007 with the goal of reducing the cost of complying with Article 404.

The results of this study are due to be published by 15 December 2009.

3.3. Work by IOSCO

The International Organization of Securities Commissions (IOSCO) is currently working on an update of the international principles for periodic disclosure, published in 2003. This update will be released for public consultation by the end of 2008. As part of this work, IOSCO is examining the transparency of corporate governance and internal control.

[36] Directive 2006/43/EC of 17 May on statutory audits of annual accounts and consolidated accounts (8th Company Law Directive). The deadline for transposition has been set at 29 June 2008.

[37] Directive 2006/46/EC of 14 June 2006 amending Directives 78/660/EC et 83/349/EC (the 4th and 7th Company Law Directives) on the annual and consolidated accounts of certain forms of company. The transposition deadline has been set at 5 September 2008.

4. CORPORATE GOVERNANCE

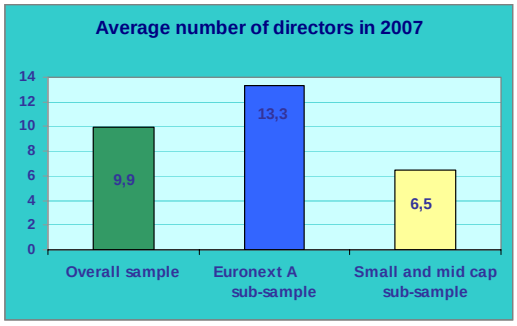
4.1. Preparation and organisation of the work of the board of directors or the supervisory board

4.1.1. Board organisation and practices

4.1.1.1. Board membership

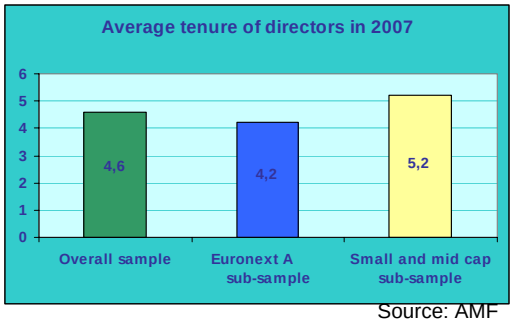
Ninety-seven percent of the companies in the sample are limited-liability companies (*sociétés anonymes*) and 3% are limited partnerships with share capital. Seventy-six percent of the companies in the sample have a board of directors and 24% have a supervisory board and either an executive board or a management board. Roughly a quarter of the companies with a board of directors separate the functions of chairman and chief executive officer. Nearly 80% of the companies are in the Euronext A sub-sample.

All the companies in the sample provide a detailed description of their board membership. The average number of members is 9.9. In the Euronext A and small and midcap sub-samples, the average number of directors is 13.3 and 6.5 respectively. In companies with supervisory boards, the average number of directors is 8.5, compared with 10.3 for companies with boards of directors.



Source: AMF

The term of office of board members is stipulated in 94% of the companies in the sample (compared with 83% last year), including all the companies in the Euronext A sub-sample. For the companies that provided the information, the average term of office is 4.6 years[38]. The terms of office for companies in the small and midcap sub-sample are one year longer (5.2 years), on average, than in companies in the Euronext A sub-sample (4.2 years).



Source: AMF

One-third of the companies in the sample (compared with 23% last year), of which 60% are in the Euronext A sub-sample, specify the nationality[39] of their directors. In companies that disclose this information, the average number of foreign directors is 2.6 (4.0 for companies in the Euronext A sub-sample). The number of women sitting on the boards of sample companies averages 0.8 (nearly 1.0 for companies in the Euronext A sub-sample and 0.6 in small and midcaps). Fifteen percent of the boards of companies in the sample have two or more women among their directors.

The directors' ages are disclosed in 60% of the cases, with 90% of the companies in the Euronext A sub-sample and 30% of the companies in the small and midcap sub-sample providing this information.

Approximately 55% of the companies provide information on the experience and education of directors, compared with slightly less than half last year. Almost all the companies that provide information on directors' education also give details about their experience.

[38] The term of office for companies in the sample ranges from 1 to 6 years.
[39] This includes only directors whose nationality is indicated explicitly and who are identified as non-French.

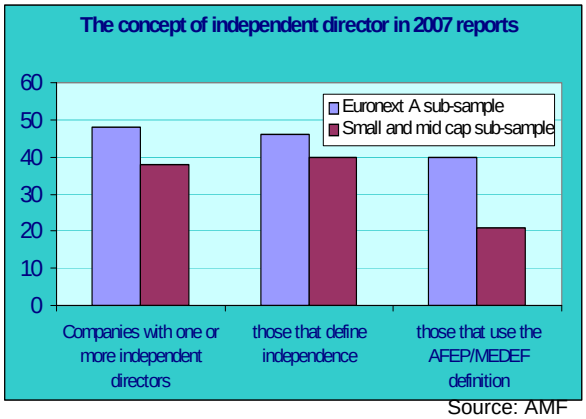
The DDAC Act of 3 July 2008 states that the chairman's report should report on the composition of the board as well as on the preparation and organisation of its work. All the companies in the sample provided information on board membership, but in most cases this information was in the body of the registration document, and not in the chairman's report itself.

4.1.1.2. Independent board members

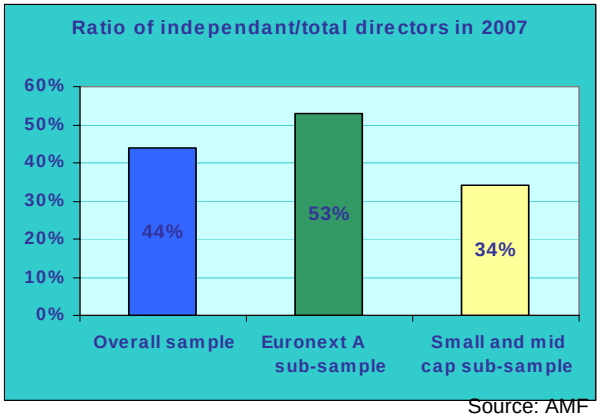
Eighty-five percent of the companies in the sample report that their board includes one or more independent directors, with an average ratio of independent directors to total directors[40] around 44%. Five companies in the sample (compared with 11 last year) state explicitly that they have no independent directors: one in the Euronext A sub-sample and four in the small and midcap sub-sample.

The concept of independent director is defined – or reference is made to the AFEP/MEDEF definition – in 88% of the reports of companies having one or more directors described as independent. Eight percent of the companies use the AFEP/MEDEF definition[41]. While some companies adhere strictly to the criteria set out in the AFEP/MEDEF report, others apply the MEDEF definition more loosely, either not taking all the criteria into account or stating that the decision to describe a director as independent is ultimately up to the board of directors.

Of the 96% of the companies in the Euronext A sub-sample that report having one or more independent directors, 96% define the concept. In 83% of these cases, they use the AFEP/MEDEF definition, either partially or fully. Of the 76% of companies in the small and midcap sub-sample that mention the presence of independent directors on their boards, 79% provide a definition of independence, which in 69% of the cases corresponds to the definition in the AFEP/MEDEF governance code. The average ratio of independent directors to total directors is 53% for the companies in the Euronext A sub-sample and 34% for companies in the small and midcap sub-sample.



Source: AMF



Source: AMF

There are considerable differences in the way that issuers refer to the AFEP/MEDEF code on the independence of directors. Some simply mention it; others provide a table showing the situation of the directors with respect to each independence criterion.

Companies that are in part family owned and those that are majority held[42] by a small number of shareholders are encouraged to follow the “at least one-third” rule set out in the 2003 AFEP/MEDEF report, which also recommends that at least half of all directors of widely held companies should be independent. There are still some differences in the methods used to calculate this ratio, depending on company’s size and how widely held its shares are, but these discrepancies are diminishing. For example, looking only at the companies in the Euronext A sub-sample, widely held companies have an average ratio of 55%, compared with about 45% for other companies (the figures for last year

[40] This statistic is based on the statements made by the companies in their reports. The companies that state explicitly that they have no independent directors are reflected in the calculation, but not those that did not indicate whether they had any independent directors.

[41] Corporate governance principles resulting from the consolidation of the AFEP and MEDEF reports issued in 1995 ("Vienot I"), 1999 ("Viénot II"), and 2002 ("Bouton").

[42] The threshold used is 30% of capital and/or voting rights

were 60% and 33% respectively). Furthermore, a number of companies consider themselves to be too small to have any independent directors. (In general these companies are traded on Euronext C and classified as family-owned.)

Some companies do not identify the directors considered to be independent, so it is not always possible to determine the level of independence of the chairmen and directors of specialised committees.

The percentage of companies in the sample reporting that their board includes one or more independent directors has stabilised at about 85%.

The AMF renews its recommendation that all companies should indicate whether their board includes one or more independent directors. The representation of independent directors on boards' specialised committees cannot be determined unless those directors are identified. Furthermore, companies should explain what criteria were used to describe directors as independent.

Last year, the AMF recommended that when companies make reference to a market standard, they should specify any respects in which they depart significantly from the criteria defined by that standard and should state their reasons for doing so. The same applies to the criteria used by the company to define the independence of its directors.

The DDAC Act of 3 July 2008 requires companies to identify where to access the code that they use and to single out any provisions they do not apply. If a company does not make reference to any code, it should indicate its reasons and should still specify in its report the rules that it applies to supplement statutory requirements.

4.1.1.3. Multiple directorships

All the companies in the sample provided information on the number and type of other directorships held by board members. In the vast majority of cases, this information is provided in the body of the registration document, usually in the chapter on corporate governance, not in the report itself.

Details on where other directorships are held are still very patchy. Nearly 60% of the companies in the sample distinguish between French and foreign directorships (compared with more than one-third in 2007). More than half of the companies in the sample specify whether the companies in which the other directorships are held belong to the same group. However, they rarely indicate whether those companies are listed.

The AMF renews its recommendation that companies should specify where their directors hold their other directorships: in other companies in the group, foreign companies, or unlisted companies.

4.1.1.4. The role of the board

Ninety-four percent of the companies in the sample define the board's tasks (compared with two-thirds last year). The figures for companies in the Euronext A and small and midcap sub-samples are 100% and 88% respectively.

The main tasks mentioned in the chairman's reports are similar to those mentioned in the previous year, namely examining financial statements, approving the annual budget, discussing strategic choices, appointing executives, and, where applicable, examining committee reports.

4.1.1.5. Board meetings

Ninety-seven percent of the reports studied disclose the number of board meetings held. The average number of board meetings for the companies in the sample is 7.3 per year (8.4 for the Euronext A sub-sample and 6.1 for companies in the small and midcap sub-sample).

Eighty-four percent of sample companies reported the directors' rate of attendance at board meetings. The average attendance rate for those companies was approximately 85%. Ninety-six percent of the companies in the Euronext A sub-sample report the attendance rate, compared with only 70% of the companies in the small and midcap sub-sample. A few companies report the attendance rates of individual directors.

Eighty-three percent of the reports provide information on the material provided to directors ahead of board meetings. Such information is often very general (agenda or technical reports). Where a timeframe for distributing this material is specified, it is generally one week[43].

An account of the board's activity is given in 69% of the cases (versus half last year). Nearly 30% of the companies either mentioned or itemised the business on the agenda, sometimes meeting by meeting. Depending on the company, board decisions were summarised in varying degrees of detail: rights issues, authorisations for acquisitions, approval of the 2008/2009 budget, 3-to-5 year strategic plan, approval of cooperation agreements, and introduction of a new product or service.

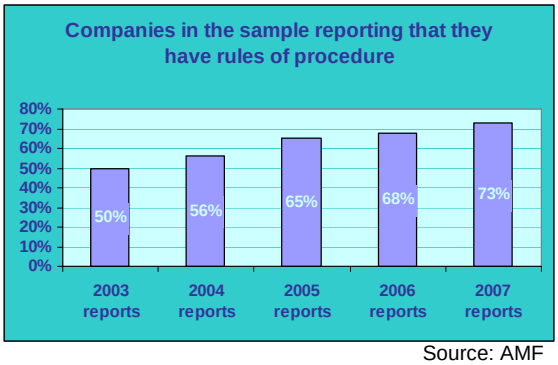
Some companies mention that the statutory accountants, whom they are legally obliged to summon to board meetings at which the financial statements will be examined, are also summoned to some other board meetings, or even to all board meetings. The chief financial and administrative officer, the head of the legal department, the head of internal control, and also the heads of internal auditor and risk management when appropriate, may also be asked to attend board meetings whenever their presence is deemed necessary.

The number of companies that give an account of the board's activity has increased from 50% of the sample last year to 70% this year.

Companies are encouraged to generalise the practice and also to disclose the subjects discussed at board meetings. The AMF also recommends that the handful of companies that do not yet do so should disclose directors' attendance rates at board meetings.

4.1.1.6. Rules of procedure

The existence of rules of procedure[44] for board meetings is reported in 73% of cases, a figure which is steadily increasing. Ninety-six percent of companies in the Euronext A sub-sample have established such rules. Of the companies that mention them, 70% disclose some information about the contents of the rules (compared with 82% last year). Fifty-one companies stated that the document itself is made public, sometimes as a summary, or, more rarely, in the form of substantial extracts.



Source: AMF

Of these companies, 21 (two-thirds of them in the Euronext A sub-sample) publish their rules of procedure in full, either in the report itself or in an annex to their registration document. A further 10 companies state that the rules of procedure can be viewed on their website, and three companies state that a paper copy can be obtained from the registered office by any shareholder on requests. Broadly, the describe the operating procedures, powers, duties and tasks of the board and its specialised committees; where appropriate, they also set out the principle for assessing the board's operation.

[43] More specifically, one company indicated that "in principle, board members receive the agenda and the minutes of the previous meeting 10 days before a meeting, and they receive the board file four or five days before the meeting. This last lead time may be reduced to two days where quarterly financial statements are concerned".

[44] Or a director's charter drafted to facilitate the board's work.

Fourteen percent of the sample companies (compared with 7% last year) that reported the existence of procedural rules – including half of small and midcaps – specify that they were introduced in 2007. About a third of the companies that already had rules of procedure report that they were amended in 2007 (compared with a quarter last year). Rules of procedure were amended to incorporate new procedures for the use of videoconferencing in board and committee meetings, to adapt the operations of the board to legislative and regulatory developments, and to revise the pay mechanisms for executives and/or the threshold limiting the powers of the chief executive officer or the chairman of the board. Several companies mentioned only that their rules of procedure had been updated, without providing any details on the extent of the revisions.

Where the rules of procedure are incorporated in whole or in part in the registration document, 60% of them contain provisions specific to the specialised committees. Some issuers also mention other framework texts, most often an ethics code.

Almost three quarters of the companies in the sample now report on the existence of rules of procedure for the board, a figure which has been increasing steadily for the past five years (50% in 2004).
Since this document is still not always made available, the AMF recommends that companies choose one of the following three approaches to disclosing their rules of procedure: include them as an annex to their registration document or annual report, provide a summary of the main points, or post them on their website and provide the hyperlink in the above-mentioned documents.

4.1.2. Organisation and functioning of specialised committees

Nearly three quarters of the companies in the sample state that they have one or more committees stipulated in the AFEP/MEDEF corporate governance principles (audit committee[45], compensation committee, and appointment committee). All companies with a specialised committee mention the interactions between the board and the committees. In the vast majority of cases, the committee's role is to make proposals and/or recommendations to the board on matters falling within their respective jurisdictions.

Seventy-two percent of the companies in the sample have set up an audit committee and 73% a compensation committee. All the companies that have an audit committee also have a compensation committee.

Some of the companies that have not established this type of committee do not explain why. The others state either that they intend to do so in the near future, or indicate that, given the size of the company, the board did not consider it necessary to set up specialised committees.

4.1.2.1. Audit committee

Seventy-two percent of the companies in the sample have an audit committee. A full 98% of the companies in the Euronext A sub-sample have one, compared with 46% of the companies in the small and midcap sub-sample.

All these companies report the membership of the committee. The average number of sitting directors is 3.6 (approximately 4 for the companies in the Euronext A sub-sample and 2.8 for companies in the small and midcap sub-sample. In companies that report having independent directors, 70% of audit committee members are independent directors; widely held companies tend to have a higher percentage. When such information is provided, it shows that the chair of the committee is an independent director in nearly 80% of all cases.

Ninety-four percent of the companies that have an audit committee report its operating methods in their reports, compared with 71% last year. The reports often consist of extracts and refer the reader to the board's rules of procedure, which are not always reproduced in full. Ninety-seven percent of sample companies that have an audit committee report the number of meetings held over the course of the year, and three-quarters report the attendance rates of committee members, which average 92%.

[45] Sometimes called the accounts committee.

The audit committee's tasks are described in 97% of the chairman's reports and fall into three categories: verifying accounting and financial information, overseeing internal control and risk management procedures, and monitoring external audits.

One company in the small and midcap sub-sample reported that it set up its audit committee in 2007.

Forty-two percent of the companies in the sample reported that the audit committee was involved in drafting the chairman's report (compared with half last year). More specifically, a large number of companies state that the audit committee examines the work of the internal audit department, or even the chairman's report per se. In addition, relations with the statutory auditors, including meeting with them, examining their work and, to a lesser extent, supervising their appointment and remuneration are often cited among the audit committee's tasks.

4.1.2.2. Compensation committee

Seventy-three percent of the companies in the sample have a compensation committee (compared with 67% last year). This figure breaks down as follows: 96% of the companies in the Euronext A sub-sample and 50% of the companies in the small and midcap sub-sample. The membership is disclosed in 97% of all cases. The average number of directors sitting on the compensation committee is 3.4. The number of meetings is reported by 96% of the companies that have a compensation committee, and attendance rates – which average 95% – are mentioned in 66% of these cases.

Two-thirds of each committee, on average, consists of independent directors. In nearly three-quarters of these committees, more than half the members are independent directors (this figure is 81% for companies in the Euronext A sub-sample and 62% for small and midcaps). In 82% of the companies for which the information is available, the chairman of the committee is not the same person as the chairman of the board, and in two-thirds of these companies the committee chairman is described as an independent director.

The tasks of the committee are described in detail in 96% of chairman's reports. They consist mainly in formulating recommendations on executive pay and (in some companies) new procedures for implementing the TEPA Act, examining the system for allocating directors' fees, and – when the committee is also responsible for giving its opinion on appointments – for the choice of new directors.

In 80% of all cases (versus three-quarters last year), an account of the committee's activity is provided, including the number of meetings and the contents of the agendas. This information was provided by nearly 92% of the companies in the Euronext A sub-sample and 56% of the companies in the small and midcap sub-sample that had a compensation committee.

In 52% of all cases, the compensation committee is combined with the appointment committee.

Seven companies, including four in the small and midcap sub-sample, reported that they had set up a compensation committee in 2007.

4.1.2.3. Appointment committee

Eighteen percent of the companies in the sample (compared with 13% in 2006) have an appointment committee that is separate from the compensation committee. All but one of these companies are in the Euronext A sub-sample. All these companies provided information on membership. The average number of directors sitting on the committee is 3.6. On average, two-thirds of committee members are independent directors, and in 56% of all cases, the chairman is an independent director.

The tasks of the appointment committee are described, at least briefly, in nearly 95% of all cases. They generally include examining or short-listing applicants for executive positions, and may include assessing the independence of directors or even evaluating the board's practices. An account of the committee's activity is provided in nearly 90% of all cases. The number of meetings (2.4 on average) is reported by all the companies that have a compensation committee.

One company in the Euronext A segment reported that it had established its committee in 2007.

4.1.2.4. Other committees

Forty-four percent of the companies in the sample (compared with 40% last year) mention the existence of one or more other committees. More than three-quarters of these companies are in the Euronext A segment. In most cases, the body in question is a strategy committee. The tasks of this committee consist mainly in giving opinions to the board on the broad long-term strategy of the company or group, but in some cases they may also include monitoring the progress of major operations. In general, the committee has a larger number of members (generally upwards of five) and is usually chaired by an executive director.

Less frequently cited are committees dealing with issues such as the environment and sustainable development, risk management, corporate governance, and ethics.

Finally, because of their specific business operations, some companies in the Euronext A sub-sample have set up science, technology or financial reporting committees.

Specialised committees established by companies in the sample

Type of committee	Number of companies in the sample *	Number in Euronext A	Number in small and midcaps
Audit committee	**72**	**49**	**23**
Compensation committee	**35**	**20**	**15**
Compensation and appointment committee	**38**	**27**	**11**
Appointment committee	**18**	**17**	**1**
Strategy committee **	**34**	**28**	**6**
Sustainable development committee	**7**	**7**	
Investment committee ***	**4**	**2**	**2**
Corporate governance and ethics	**5**	**4**	**1**
Science or technology committee	**2**	**1**	**1**
Internal control committee	**1**	**1**	
Financial reporting committee	**1**		**1**

* A single company can have several types of committee.
** Some of these committees may also deal with research and sustainable development.
*** Also referred to as the financial committee or the transactions committee

Source: AMF

Companies are encouraged to continue the work undertaken in previous years, and not only to describe the remit of the various committees of the board together with an account of their activities but to also provide information on the interactions between these committees and the board.

4.1.3. Assessment of the board's work

Although there is nothing in the laws or regulations that require them to do so, 46% of the companies in the sample state that they periodically assess the work of the board in accordance with the AFEP/MEDEF corporate governance code. The code encourages them to conduct a self-assessment every year and a more formal assessment every three years. Seventy-four percent of these companies state that they conducted such an assessment in 2007. This statistic conceals large differences between the sub-samples: the assessment rate is close to 80% for companies in the Euronext A sub-sample and only 14% for companies in the small and midcap sub-sample. Ninety percent of the companies that periodically review their board's work state that they conduct an internal assessment, generally using self-assessment questionnaires sent annually to directors, and 24% organise an external assessment. More than 80% of these external assessments involve a detailed three-yearly assessment conducted with the aid of an expert or external firm. Virtually all these companies state that they conduct a parallel internal assessment every year.

When details are provided, they reveal that the assessments focus primarily on the composition of the board, the frequency and length of its meeting, the topics considered, the standard of deliberations, the work of board committees, the information provided to directors, their compensation, and their access to the managers of the group. The results of the assessment are generally discussed by the board.

Half the companies that conducted an assessment of their board disclosed the results of the assessment. Three-quarters of them disclosed the results in general terms, with a statement to the effect that the board's work "is considered satisfactory". Half of the companies that conducted an assessment (compared with 60% last year) found that the work of their board was satisfactory but pointed out some areas for improvement. All but one of these companies are in the Euronext A sub-sample.

Areas for improvement include[46]: the need to meet more frequently with operational managers; to expand the expertise of the board of directors or the supervisory board in areas where it is currently lacking (either through training for board members or through the appointment of new board members); to review the coordination of certain matters with committees; and to obtain more information on certain topics (competitors, the group's business lines, etc.).

The AMF notes that the number of companies reporting an annual assessment of the board's work has stabilised at roughly half. This figure conceals large differences between the sub-samples: the assessment rate is close to 80% for companies in the Euronext A sub-sample and only 14% for those in the small and midcap sub-sample.

The AMF also notes the efforts that companies in the sample have made to disclose the results of such assessments, including the main areas for improvement. However, the number of companies reporting on areas for improvement seems to have declined slightly (50% of the companies that conducted an assessment, compared with 60% last year). This can be interpreted in two ways: either the assessment of the board of directors was more satisfactory, or the companies are disclosing less information.

The AMF renews its recommendation that companies that have not yet conducted an assessment of their board's work should do so. They should also disclose details of the assessment process, the results of the assessment, the follow-up to the assessment, and any areas for improvement that the company is considering as a result.

4.2. Restrictions placed by the board of directors on the powers of the chief executive officer[47]

Eighty-two percent of the companies with boards of directors (which make up 76% of the sample) either report restrictions or state explicitly that they place no restrictions on the powers of the chief executive officer. When there are no restrictions, the most commonly used phrases are: "the Board of Directors has not placed any particular limits on the powers of the Chief Executive Officer" or "the Chairman of the Board of Directors, the Chief Executive Officer, and the other executive officers exercise their powers as provided by law. No restrictions have been placed on the powers of the Chief Executive Officer".

Forty-three companies in the sample (compared with 30 last year) explicitly report on restrictions. Thirty-two of these companies are in the Euronext A sub-sample and 11 are in the small and midcap sub-sample. Some issuers use the phrase: "the Chief Executive Officer carries out his duties without any special restrictions, notwithstanding the powers explicitly assigned to the Board of Directors by law and the articles of incorporation" and sometimes "the rules of procedure". Other companies report that the chief executive officer needs to obtain the prior consent of the board of directors for any transaction or investment in excess of a set amount, or even give the list of the transactions requiring

[46] One company mentioned the following points: "one of the wishes expressed in the assessment was to increase the number of women on the board and to increase its international profile. The appointments proposed at the 2008 general meeting should address that wish. It was also recommended that the topics relating to the development of strategy towards major industrial players be developed more fully. This was accomplished at the June, August, and November meetings".

[47] In structures where the same person holds the posts of chairman of the board and chief executive officer, this paragraph is generally entitled "Restrictions that the board of directors places on the powers of the chairman".

such prior consent. (In general, this applies to acquisitions and sales of key company assets and certain securities issues or borrowings).

The AMF finds that the number of companies that explicitly disclose the existence or absence of restrictions on the chief executive officer has stabilised around 80%.

The AMF renews its recommendation that all restrictions resulting from practices and/or internal rules should be systematically disclosed in the report. A distinction should be drawn between matters that require the prior approval of the board and those that require specific regular reporting to the board. If these restrictions have been adopted officially, the report should provide a cross-reference to the rules of procedure, if these have been published. If no restrictions have been placed on the powers of the chief executive, that fact should be mentioned.

5. INTERNAL CONTROL PROCEDURES

5.1. Description of internal control procedures

5.1.1. Definition and objectives of internal control

Almost all the companies in the sample present their internal control procedures as a system, defined and implemented under their authority, which has a number of objectives.

Forty-three percent of the companies adopt the objectives set out in the AMF reference framework in their strict sense, usually referring to them explicitly. These include:

- compliance with laws and regulations,
- enforcement of instructions and guidelines set by general management or the management board,
- the smooth operation of the company's internal processes, including those contributing to the protection of its assets,
- reliability of financial reporting.

Twenty-four percent of the companies in the sample refer exclusively to the objectives set by the COSO[48].

Regardless of the reference chosen – or the absence thereof – all the sample companies (compared with 92% last year) identify the reliability of financial reporting as an objective, 99% identify compliance with laws and regulations (compared with 85% last year), and 97% identify control over operations (compared with 82% last year)[49]. Yet the discussion devoted in the main body of the report to these objectives, and to the methodologies used to achieve them, is uneven.

That a company uses the internal control definition from one framework does not necessarily affect its ultimate choice of framework (see Choice of reference framework).

Eighty-eight percent of the companies in the sample (compared with 83% last year) disclose the inherent limitations of their internal control systems. These limitations are described in general terms and are often linked to the definition of internal control. Very few companies describe the limitations inherent in their specific business. Virtually all use either the phrase found in the AMF reference framework: that the internal control cannot provide an "absolute guarantee" that the company's objectives will be achieved; or the phrase found in the COSO framework: "reasonable assurance".

[48] Committee of Sponsoring Organizations of the Treadway Commission
[49] Although the formulation used by the companies is not always in exactly these terms.

All companies cite the reliability of financial and accounting information as one of their internal control objectives. Almost all also include control of operations and compliance with applicable laws and regulations. Ninety percent of the reports point out that the internal control system cannot be regarded as an absolute guarantee that the company will achieve its objectives.

5.1.2. Scope of the chairman's report

Ninety-five percent of the companies in the sample provide information on the scope of the chairman's report. All but one of the companies use the term "group" in their definition of internal control and in setting internal control objectives. Five companies (versus 10 last year) state that the internal control system may be decentralised[50], since the task of defining the internal control system rests with the senior executives of each operational entity (subsidiaries or departments).

In 92% of the companies providing information on scope, the procedures of the lead company in the group apply to most or all of its subsidiaries, subject to differences in implementation across business lines or subsidiaries, especially for operational functions. Ten companies (compared with one-quarter last year) point out that some of their subsidiaries may apply procedures that differ from those of the group, either because the subsidiary uses its own definition, as in the case of a recent acquisition, or because it is located in a country where specific internal control rules apply. For this reason, eight companies, including four in the Euronext A sub-sample, explicitly mention subsidiaries or branches that are not covered by the chairman's report.

Almost all companies now disclose the scope of the chairman's report.

When companies refer to the group, the AMF recommends that they specify whether this term encompasses the parent company and the consolidated entities or, failing that, list any subsidiaries or branch offices that are not covered by the chairman's report or where the internal control system is not the same as in the rest of the group. The application guide stipulates that when consolidated financial statements are produced, the scope of internal control over financial reporting encompasses the parent company and the consolidation.

5.1.3. Framework

Seventy-nine percent of the companies in the sample (compared with slightly more than half last year and one third in 2005) describe the methodology they use to develop and implement their internal control systems or to draft their reports.

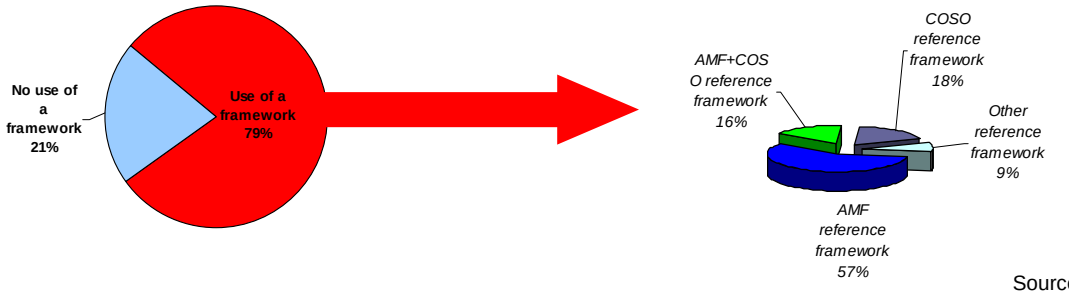
More than 73% of these companies report that they use the AMF reference framework or its simplified version. This represents a total of 58 companies (of which more than three-quarters rely exclusively on the reference framework and fewer than one-quarter combine it with the COSO framework).

For example, the sample includes:

- one company that states that "the section of this report describing internal controls is based on the COSO framework, supplemented as necessary, by the reference framework for internal control recommended by the AMF";
- another company states that "the framework developed […] based on the COSO model […] is consistent with the principles described in the reference framework supplemented by the application guide published in January 2007".

[50] The reference may be very general: "some internal control functions are devolved to the subsidiaries", or it may be somewhat more detailed: "the internal control systems of each entity include both the enforcement of group procedures and the definition and application of specific procedures to each business line depending on their organisation, culture, risk factors, and specific operational characteristics".

Use of a reference framework by the companies in the 2007 sample



Source: AMF

Of the 49 companies in the Euronext A sub-sample that say they use one or more reference frameworks, 34 (or 70%) mention the AMF reference framework (65% of these companies mention only the reference framework and 35% also mention the COSO). One-quarter of the companies that say they use a reference framework cite only the COSO.

Of the 30 companies in the small and midcap sub-sample that report using one or more reference frameworks, 24 (80%) mention the AMF framework or its simplified version. All but one mention only the reference framework or its simplified version. Seven percent of small and midcaps state that they use a framework and cite only the COSO. Sixty percent of the small and midcaps that mention the AMF reference framework say they have used its simplified version.

The companies that refer to the AMF reference framework can be divided into three categories:

- Some use the reference framework as well as the application guide on internal control of financial reporting. For example:
  - one issuer set the objective of having an internal control system that corresponds to the AMF reference framework and its application guide by the end of 2007;
  - another issuer stated that “the [self-assessment] questionnaire […] had been expanded by 50 questions in order to reflect the recommendations in the application guide on internal and financial control […]”;
  - a third issuer stated that “FY2007/2008 has been devoted to […] implementing the self-assessment questionnaire on internal control and risk management. This questionnaire has been modified to be consistent with the internal control reference framework and application guide issued by the AMF in January 2007”.

- Others state that they are pursuing a gradual approach to application. For example:
  - one issuer states that it has “adopted an approach that seeks to adapt its internal control system to bring it closer to the reference framework recommended by the AMF.”
  - another company states that “the group is gradually applying the reference framework and application guide published by the AMF”.

- Some of these companies state only that they have relied on the reference framework or its simplified version in drafting their report. The wording used in the report does not indicate whether the reference framework was used to complete their internal control system. The following wordings are examples:
  - “This report is based on the ‘reference framework on internal control systems supplemented by the application guide’ developed under the auspices of the AMF”;
  - “This report has been prepared in accordance with the internal control reference framework developed by the market advisory group led by the AMF. The outline of the descriptive section on internal control procedures is taken from that framework”.

Special mention should be made of the vocabulary used by companies to describe how they used the AMF reference framework or its simplified version. Some companies use terms that are not very precise (“is borrowed from”), making it difficult to determine precisely to what extent they have used the AMF framework.

Seven percent of the companies in the sample state that they use an *ad hoc* reference framework. These are primarily banking and insurance firms whose business is subject to specific rules. In particular, credit institutions point out that they are governed by CRBF Regulation 97-02[51] on internal control. Indeed, no banking institution refers to the AMF reference framework.

Two companies in the Euronext C segment state explicitly that they do not use the reference framework.

Finally, none of the five French companies that do not issue registration documents mentions in the chairman's report whether it refers to a reference framework of any kind.

More than three quarters of the companies in the sample provide some information on the reference framework they use in developing and implementing their internal control systems or in drafting their reports.

More than half the companies in the sample state that they used the AMF reference framework or its simplified version. However, the detail with which they refer to the framework varies considerably from one business to the next. Companies can be divided into three categories. The first consists of companies which state that they borrow from the AMF reference framework when drafting their reports or that they used only the general principles of the reference framework. The second category consists of companies that have adopted a gradual approach and that explain to a greater or lesser extent the systems they have put in place to comply eventually with the framework. The third category consists of companies that have applied all the elements of the reference framework to their 2007 analysis, leading them in some cases to adapt or round out their internal control system.

While a progressive approach or the adoption of the entire AMF reference framework both appear satisfactory, a reference to the framework in only vague and general terms does not satisfy the goals of the AMF. The AMF urges companies that do not make adequate disclosures on their use of a reference framework to be more explicit on the subject.

5.1.4. Risk identification and risk management systems

Almost two-thirds of the companies in the sample identify in the chairman's report the risks that are covered by internal controls. Most of the time, these risks are dealt with fairly briefly in the chairman's report, and readers are referred to the report on "risk factors" or "risk management" for greater detail.

In addition to the financial risks cited by almost all companies, the most frequently mentioned risks are: operational risk or risks related to the company's business, information technology risk, risks of error or fraud, environmental risks, and legal risks. The descriptions cover a wide variety of risks and the level of detail varies greatly.

Sixty-four percent of the companies make a link between risk identification and management procedures, usually in very general terms. This is the case for 78% of the companies in the Euronext A sub-sample and 50% of small and midcaps.

Forty-seven percent of the companies report that they have a risk-mapping function (compared with 43% last year), which is sometimes called a "risk grid" or "risk matrix". The process of developing, validating, and implementing this risk-mapping process is described briefly at best, with the primary focus on the allocation of roles within the company. Six percent of the companies report on the risk-mapping methodology, including the number of risks considered and the parameters used to rank them: type, frequency, criticality, and hierarchical and/or geographical level.

[51] CRBF 97-02 of 21 February 1997 relating to internal control in credit institutions and investment firms.

Nearly half of the companies in the sample report that they have a risk-mapping function.

The AMF renews its recommendation that risks, especially those described in the "risk factors" section of the registration document, should be linked to the procedures implemented. This is because the suitability of internal control procedures depends on identifying the main risks, which only the company itself can do. Providing this link should make it easier to understand how the company perceives, formalises, ranks, and ultimately attempts to manage its risks.

Companies must take into account the additions made to Articles L.225-37 and L.225-68 of the Commercial Code by the DDAC Act of 3 July 2008, which state that the chairman must also report on the company's risk management procedures.

5.1.5. Clarification of internal control procedures

All the companies in the sample describe their internal control procedures. Virtually all mention the preventive nature of these procedures. Seventy-three percent describe the extent to which the procedures have been formalised. About 60% (compared with 50% last year) indicate that they use an audit charter, and internal control or best practices manual, or, in the case of accounting and financial disclosures, a reporting guide.

Some companies, including a large majority of those listed in segment A of Euronext, state that an area of their intranet is devoted to internal control and/or that they use an integrated software package to manage internal control. This information is for internal use and, in principle, is disseminated to members of the internal audit department or to all the company's managers. Some companies have established a code of conduct that applies to all personnel.

Financial reporting procedures

Ninety-eight percent of the companies in the sample, including all those in the Euronext A sub-sample, have provided detailed information on the internal control procedures relating to financial reporting. In nearly all cases, this information is presented in a separate section. It includes a description of the accounting structure, the implementation of a monitoring system, and the role of the finance department. Companies provide information on their procedures for accounting, consolidation and reporting, and for monitoring assets, off-balance sheet liabilities and the quality of financial and accounting disclosures.

Other internal control procedures.

One-third of the chairman's reports of sample companies deal with their procedures for ensuring compliance with laws and regulations, and half deal with procedures for controlling transactions (control of investments and/or sales, procedures to ensure that all transactions are recorded, etc.). These statistics show a decline since last year. The corresponding statistics for the Euronext A sub-sample are 42% and 52%, and for the small and midcap sub-sample they are 24% and 46%.

The most commonly cited internal control procedures are those relating to support functions (human resources, purchasing, marketing), operational, IT and legal matters, delegation procedures, authorisation of decisions, separation of tasks, procedures to ensure the security of persons, property and data, quality procedures, etc.

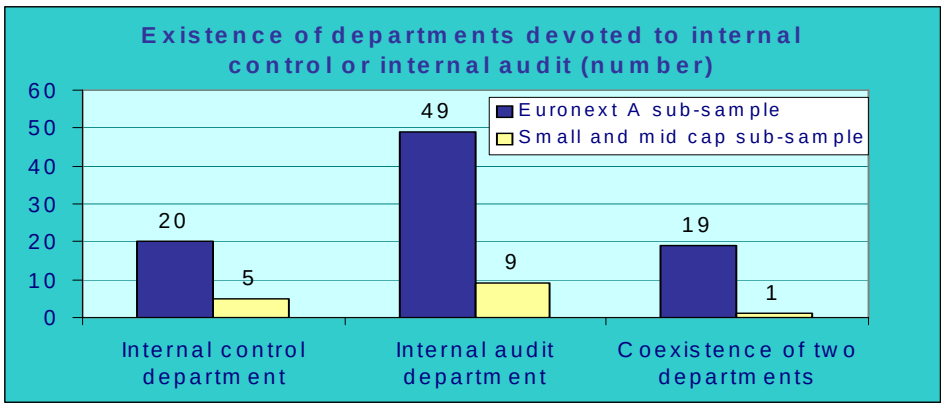
The AMF recommends that companies strengthen the link between their stated objectives and the description of internal control procedures in the chairman's report. The AMF also points out that the scope of internal control is not limited to procedures for making financial reporting more reliable.

5.1.6. Internal control resources

Nearly 90% of the companies in the sample disclose the resources they allocate to internal control. In particular, 96% of the companies in the Euronext A sub-sample provide information on the personnel assigned, and they devote a section of the chairman's report to information about internal control personnel[52] (number, function, position in the hierarchy).

There are three main trends. Some companies list all the departments and even all the employees involved. Others limit internal control personnel to the members of the internal control and/or internal audit department. Between these two extremes, some companies refer to some functional departments of the group, such as the finance department, the risk control department, the IT department, and, where appropriate, the internal control coordinators. The vast majority of companies attempt to define different levels of control.

Fifty-eight percent of the companies in the sample have an internal audit department and 24% have an internal control department. Twenty percent have both departments. Eighty-five percent of these companies maintain a formal separation between the two departments. In the other 15%, there is either an audit and control department, or the coordination of internal audit is the responsibility of the internal audit department. With the exception of four cases, when an internal control department exists it is always backed up by an internal audit department.



Source: AMF

For regulatory reasons, all financial institutions have such a department (sometimes referred to as the "permanent control department"), which is separate from the internal audit department (periodic control).

In some cases the internal control function applies specifically to financial aspects and is therefore part of the financial department. In some companies, the internal control system is supported by one or more “internal control coordinators” without their being a distinct internal control department.

Seven companies, including six in the Euronext A segment, report that their internal audit or accounting unit has been certified by an external body (ISO or IFACI).

Where applicable, companies specify whether they are in the processes of setting up an internal audit department or intend to do so in the near future. This department often reports to the chairman and/or the chief executive officer. Its tasks may include providing advice for establishing self-oversight plans as part of an audit plan, monitoring the relevance of procedures and their enforcement by line and staff units, and informing senior executives and line and staff units of any problems found. Three companies in the Euronext A sub-sample include an organisational chart showing the internal control players and the staff and line links between the different levels of control.

None of the companies discloses the cost of its internal control system. One company in the Euronext A sub-sample provides a partial cost estimate and explains that the annual internal audit budget is equal to 0.1% of the group’s turnover, stating that this is in line with the standards in the group’s industrial sector.

[52] For issuers using the COSO framework, this is dealt with under the heading of "Control environment ".

On the other hand, about 35% of the companies mention the investments they have made (in human resources, information technology, etc.) for setting up and operating internal controls.

Approximately 90% of the companies in the sample disclose the resources that they allocate to internal control.

The AMF recommends that, in addition to describing the resources devoted to internal control, companies should include a summary organisation chart if this would provide a clearer picture of the internal control system. The AMF also recommends that issuers provide a general description of the roles of the various internal control players.

5.2. Due diligence and the assessment of the internal control system

5.2.1. Due diligence in the preparation of the report

Sixty percent of the companies in the sample (compared with two-thirds last year) describe the due diligence carried out when preparing the chairman's report**.** This figure includes 43 companies in the Euronext A sub-sample and 17 companies in the small and midcap sub-sample. Most of the companies describe this due diligence in the general introduction to the report or in the introduction to the section of the report dealing with internal control.

For example, two issuers describe their due diligence in the following terms:

- "This section was presented to the audit and accounts committee at its meeting on […] in the presence of the statutory auditors. It was based on the main conclusions resulting from the work on internal audit and risk management carried out by the group last year. The results of this work were examined at several meetings of the risk and internal control committee over the course of the years and also at the meetings of the audit and accounts committee that were held in 2007."

- "This report was based on the contributions of several departments, including the financial, legal, risk, and audit departments of the Group. The internal control departments of the Group and each of its divisions […] have also contributed actively to the assessment of internal control, as cited in this report. This due diligence was described in a summary report presented on […] to the company's accounts and audit committee. The report was drafted by the Group's audit, legal, and financial departments and has been validated by senior management."

Three-quarters of the companies that mentioned due diligence reported that the topic had been discussed at a board meeting, half reported that it had been discussed at a meeting of the audit committee[53], and 43% had discussed it at senior management level (the executive committee or the management board).

The AMF renews its recommendation on the description of the due diligence carried out in preparing the report and the list of units, departments, and bodies concerned. For the sake of clarity, this description should be presented in the introduction to the report.

Presumably all companies will at least indicate in their next report that the board of directors has approved the report, since this requirement, recently introduced into the Commercial Code, applies to reports for the 2008 financial year.

[53] Seventy-two percent of all companies have set up such a committee.

5.2.2. Assessment of the internal control system

Eighty-four percent of the companies in the sample, compared with slightly more than 60% last year and 34% in 2005, describe in varying degrees of detail the continuing improvements they are making to their internal control systems (98% in the Euronext A sub-sample and 70% in the small and midcap sub-sample).

For example, one company explains that "in each operational unit of the Group, internal control coordinators are responsible for the organisation and internal control of the unit. They are part of the company's process for continually improving internal control. Their role consists mainly in supporting the implementation of the Group's internal control standards and coordinating work on internal control in their unit.

Some companies present this information in a separate paragraph. One states that "since the self-assessment of internal control procedures in 2004, progress has been made in the subsidiaries under the supervision of the functional departments. In 2007, the company initiated an analysis of accounting and financial procedures, using the application guide (presented within the AMF reference framework) on the internal control of financial reporting."

Forty-seven percent of the companies in the sample report that they conducted an assessment of all or part of their internal control procedures during 2007. In 70% of these companies, this assessment was conducted internally. But this figure conceals some disparities. Most companies simply list the various action plans directed by the internal audit department[54], while a few mention in a separate paragraph the establishment of a specific assessment process. In the first case, the report does not necessarily specify whether improvements are the result of changes in existing procedures or if they reflect the adoption of new procedures. In all, a quarter of the companies in the sample have developed self-assessment questionnaires, which are usually distributed to each operational unit or to those considered most important.

More than one-fifth of the companies that assess their internal control systems (compared with one third last year) report the findings, usually in very general terms. Two of the companies that report their findings mention weaknesses in the system. Although these companies specify which activity is affected by the weaknesses, they then express them in very general terms. For example, one stated that "these tests have not revealed significant shortcomings". Six companies reported an improvement in the results of the assessment compared with the previous assessment. Areas of progress are sometimes identified, but few details are provided, other than stating that remedial plans have been established or that certain procedures have been strengthened and standardised.

Two companies state that they will assess their internal control systems in 2008. They describe the resources devoted to the assessment and the state of progress of the work. Finally, among other steps that companies propose for strengthening their internal control systems, some cite analysing the risk monitoring system, broadening the scope of internal control, or harmonising and updating procedures.

The assessment mentioned in the report often covers procedures relating to financial reporting. Some companies report that other processes are assessed.

Two companies reported incidents of significant fraud, one in 2007 and the other at the beginning of 2008. They state that changes have been made to internal controls following these incidents. One of the companies states that "specific control procedures have been defined in order to thwart techniques for circumventing controls […]. Some measures can be applied immediately; others, which are structural, will be applied in the near term […]. [These changes] are aimed at defining more precisely the scope of frauds to be reported, strengthening the security of IT systems, improving the monitoring of warning indicators, and strengthening organisation and training". The other company states that "immediate action has been taken to upgrade the internal control processes shown by the fraud to be faulty. In addition, a special audit has been conducted with the support of an external audit agency in order to reassess all the faulty processes and identify remedial action".

[54] This department's role is to review transactions and procedures and to recommend improvements in internal control. It generally has the task of conducting a full review of the system over a number of years.

One other company mentioned an incident during the summer of 2007 which was "detected rapidly, reported appropriately to the group's decision-making and control bodies (in particular, the Audit Committee), and gave rise to immediate measures in relation to local management". The chairman's report also discusses a large project that has been put in place. The company ends by stating that "in the light of the Lagarde report of February 2008, some of the systems are undergoing additional review at this writing".

The number of companies reporting improvements in their internal systems continues to increase (84%) after having almost doubled between 2006 and 2007.

The AMF renews its recommendation concerning companies' description of work to improve their internal control processes, in particular through self-assessment questionnaires.

The AMF also reminds issuers that they should disclose any serious internal control failures or shortcomings that have been revealed by an assessment or at any other time, especially when preparing the chairman's report.

5.2.3. French companies subject to the Sarbanes-Oxley Act[55]

5.2.3.1. Companies in the sample

Nine companies state in their report that they were subject to the Sarbanes-Oxley Act (SOX) on 31 December 2007 (compared with 16 last year[56]); eight of these companies are listed on the NYSE and one is subject to SOX because it is a subsidiary of a NYSE-listed company.

Two of the companies that in 2007 were no longer required to comply with SOX note explicitly that they are voluntarily retaining certain internal control procedures that they adopted in response to the requirements of the Act.

5.2.3.2. Disclosures

Most of the companies concerned state explicitly that they have implemented a system to ensure compliance with US regulations, in parallel with French internal control regulations.

All the companies mention that they have developed extensive systems in the past several years to help them draft their assessment reports on the effectiveness of internal control over financial reporting as of 31 December 2006, and subsequently as of 31 December 2007. They provide details on the investments they have made in the processes for documenting, assessing, and improving internal procedures and controls for financial reporting in order to satisfy the requirements of Section 404 of SOX.

Most of the companies state in their chairman's reports that the assessment process under Section 404 of SOX was being conducted at the time their registration document was published. Companies often refer readers to their American report (Form 20F) filed with the Securities and Exchange Commission (SEC). Five companies in the sample included a separate a section entitled "Assessments conducted under the Sarbanes-Oxley Act" or "Documentation and assessment of internal control under Section 404 of the Sarbanes-Oxley Act". However, the description provided is often general and uses boilerplate language.

Two of these nine companies appended the statutory auditors' report on their internal control procedures to the chairman's report.

[55] The guide for developing registration documents, published in January 2006, states that companies listed in the United States are encouraged to disclose, if applicable, how they have complied with recent rules and regulations on corporate governance (Sarbanes Oxley Act), mentioning the policies they have adopted, particularly those rules that are not strictly identical to the rules applied in France.

[56] This decline is explained in part by the fact that four sample companies completed the process of delisting in the United States in 2007.

The AMF reiterates that any company that is listed on a foreign market and discloses information in that market is required to simultaneously publish equivalent information on the French market. This applies in particular to companies listed in the USA, which are therefore subject to the Sarbanes-Oxley Act.

5.2.4. Reports of the statutory auditors

All the companies in the sample that are required to do so[57] incorporate the report of the statutory auditor, usually as an appendix to the chairman's report, or, more rarely, in an annex with all the statutory auditors' other reports[58].

Two of the nine companies in the sample that are subject to the Sarbanes Oxley Act provide an assessment report produced by their statutory auditor[59], distinct from the Form 20-F filed with the SEC.

One report notes that "progress still needs to be made in formalising internal control procedures and applying them exhaustively". In the other reports, the statutory auditors do not find anything that would call into question the truthfulness of the information contained in the chairman's reports.

5.3. Summary of meetings with companies in the sample

The meetings with the internal control managers of sample companies produced the following findings:

- In general, these meetings revealed that most of the companies interviewed have made an effort to adopt the AMF reference framework, which is used either in its entirety as the principal reference framework, or as an adjunct to frameworks already in place.

- In organisational terms, the relationship between the internal control function and the company's other departments varies considerably, depending on the size and business sector of the company or the regulations to which it is subject. While some companies maintain a separation between the internal control department and the audit department, others combine the two functions in a single department. Similarly, the hierarchical position of the internal control unit can differ totally from one company to the next. The personnel assigned to internal control and audit may be centralised at head office or dispersed in the various subsidiaries of the group. Furthermore, some issuers state that they use consultants only for specific internal audit assignments such as IT audits, while others outsource more recurrent and formalised internal audit engagements.

- The interviewees stressed the efforts made to formalise their disclosures on internal control, including the use of self-assessment questionnaires, charters, training sessions, and intranet modules dedicated to internal control.

- The companies described their efforts to strike the best possible balance in the scope of their internal control procedures. Some indicated that they were gradually extending their approach to all the subsidiaries in the group, while others focused on the most business-critical controls, particularly those relating to financial reporting.

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[57] Companies whose registered office is located outside France are not required to apply the Financial Security Act. It should be noted that the statutory auditors of limited partnerships with share capital have certified the chairman's reports.

[58] Professional Standard NEP-9505 on "internal control procedures for financial reporting – statutory auditors' report on the chairman's report" approved by a decree of the Minister of Justice dated 5 March 2007 and published in the Official Journal dated 6 April 2007. It replaces the professional practice with regard to "internal control procedures" identified as a best practice by the High Council of Statutory Auditors. The approval was granted following a favourable opinion issued by the AMF Board and subsequently by the High Council of Statutory Auditors on 20 February 2007.
This standard sets out the principles for drafting the statutory auditors' report on the chairman's report mentioned in Articles L.225-37 and L.225-68 of the Commercial Code.

[59] This is described in the following terms: "This due diligence consists in particular of evaluating the assessment process and the quality and adequacy of the documentation relating to the assessment of internal control".

- The internal audit and internal control managers are closely involved in drafting the section of the chairman's report dealing with internal control The report is generally presented to the audit committee in the presence of the heads of the internal audit and internal control units. In some companies, a steering committee, consisting of up to ten persons is convened annually to draft the report.

- Managers say that they pay special attention to the recommendations published each year by the AMF and take them into account in drawing up the chairman's report for the following year. Some issuers also use industry best practices as a guide. Others suggested that the AMF should publish its report two months earlier so that its recommendation can be given greater consideration[60].

6. DIRECTORS' AND EXECUTIVES' PAY

Except where noted otherwise, the analysis of executive pay in sections 6.1 and 6.2 applies to all 94 companies in the sample that issue a registration document [61], (aside from point 6.2.1. which applies to the entire sample)

6.1. Directors' pay

Eighty-four percent of the companies in the sample state that they pay directors' fees, while 16%, all of them small and midcaps, state explicitly that they do not pay such fees. All the companies that pay directors' fees disclose the total amounts, and 94% disclose the fees paid to individual directors. All but one of the companies in the Euronext A sub-sample provide this information, compared with 88% of small and midcaps.

Sixty percent of the companies that disclose the fees paid to individual directors explain exactly how they are calculated. Nearly three-quarters of these companies are in the Euronext A sub-sample.

In seventy-one percent of the companies that pay directors' fees, a flat fee is paid to each director. In 62% of cases, the size of the fees is linked, at least in part, to the directors' attendance at board meetings, and in 60% of cases to membership of specialised committees (in half the cases, higher fees are paid to members of the audit committee).

Some of the companies in the sample that disclose only the overall amounts of directors' fees nevertheless disclose the principles and rules governing their distribution.

Fifty-seven percent of the companies that pay directors' fees (compared with 12% last year) also disclose the fees paid to individual directors in the previous year, or in some cases the previous two years. About 5% of the sample companies announce that they have changed the way they calculate directors' fees in order to create incentives for meeting attendance or participation in committees.

Nearly 40% of the companies that pay directors' fees state that they pay out the entire amount authorised by the general meeting.

Foreign directors are often paid higher fees, while several companies state that some board members, such as government representatives and sometimes the chairman and chief executive, receive no fees.

[60] The first four AMF reports on companies' reports for financial year N-1 were published between 13 January and 24 January of year N+1.

[61] And not on a sub-sample, as was the case in the previous report. Consequently the statistics on directors' pay presented this year are not comparable with those for the previous year.

6.2. Executive pay

6.2.1. Principles and rules for determining executive pay

Ninety-nine percent of the companies disclose at least summarily the principles and rules adopted by their boards to determine pay and sundry benefits granted to executives, and 37% of them provide detailed information. A few provide information only on short-term benefits, while a larger number also disclose remuneration payable in the medium or long term.

Roughly 20% of the companies disclose at least part of this information in the chairman's report. The others disclose it in the section of the management report dealing with compensation or in the chapter on corporate governance.

All the companies that have a compensation committee state that the process for determining the variable component of pay is generally set by the board, after hearing the opinions, proposals or recommendations of the compensation committee. In some companies, the chairman of the board may attend the meetings of the compensation committee or take part in its deliberations even if he is not a member.

Approximately 10% of the companies make explicit reference to the recommendations on compensation of executive officers in listed companies, published by AFEP and MEDEF in January 2007.

6.2.2. General information on fixed and variable pay components and benefits in kind

All the companies in the sample that issue a registration document disclose the amounts paid to each executive. Eighty-six percent of these companies distinguish the fixed and variable components.

Seventy-nine percent of these companies present pay information in the form of a table. In one-third of the companies, the table shows fixed pay, variable pay, directors' fees, and benefits in kind. Twelve percent of the companies add a column showing grants of stock options and bonus shares.

Half of the companies disclose information for two financial years, 30% only for the current financial year, and 20% for three years or more.

Sixteen percent of the companies provide some information on how the fixed pay component is determined. These companies refer to market practices, or to benchmarks established by external consultants based on pay levels observed for similar positions in other listed companies.

Seventy-eight percent of the companies report that they grant benefits in kind, and three-quarters of these quantify the amount. When the type of benefit is specified, it most often consists of the use of a company car, with or without a driver, and, more rarely, housing provided by the company.

A quarter of the companies report that the variable pay component is allotted to the financial year from which it has been calculated, even though it is not paid until the following year. Twenty percent of the companies also disclose all the compensation paid during the year[62].

6.2.3. Determination of the variable component of pay

About three quarters of the companies in the sample disclose the criteria they use to determine the variable component of pay.

[62] The January 2007 AFEP/MEDEF recommendations on compensation of executive directors state that "while the Commercial Code does not address this issue, it would appear that the information that is most relevant for shareholders is that which consists in attributing the variable component to the financial year from which it is calculated, even if it is not paid out until the following year. It is therefore recommended that priority be given to disclosing compensation accrued in the financial year and to display in a summary table the amounts due and paid for the current year and the previous".

Two-thirds of the companies that provide information on the calculation of the variable pay component say that it is based on a combination of financial and qualitative criteria linked to individual performance. For the other third, it is based solely on qualitative criteria. In slightly more than 40% of the companies, a weighting factor determines the relative importance of the two types of criteria. In virtually every case, financial criteria are predominant.

As a general rule, companies use several financial criteria. The average is three criteria, and where information on weighting is provided, they are usually weighted equally. Some disclosures are quite specific, while others are made in broader terms. Details on qualitative targets are rarely provided.

Approximately one-quarter of the companies state that the variable component is capped, either as a percentage of the fixed component or in absolute value. Approximately 20% of the companies disclose a pay range.

A few companies indicate that the variable pay component is partly indexed to the performance of the company's shares relative to an index. Among the indices cited are the CAC 40 and the European sector index to which the company belongs.

The criteria, their weights, and the range of variable pay can vary between executives of the same company, although in practice this variation is small. It occurs most often in companies with boards of directors in which the chairman of the board and the chief executive officer are two separate functions, and in companies with management boards.

Seventeen percent of the companies state explicitly that the criteria for 2007 are the same as those used in 2006. Thirteen percent of the sample companies report that in 2007 they re-examined the criteria they would use in 2008. These reviews often highlighted current standards and practices in France or on the international market and/or in the company's sector. Twenty-six percent of the companies disclose how the chosen criteria have been applied, how this compares to what was planned for 2007, and whether personal targets have been achieved.

Seven percent of the companies report that special circumstance have led or could lead them to grant special compensation, without always explaining the circumstances or grounds for such payments[63].

6.2.4. Executives' severance packages

About 40% of the companies in the sample disclose specific severance packages for executives; about 60% of these companies are in the Euronext A sub-sample.

Nearly 18 months after the passage of the TEPA Act, it appears timely to conduct an initial implementation review. The results of this review apply only to companies in the Euronext A sub-sample. Furthermore, since the Act applies only to commitments benefitting executives of French limited-liability companies whose securities are traded on a regulated French market, the foreign company in the Euronext A sub-sample is not included in the analysis[64]. Thus the study covers 49 companies.

This study goes beyond an analysis of the chairman's reports: it also involved a review of the special reports of the statutory auditors on regulated agreements and commitments, draft resolutions submitted to general meetings, and the outcome of voting on those resolutions.

6.2.4.1. Companies in which one or more executives receive deferred compensation

In 2008, roughly 30% of the French limited-liability companies in the Euronext A sub-sample stated explicitly in their registration document that one or more executives received deferred compensation.

Paradoxically, there are two examples in which the body of the registration document states that an executive does not receive compensation or benefits upon leaving or changing functions or following such events, whereas the

[63] By way of illustration, one company stated that "in exceptional circumstances, the board of directors, after consulting with the compensation committee, reserves the right to award a special bonus".

[64] The foreign CAC 40 company in the sample has not placed performance conditions on the payment of severance benefits.

regulated agreements specifically mention the existence of such benefits. In both cases, moreover, the board of directors met in 2008 to set the conditions therefor.

6.2.4.2 Compliance with statutory mechanisms (regulated agreements, general meeting votes)

Regulated agreements subject to the vote of the general meeting

In more than 85% of the companies reporting that one or more executives receive deferred compensation, the special report on regulated agreements and commitments prepared by the statutory auditor discloses the severance pay and benefit commitments for each of the executives concerned. All these companies have submitted these commitments for approval to the general meeting that approved the 2007 accounts.

Resolutions voted in general meetings

In all the cases in which a regulated agreement was submitted to the vote of the general meeting, each was framed in an individual resolution for the executive concerned.

All these resolutions were adopted. The lowest majority to approve a severance package for an executive was 62% of the votes, one passed with less than 75% of the votes, and two with less than 80%. It should be noted that, despite the voting instructions issued by AFG and Risk Metrics against golden parachutes in a certain number of companies where the amount of the benefit was more than twice the executive's final salary, all the resolutions were adopted with more than 70% of the votes.

It is not always easy to ascertain the date at which an agreement takes effect. One company stated explicitly that the decision submitted to ratification by the general meeting would take effect on 1 January 2009.

Performance-related conditions

In almost all the French companies in the CAC 40 index, severance payments are contingent on performance conditions that are stated more or less explicitly. However, one-third of the other companies in the Euronext A sub-sample that grant deferred compensation have not placed performance-related conditions on such severance benefits.

6.2.4.3. Level of detail in performance conditions

While some companies present their performance criteria in detail, others remain fairly vague. Some companies correlate the payment of a benefit exclusively with developments in their business, while others relate payments to share prices or market indices. Some companies use a mixture of these criteria. Others set qualitative goals, often in very generous terms.

While the great majority of companies set the level that the criteria must reach in order for benefits to be paid (e.g. ratio of net earnings to sales greater than 15%, cash flow-to-sales ratio greater than 18%), others provide no indication whatsoever. A few companies have specified several levels below which no payment will be made. And while some companies demand that a particular objective or set of objectives be met before payment will be made, others require only certain objectives (e.g. two out of three).

Without pre-judging companies' strategies, it seems that while some base performance conditions on ambitious objectives for deferred compensation, others require minimal levels of performance.

The vast majority of companies that provide information state that the performance assessment covers the three years prior to the end of the person's tenure. A few companies consider the performance of the executive over all of the years completed during his tenure. More rarely, a few companies state that the evaluation covers only the last financial year prior to dismissal.

6.2.4.4. Amount of benefits payable

Most regulated agreements relating to severance benefits set the benchmark at 24 months of gross annual compensation (fixed and variable). As a rule, the variable component is calculated as the average for the two or three years preceding the termination or non-renewal of the contract. In some cases, if the departure occurs within a certain period of time (often 12 months) following a change in control of the group, the amount may be increased (for example, set at 30 or 36 months of compensation).

In the most extreme cases:

- at the lower end of the range, termination benefits are capped at 12 months of the last fixed compensation in one case and at 6 months of fixed and variable compensation in another;
- at the upper end of the range, benefits equal to 36 months of fixed and variable compensation, calculated on the basis of the most recent compensation or on an average.

6.2.4.5. Other findings

Some companies also pay loyalty or non-compete bonuses, which in some cases can amount to 18 months of total compensation

The fact that no regulated agreement is mentioned in the special report of the statutory auditors does not mean that a contractual termination benefit does not exist. Some companies specify that executives cannot expect payment of any benefits for their executive functions but can receive “end of career” bonuses or bonuses stipulated either in their employment contracts or in a collective bargaining agreement applicable to company's industry. In certain cases, although not subject to performance conditions, some companies disclose information on the maximum amount of these benefits. While in some companies the provisions of employment contracts are covered by regulated agreements, other companies state that no severance bonuses are paid to executives and refer to their employment contracts without providing further details. Some companies include in the regulated agreement a clause specifying that the employment contract resumes automatically on the day that the chief executive officer’s tenure ends for whatever reason.

One company provides that in the event of a contract termination following a change of majority owner, executives are entitled to payment of a termination bonus equal to one or two years' compensation, depending on the circumstances, since the payment of such benefits is not subject to the TEPA Act. In some companies with management boards, while the deferred compensation for some members of the management board is subject to the TEPA provisions, this is not so for others, in particular because they work for foreign subsidiaries of the group.

Finally, one company that does not follow the provisions of the TEPA Act states that “the members of the executive board and, where applicable, the executives are entitled to a contractual severance benefit, by virtue of their functions and under certain conditions, in particular the absence of misconduct in performing their duties. They may also retain, where appropriate, some or all of their rights to exercise previously granted stock options”.

6.2.5. Supplementary retirement benefits for executives

Roughly one-third of the companies stated that they provided supplementary pension benefits to executives.. This represents 60% of the companies in the Euronext A sub-sample and 8% of the companies in the small and midcap sub-sample.

This information is sometimes dispersed, and executives are sometimes also entitled to benefits that are offered to all the company’s employees or to senior managers under a general scheme.

Nearly 80% of the executives concerned benefit from a person-specific plan. Other companies state that executives have the same retirement plan as the group’s other senior managers, or more generally other employees whose compensation exceeds a certain fraction of the earnings limit for chargeable social security contributions.

Three-quarters of the companies that have a specific retirement plan disclose its main characteristics and in particular the calculation methods. About one-quarter of the companies are very transparent, providing information on the potential amounts of their commitments to individual executives.

Finally, 10% of the companies, all in the Euronext A sub-sample, describe the terms of their employee benefit scheme.

6.2.6. Stock options

About half of the companies in the sample report that they set up stock option plans in 2007. Three-quarters of these outlined their option grant policies. The majority of companies state that the general policy is discussed in the compensation committee and that the board of directors or the supervisory board makes its decision based on the committee's proposals.

None of the stock option plans described, and for which such information is disclosed, applies a haircut when the options are granted. Some companies distribute stock options at irregular intervals, while others offer plans at the same time every year. A few companies spread the exercise of options over several years, some of them adding conditions based on targets. About a quarter of the companies that implemented stock option plans in 2007 made exercise conditional in part on achieving performance targets over one or more years. In a few cases, the performance targets are set for executives, but not senior managers.

For example, one company states that "100% of the options are exercisable […] if the group's profit margin is 8.5% or more; 80% of the options are exercisable if the profit margin is between 8% and 8.5%; 40% of the options are exercisable if the profit margin is between 7.5% and 8%; and no options may be exercised if the margin is less than 7.5%".

A few companies state explicitly in their registration document that they have introduced a procedure that executives must follow before exercising their stock options to ensure that they do not have any inside information that could prevent them from doing so. For example, at one company senior managers' options are managed by an external financial institution.

Some companies describe how they deal with unexercised options and bonus shares not acquired upon leaving the company, stating, for example, that the executive must still be with the company when the options are exercised. Some companies specify, in the agreement dealing with compensation and severance benefits in certain cases of termination, that executives retain entitlement to stock options distributed to them prior to termination, provided they are not guilty of gross negligence.

A few companies allow early exercise of stock options in the event of a change of corporate control.

Some companies explain the holding requirements[65] that apply to executives with regard to option exercise shares.

Some other companies provide that managers can retain in their name a certain percentage of the shares resulting from the options they have exercised, in general until their departure or for a certain number of years. For example, one issuer states that "the board of directors has decided that the CEO must retain, in the form of securities, at each exercise of options granted in 2007 and throughout the entire term of office, 40% of the after-tax capital gain".

6.2.7 Bonus shares

Twenty-eight percent of the companies state that they awarded bonus shares in 2007, and three-quarters of them provide details on the characteristics of these awards. More than 40% of the companies that awarded bonus shares in 2007 also did so in 2007.

[65] The provisions of Articles L.225-185 and L.225-197-1 of the Commercial Code apply to options and shares awarded on or after the date of publication of the Act of 30 December 2006 on promoting employee profit-sharing and shareholding.

The AMF notes the efforts made by companies to improve transparency by presenting a special section in the chairman's reports devoted to the principles and rules set by the board to determine executive pay and benefits.

Nevertheless, the need for clear and accessible information on executive compensation calls for an overhaul of the legislation.

The requirements dealing with executive pay are defined and applied as follows:

- **multiple sources (overlapping laws);**
- **sometimes different scopes;**
- **communicated in multiple forms (management reports, chairman's reports on corporate governance and internal controls, etc.);**
- **complemented by regulatory recommendations (recommendations for registration documents, recommendations for the chairman's reports on corporate governance and internal controls, and accounting recommendations), along with those of professional associations (AFEP, ANSA, MEDEF, AFG, etc.) and other specialised bodies (IFA).**

Consequently, the existing framework should be simplified[66] to ensure uniform enforcement of the principle of transparency in compensation arrangements.

The AMF encourages companies to apply the recommendations formulated by AFEP and MEDEF in their report on executive pay published in October 2008. This document supplements the one published in January 2007 which the previous AMF report encouraged companies to apply. Accordingly the AMF wrote a letter inviting companies to disseminate and to post on their web-site the decisions adopted by their board in this respect by the 31 December 2008. Companies are also required to file the decisions of their board with the authority. The AMF will prepare a summary of published information as from the beginning of 2009, and monitor and report on their implementation within the AMF's next report.

More specifically, the AMF recommends that companies:

- **indicate clearly whether they apply all the October 2008 AFEP/MEDEF recommendations, and if they apply only some of them, explain precisely on which points they have decided to differ;**
- **provide detailed explanations of the fixed and variable components of compensation and disclose whether benefits in kind are awarded;**
- **disclose whether compensation is calculated on a net or gross basis;**
- **present a table that displays clearly the fixed compensation, variable compensation, directors' fees, and benefits in kind awarded to each executive, along with a comparison of the compensation paid over several financial years;**
- **provide explicit information on the criteria used to determine the variable component of executive pay;**
- **describe clearly and satisfactorily the terms of the commitments extended individually to one or more executives, particularly for deferred compensation;**
- **ensure that the information provided in the body of registration documents or management reports is consistent with that contained in regulated agreements or the draft resolutions submitted to the general meeting;**
- **ensure that investors are informed of all provisions in employment contracts that can influence executive pay.**

[66] In the report of the working group on small and medium capitalisation companies published in November 2007, the participants were already calling for the simplification of numerous requirements having multiple sources and different scopes. As an example, they cited the requirements on executive pay disclosures.

Finally, concerning the relationship between the information to be provided in the accounts and the information in the management report, the AMF reminds companies that when it published its recommendations regarding 2007 financial statements, it sought to "draw issuers' attention to the fact that disclosures in the financial statements and in the management report on the type of compensation (immediate or deferred) accruing to the parties covered by the two disclosure obligations (IAS 24[67] and management report) must be consistent. The AMF found that the commitments described in the management report were not always disclosed in the notes, particularly in the case of termination benefits."

[67] IAS 24.16 requires disclosure of total (not individual) compensation paid to senior managers, broken down into five categories: short-term benefits, post-employment benefits, other long-term benefits, termination benefits, and equity compensation benefits. In December 2007, the AMF recommended that issuers should disclose, in the annex, administrative and management bodies and other committees composing the group of "key management personnel" as defined in paragraph 9 of IAS 24. This report should be consistent with the corresponding information in the other parts of the registration document or annual report (for example, the presentation of the senior managers or the executive committee).

GENERAL CONCLUSIONS

This is the last report that will be based on a text which, although amended several times, still draws most of its substance from the 2003 Financial Security Act.

The AMF notes the progress that has been made in improving the transparency of corporate governance, particularly in terms of the details provided on the tasks and activities of the board of directors or supervisory board and the monitoring and structure of its work with committees. Small-cap and mid-cap companies have made noteworthy efforts to bring themselves closer to best practices in governance.

In keeping with the spirit in which it was developed, the AMF reference framework has, for many companies, become an internal control management tool, even if the references to the framework in the reports reveal varying degrees of implementation of both the framework and its application guide. In this first year of the framework's existence, more than half the companies in the sample refer to it. This is particularly noteworthy for small-cap and mid-cap firms, about half of whom use the framework, compared with the very small percentage that used a reference framework last year. In 60% of these cases the companies use the simplified reference framework, published in February 2008 and directed at small-caps and mid-caps, based on the findings of the work group chaired by Yves Mansion, a member of the AMF Board.

The AMF also notes the progress that companies have made in improving transparency on compensation, including a separate section that describes the principles and rules set by the board to determine pay and sundry benefits for executives.

Next year, companies will be required to draft their reports in accordance with the new European framework resulting from the transposition of Directives 2006/43/EC and 2006/46/EC. The DDAC Act of 3 July 2008 rounds out the framework, requiring companies to report on their risk management procedures. The section of the report on corporate governance should be supplemented by a description of the composition of the board, a "comply or explain" statement with respect to a code of conduct for corporate governance drafted by a professional association, a description of the specific mechanisms relating to the participation of shareholders in the general meeting or a reference to the relevant sections of the articles, and a reference to the publication of information likely to have an impact in the event of a public offering.

The AMF will analyse the way in which companies have incorporated the provisions of the administrative order that will implement the DDAC Act, particularly those relating to the establishment of audit committees. It should be noted that many French companies have largely anticipated this requirement, in some cases by several years.

Annex 1

Composition of the sample of companies used for the analysis

Sample description

The analysis of information published by legal entities making public offerings was finalised on 31 October 2008[68] on the basis of the following sample:

- 100 reports were analysed, including 94 that were in registration documents filed with the AMF.
- 97 of the companies are incorporated as limited-liability companies and 3 as limited partnerships with share capital.
- 99 of the companies have their registered office in France and 1 in another country.
- 9 of the companies in the sample are subject to the American Sarbanes-Oxley law, either because they are listed in the United States or because they are subsidiaries of parent companies listed in the United States.
- The classification by segment of companies listed on Euronext Paris was based on the segment to which they belonged on 21 January 2008[69].
- Les 50 companies marked with an asterisk in the following list were not in the 2007 sample.

List of companies in the sample

Euronext A sub-sample

CAC 40

1. ACCOR
2. AIR FRANCE KLM*
3. AIR LIQUIDE
4. ALCATEL-LUCENT
5. ALSTOM
6. AXA
7. BNP PARIBAS
8. BOUYGUES
9. CAP GEMINI
10. CARREFOUR
11. CREDIT AGRICOLE
12. DANONE
13. EADS
14. EDF
15. ESSILOR INTERNATIONAL
16. FRANCE TELECOM
17. GAZ DE FRANCE
18. L'OREAL
19. LAFARGE
20. LAGARDERE
21. LVMH
22. MICHELIN
23. PERNOD-RICARD
24. PEUGEOT
25. PPR
26. RENAULT
27. SAINT-GOBAIN
28. SANOFI-AVENTIS
29. SCHNEIDER ELECTRIC
30. SOCIETE GENERALE
31. SUEZ
32. TOTAL
33. UNIBAIL-RODAMCO*
34. VALLOUREC
35. VEOLIA
36. VINCI
37. VIVENDI

EURONEXT A (excluding CAC 40)

1. AREVA*
2. ATOS ORIGIN
3. CGG VERITAS
4. CLARINS*
5. EULER ET HERMES*
6. FAURECIA*
7. GECINA*
8. HAVAS
9. IMERYS*
10. LEGRAND*
11. THALES*
12. THOMSON
13. VALEO*

[68] The analysis of the companies was based on their situation on 31 August 2008, with the exception of one company that closed its accounts on 30 June 2008 and published its registration document in mid-October.

[69] On 17 January 2008, in accordance with Rule 6902/1 of Book I of the Market Rules, NYSE Euronext Paris published a list of the stocks whose market capitalisation segment changes on 21 January 2008. The market capitalisation used by NYSE Euronext is calculated based on the opening price on the last 60 trading days of 2007.

small and midcap sub-sample

EURONEXT B

1. ACANTHE DEVELOPPEMENT*
2. ALES GROUPE*
3. ALTRAN TECHNOLOGIES*
4. AUDIKA*
5. BOIRON*
6. BOIZEL CHANOINE CHAMPAGNE
7. BOURSORAMA*
8. CEGEDIM*
9. FONCIERE PARIS FRANCE*
10. GL TRADE
11. GROUPE GO SPORT*
12. INGENICO*
13. INTERPARFUMS*
14. IPSOS*
15. JACQUET METALS
16. LES NOUVEAUX CONSTRUCTEURS*
17. NRJ GROUP*
18. SOPRA*
19. TOUPARGEL*
20. TOUR EIFFEL*

EURONEXT C

1. ACTEOS
2. AUBAY*
3. BIOALLIANCE PHARMA
4. CAST*
5. COHERIS*
6. DEVERNOIS*
7. EBIZCUSS.COM*
8. ECA*
9. ESKER*
10. EVIALIS*
11. GENESYS
12. HOLOGRAM INDUSTRIES
13. HUBWOO.COM*
14. INNATE PHARMA*
15. KEYRUS*
16. JET MULTIMEDIA*
17. LE TANNEUR
18. MRM*
19. NATUREX
20. ORAPI
21. QUANTEL
22. SIIC DE PARIS*
23. SIPAREX CROISSANCE*
24. SOLUCOM*
25. SOREFICO COIFFURE*
26. SQLI*
27. SYTRAN*
28. TEAM PARTNERS GROUP*
29. TIPIAK*
30. VISIODENT*

French companies subject to SOX as of 31 December 2007 and included in the sample :

1. ALCATEL-LUCENT
2. AXA
3. CGG VERITAS
4. EULER HERMES
5. FRANCE TELECOM
6. SANOFI-AVENTIS
7. THOMSON
8. TOTAL
9. VEOLIA ENVIRONNEMENT

Annex 2

Amendments and proposed amendments to Article L225-37 of the Commercial Code between 1 August 2003 and 17 July 2008 concerning the corporate governance and internal control of limited-liability companies with boards of directors[70]

Note : amendments are shown underlined and in bold typeface

Act 2003-706 of 1 August (LSF Act)	Act 2005-842 of 26 July 2005 (Breton Act)	Act 2006-1770 of 30 December 2006	Act 2008-649 of 3 July 2008 (DDAC Act)[71] [72]	Draft administrative order of 17 July 2008 on the reform of pubic issuance
[…] ***The chairman of the board of directors describes the preparation and organisation of the board's work and the internal auditing procedures put in place by the company in a report attached to the report referred to in Articles L225-100, L225-102, L225-102-1 and L233-26. Without prejudice to the provisions of Article L225-56, the said report also indicates any limitations the board of directors places on the powers of the general manager.***	[…] **In companies that make public offerings**, the chairman of the board of directors describes the preparation and organisation of the board's work and the internal auditing procedures put in place by the company in a report attached to the report referred to in Articles L225-100, L225-102, L225-102-1 and L233-26. Without prejudice to the provisions of Article L225-56, the said report also indicates any limitations the board of directors places on the powers of the general manager.	[…] In companies that make public offerings, the chairman of the board of directors describes the preparation and organisation of the board's work and the internal auditing procedures put in place by the company in a report attached to the report referred to in Articles L225-100, L225-102, L225-102-1 and L233-26. Without prejudice to the provisions of Article L225-56, the said report also indicates any limitations the board of directors places on the powers of the general manager. **In companies whose securities are traded on a regulated market, this report shall also present the principles and rules set by the board of directors to determine compensation and sundry benefits for executives.**	[…] In companies that make public offerings, the chairman of the board of directors describes, in a report attached to the report referred to in Articles L225-100, L225-102, L225-102-1 and L233-26, **the composition**, the preparation and organisation of the board's work, and the internal auditing procedures **and risk management procedures put in place by the company, in particular describing the procedures relating to the generating and processing of accounting and financial information for the individual company accounts and, if applicable, for the consolidated accounts.** Without prejudice to the provisions of Article L225-56, the said report also indicates any limitations the board of directors places on the powers of the general manager. **When a company voluntarily applies a corporate governance code developed by a professional association organisation, the report referred to in this Article shall also identify the provisions that have**	[…] In companies **whose securities are traded on a regulated market ~~that make public offerings~~**, the chairman of the board of directors describes, in a report attached to the report referred to in Articles L225-100, L225-102, L225-102-1 and L233-26, the composition, the preparation and organisation of the board's work, and the internal auditing procedures and risk management procedures put in place by the company, in particular describing the procedures relating to the generating and processing of accounting and financial information for the individual company accounts and, if applicable, for the consolidated accounts. Without prejudice to the provisions of Article L225-56, the said report also indicates any limitations the board of directors places on the powers of the general manager. When a company voluntarily applies a corporate governance code developed by a professional association, the report referred to in this Article shall also identify the provisions that have been

[70] The same amendments were made to Article L225-68 of the Commercial Code, which applies to limited-liability companies with management boards or supervisory boards.

[71] This Act also extended to limited partnerships with shares the requirement to draw up a chairman's report on corporate governance and internal control.

[72] Article L.225-235 of the Commercial Code, which states that "in a report appended to the report referred to in the second paragraph of Article L225-100, the auditors present their observations on the report referred to in Article L225-37 or Article L225-68, as applicable, concerning the internal auditing procedures relating to the preparation and processing of accounting and financial information" has been amended by adding the following phrase : "they certify the establishment of the other information required by Articles L.225-37 and L.225-68".

Act 2003-706 of 1 August (LSF Act)	Act 2005-842 of 26 July 2005 (Breton Act)	Act 2006-1770 of 30 December 2006	Act 2008-649 of 3 July 2008 (DDAC Act)[71] [72]	Draft administrative order of 17 July 2008 on the reform of pubic issuance
			been rejected and the reasons for doing so, as well as where the code may be consulted. If a company does not make reference to such a corporate governance code, the report shall indicate the rules that it applies in addition to statutory requirements, and explain why the company has decided not to apply this corporate governance code. **The report referred to in this Article shall also describe the specific mechanisms relating to the participation of the shareholders in the general meeting or provide a reference to the provisions of the statutes that set out these mechanisms.** In companies whose securities are traded on a regulated market, this report shall also present the principles and rules set by the board of directors to determine compensation and sundry benefits for executives, **and it shall mention the publication of the information referred to in Article L.225-100-3.** **The report referred to in this Article shall be approved by the board of directors and made public.**	rejected and the reasons for doing so, as well as where the code may be consulted. If a company does not make reference to such a corporate governance code, the report shall indicate the rules that it applies in addition to statutory requirements, and explain why the company has decided not to apply this corporate governance code. The report referred to in this Article shall also describe the specific mechanisms relating to the participation of the shareholders in the general meeting or provide a reference to the provisions of the statutes that set out these mechanisms. ~~**In companies whose securities are traded on a regulated market,**~~ **This** report shall also present the principles and rules set by the board of directors to determine compensation and sundry benefits for executives, and it shall mention the publication of the information referred to in Article L.225-100-3. The report referred to in this Article shall be approved by the board of directors and made public.