AMF 2010 REPORT 0N
CORPORATE GOVERNANCE
AND EXECUTIVE COMPENSATION

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Executive Summary

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

This is the seventh AMF report on corporate governance in listed companies. It is based on an analysis of disclosures by a sample of 60 companies with shares listed on Euronext Paris (34 listed in the CAC 40 index and 26 in the SBF 120).

The AMF will draw up a second report at the end of 2010 concerning practices in small and medium capitalisation companies, with special reference to the new Middlenext code.

The first section of this report deals with methodology and a review of prevailing legislation, rules and standards (I). Based on observations made by the AMF when analysing companies' submissions, the report puts forward recommendations on corporate governance (II) and executive compensation (III).

The key trends covered in the 2010 AMF annual report on corporate governance and executive compensation are summarised below.

1. Corporate governance

1.1 Findings

The results reflect a further improvement in French companies' corporate governance practices.

<u>Systematic reference to a corporate governance code, the use of "consistent" terminology and widespread use of the "comply or explain" principle</u>:

- 100% of companies in the sample say they refer to the AFEP/MEDEF corporate governance code.
- 75% of companies use the terms "refer to" or "reference" (in 2008, the proportion stood at 59% across the sample as a whole).
- 60% of companies say they set aside some of the AFEP/MEDEF code's provisions and almost 80% of these companies explain why.
- The AMF further notes that certain explanations given by some of the companies that set aside provisions of the AFEP/MEDEF code fail to satisfy the "comply or explain" principle.

<u>Increase in the number of companies entrusting new duties to board members, notably with a view to preventing conflicts of interest:</u>

- 15% of companies in the sample have introduced (or say they plan to introduce) the role of lead director or board vice-chairman with responsibility for governance.
- More than half of companies specifically explain the reasons for deciding to introduce this organisational structure.
- All companies gave details of the specific tasks assigned to this director.

<u>Companies subscribe to the goal of greater boardroom diversity</u>:

- Increasing the number of women directors and bringing foreign directors onto the board are among the improvements in working methods planned by several companies.
- Following the 2010 annual general meeting season, the proportion of women directors of companies in the sample will be approximately 13%, and more than 15% for CAC 40 companies.
  In addition, more than 15% of sample companies will have 20% or more female directors, compared with 10% before the annual general meetings. CAC 40 companies in the sample will have more than 25% female directors, compared with some 15% at 31 December 2009.

No change in the proportion of independent directors on boards and committees:

- 100% of companies have independent directors (in 2008, the proportion for Segment A companies was 96%).
- The average proportion of independent board directors is 55% (comparable to that in 2008 for Segment A companies).
- The AMF has noted that a few companies do not clearly identify board members who are classified as independent. It also stresses the need for clear and detailed explanations about the implementation of the independence criteria in the AFEP/MEDEF code, particularly the one on business relations.

Increase in the proportion of audit and compensation (or remuneration) committees chaired by an independent director:

- 88% of audit committees are chaired by an independent director (in 2008, the proportion for Segment A companies was 81%).
- 79% of compensation committees are chaired by an independent director (in 2008, the proportion for Segment A companies was 70%).

Better information about the work and evaluation of boards:

- More than 60% of companies provide a detailed description of the board's work (in 2008, the proportion for Segment A companies was 53%).
- The proportion of companies providing a detailed account of the topics discussed at board meetings reached 90% in 2009.
- 87% of companies that assessed the work of the board in 2009 provided information on the results of their evaluation (in 2008, the proportion for Segment A companies was 71%).
- 59% of companies mentioned changes they wished to make to the board (in 2008, the proportion for Segment A companies was less than 50%).

Increase in the proportion of companies disclosing information about restrictions on the powers of the CEO or deputy CEOs:

- All sample companies with a board of directors gave information about restrictions on the CEO's powers.
- 83% of companies apply restrictions to the CEO's powers (in 2008, the proportion for Segment A companies was 71%).

1.2 Recommendations and areas for discussion

The AMF has noted significant progress this year on a large number of issues relating to corporate governance. These encouraging results are a sign of ongoing improvements in French companies' governance practices. The findings also identify room for improvement in the transparency of information, particularly in light of observed changes in governance arrangements. In this context, while highlighting the advances that have been made, the AMF is making a number of recommendations and highlighting some areas for discussion (see below).

➢ **Recommendations**

In view of the report's findings, the AMF is making the following recommendations:

1. Organisation of the board's work

- The AMF notes that many companies have this year provided explanations of changes in their governance; it recommends that companies should continue to explain their reasons for modifying their governance structure.
- The AMF recommends that companies which have separated the roles of chairman of the board of directors and chief executive officer should describe the chairman's duties in detail.

- The AMF recommends that companies which have introduced a lead director should describe in detail his role and duties, as well as his resources and prerogatives.
- The AMF notes an improvement with regard to multiple directorships held by executive officers in French and foreign listed companies. To ensure that the AFEP/MEDEF recommendation on multiple directorships is properly applied, and for the sake of transparency, the AMF recommends that companies should specify whether the directorships in question are held outside the group and whether the companies in which they are held are listed. The AMF reminds companies that particular attention should be paid to complying with the AFEP/MEDEF recommendation on multiple directorships or explaining non-compliance.
- The AMF recommends that companies which have adopted an objective of increasing boardroom diversity by having more women directors should disclose this fact, as some companies already do, when reporting on the areas for improvements identified in the board evaluation. The AMF reminds companies that have chosen to refer to the AFEP/MEDEF code that in the future they will have to explain their practices with regard to women directors as a result of new recommendations incorporated into the code in April 2010.
- The AMF notes that one third of companies provide information about the nationality of their directors, and it encourages those that do not yet do so to adopt this practice. The AMF also suggests that companies that have adopted an objective of increasing boardroom diversity by having more foreign or internationally experienced directors should disclose this fact, as some already do, when reporting on the areas for improvements identified in the board evaluation.
- The AMF notes the high proportion of companies that restrict the powers of their chief executive officers, reflecting a sharp increase on the previous year. It reiterates the recommendations in its 2009 Corporate Governance Report and recommends that all restrictions on the powers of the chief executive, and his deputies where such is the case, should be disclosed; if these restrictions have been adopted officially, companies should provide a cross-reference to the rules of procedure. If no restrictions have been applied, the AMF recommends that companies should state this explicitly.

2. Reference to a corporate governance code

- The AMF notes that companies are using much more consistent terminology to refer to the AFEP/MEDEF code this year, with the vast majority employing the exact same terms used in the Commercial Code, and recommends that companies continue with these improvements.
- The AMF notes that almost 80% of companies that say they set aside one or more of the code's corporate governance provisions provide an explanation for doing so. Regarding these explanations, the AMF reminds companies that if they do not apply one or more provisions of the code to which they refer, they are required by law to highlight those provisions and give reasons for their decision, in order to satisfy transparency and "comply or explain" requirements.

3. Director independence

- The AMF notes that all companies report having independent directors and recommends that they keep up their efforts to disclose information about the implementation of independence criteria contained in the code to which they refer and the nature of any explanations of non-compliance. The AMF recommends that the few companies that do not yet clearly identify which members of the board have been classified as independent by the board should do so, regardless of whether these directors are members of specialised committees.

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

- The AMF notes the genuine progress made this year in disclosing information about the results of board evaluations, as well as the desirable changes discussed as part of these assessments. This information should include the content of discussions held during the evaluation on the issue of greater boardroom diversity.

- **Areas for discussion**

Reminder of the areas for discussion outlined in the 2009 Corporate Governance Report

The AMF reiterates the four areas for discussion set out in its 2009 Corporate Governance Report, and once again suggests that industry groups take these guidelines into account when discussing these issues.

For the record, these areas for discussion cover the following subjects:

Discussion area 1: given the established observation that there are many different interpretations of what is meant by the independence and financial/accounting expertise of directors (concepts that are referred to in the regulations), discussions could be held on: clarifying the concepts of independence and financial and accounting expertise; independent directors, and how to square their position with compensation procedures and their role on boards; and achieving the right balance between independence and skills by appointing directors working in an appropriate professional area.

Discussion area 2: begin discussions about boardroom diversity. Aside from the need for board members to have specific individual qualities (independence, competence, experience, etc.), greater diversity (with more women, foreign directors, etc.) may help to enhance the quality of a board's work.

Discussion area 3: hold discussions about the stability of corporate governance arrangements and about explanations provided in this regard, particularly if a company returns to a governance structure it recently abandoned.

Discussion area 4: consider publishing sections of companies' rules of procedure dealing with the work of the board and its specialised committees in order to ensure orderly functioning and greater transparency.

Additions to the areas for discussion set out in the 2009 Corporate Governance Report

Furthermore, in light of the findings of this 2010 report, the AMF is expanding last year's discussion areas aimed at industry bodies as follows:

Discussion area 2: composition of boards and multiple directorships

- The AMF notes the progress made in 2010 on increasing the number of women directors and encourages companies to continue their efforts in this area. Aside from the issue of women directors, the AMF once again encourages companies to take a comprehensive look at the diversity of their boards.

- The question of strengthening the AFEP/MEDEF recommendation on multiple directorships could be addressed. In this context, and in line with any practical arrangements that may already have been made, a discussion could be opened on whether an executive director in the strict sense of the term (chairman and CEO, CEO, deputy CEO, chairman of the management board, member of the management board or statutory manager in a limited partnership) should obtain prior approval from the board before accepting a new directorship in a listed company.
  In terms of multiple directorship, another possibility to envisage is that the board should be able to make specific recommendations regarding the non-executive chairman, taking into account the special duties that may be assigned to him.

Discussion area 3: governance arrangements

- Giving consideration to corporate governance arrangements means questioning the status and role of non-executive chairmen in companies with a board of directors, particularly where a company decides to separate the duties of the chairman from those of the chief executive. In particular, clarifying these issues requires a review of (i) the nature of the tasks assigned to non-executive chairmen; (ii) the bodies that assign those tasks and any procedures they use to do so (e.g. opinions issued by committees); (iii) restrictions applied to those tasks, particularly in light of the powers of the chief executive; and (iv) the way in which the execution of those tasks is taken into account when determining the various components of compensation.

- The appointment of a lead director is a worthwhile area for discussion with a view to preventing potential conflicts of interest, particularly where the duties of chairman and CEO are held by the same person. In this regard, it is important that companies which decide to appoint a lead director should grant him powers and resources appropriate to his role, and that these should be formalised and transparent. Furthermore, companies that have appointed a lead director could consider including his corporate governance activities in the board evaluation and/or the chairman's report on corporate governance.

2. Executive compensation

2.1 Findings

This report has focused on implementation of the AFEP/MEDEF recommendations on combining corporate office with an employment contract and awarding stock options and performance shares. This issue can only be assessed over time. The AMF has also reviewed the response to the recommendations set out in its 2009 report in order to improve implementation of the AFEP/MEDEF code, as well as arrangements for termination payments to executives who left their posts during 2009.

- All the companies which in 2009 renewed the appointments of executives concerned by the AFEP/MEDEF provisions on combining corporate office with an employment contract were in compliance with the code.
  The AMF thus notes that 14 companies withdrew their executives' employment contracts. Some of these companies made up for the loss of benefits associated with employee status by paying compensation or maintaining those same benefits under the terms of corporate office.
  Furthermore, seven companies maintained their executives' employment contracts but, in accordance with the "comply or explain" principle, made it clear that they were doing so because of the executives' length of service as employees. The AMF considers that a company is complying with the code if it explains that it is maintaining an executive's employment contract because of the person's length of service as an employee and his personal circumstances.
  Finally, three companies in the sample also applied the rule of not combining corporate office with an employment contract to either the deputy chief executive or members of the management board, withdrawing their employment contracts.

- Regarding executive officers who left office in 2009, the AMF notes that only 50% of those companies that reported termination payments in their registration documents explained the terms and conditions of such payments to executives. The AMF considers that, in failing to provide precise and specific explanations, these companies are in breach of the AFEP/MEDEF code.

- The AMF notes an improvement in the standard of disclosure about defined benefit supplementary pension schemes in 2009, with 14 companies providing full information on individual entitlements (compared with eight in 2008). Two companies specified that pension scheme entitlement did not depend on the executives' presence in the company; as such, they failed to comply with one of the AFEP/MEDEF recommendations on supplementary pension schemes.

- The AMF notes that almost all companies spell out the quantitative criteria they use to determine variable compensation. These criteria are hard to measure since only one company provided precise figures on the level of performance to be achieved. The AMF recommends that companies clarify the extent to which executive directors are expected to achieve quantitative targets in relation to variable remuneration or, at the very least, explain that the required level of achievement has been determined precisely but is not publicly disclosed for reasons of confidentiality.

- The AMF notes that almost all companies that awarded stock options or performance shares in 2009 said that they apply performance criteria which must be met before stock options can be exercised in full or shares are finally allotted. Only five companies fail to comply with the AFEP/MEDEF code on this issue: four of these apply performance criteria only to the exercise of some of the stock options awarded or to the final allotment of some shares, while one does not apply any performance criteria, considering the company's stock market performance alone to be sufficient.

Furthermore, the vast majority of companies link grants of stock options and performance shares to the achievement of either internal or external performance criteria. The AMF notes that the beneficiary's continued presence in the company when options are exercised and performance shares finally allotted cannot be considered a serious and demanding performance criterion. The AMF also observes that few companies apply a combination of both internal and external performance criteria. Finally, the AMF notes that several companies in the sample do not specify that their executives are required to hold shares for a mandatory period, even though this obligation is set forth in Articles L. 225-185 and L. 225-197-1 of the Commercial Code and stipulated by the AFEP/MEDEF code.

2.2 Recommendations and areas for discussion

Based on its main findings the AMF concludes that, a year and a half after the AFEP/MEDEF recommendations were published, large corporates have made genuine progress in the area of executive compensation.

In particular, issuers have made significant efforts to apply the transparency recommendations issued by the AMF in 2009: (i) centralisation of information and use of summary tables; (ii) full disclosure of potential individual supplementary pension entitlements; (iii) a precise and explicit definition of the qualitative criteria used to determine variable compensation; and (iv), imposition of performance requirements on the right to exercise stock options in full and the allotment of shares.

In light of these improvements and in order to continue down this path, the AMF sets out the following recommendations and reiterates the areas for discussion published in 2009, which remain relevant for some issuers:

- The AMF recommends that companies make a particular effort to clearly disclose when they do not apply certain provisions of the code, especially with regard to termination payments to executive directors. Since the AFEP/MEDEF Code is based on the "comply or explain" principle, the AMF considers that companies are in breach of its terms if they fail to provide detailed explanations.
- The AMF recommends that companies clarify the extent to which executive directors are expected to achieve quantitative targets in relation to variable remuneration or, at the very least, explain that the required level of achievement has been determined precisely but is not publicly disclosed for confidentiality reasons.
- The AMF considers that the beneficiary's continued presence within the company when options are exercised and performance shares are finally allotted cannot be considered a serious and demanding performance criterion.
- The AMF recommends that companies disclose information in their registration document on the obligation to hold shares for a mandatory period, as required by the Commercial Code and the AFEP/MEDEF code.

The AMF also wishes to reiterate the areas for discussion published in 2009, which remain relevant:

- Definition of qualitative components of the AFEP/MEDEF code. This report's observation on the "presence requirement" illustrates the need for companies to spell out these quantitative factors, providing examples where applicable.
- A formal commitment not to hedge stock options.
- A specific amendment to the AFEP/MEDEF code concerning the ban on combining an employment contract with corporate office for listed companies and their subsidiaries.
- An amendment to the AFEP/MEDEF code to ensure that the exercise of all stock options granted to executives and the acquisition of all performance shares is subject to internal performance criteria and, where possible and relevant, to external performance criteria, in accordance with the AFEP/MEDEF recommendations dated 6 October 2008.
- Compensation arrangements for non-executive chairmen, taking into account the wide range of situations and the variety of duties they carry out, as well as their role of supervising and monitoring the company.
- Adoption of the European Commission recommendation of 30 April 2009, particularly as regards the role of shareholders.

I. METHODOLOGY AND REVIEW OF THE LEGISLATIVE AND REGULATORY FRAMEWORK

1. Objectives and methodology

1.1 Objectives and sample

1.1.1 Objectives

The objective of the AMF's annual report on corporate governance and executive compensation is to assess the best practices used by listed companies and, where applicable, set out recommendations and areas for discussion. The report is based on an analysis of information published by issuers on this subject. It does not include a statistical analysis of internal control activities. The AMF set up a working group in October 2009 to review the operation of audit committees. This review also served as an opportunity to suggest amendments to the internal control and risk management reference framework introduced by the AMF in 2007. The group's work will be published following a consultation process.

1.1.2 Sample

The AMF has based its analysis on a sample of 60 companies representing a total market capitalisation of €951 billion at 30 April 2010. This is equivalent to 74% of the combined capitalisation of all French listed companies and 69% of the total capitalisation of all companies listed on Euronext Paris.

For CAC 40 companies, the sample corresponds to that used for the 2009 AMF report on executive compensation in 2008[1] (the "2009 AMF Report on Compensation"). To renew the sample, 26 new companies from the SBF 120 index, selected in descending order of market capitalisation and different from those used in the 2009 AMF Report on Compensation, have been added for the executive compensation section of this year's report. It includes 34 companies from the CAC 40 index[2] and 26 from the SBF 120, selected on the basis of market capitalisation (a full list of companies is provided in the annexes).

It should, however, be noted that the following CAC 40 companies were not included in the sample, either because they are foreign-owned or because their registration documents were unavailable when this report was drafted:

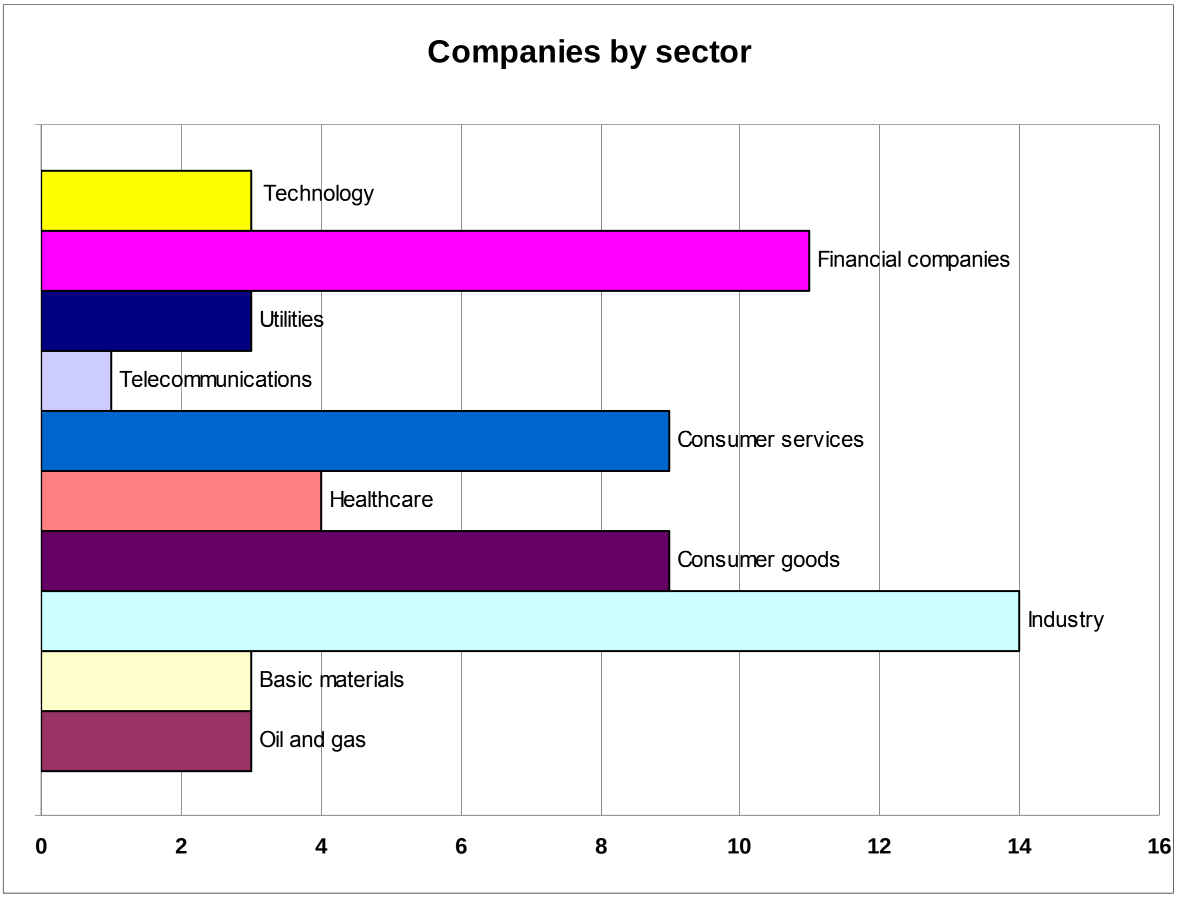
- 4 foreign companies (Arcelor Mittal, Dexia, EADS and STMicroelectronics)
- 2 companies using a non-standard accounting year and whose registration documents had yet to be filed with the AMF as at 6 May 2010 (Alstom and Pernod Ricard)

1 AMF report on executive compensation and implementation of the AFEP/MEDEF recommendations – 9 July 2009

2 Air France KLM is no longer in the CAC 40, and has been replaced by Technip, bringing the number of CAC 40 companies included in the sample to 34, as compared with 33 for the 2009 AMF Report on Compensation (Air France KLM could not be included last year as a result of having a non-standard accounting year).

➢ A breakdown of companies in the sample by sector is as follows:

Business sector	Number of companies	Business sector	Number of companies
Consumer goods	9	Consumer services	9
Industry	14	Financial companies	11
Basic materials	3	Technology	3
Oil and gas	3	Telecommunications	1
Healthcare	4	TOTAL	60
Utilities	3		



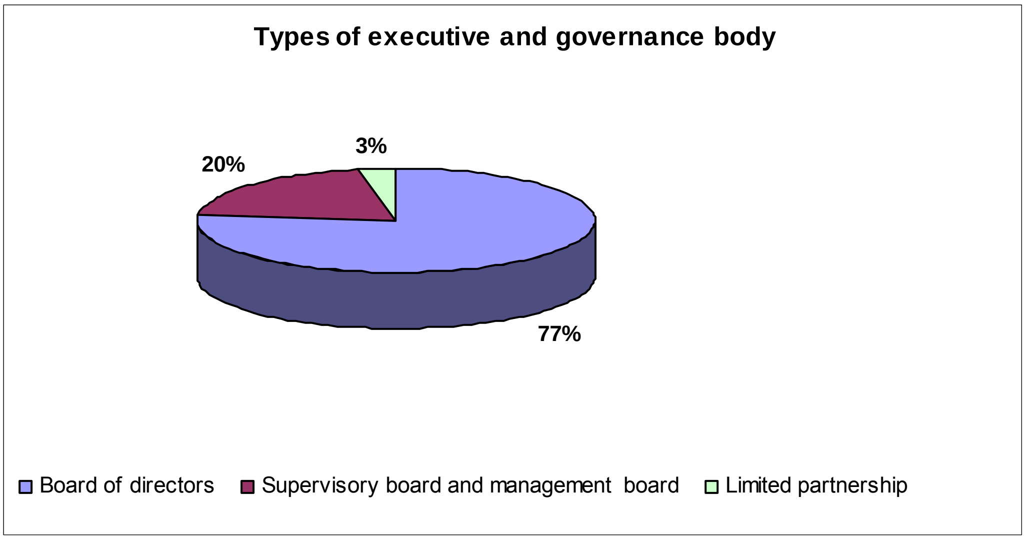
Source: AMF

➢ Breakdown by type of executive and governance body

In terms of their executive and governance bodies, the companies in the sample can be broken down as follows:

- 77% of companies in the sample have a board of directors;
- 20% have a supervisory board and a management board;
- 3% are limited stock partnerships (*sociétés en commandite par actions*).

Comments on organisational changes occurring during 2009 or in early 2010 are provided in the corporate governance section of the report.



Source: AMF

1.2 Analytic method

The registration documents filed by the sample companies were analysed both quantitatively and qualitatively, using a matrix of best practices for corporate governance and executive compensation in the French markets. The AMF did not interview any of the issuers in the sample for this report.

With regard to corporate governance, it should be noted that:

- in some cases, separate analyses were carried out on companies in the CAC 40 and others in the SBF 120 and/or exclusively on CAC 40 sample companies, where appropriate;
- for the purposes of analysing board composition and diversity ("1. Organisation of the board's work"), draft resolutions published by sample companies in the official gazette, BALO, were also reviewed.

With regard to executive compensation, a comparative analysis was also carried out for specific points pertaining to CAC 40 companies (the sample of CAC 40 companies used for this report is the same as that used for the 2009 AMF Report[3] on Compensation).

1.3 Structure of the analysis

1.3.1 Reminder of previous year's findings

1) December 2009 Corporate Governance Report

The AMF's previous report on corporate governance and internal control (hereafter "the 2009 Corporate Governance Report") was based on a sample of 100 companies. Fifty of these were listed on Segment A of Euronext, and 36 of those 50 belonged to the CAC 40.

This year's sample of 60 companies includes firms included in the SBF 120 index, 34 of which belong to the CAC 40. Forty-one of the 60 were included in last year's sample. CAC 40 companies accounted for 57% of this year's total sample (60 companies), compared with 72% last year for Segment A companies (50 companies).

[3] Although it did not join the CAC 40 until 2009, Technip has been included in all 2008 figures in the report so as to ensure a consistent sample of CAC 40 companies across both years.

2) 2009 AMF report on executive compensation

The AMF report on executive compensation in listed companies and implementation of the AFEP/MEDEF recommendations was based on a sample of 60 companies from the CAC 40 and SBF 120 indices. At 30 April 2009, this sample represented a total market capitalisation of €816 billion, equivalent to 83% of the combined market capitalisation of all French companies listed on the Paris market.

This year's 60-strong sample includes companies from the SBF 120 index, 34 of which belong to the CAC 40. All 34 CAC 40 companies were also included in last year's sample.

1.3.2 Recommendations and areas for discussion put forward by the AMF

To maintain clarity, the following structure is used throughout the report:

- a summary of applicable legislation, provisions from the AFEP/MEDEF code and recommendations or areas for discussion put forward by the AMF in previous years;
- observed practices;
- further AMF recommendations, where applicable;
- suggested areas for discussion for industry groups.

2. Legislative and regulatory framework

The legislative and regulatory framework for the AMF's 2010 report includes both European and domestic statutes and regulations, which are set out in detail in the 2009 AMF Report on Corporate Governance dated 8 December 2009.

The following European provisions in particular should be noted:

- European Commission Regulation 809/2004/EC of 29 April 2004 stipulates the information to be included in prospectuses prepared by companies planning a public offering or the listing of their securities on a regulated market. The regulation's content also applies to the registration documents prepared annually by some listed companies.
- European Commission recommendations:
    - Recommendation 2004/913/EC of 14 December 2004 fostering an appropriate regime for the remuneration of directors of listed companies
    - Recommendation 2005/162/EC of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board
    - Recommendation 2009/385/EC of 30 April 2009 complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies.

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

- Article L. 621-18-3 of the Monetary and Financial Code, pursuant to which the AMF has prepared this report.
- Article L. 225-37 of the Commercial Code, which stipulates that, where a company voluntarily applies a corporate governance code drawn up by industry groups, the chairman's report should identify any provisions that have been set aside and give the reasons for doing so. Furthermore, where a company does not apply a corporate governance code, the report should indicate the rules that are applied in addition to statutory requirements and explain why the company has chosen not to apply any of the provisions of the relevant corporate governance code.
- Article L. 225-102-1 of the Commercial Code, which sets out references to executive compensation to be included in the management report presented to shareholders at general meetings. The content of this article also applies to registration documents.
- Articles L. 225-185 and L. 225-197-1 of the Commercial Code, requiring executive directors to retain a certain number of shares.
- Article L. 823-19 of the Commercial Code, which makes it mandatory to set up a specialised committee of the board of directors or supervisory board whose statutory duties include the monitoring of:
    - the process used to prepare financial reporting;
    - the effectiveness of internal control and risk management systems;
    - statutory audits of the annual financial statements and, if applicable, consolidated financial statements, carried out by the statutory auditors;
    - the independence of the statutory auditors[4].
- Article 221-1 of the AMF General Regulation provides that regulated information should include – in addition to the annual financial report, the half-yearly financial report and quarterly financial reporting – the reports referred to in Article 222-9 of the General Regulation concerning the conditions for preparing and organising the work of the board of directors or supervisory board and the internal control "and risk management" procedures adopted by issuers.

Regarding the specialised committee required by Article L. 823-19 of the Commercial Code, the AMF set up a working group in October 2009 to review the operation of audit committees. The group prepared a report, currently under public consultation, highlighting the salient aspects of the audit committees' role, clarifying their operational scope and suggesting an approach to implementation. This review also served as an opportunity to suggest amendments to the internal control and risk management reference framework introduced by the AMF in 2007.

It should also be noted that two pieces of draft legislation have been filed, relating in particular to the representation of women on boards of directors and supervisory boards, and, for one of the bills, multiple directorships:

- the bill on balanced representation of women and men on boards of directors and supervisory boards and professional equality, filed at the Assemblée Nationale on 3 December 2009

- the bill on rules for multiple and incompatible directorships in public limited companies and for balanced representation of women and men on boards of directors and supervisory boards, filed at the Senate on 16 February 2010

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

3. Corporate governance codes and positions expressed by various bodies and associations

3.1 Corporate governance codes

- AFEP/MEDEF code

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

On 18 November 2009 AFEP and MEDEF published a report on the implementation of their corporate governance code in an effort to assess compliance with its recommendations.

- Middlenext code

Middlenext published a corporate governance code for small and medium capitalisation companies in December 2009.

3.2 Positions expressed by various bodies and associations

- Institut Français des Administrateurs (IFA)

The national institute of directors (Institut Français des Administrateurs – IFA) has put forward several proposals on the role of independent directors, audit committees and internal audit:

- Independent directors: definition and analysis matrix – produced by the IFA Commission on Ethics and the Status of Directors – 14 December 2006
- 100 best practices for audit committees – January 2008
- The role of internal audit in corporate governance (in partnership with Institut Français de l'Audit et du Contrôle Internes) – April 2009
- The role of the director in risk management (in partnership with Association pour le Management des Risques et des Assurances de l'Entreprise) – June 2009
- Audit committees and external auditors – November 2009

- Association française de la gestion financière (AFG)

The AFG updated its *"Recommendations on corporate governance"* in January 2010.

II. CORPORATE GOVERNANCE

In its 2009 Corporate Governance Report, the AMF reported encouraging results that reflected ongoing improvements in French companies' corporate governance practices. However, the AMF noted that there was still room for improvement in some areas of corporate governance. It noted in particular the small proportion of companies that provided a genuinely detailed summary of their board's remit and those that described planned improvements following a board evaluation. It also noted a fall in the number of compensation committees chaired by an independent director and the proportion of companies reporting that restrictions had been placed on their chief executive's powers. It further noted that, of those companies that set aside one or more provisions of the corporate governance code to which they referred, 22% gave no reasons for doing so. It also noted the presence of executive directors and non-executive chairmen on audit and compensation committees.

In 2009 the AMF made several recommendations based not only on these findings but also on other subjects, including: changes in governance arrangements and the explanations therefor, together with the resources put in place to prevent potential conflicts of interest (e.g. appointment of a lead director); adherence to the "comply or explain" principle with respect to multiple directorships; publication and regular updating of rules of procedure, particularly so as to remain in step with regulatory changes; the terminology used to refer to a corporate governance code; and the extent to which companies disclose compliance with the code to which they refer when defining director independence. The AMF also put forward several areas for discussion, one of which relating specifically to boardroom diversity.

The corporate governance section of the 2010 report has been prepared in light of these key findings and recommendations.

It should be remembered that listed companies are legally required to include a statement on corporate governance in their annual reports. The statement should indicate which corporate governance code, if any, the company voluntarily applies. As part of best practice, the statement should also explain which parts of the code are not applied and why this is the case. It is recommended that companies comply with a code, since market standards are deemed to include best practice. To ensure that shareholders are properly informed, listed companies must therefore be transparent on this issue, providing disclosures through the chairman's report on the preparation and organisation of the board's work and the internal control procedures adopted by the company.

1. Organisation of the board's work

1.1. Organisation of the board's work

1.1.1 Types of board

1.1.1.1 Reminder of legislation and recommendations

- AMF recommendation

In its 2009 Corporate Governance Report, the AMF urged companies to explain decisions to change their governance arrangements.

1.1.1.2 Findings

1) Observed trends in governance systems

In terms of board organisation, the proportion of companies with a board of directors (77%) and those with a supervisory board (23%)[5] remains unchanged relative to 2008 (76% and 24% across the sample as a whole). Of the companies with a board of directors, those that have decided to separate the positions of chairman and chief executive represent approximately one third of the sample in 2009.

In the course of 2009 six companies made changes to their governance systems. Three combined the positions of chairman and chief executive, two separated these positions and one moved from a structure with a supervisory board and a management board to a structure with a board of directors without separating the positions of chairman and chief executive.

Furthermore, eight companies in the sample also refer to governance changes they wish to implement during 2010; some of these companies had already implemented the changes in question when they published their 2010 registration documents. Four separated the positions of chairman and chief executive, three combined these positions and one moved from a structure with a supervisory board and a management board to a structure with a board of directors without separating the positions of chairman and chief executive.

2) Disclosures on changes in governance systems

A full 79% of companies provided an explanation of these governance changes.

The following should be noted:

- Both of the companies that moved from a supervisory board / management board structure to a board of directors explained why they had done so. The first company stressed that the change was a way of becoming more responsive in order to ensure growth and profitability in a broadly deteriorating economic environment. The second also underlined the need for a more responsive decision-making process in the context of a financial crisis characterised, in particular, by a swift succession of events.
- All six companies that combined the positions of chairman and chief executive explained why they had done so. Four highlighted the need to simplify the decision process so as to increase the efficiency and responsiveness of governance in a more challenging economic climate. The remaining two companies explained that their decisions had been driven by the departure of the chairman of the board of directors. In particular, they emphasised that the initial decision to separate the two positions had been prompted by a desire to facilitate management transition, with the chairman of the board previously holding the office of company chairman and CEO.
- Only three of the six companies that separated the positions of chairman and chief executive explained why they had done so. One said that separating the two positions led to an improvement in the operation of the board of directors through the appointment of an individual assigned exclusively to chairing the board, as well as increasing the board's oversight of the company's senior management. Another explained that the two positions had been separated to ensure continuity and stability in the eyes of the company's customers and staff when the chairman and CEO was appointed to an outside role, though the latter did stay on as chairman of the board of directors. A third company highlighted the need to put in place a succession plan for the chairman and CEO, who became chairman of the board of directors.

[5] These numbers include companies with share capital with supervisory and management boards (20% of the sample) and limited stock partnerships with share capital (sociétés en commandite par actions) which also have a supervisory board (3% of the sample).

In conclusion, the main trends observed in 2009 and early 2010 concerning changes in governance structure and companies' disclosures on the subject are as follows:

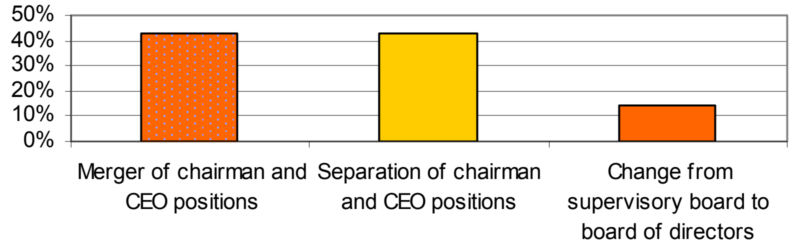
➢ <u>Changes in governance systems</u>

- The number of companies with a board of directors that decided to combine the positions of chairman of the board and CEO was the same as that which decided to separate them.
- Neither of the two companies that decided to move away from a structure with a supervisory board and a management board in favour of a structure with a board of directors chose to separate the positions of chairman and CEO.

➢ <u>Companies' disclosures on changes in governance systems</u>

- Among companies with a board of directors, all those that decided to combine the positions of chairman of and CEO explained why they had done so, whereas only 50% of those that decided to separate the two positions explained their reasons.
- Executive succession, together with an associated transition period, is one of the reasons put forward by companies to explain either a decision to combine the two positions at the end of the transition period or a decision to separate them.

Figure 1: changes in governance arrangements implemented in 2009 and announced or implemented in 2010



Source: AMF

The AMF notes that a large number of companies have this year provided explanations for changes in governance, and recommends that companies continue to explain why they modify their governance structure.

1.1.2 Role of the non-executive chairman in companies with a board of directors[6]

1.1.2.1 Reminder of legislation and recommendations

- Commercial Code

Article L.225-51 of the Commercial Code defines the role of the chairman of the board of directors as follows: "The chairman of the board of directors organises and directs the work of the board and reports on it to shareholders at the annual general meeting. He sees to it that the company's bodies operate smoothly and, in particular, that the directors are able to fulfil their duties."

1.1.2.2 Findings

The duties of chairman of the board of directors are separate from those of the executive in around one third of companies with a board of directors[7].

In this context, all companies reiterate the chairman of the board's statutory role of organising and directing the work of the board, as well as that of ensuring that the company's bodies operate smoothly.

Just under half of companies in which the two roles are separate report that they assign additional duties to the chairman of the board. Aside from confirming his involvement in determining the company's strategies, some companies assign the chairman a specific task of representing them and maintaining "high level" relationships ("he may represent...", "he contributes to developing the Group's relationships with...", "he maintains high-level relationships with...", etc.) with the following:

- public authorities, domestic or international institutional authorities and, more generally, economic stakeholders;
- key customers or partners of the group, both domestically and internationally;
- the company's shareholders

All those companies that assign specific duties to non-executive chairmen give details of those duties in the board's rules of procedure.

Fifty-seven per cent of companies specify that these duties are discharged in consultation or cooperation with senior management. Seventy-one per cent of the non-executive chairmen to whom these duties have been entrusted previously held the role of company chairman and CEO.

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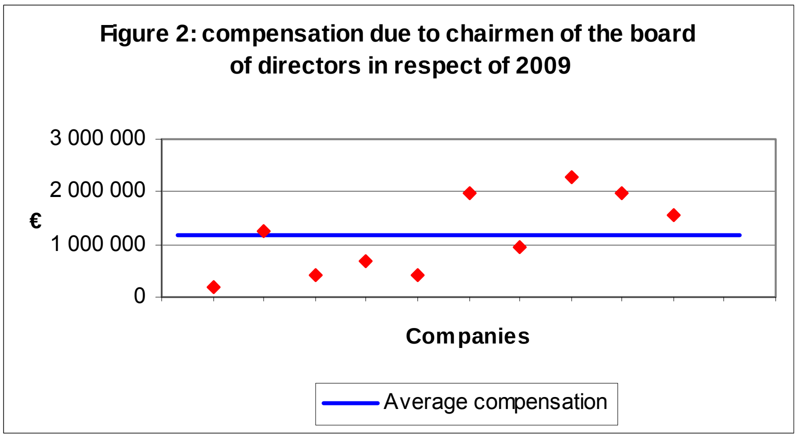
[6] For the record, the AFEP/MEDEF corporate governance code considers that a non-executive chairman of the board of directors falls into the category of "executive directors": "The term 'executive directors' refers here to the chairman, chief executive and deputy chief executive(s) of companies having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

[7] This finding only reflects companies in which the two roles were separate At 31 December 2009, and excludes any separation of roles that took place after that date.

As regards the compensation structure for non-executive chairmen[8], the following points should be noted:

- Two companies paid no fixed or variable compensation to their chairmen in 2009 (note, however, that both these chairmen are also executive directors of companies affiliated to the companies whose boards they chair).
- One company paid its chairman exceptional compensation in respect of 2009 for fulfilling duties linked to his technical expertise. This was authorised by the board in accordance with the procedure laid down in Article L. 225-38 of the Commercial Code.
- Five companies paid their chairmen variable compensation in respect of 2009 linked to performance criteria. In three companies, these performance criteria include conditions relating explicitly to the duties and tasks of the non-executive chairman[9].
- Average fixed, variable and exceptional compensation[10] paid in respect of 2009 to chairmen whose position was not combined with that of chief executive at any point in the year amounted to €1,170,000.
- Two companies awarded significant numbers of performance shares to their non-executive chairmen. In one case, the award was contingent on performance criteria including, in particular, a qualitative criterion linked to the way in which the chairman performed his duties; in the other case, the award was contingent only on the beneficiary still being with the company when the shares were finally allotted (see explanations in the "Compensation" section of this report).



Source: AMF

In light of the above findings, the AMF considers it important for companies to disclose the duties actually carried out by chairmen whose role is not combined with that of chief executive, and also to establish a link between the exact nature of those duties and the compensation structure adopted.

The AMF recommends that companies which have separated the roles of chairman of the board of directors and chief executive officer should describe the chairman's duties in detail.

8 These findings reflect only those companies whose registration documents contained full information on the chairman of the board's compensation in respect of 2009, with the exception of companies that published information on this subject in press releases or updates after filing their registration documents.

9 For more information on variable compensation criteria used by companies, see the detailed explanations set out in section 3 of this report ("Executive compensation").

10 Excluding directors' fees and benefits in kind. The two companies referred to above, which paid no fixed or variable compensation to their chairmen in 2009, were not included when calculating this average.

1.1.3 Appointment of a lead director

1.1.3.1 Reminder of legislation and recommendations

- AMF recommendation

In its 2009 Corporate Governance Report, the AMF urged companies making changes to their governance arrangements to disclose any measures, e.g. appointing a lead director, taken to prevent potential conflicts of interest.

1.1.3.2 Findings

Fifteen per cent of the sample companies have already introduced (or said they plan to introduce) the role of lead director or board vice-chairman with responsibility for governance[11] (hereafter “lead director”). Of these, 22% pointed out that a lead director would not actually be appointed until 2010.

All the companies that have either appointed or are planning to appoint a lead director have a board of directors. In 89% of these companies, the roles of chairman of the board and chief executive are combined into a single position.

More than half of companies specifically explain the reasons for deciding to introduce this structure. In four companies, the decision is intended to protect the prerogatives of the board and ensure good governance in a context where there is a single chairman and CEO. Another company expressly said it had implemented this change as a result of a discussion area referred to in the AMF's December 2009 Corporate Governance Report.

Eighty-nine per cent of companies define the characteristics, duties and prerogatives of the lead director within the board’s rules of procedure. It should be noted that one company’s articles of association expressly stipulate that a vice-chairman must be appointed where the roles of chairman of the board and chief executive are held by the same person.

Regarding the main characteristics of these directors, two thirds have the status of vice-chairman of the board of directors and 78% are independent directors or should be classified as such. One issuer specifically pointed out that the role of lead director was confined to a one-year term, with the holder eligible for reappointment if applicable.

Figure 3: main characteristics of lead directors

Source: AMF

[11] The examples given of companies with board vice-chairmen are cases where the company’s registration document expressly refers to specific duties whose content is related to corporate governance. This analysis does not, therefore, include board vice-chairmen for whom no specific duties are defined or described in the issuer’s registration document.

Lead directors have a wide range of duties:

- In more than half of companies, the role of the lead director is to advise and assist the chairman of the board on matters of governance and organising the board's work. He also has a key role in relation to independent directors: he seeks their opinions, coordinates their activities and represents them, particularly in dealings with the company's senior management.
- In just under half of companies, the lead director conducts or is involved in the annual appraisal of the chairman and CEO's performance and compensation; he also stands in for the chairman of the board, in particular by chairing board meetings, when the latter is unavailable.
- In one third of companies, the lead director is responsible for seeking comments and suggestions from shareholders not represented on the board and, where applicable, responding to them directly or taking part in any discussions held with them on the issue of corporate governance.
- More than 20% of companies also refer to the role of the lead director in detecting and investigating potential conflicts of interest and periodic self-assessments by the board.

Figure 4: duties of Lead Directors

Source: AMF

Some companies also grant the lead director certain prerogatives:

- He has prerogatives in terms of setting the agenda for board meetings. In 10% of cases, the lead director is consulted on the agenda and in 20% of cases, he may set the agenda and either directly call board meetings or ask the chairman to call them.
- One issuer expressly grants its lead director the right to hear the members of the group's executive committee as well as its senior executives in general.
- Another issuer stipulates that the lead director may call meetings of the board of directors not including members of senior management, is involved in the process of recruiting board and committee members and is invited by the chairman to report on his activities at annual general meetings.

In addition, just under half of companies point out that the lead director is a member, and, in some cases, chairman, of one or more board committees (corporate governance and appointments committee, compensation committee and audit committee).

These findings demonstrate that appointing a lead director is one practical way of preventing potential conflicts of interest; however, this does not mean that boards cannot pursue alternative methods of achieving the same result.

The AMF recommends that companies which have introduced a lead director should describe in detail his role and duties, as well as his resources and prerogatives.

1.1.4 Board composition, size and diversity

In its 2009 Corporate Governance Report, the AMF initiated a discussion on boardroom diversity and multiple directorships. Taking the issue forward, this section reviews the proportion of independent board directors, multiple directorships in listed companies held by executive directors and non-executive chairmen, and the representation of women and foreign directors on boards.

By way of introduction, it should be noted that the average number of directors or members on boards of directors and supervisory boards is 13, the same as in the previous year. Within the selected sample, the largest board had 18 more members than the smallest board.

In addition, as set out in section 5 below ("Evaluation of the work of the board and its committees"), several of the companies that disclose areas for improvement identified in a board evaluation expressly stated that they had begun discussions this year on the number of board members.

1.1.4.1 Proportion of independent directors

1) Reminder of legislation and recommendations

- AFEP/MEDEF code

"Independent directors should account for half the members of the Board in widely-held corporations and without controlling shareholders. In controlled companies, independent directors should account at least for a third."

2) Findings

All the companies in the sample have independent directors (in 2008, the proportion for Segment A companies was 96%). Seven per cent of companies do not explicitly identify their independent directors.

The average proportion of independent board directors is 55% (in 2008, the proportion for Segment A companies was 54%).

1.1.4.2 Multiple directorships in listed companies held by executive directors and non-executive chairmen

1) Reminder of legislation and recommendations

- Commercial Code

Article L. 225-21 of the Commercial Code stipulates as follows: "No one individual may simultaneously hold more than five directorships in public limited companies having their registered office in France. Notwithstanding the provisions of paragraph 1, this number shall not include directorships or supervisory board memberships held by the individual in question in companies which are controlled, within the meaning of Article L. 233-16, by the company of which he is a director. As regards enforcement of the provisions of this article, directorships of companies whose securities are not admitted to trading on a regulated market and which are controlled, within the meaning of Article L. 233-16, by the same company shall count as one directorship, provided that the number of such directorships does not exceed five [...]."

- AFEP/MEDEF code

"The director should apply to his or her duties the necessary time and attention. If performing executive duties, he or she should not, in principle, agree to hold more than four other directorships in listed corporations, including foreign corporations, not affiliated with his group."

- AMF recommendation

In its 2009 Corporate Governance Report, the AMF observed that, given the increased powers assigned to boards of directors (and especially to board committees), the complexity of organisational structures and the economic environment, the role of director was becoming ever more demanding. The AMF therefore recommended companies to pay particular attention to complying with – or explaining non-compliance with – the AFEP/MEDEF recommendation on multiple directorships, especially as regards executive directors and chairmen of boards of directors or supervisory boards.

2) Findings[12]

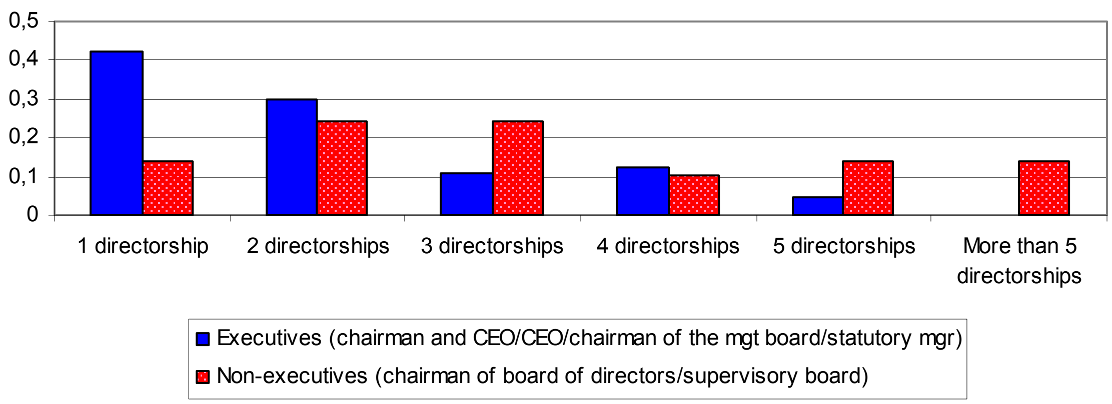
Just over half of executive directors of companies in the sample hold only one directorship in a French listed company, up slightly on last year's figure[13].

Some of these executives also hold directorships in foreign listed companies. These positions may prove demanding and require significant involvement on the part of the executives in question.

In 2009, taking into account directorships held in both French and foreign companies, no executive director held more than five directorships (in 2008, four executive directors out of a sample of 100 companies held more than five directorships)[14].

Although the relevant recommendation in the AFEP/MEDEF code does not apply to non-executive chairmen, it should be noted that in four companies, the non-executive chairman holds more than five directorships (fewer than the number of companies of which this was true in 2008 for a sample of 100 companies).

Figure 5: multiple directorships in French and foreign listed companies



Source: AMF

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[12] The following findings are based on directorships held by (i) non-executive chairmen (chairman of the supervisory board and chairman of the board of directors where the roles of chairman and chief executive are separate) and executive directors (chief executive, chairman of the management board, chairman and CEO, and statutory manager of a limited stock partnership). Directorships which came to an end in the course of 2009 are not taken into account.

[13] For the record, the French institute of directors, IFA, suggests that where a director has executive responsibilities in a listed company, he should not hold more than two other directorships in listed companies, not counting group subsidiaries.

[14] Directorships in companies belonging to key subsidiaries and associates of the listed companies in which the executive director holds his position were not included when counting the number of directorships held in listed companies.

As stated in a later section expanding on boards' rules of procedure, it should be noted that one company inserted an obligation into the provisions of its rules of procedure in 2009 under which its chairman and CEO is required to obtain agreement from the corporate governance and appointments committee before accepting a directorship in a listed company.

The AMF notes an improvement with regard to multiple directorships held by executive directors in French and foreign listed companies. To ensure that the AFEP/MEDEF recommendation on multiple directorships is properly applied, and for the sake of transparency, the AMF recommends that companies should specify whether the directorships in question are held outside the group and whether the companies in which they are held are listed. The AMF reminds companies that particular attention should be paid to complying with the AFEP/MEDEF recommendation on multiple directorships or explaining non-compliance.

1.1.4.3 Women in the boardroom

1) Reminder of legislation and recommendations

- Draft legislation

Two bills covering, inter alia, balanced representation of women and men on boards of directors and supervisory boards were filed on 3 December 2009 and 16 February 2010 respectively.

- AMF recommendation

In its 2009 Corporate Governance Report, the AMF recommended companies to appointing women with the same skills as their male counterparts.

- AFEP/MEDEF code

In April 2010 AFEP and MEDEF amended the provisions of their consolidated corporate governance code to incorporate a recommendation on the role of women in the boardroom[15].

2) Findings

a) At 31 December 2009

At 31 December 2009 the proportion of female members of boards of directors and supervisory boards of the sample companies was just under 10%; this proportion rises to 11.4% for the CAC 40 companies in the sample[16].

[15] See press release dated 19 April 2010. In this context, Articles 6.3 and 15.2.1 of the AFEP/MEDEF code were amended as follows: **Article 6.3**: "Each Board should consider what would be the desirable balance within its membership and within that of the committees of Board members which it has established, in particular as regards the representation of men and women and the diversity of competencies, and take appropriate action to assure the shareholders and market that its duties will be performed with the necessary independence and objectivity. In order to reach such balance, the objective is that each board shall reach and maintain a percentage of at least 20% of women within a period of three years and at least 40% of women within a period of six years, from the date of publication of this recommendation or from the date of the listing of the company's shares on a regulated market, whichever is later. The directors who are permanent representatives of the legal person and the directors representing employees/shareholders are taken into account in order to determine these percentages, but such is not the case as regards directors elected by the employees. When the board is comprised of fewer than 9 members, the gap at the end of six years, between the number of directors of each gender, may not be in excess of two. In addition, those boards that do not presently have any female member must nominate a female director at the latest upon the second general meeting following the publication of the recommendation, either through appointment of a new director or replacement of a director whose term of office has expired". **Article 15.2.1**: "This committee is in charge of submitting proposals to the Board after reviewing in detail all of the factors that it is to take into account in its proceedings: desirable balance in the membership of the Board having regard to the make-up of and changes in ownership of the corporation's stock, balance between men and women within the board, identification and evaluation of potential candidates, desirability of extensions of terms *(remainder of article unchanged)."*

It should be noted that almost 80% of boards include at least one woman and around 20% of boards of companies in the sample consist exclusively of men.

Around 10% of companies in the sample have at least 20% of female board members, while 15% of CAC 40 companies in the sample have at least 20% of female board members.

It should also be noted that almost 80% of women holding a directorship in a company in the sample hold only a single directorship in a listed company belonging to the SBF 120 index (this applies both to sample companies and to companies outside the sample).

In addition, as mentioned in section 5 below (“Evaluation of the work of the board and its committees”), some companies that disclose areas for improvement identified in a board evaluation expressed a desire to increase the number of female board members.

b) Trends observed at 2010 annual general meetings

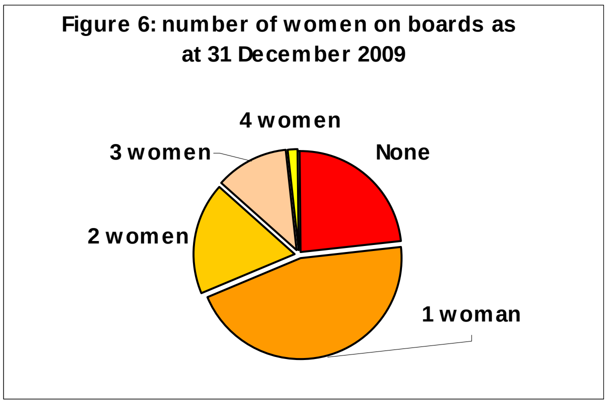
As well as the trends observed in 2010 registration documents published by the sample companies, the proportion of companies proposing the appointment of women to their boards of directors or supervisory boards at 2010 annual general meetings has also been reviewed[17].

More than 40% of companies in the sample proposed that at least one woman be appointed to their board. However, it should be noted that, across the sample as a whole, around one female appointee was proposed for every two male appointees proposed in resolutions submitted to shareholders at 2010 annual general meetings.

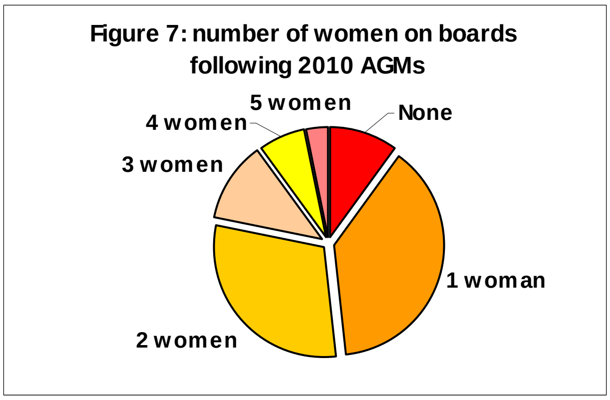
Following the 2010 annual general meeting season, the proportion of women directors of companies in the sample will be approximately 13%, and more than 15% for CAC 40 companies.

In addition, more than 15% of companies in the sample will have 20% or more female directors, compared with 10% before annual general meetings. CAC 40 companies in the sample will have more than 25% female directors, compared with around 15% at 31 December 2009. Thirty per cent of proposed female appointees are non-French.

The AMF notes the progress made in 2010 with regard to increasing the number of female directors, and encourages companies to continue their efforts in this area. For the record, the draft legislation on the subject stipulates that an interim threshold of 20% of female board members should be reached in the near future (within three years).



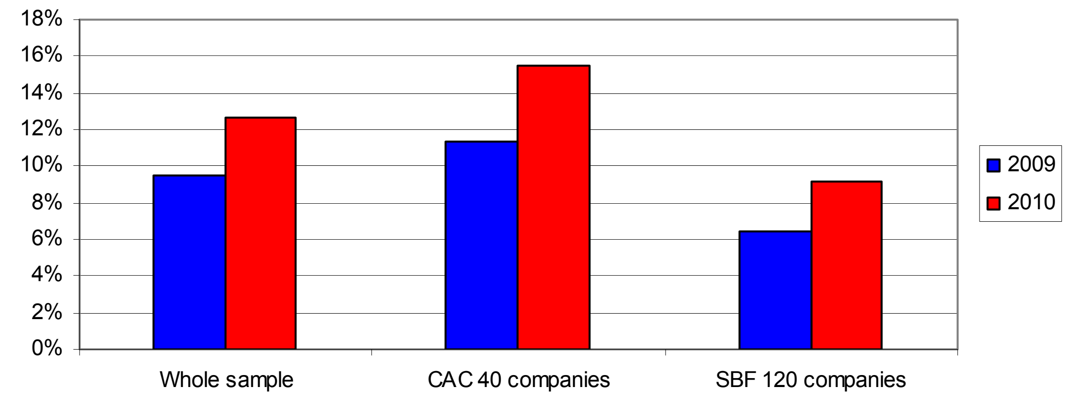
Source: AMF



Source: AMF

[16] Only includes directorships with voting powers (excluding, for example, any non-voting board members).
[17] The statistics that follow have been calculated on the basis of information contained in registration documents filed by companies in the sample and draft resolutions submitted to shareholders at 2010 annual general meetings, as published in the legal gazette (BALO).

Figure 8: average proportion of women on boards



Source: AMF

The AMF recommends that companies which have adopted an objective of increasing boardroom diversity by having more women directors should disclose this fact, as some companies already do, when reporting on the areas for improvements identified in the board evaluation. The AMF reminds companies that have chosen to refer to the AFEP/MEDEF code that in the future they will have to explain their practices with regard to women directors as a result of new recommendations incorporated into the code in April 2010.

1.1.4.4 Foreign directors

1) Reminder of legislation and recommendations

- AMF area for discussion

In its 2009 Corporate Governance Report, the AMF suggested that a discussion be initiated on boardroom diversity, with greater diversity (more women, foreign directors, etc.) potentially enhancing the quality of the board’s work.

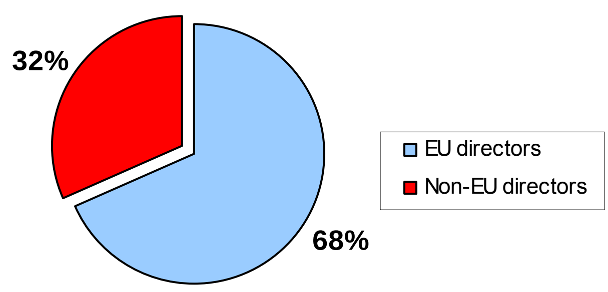
2) Findings

One third of companies in the sample expressly mention the nationality of their directors. Among these companies, the average proportion of foreign board members stands at around 30%. A full analysis of the sample[18] based on data not included in companies' registration documents (potentially non-centralised data which may be less reliable than that explicitly included in registration documents) shows the proportion of foreign directors to be just over 20%.

Fifty-five per cent of those companies that expressly mention nationality have fewer than five foreign directors. Around two thirds of these directors are from European Union countries; however, by nationality, the three most highly-represented countries are the United States (20%), the United Kingdom (20%) and Belgium (16%).

[18] i.e. also including companies in the sample that do not expressly mention the nationality of their directors.

Figure 9: nationality of board directors in 2009



Source: AMF

In addition, as mentioned in section 5 below ("Evaluation of the work of the board and its committees"), some companies that disclose areas for improvement identified in the board evaluation expressed an objective of opening up the board to foreign directors or directors with international knowledge and/or experience.

The AMF notes that one third of companies provide information about the nationality of their directors, and encourages those that do not yet do so to adopt this practice. The AMF also suggests that companies that have adopted an objective of increasing boardroom diversity by having more foreign or internationally experienced directors disclose this fact, as some already do, when reporting on the areas for improvements identified in the board evaluation.

1.2 Tasks and activity of the board

1.2.1 Tasks of the board

All companies set out the board's tasks. More than 60% of companies provide a detailed description of the board's work (in 2008, the proportion for Segment A companies was 53%).

1.2.2 Frequency of board meetings

1.2.2.1 Reminder of legislation and recommendations

- AFEP/MEDEF code

"The number of meetings of the Board of Directors and of the committees held during the past financial year should be mentioned in the annual report, which must also provide the shareholders with any relevant information relating to the directors' attendance at such meetings. The frequency and duration of meetings of the Board of Directors should be such that they allow in-depth review and discussion of the matters subject to the board's authority [...]."

- AMF recommendation

In its 2009 Corporate Governance Report, the AMF called for widespread adoption of the practice of preparing a detailed report on the board's activity, specifying the subjects discussed at board meetings and disclosing directors' average attendance rate at meetings.

1.2.2.2 Findings

As in the previous year, the average number of board meetings held in the year was stable at around eight, with 89% of board members attending meetings. The proportion of companies providing a detailed account of the subjects discussed at board meetings reached 90% in 2009.

As regards a detailed account of the board's work, companies provided information, in particular, on the board's monitoring of major strategic policies (planned or completed acquisitions, competitor reviews, group financing, etc.), day-to-day management (budget reviews, activity reports, signing off the financial statements, reporting of results, committee minutes, preparations for annual general meetings, dividend policy, etc.) and the workings of corporate bodies (composition and evaluation of the board, compensation paid to executive directors, review of directors' independence, etc.).

One issuer indicated as part of the annual review that the board had adopted a succession plan aimed in particular at establishing the procedure to be followed by the corporate governance and appointments committee and the board to identify potential successors to the chief executive and chairman. This procedure stipulates that no former executive director may be appointed chairman of the board.

1.3 Board rules of procedure

1.3.1 Reminder of legislation and recommendations

- AMF recommendation

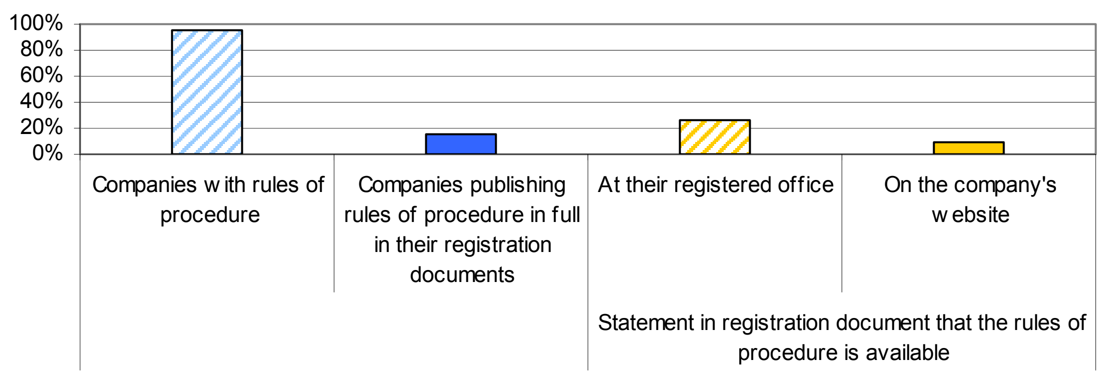
In its 2009 Corporate Governance Report, the AMF reminded companies that the rules of procedure constitute an extremely important document that describes the operating procedures, powers, responsibilities and tasks of the board and its specialised committees, and may establish the principle of evaluating the workings of the board. In particular, the AMF recommends that board rules of procedure be regularly reviewed and, if necessary, supplemented or amended to reflect regulatory changes.

1.3.2 Findings

Ninety-five per cent of companies say they have rules of procedure.

Sixteen per cent of companies publish their full rules of procedure either within their registration documents or as an annex, while 84% provide a summary. Furthermore, 26% of companies state that their rules of procedure may be viewed on their websites, and 9% at their registered offices.

Figure 10: rules of procedure



Source: AMF

Regarding the content of rules of procedure in particular:

- In 93% of companies, the rules cover the composition and operation of the board;
- In 84% of companies, they cover the composition, operation and tasks of specialised committees;
- In 70% of companies, they cover the division of tasks between senior management and the decision-making body.

Moreover, more than 20% of companies pointed out that they had amended their rules of procedure to bring them into line with legal provisions on audit committees laid down in the Executive Order of 8 December 2008.

Other key issues covered by the rules of procedure include:

- ethics for board members: duties of care, fairness, secrecy and confidentiality and rules on conflicts of interest;
- measures to prevent insider misconduct: rules on trading in the company's financial instruments, closed periods, etc.
- the requirement for board members to hold a minimum number of shares in the company.

Finally, notable practices found in the rules of procedure include:

- the obligation for a company’s chairman and CEO to obtain agreement from the corporate governance and appointments committee before accepting directorships in listed companies
- the provision of training to directors in the financial and legal aspects of their roles, the organisation of site visits, and the option for members of specialised committees to be put in contact with specialised committees in other listed companies

1.4 Restrictions on the powers of the chief executive and his deputies

1.4.1 Reminder of legislation and recommendations

- Commercial Code

Article L. 225-37 of the Commercial Code stipulates: “[...] without prejudice to the provisions of Article L225-56, the said report [the chairman’s report] shall also indicate any restrictions the board of directors may place on the powers of the chief executive.”

Article L. 225-56 of the Commercial Code stipulates: “I. - The chief executive officer shall have the broadest possible powers to act on behalf of the Company under all circumstances. He shall exercise these powers within the confines of the corporate purpose and subject to powers expressly granted by law to shareholders’ general meetings and to the board of directors [...] Provisions in the articles of association or decisions by the board of directors restricting the powers of the chief executive officer shall not be enforceable against third parties. II. - In agreement with the chief executive officer, the board of directors shall determine the scope and term of powers granted to deputy chief executives. Deputy chief executives shall have the same powers with regard to third parties as the chief executive officer.”

- AMF recommendation

In its 2009 Corporate Governance Report, the AMF pointed out, in particular, that it urges companies to disclose any restrictions on the powers of the chief executive and, if applicable, his deputies, by publishing them within the rules of procedure.

1.4.2 Findings

All sample companies with a board of directors report on whether restrictions have been placed on the chief executive's powers.

Of these companies, 83% restrict their chief executive's powers (in 2008, the proportion for Segment A companies was 71%).

Restrictions mainly apply to decisions on major issues, in particular:

- determining strategic areas for development;
- investments and divestments, debt, acquisitions, disposals, restructuring and partnerships above a level set by the board of directors;
- establishment in or withdrawal from certain geographical regions;
- issuing securities;
- authorising guarantees and sureties.

The AMF notes the high proportion of companies that restrict the powers of their chief executive officers, reflecting a sharp increase on the previous year. It reiterates the recommendations in its 2009 Corporate Governance Report and recommends that all restrictions on the powers of the chief executive, and his deputies where such is the case, should be disclosed; if these restrictions have been adopted officially, companies should provide a cross-reference to the rules of procedure. If no restrictions have been applied, the AMF recommends that companies should state this explicitly.

2. Reference to a corporate governance code

2.1 Reference to a corporate governance code

2.1.1 Reminder of legislation and recommendations

- Commercial Code

Under the terms of Article L. 225-37 of the Commercial Code: "Where a company voluntarily refers to a corporate governance code drafted by industry groups, the report stipulated in this article [the chairman's report] shall also identify any provisions the company has chosen not to apply and give the reasons for doing so. The report shall also state where the code can be consulted. Where a company does not refer to a corporate governance code, the report shall indicate the rules that are applied in addition to statutory requirements, and explain why the company has chosen not to apply any of the provisions of the relevant corporate governance code."

- AMF recommendation

In its 2009 Corporate Governance Report, the AMF recommended that companies use the language found in the Commercial Code, and particularly the expression "refer to", or, as the case may be, other terms such as "apply" or "comply with".

2.1.2 Findings

Regarding reference to a code, all the companies in the sample say that their corporate governance rules are based on the AFEP/MEDEF code (in 2008, the proportion among Segment A companies was 94%), while 75% of companies that mention the AFEP/MEDEF code use the terms "refer to" or "reference" (in 2008, the proportion among all companies in the sample was 59%).

The AMF notes that companies are using much more consistent terminology to refer to the AFEP/MEDEF code this year, with the vast majority employing the exact same terms used in the Commercial Code, and recommends that companies continue with these improvements.

2.2 Implementation of the "comply or explain" principle

2.2.1 Reminder of legislation and recommendations

- AFEP/MEDEF code

"Listed corporations referring to this corporate governance code should report, with particulars, in their reference documents or in their annual reports, on implementation of these recommendations and, if applicable, explain the reasons why any of them may not have been implemented. […]

Without affecting the duration of current terms, the duration of directors' terms of office, set by the by-laws ("*statuts*"), should not exceed a maximum of four years, so that the shareholders are called to express themselves through elections with sufficient frequency. Terms should be staggered so as to avoid replacement of the entire body and to favour a smooth replacement of directors [...]."

- AMF recommendation

In its 2009 Corporate Governance Report, the AMF reminded companies that, where they do not apply one or more provisions of the code to which they refer, they are required by law to highlight those provisions and give reasons for their decision, in order to satisfy transparency and "comply or explain" requirements.

2.2.2 Findings

Sixty per cent of companies set aside some of the provisions of the AFEP/MEDEF code. Those provisions most frequently set aside include:

- the proportion of independent directors on the board or its committees (49%);
- the requirement that, to be considered independent, a director may not have been a director of the company in question for more than 12 years (47%);
- the four-year limit on directors' terms of office (17%);
- the requirement for directors' terms to be renewed on a staggered basis (11%).

Almost 80% of companies explain their reasons for setting aside certain provisions of the AFEP/MEDEF code; correspondingly, around 20% of companies ignore certain criteria without giving any reason.

In particular, companies give the following reasons for setting aside certain recommendations in the AFEP/MEDEF code:

➢ A term in excess of 12 years but no impact on the director's independence [19]

[19] See the explanations set out in section 3, "Director independence".

➢ Proportion of independent directors on the board or its committees below AFEP/MEDEF code recommendations

To explain their reasons for not applying the AFEP/MEDEF recommendation on the proportion of independent directors on the board or its committees, some companies highlighted the following factors in particular:

- the fact that the company's share capital was controlled by two major shareholders, both of which were represented on the board;
- the combination of both a single major shareholder and directors representing employee shareholders, together with the group's tradition of having directors with executive duties within the group; the company in question concluded that this composition therefore reflected its specific characteristics and was considered as achieving a "sound balance"**;**
- the existence of specific legal and regulatory provisions governing the composition of the board of directors (the requirement to appoint a specific number of representatives of the French State and/or company employees to the board).

➢ Term of office longer than that recommended in the AFEP/MEDEF code

To explain that its directors' terms of office were longer than that recommended by the AFEP/MEDEF code, one company in particular stated that this situation had not hindered the regular renewal of expertise on the board. The company pointed out that the average length of service among current board members, based on their initial date of appointment, was less than six years.

Another company pointed out that, "for historical reasons", its articles of association set its directors' terms of office at the statutory maximum of six years, and that it had not been considered worthwhile to ask shareholders to vote on amending the articles on this matter.

➢ Staggering directors' terms

To explain its decision not to apply the AFEP/MEDEF code's recommendation on staggering directors' terms of office, one company stressed that, when proposing appointments, its board endeavoured to achieve a harmonious balance between new and reappointed directors.

Another company felt that any resulting improvement in governance was not sufficient to justify the "inconvenience" and "difficulty of implementing" such a practice.

Several of the explanations given by companies, as set out above, fall short of the "comply or explain" principle. In this regard, the AMF considers that, where a company explains its reasons for setting aside one or more criteria of a code to which it refers, it must commit to proving detailed explanations appropriate to its particular circumstances.

The AMF notes that almost 80% of companies that say they set aside one or more of the code's corporate governance provisions provide an explanation for doing so. Regarding these explanations, the AMF reminds companies that if they do not apply one or more provisions of the code to which they refer, they are required by law to highlight those provisions and give reasons for their decision, in order to satisfy transparency and "comply or explain" requirements.

3. Director independence

3.1 Information about independent directors

3.1.1 Reminder of legislation and recommendations

- AFEP/MEDEF code

A director is independent when he or she has no relationship of any kind whatsoever with the corporation, its group or the management of either that is such as to colour his or her judgment. Accordingly, an independent director is to be understood not only as a non executive director, i.e. one not performing management duties in the corporation or its group, but also as one devoid of any particular bonds of interest (significant shareholder, employee, other) with them. [...]. The criteria to be reviewed by the committee and the Board in order to have a director qualify as independent and to prevent risks of conflicts of interest between the director and the management, the corporation, or its group, are the following:

- Not to be an employee or executive director of the corporation, or an employee or director of its parent or a company that it consolidates, and not having been in such a position for the previous five years.
- Not to be an executive director of a company in which the corporation holds a directorship, directly or indirectly, or in which an employee appointed as such or an executive director of the corporation (currently in office or having held such office going back five years) is a director;
- Not to be a customer, supplier, investment banker or commercial bankers:
    - o that is material for the corporation or its group;
    - o or for a significant part of whose business the corporation or its group accounts.
- Not to be related by close family ties to an executive director.
- Not to have been an auditor of the corporation within the previous five years.
- Not to have been a director of the corporation for more than twelve years [...]."

- AMF recommendation

In its 2009 Corporate Governance Report, the AMF recommended that companies should specify whether they comply with the criteria in the AFEP/MEDEF code on director independence, list all the criteria and, where a company does not apply certain of the code's criteria, provide precise reasons for not doing so.

3.1.2 Findings

All companies say that their board of directors or supervisory board includes independent directors.

1) Implementation of the AFEP/MEDEF criteria and the "comply or explain" principle

Thirty-two per cent of companies do not apply one or more of the independence criteria in the AFEP/MEDEF code. Of these, it should be noted that:

➢ <u>Some companies provide insufficiently detailed explanations, or no explanation at all, of the reasons why the board does not apply a criterion in the AFEP/MEDEF code.</u>

The following explanations may be noted with regard to the criterion concerning a director in office for more than 12 years:

- One company's board considered that, in a long-term business and for companies with a high degree of management stability, having directors hold office for long periods brings increased experience and authority and strengthens director independence.

- Another company's board considered that it was appropriate to set aside the 12-year criterion, since it "did not feel" that the fact of holding office for more than 12 years was an obstacle to a director discharging his duties independently.

- Another company stated that the fact that a director had held office for more than 12 years "did not appear" to call into question his independence.

➢ Some companies decide not to apply a criterion in the AFEP/MEDEF code without giving any specific explanation

2) Explanations about the way in which companies apply the selected criteria

Several companies also explain how, in practice, they apply the terms of the AFEP/MEDEF independence criterion pertaining to business relationships[20].

In this regard, the AMF draws companies' attention in particular to the need to provide detailed and sufficiently clear evidence so that the materiality of relationships falling into the categories referred to by the code – including, in particular, bankers and suppliers – may be properly assessed.
For example, one company said that its board relied on a summary statement of cash flows (purchases and sales) during the previous financial year between the group to which it belonged and group companies in which a director of the company was also a corporate officer; these flows were then compared with each group's total purchases and sales in order to assess their significance. For financial 2009, this statement showed that sales by the company's group to any of the groups in question, and its purchases from any of those groups, did not at any time exceed 0.5% of its group's total sales or purchases or those of any of the groups in question.

As well as the terms under which the independence criteria in the AFEP/MEDEF code are applied, other noteworthy practices are detailed below.

3) Other observed practices

a) Identification of board members considered independent

Four companies in the sample do not precisely identify which board members are considered independent. Of these, one company discloses its total number of independent directors; another states how many of its directors are not classified as independent but fails to clearly state whether the remaining directors are, in fact, independent; a third company points out that two of its members are independent while describing the composition of its committees, yet fails to indicate whether any other board members are independent; and the last company also points out that three of its members are independent while describing the composition of its committees, without giving a general indication as to its remaining board members.

b) Independence of the chairman of the board of directors

One company, which, in particular, applies the general definition of independence in the AFEP/MEDEF code and does not explicitly set aside any of the criteria laid down in the code classifies its chairman of the board of directors as an independent board member without providing any specific explanation for so doing.

While it may be that the chairman of the board was classified as independent when he was appointed to the chairmanship, his circumstances, like those of the other directors, should be reviewed every year as recommended by the AFEP/MEDEF code.

Since it is several years since this non-executive chairman was appointed, the claim that he is independent raises questions as to the company's compliance with the AFEP/MEDEF recommendations on this issue.

[20] "...not to be a customer, supplier, investment banker or commercial bankers that is material for the corporation or its group, or for a significant part of whose business the corporation or its group accounts".

The AMF notes that all companies report having independent directors and recommends that they keep up their efforts to disclose information about the implementation of independence criteria contained in the code to which they refer and the nature of any explanations of non-compliance. The AMF recommends that the few companies that do not yet clearly identify which members of the board have been classified as independent by the board should do so, regardless of whether these directors are members of specialised committees.

3.2 Director independence and compensation arrangements

3.2.1 Reminder of legislation and recommendations

- AFEP/MEDEF code

"[...] The method of allocation of directors' compensation, the total amount of which is determined by the meeting of shareholders, is set by the Board of Directors. It should take account, in such ways as it shall determine, of the directors' attendance at meetings of the Board and committees, and therefore include a variable portion. It seems natural that the directors' attendance at meetings of specialised committees should be rewarded with an additional amount of directors' fees. The amount of directors' fees should reflect the level of responsibility assumed by the directors and the time that they need to apply to their duties. The new definitions of directors' duties and responsibilities ought to encourage all Boards to consider the adequacy of the level of directors' fees. The rules for allocation of the directors' fees and the individual amounts of payments thereof made to the directors should be set out in the annual report."

3.2.2 Findings

The following findings may be observed:

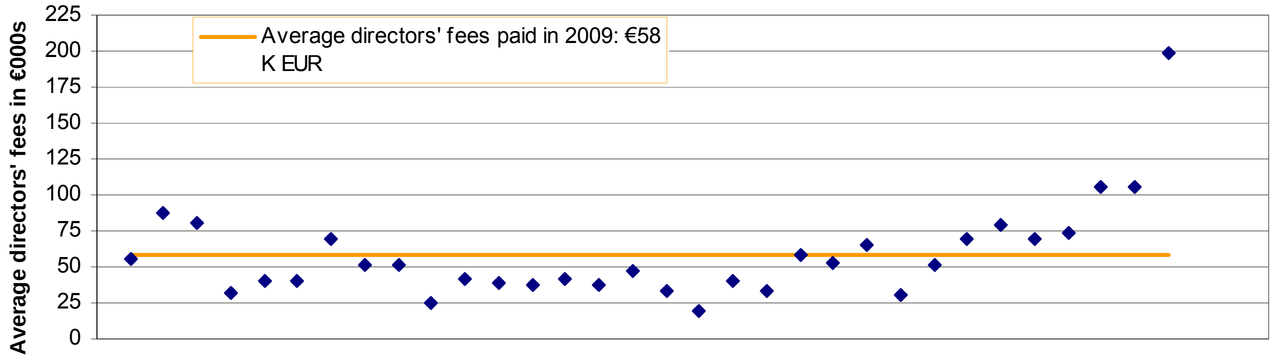
- The average amount of fees paid to independent directors of sample companies belonging to the CAC 40 index is €58,000.
- 47% of companies pay average directors' fees of less than €50,000.
- 31% of companies pay average directors' fees of between €50,000 and €70,000.
- 22% of companies pay average directors' fees of more than €70,000.

Furthermore, among companies paying directors' fees of more than €70,000, there were wide variations in the individual amounts paid (up to €885,000).

The differences observed between companies, and the significant variations between individual fees paid by a single company, are explained by various factors, including: (i) the number of members (specifically with respect to the differences observed between companies); (ii) membership and, where applicable, chairmanship of a specialised committee; (iii) the attendance rate at board and/or committee meetings; and (iv) vice-chairmanship of the board.

The AMF reiterates the importance of companies disclosing transparent information about the rules they adopt for allocating directors' fees.

Figure 11: distribution of companies by amount of directors' fees paid to independent directors of the same company



Source: AMF

4. Role of specialised committees

4.1 Specialised committees

4.1.1 Reminder of legislation and recommendations

- Commercial Code

Article L. 823-19 of the Commercial Code made it mandatory to establish an audit committee: "In entities whose securities are listed on a regulated market, a specialised committee acting exclusively under the joint responsibility of the members of the board of directors or the supervisory board, as applicable, shall monitor issues relating to the preparation and review of accounting and financial information […]."

Article R. 225-29, paragraph 2 of the Commercial Code further stipulates that the board of directors "may decide to form committees tasked with studying issues submitted to it for review by the board or its chairman. The board shall determine the composition and remit of such committees, which shall operate under its responsibility."[21]

- AFEP/MEDEF code

"The number and structure of the committees are determined by each Board. However, it is recommended that the review of accounts, the monitoring of internal audit, the selection of statutory auditors, the compensation policy and appointments of directors and executive directors should be subject to preparatory work by specialised committees of the Board of Directors."

[21] Article R. 225-56, paragraph 2 of the Commercial Code contains the same provisions applicable to supervisory boards: "It [the supervisory board] may decide to form committees whose composition and remit shall be determined by it and which shall operate under its responsibility; however, the remit of such a committee may not be intended to delegate to a committee powers which are attributed to the supervisory board itself by the law or the articles of association, nor may it have the effect of reducing or restricting the powers of the management board."

- AMF recommendation

In its 2009 Corporate Governance Report, the AMF urged companies to continue the efforts made in previous years to describe the way in which committees operate, as well as their tasks and the results of their work, and to clarify interactions between such committees and the board. On the issue of composition, the AMF urged companies to appoint independent directors to chair such committees and to increase the proportion of independent directors on these committees generally. The AMF also encouraged companies to avoid, as far as possible, having executive directors as members, much less chairmen, of such committees.

4.1.2 Findings

Nearly all the boards of directors or supervisory boards of companies in the sample have formed specialised committees (e.g. audit committees, compensation committees, appointments committees, etc.).

However, it should be noted that one company in the sample has no specialised committees. The company attributes this situation to its status as an owner-managed company, its predominant family shareholding, the limited number of directors and the fact that it is chaired by its main shareholder. It also emphasises that the tasks normally allocated to specific appointments, audit and compensation committees are assigned to management structures, which have broad authority to implement the group's governance arrangements. The explanations given for not forming specialised committees fall short of the requirements of the "comply or explain" principle.

Seventy per cent of companies in the sample have also formed other specialised committees (in addition to audit, compensation and appointments committees). The main issues addressed by these committees are shown in the table below.

Table 1: Main issues addressed by other specialised committees	
Strategy	**64%**
Investments/financial commitments	**24%**
Ethics and social responsibility	**21%**
Sustainable development	**14%**
Corporate governance	**14%**

Source: AMF

4.2 Audit committee

4.2.1 Reminder of legislation and recommendations

- Commercial Code

Article L. 823-19 of the Commercial Code defines the composition and tasks of the audit committee[22].

- AFEP/MEDEF code

"The proportion of independent directors on the audit committee should be at least equal to two-thirds, and the committee should not include any executive director[23]".

- AMF recommendation

In its 2009 Corporate Governance Report, the AMF recommended in particular that companies should be more explicit when detailing the criteria used to define financial or accounting skills, and reiterated that executives should be banned from being members of the audit committee (and even more so from chairing it).

4.2.2 Findings

Ninety-eight per cent of companies in the sample have an audit or accounts committee.

The average number of directors sitting on audit committees is four, unchanged from the previous year.

The average proportion of independent directors is just over 70%. Eighty-eight per cent of audit committees are chaired by an independent director (in 2008, the proportion for Segment A companies was 81%). No audit committee is chaired by an executive director (chairman and CEO, or chief executive or chairman of the board where these roles are separate). In a limited stock partnership, the chairman of the supervisory board also chairs the audit committee.

As in 2008, the number of meetings is stable at around 5.4 per year and the attendance rate is 92% (in 2008, it was already 92% for Segment A companies). Finally, 93% of companies provide a detailed description of the work of the audit committee.

As regards the composition, operation and tasks of the audit committee, the AMF refers companies this year to the conclusions of its working group formed in October 2009.

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

[23] Within the meaning of the AFEP/MEDEF code, "executive directors include the chairman, the chief executive officer, the deputy chief executive officers of companies having a board of directors, the chairman and members of the management board of companies having a management board and supervisory board and the statutory managers of limited stock partnerships".

4.3 Compensation committee

4.3.1 Reminder of legislation and recommendations

- AFEP/MEDEF code

"The [compensation] committee should not include any executive directors, and should have a majority of independent directors [...].The compensation committee must help place the Board of Directors or the Supervisory Board under the best conditions to determine the whole of the compensation and benefits accruing to executive directors. All decisions are to be made by the Board of Directors or by the Supervisory Board."

- AMF recommendations

In its 2009 Corporate Governance Report, the AMF noted that, on average compared with the previous year, fewer compensation committees were chaired by independent directors; it therefore urged companies to reverse this trend.

4.3.2 Findings

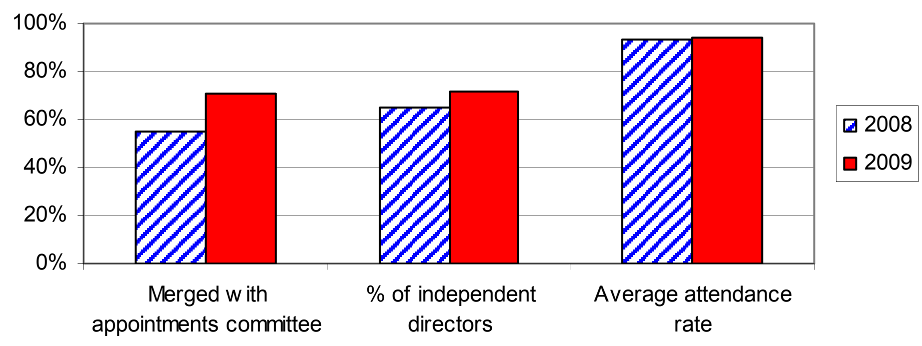
Ninety-seven per cent of companies have a compensation committee. In over 70% of cases, a single committee covers the areas of both compensation and appointments.

The average number of members on this committee is 3.8 (in 2008, the number was 3.6 for Segment A companies), and the proportion of independent directors is 72% (in 2008, the proportion for Segment A companies was 65%).

The proportion of compensation committees chaired by an independent director is 79% (in 2008, the proportion for Segment A companies was 70%).

No compensation committee is chaired by an executive director (chairman and CEO, or chief executive or chairman of the board where these roles are separate). In four public limited companies with a management board and one limited stock partnership, the compensation committee is chaired by the chairman of the supervisory board.

Figure 12: compensation committee



Source: AMF

The number of meetings held each year is 4.8 (in 2008, the number of meetings for Segment A companies was 3.9). The average attendance rate is 94%. Finally, 93% of companies prepare a detailed report on the work of the compensation committee.

4.4 Appointments committee

4.4.1 Reminder of legislation and recommendations

- AFEP/MEDEF code

"The appointments or nominations committee plays an essential role in shaping the future of the company, as it is in charge of preparing the future membership of leadership bodies. Accordingly, each Board should appoint, from among its members, a committee for the appointment or nomination of directors and executive directors, which may or may not be separate from the compensation committee [...]. When the appointments or nominations committee is separate from the compensation committee, the recommendations relating to the latter's membership and mode of operation are also applicable to it. However, unlike the provisions governing the compensation committee, the current Board chairman shall be associated with the appointments or nominations committee's proceedings [...]." The committee has powers in respect of selecting new directors and succession planning for executive directors.

4.4.2 Findings

Twenty-nine per cent of companies have an appointments committee that is separate from the compensation committee.

The average number of members on this committee is 4.4 and the proportion of independent directors is 63% (in 2008, the proportion for the sample as a whole was 56%).

The proportion of appointments committees chaired by an independent director is 53% (as compared with less than half in 2008). In three companies with a board of directors, the committee, which is separate from the compensation committee, is chaired by the chairman of the board (whose role is separate from that of chief executive). In one company with a management board and supervisory board, the appointments committee is chaired by the chairman of the supervisory board.

The number of meetings held each year is 3.5. The average attendance rate is 92% (compared with almost 95% in 2008).

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

5.1 Reminder of legislation and recommendations

- AFEP/MEDEF code

“For sound corporate governance, the Board of Directors should evaluate its ability to meet the expectations of the shareholders having entrusted authority to it to direct the corporation, by reviewing from time to time its membership, organisation and operation (which implies a corresponding review of the Board’s committees). Accordingly, each Board should think about the desirable balance in its membership and that of the committees created from among its members and consider from time to time the adequacy of its organisation and operation for the performance of its tasks [...]. The evaluation, which should preferably be conducted on an annual basis, should be performed in the following manner:

- Once a year, the Board should dedicate one of the points on its agenda to a debate concerning its operation.
- There should be a formal evaluation at least once every three years. It could be implemented, possibly under the leadership of an independent director, with help from an external consultant.
- The shareholders should be informed each year in the annual report of the evaluations carried out and, if applicable, of any steps taken as a result [...].”

- AMF recommendation

In its 2009 Corporate Governance Report, the AMF reiterated that, once a year, companies should devote an item of the board's agenda to a debate on its operating methods and that a formal evaluation should be performed at least once every three years. The AMF encouraged companies to conduct, as far as possible, an evaluation of the board’s mode of operation and recommended that they provide details of how that assessment had been conducted, and, in particular, whether an outside consultant had been involved. The AMF also urged companies to disclose the results of that evaluation, and, more specifically, any potential areas for improvement that may have been identified.

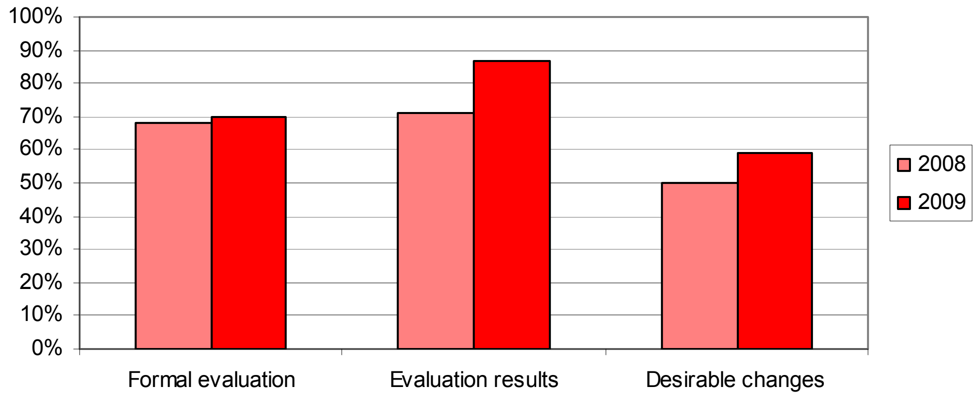
5.2 Findings

Ninety-seven per cent of companies in the sample regularly evaluate their board’s operating methods.

More than two thirds of sample companies carried out a formal evaluation in 2009.

Of those companies that evaluated their board’s operating methods in 2009, 87% provided information about the results of their assessment (in 2008, the proportion for Segment A companies was 71%) and 59% of those companies referred to changes that were desirable within the board (in 2008, the proportion for Segment A companies was 50%).

Figure 13: board evaluation



Source: AMF

Requests expressed by board members on this subject include the following, in order of priority:

- a more active role for the board in setting the company's overall strategic policies;
- an increase in the number of women on the board of directors;
- increased board involvement in monitoring the key risks faced by the company;
- opening up the board to foreign directors;
- opening up the board to directors with international knowledge and/or experience;
- increasing or decreasing the number of board members.

The AMF notes the genuine progress made this year in disclosing information about the results of board evaluations, as well as the desirable changes discussed as part of these assessments. This information should include the content of discussions held during the evaluation on the issue of greater boardroom diversity.

III. EXECUTIVE COMPENSATION

Although the recommendations in the AFEP/MEDEF code on not combining employment contracts with corporate office and on the allotment of stock options and performance shares will take effect only gradually, the key findings set out in the AMF's report published in July 2009 showed that the code had had a positive impact on the compensation practices of major listed companies. In the conclusion of its report, the AMF made a number of recommendations aimed at improving implementation of the code.

Consequently, the 2010 report has particularly focused on the following aspects:

- **Implementation of the AFEP/MEDEF recommendations, which can only be assessed over time:**

- Terminating employment contracts on appointment as executive director: implementation of this recommendation is assessed as and when the relevant directorships are renewed.
- Stipulating additional requirements for stock options and performance shares: given the code's publication date, most companies were unable to implement this recommendation before 2009 and it has therefore only been possible to assess implementation over that one year.

- **Monitoring recommendations put forward by the AMF in its 2009 report to improve implementation of the AFEP/MEDEF code:**

- bringing information and tables together in the section of the registration document on executive compensation and inserting explicit information;
- publishing full information on potential individual supplementary pension entitlements;
- making the exercise or acquisition of all stock options or shares allotted to executives contingent upon performance criteria, or, failing that, providing an explanation of the policy adopted;
- defining precisely and explicitly the qualitative criteria used to determine variable compensation, except where this is not possible for confidentiality reasons (which must be specifically indicated).

- **The method of calculating termination payments and the terms under which such payments are made have been reviewed only in cases where an executive director has left office in the course of 2009.**

1. Overview of the sample of executives

The 60 companies in the sample include a total of 152 executive directors (chairman of the board of directors, chairman and CEO, chief executive, deputy chief executive, chairman of the management board, vice-chairman of the management board, member of the management board, partner and statutory manager).

ROLE	Number of executives	Percentage
Chairman and CEO	31	20%
Chairman/Vice-chairman of the management board	14	9%
Chairman of the board of directors	14	9%
Chief executive	20	13%
Deputy chief executive	34	23%
Member of the management board	33	22%
Statutory manager	6	4%
TOTAL	**152**	**100%**

Source: AMF

The CAC 40 companies in the sample include a total of 92 executive directors. The following table shows a breakdown across 2008 and 2009:

Role	Number of CAC 40 executives	
	2009	**2008**[24]
Chairman and CEO	15	13
Chairman/Vice-chairman of the management board	6	7
Chairman of the board of directors	10	12
Chief executive	12	10
Deputy chief executive	24	23
Member of the management board	19	21
Statutory manager	6	6
TOTAL	**92**	**92**

The report is based on executives in office at 31 December 2009. However, it was decided also to include those executives who left office before 31 December 2009 but had held corporate office for a significant portion of the year.

On average, companies with a board of directors include two executives per company, while the management boards of companies with a two-tier governance structure include an average of four members each.

[24] Although it did not join the CAC 40 until 2009, Technip has been included in the 2008 figures in order to ensure a consistent sample of CAC 40 companies across both years.

Compensation paid to these executives in 2009 in respect of the 2009 financial year, excluding non-executive chairmen (chairman of the board of directors) was distributed as follows:

- Distribution of 2009 compensation for the roles of chairman and CEO, chairman of the management board, chief executive and statutory manager (71 executives in all)

The median for this initial population of executives is €1,263,000 in compensation paid in 2009, compared with €1,474,000 in 2008, with €1,393,000 due in respect of 2009, compared with €1,278 due in respect of 2008.

Total compensation paid in 2009	Number of executives	Total number of executives	Cumulative %
€240k - €746k	18	18	25%
€746k - €1,264k	18	36	50%
€1,264k - €1,829k	17	53	75%
€1,829k - €4,024k	18	71	100%

Total compensation due in respect of 2009	Number of executives	Total number of executives	Cumulative %
€0 - €910k	18	18	26%
€910k - €1,394k	17	35	50%
€1,394k - €1,956k	17	52	75%
€1,956k - €4,398k	17	69	100%

- Distribution of 2009 compensation for the roles of member of the management board and deputy chief executive (67 executives in all)

The median for this population is €716,000 in compensation paid in 2009, compared with €683,000 in 2008, with €657,000 due in respect of 2009, compared with €618,000 due in respect of 2008.

Total compensation paid in 2009	Number of executives	Total number of executives	Cumulative %
€91k - €418k	17	17	25%
€418k - €716k	17	34	50%
€716k - €1,050k	16	50	75%
€1,050k - €5,429k	17	67	100%

Total compensation due in respect of 2009	Number of executives	Total number of executives	Cumulative %
€0 - €423k	17	17	25%
€423k - €657k	17	34	50%
€657k - €1,208k	16	50	75%
€1,208k - €5,413k	17	67	100%

These data are taken from registration documents prepared by companies in the sample, and, more specifically, the tables set out in the AFEP/MEDEF code and the AMF's 22 December 2008 recommendation describing the information to be disclosed in registration documents on executive compensation and stock option packages[25] (the ***Recommendation***). These tables are used by the vast majority of companies.

[25] AMF recommendation on information on executive compensation to be disclosed in registration documents – 22 December 2008

Total compensation paid in 2009 and due in respect of 2009 includes fixed compensation, variable compensation (where applicable), exceptional compensation, directors' fees and benefits in kind.
Total compensation does not include stock options, performance shares or pension scheme benefits. References to overall compensation in the remainder of this report include total compensation as defined above, together with stock options and performance shares valued in accordance with IFRS standards.

2. Presentation of information on executive compensation

2.1. Presentation of information on executive compensation

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

To make this information clearer and easier to access, the AMF also recommended in its 2009 report that companies:

- centralise their information and tables in the section of their registration document on executive compensation, or, where a company wishes to avoid duplicating information, insert explicit cross-references to other sections of the document where the relevant information is provided;
- make particular use of Table 10[26] from its Recommendation summarising information on employment contracts, termination payments, non-compete compensation and defined benefit pension schemes.

26

Executive Directors	Employment contract (1)		Supplementary pension plan		Payments and benefits due or likely to be due in connection with termination or change of positions		Compensation in connection with a non-compete clause	
	Yes	No	Yes *(2)*	No	Yes *(3)*	No	Yes *(4)*	No
Name 1 Position 1 Date appointment begins 1 Date appointment ends 1								
Name 2 Position 2 Date appointment begins 2 Date appointment ends date 2								

Almost all the companies in the sample provide the tables laid down in the AFEP/MEDEF recommendations and the AMF Recommendation, or provide equivalent information, and centralise the relevant information in the section of their registration document on executive compensation or insert explicit cross-references to other sections of the document where that information is provided.

Table	% of companies completing table or providing equivalent information
Table 1	98%
Table 2	98%
Table 3	100%
Table 4	100%
Table 5	100%
Table 6	100%
Table 7	100%
Table 8	100%
Table 9	100%
Table 10	**90%**

Source: AMF

Ninety per cent of companies in the sample provide a summary table as suggested by the AMF, compared with 70% in 2008: this table makes it easier for the public and the AMF to monitor implementation of recommendations.

2.2 Information on executive compensation

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

Pursuant to the Commercial Code[27], the management review of the consolidated financial statements must indicate the amount of compensation and benefits of any kind paid to executives by companies that are controlled within the meaning of Article L. 233-16. There are different interpretations of the cross-reference to this article, which requires companies to prepare consolidated financial statements “where they exclusively or jointly control or exercise significant influence over one or more other companies.”[28]

The AMF’s position has always been that this cross-reference is intended to cover all companies consolidated by the parent.

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

[28] Commercial companies shall prepare and publish each year, under the responsibility of the board of directors, management board or statutory manager(s), as the case may be, consolidated financial statements together with a group financial review by management, where they exclusively or jointly control or exercise significant influence over one or more other companies as defined below.
II. - Exclusive control by a company shall result from:
1) Either direct or indirect ownership of the majority of voting rights in another company.
2) Or the appointment for two consecutive years of the majority of members of the board of directors, management board or supervisory board of another company. The consolidating company shall be presumed to have made these appointments where it has, in the course of that period, directly or indirectly held more than 40% of the voting rights and no other associate or shareholder directly or indirectly held a greater proportion than that held by it.
3) Or the right to exercise a dominant influence over a company by virtue of an agreement or clauses in the articles of association, where allowed by applicable law.
III. - Joint control is shared control of a company operated jointly by a limited number of associates or shareholders, such that decisions are made by mutual agreement.
IV. - Significant influence over a company’s management and financial policy is presumed where a company directly or indirectly holds at least one fifth of the voting rights in that company.

The AMF notes that one company in the sample shows compensation paid to its executive directors by an equity affiliate as distinct from that paid by another company.

The AMF therefore reiterates its recommendation and asks listed companies to include in their summary tables compensation and benefits of all kinds due or paid to corporate officers in connection with their office by all exclusively or jointly-controlled companies or those over which the parent company exercises significant influence.

- **Specific co-investment mechanisms for executives**

According to the AFEP/MEDEF code, all components of compensation must be disclosed: fixed and variable compensation, stock options, performance shares, directors' fees, pension benefits and other specific benefits must be included when assessing overall compensation.

The AMF notes that some companies have introduced mechanisms reserved specifically for executive directors and senior executives in order to involve them in management decisions. These co-investment systems are set up using various leveraged financial instruments in which the beneficiaries have a share. They enable the beneficiaries to receive a proportion of any overall capital gain realised when the investment is unwound (after deducting a priority return guaranteed to the company).

Executive directors of such companies invest significant amounts in these mechanisms, for which they receive no help from the companies in respect of financing, and in relation to which they are exposed to specific risks. Executives benefit substantially from companies' experience in selecting financing options or investment structures for these leveraged mechanisms, which are arranged by the company in question. One of the companies concerned put in place co-investments for new executives in 2009.

While companies explain these mechanisms in detail in their registration documents, the AMF has noted that they have not provided individual information on co-investments for each relevant executive, either for 2009 or for previous years.

To move towards fully transparent disclosure about these types of mechanisms, the AMF recommends that companies provide the individual amounts co-invested by each executive director in the year in question.

3. Combining employment contracts with corporate office

3.1 Reminder of legislation and recommendations

The AFEP/MEDEF corporate governance code for listed companies, supplemented by the October 2008 recommendations, states: "When a senior executive is appointed as executive director, it is recommended to terminate his or her employment contract with the company or with company affiliated to the group, whether through contractual termination or resignation".

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

This provision applies only to the chairman of the board of directors, chairman and CEO, chief executive in companies with a board of directors, chairman of the management board, sole chief executive of companies with both a management board and a supervisory board, and statutory managers in limited stock partnerships. Accordingly, deputy chief executives and members of the management board are not covered by this recommendation.

The AMF considers that a company is complying with the code if it explains that it is maintaining an executive's employment contract because of the person's length of service as an employee and his personal circumstances[29].

3.2 Findings

The AMF has reviewed the policy adopted by companies in the sample in 2009 and early 2010 when renewing the directorships of executive directors with an employment contract.

- **12 companies, including 9 CAC 40 companies, explicitly state that they terminated executives' employment contracts when their directorships were renewed.** This number includes issuers where executive directors with an employment contract left the company and were replaced by executives with no employment contract. Of these 12 companies:
  - 6, including 3 CAC 40 companies, underwent a change of executives. The new executives do not have employment contracts.
  - 5 companies stated in their 2008 registration documents that their executive directors' employment contracts would be withdrawn when their directorships were renewed, and went on to withdraw those contracts.
  - 1 company applied the rule of not combining corporate office with an employment contract when it changed its corporate governance structure from a supervisory board to a board of directors.

Furthermore, four companies, including three CAC 40 companies, have committed to withdraw executives' employment contracts when their directorships fall due for renewal. Of the three CAC 40 companies question, two had already disclosed this information in their 2008 registration documents.

- The executive directors of two CAC 40 companies voluntarily resigned from their employment contracts.

- 7 companies, including 4 CAC 40 companies, **decided to maintain their executive directors' employment contracts** when their directorships were renewed.

  Of the 4 CAC 40 companies in question:
  - 3 stated in their 2008 registration documents that they would review the issue of combining employment contracts with corporate office when their executives' directorships were renewed, and went on to maintain those contracts.
  - 1 stated in its 2008 registration document that its chairman and CEO's employment contract would be maintained when his directorship was renewed, and went on to maintain that policy.

  The issuers in question explained their decisions to maintain directors' employment contracts in their registration documents, in accordance with the "comply or explain" principle.

  Of the 7 issuers in question:
  - **5 decided to maintain executive directors' employment contracts** on the basis that the loss of benefits associated with their status as salaried executives appeared unwarranted in light of their long experience as employees of the group. Indeed, these companies said that withdrawing the contracts (either immediately or when directorships were renewed) could entail the loss of a number of benefits to which the executives in question were entitled as employees, including retirement schemes, compensation for contract termination under the terms of collective bargaining agreements and insurance.
  - 1 issuer said it had maintained an employment contract for reasons linked to UK legislation (see section 2.4).
  - 1 points out that the provisions of the AFEP/MEDEF code do not apply to the chief executive in companies with a management board and supervisory board, but only to the chairman of the management board or, where applicable, the sole chief executive[30].

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

The following explanations have been put forward:

- One company said that it was appropriate to maintain an employment contract in light of the executive director's age, personal circumstances and length of service as an employee of the group. This company considers that "this approach is relevant for executives who have served in the group for at least ten years, so as to promote the principle of internal promotion and sustainable management the company endeavours to implement; conversely, withdrawing the employment contract could deter internal candidates from accepting positions as corporate officers."

- Similarly, a second company says that it has no wish to see its chief executive deprived of benefits linked to his status as an employee when he was appointed to the post after 27 years' service with the company. This company has decided to apply this policy to all new corporate officers with more than 15 years' service within the group.
- Another company bases its decision to maintain an employment contract on the executive's length of service and "personal contribution to the group's development and influence as a major player in the French media since it was formed".

The AMF considers that a company is complying with the code if it explains that it is maintaining an executive's employment contract because of the person's length of service as an employee and his personal circumstances[31].

Other companies that have withdrawn their executive directors' employment contracts, either when their directorships were renewed or at the request of the executive in question, have made up for the loss of benefits associated with employee status by paying compensation or maintaining those same benefits under the terms of corporate office:

- One issuer says that it pays its executive director an annual allowance of €300,000 to make up for the loss of benefits arising from the pension scheme associated with his employment contract.
- Three companies in the sample have maintained the benefit of employee welfare schemes (healthcare costs, provident benefits, pension, etc.) previously associated with executive directors' employment contracts, as well as authorising the payment of compensation in the event that those directors leave office.
- Another group is introducing termination payments, in line with the "TEPA" Act on labour, employment and purchasing power and the AFEP/MEDEF code to make up for the loss of compensation provided for by collective bargaining agreements linked to its executive's length of service within the group (more than 19 years).

➢ **Finally, three companies in the sample also applied the rule of not combining corporate office with an employment contract either to the deputy chief executive or to members of the management board, withdrawing their employment contracts.**

[30] One company whose chief executive has an employment contract says that the company's approach is in compliance with the AFEP/MEDEF recommendation, which, in the case of companies with a management board and supervisory board, only covers the chairman of the management board or the "sole chief executive, where the latter alone carries out the duties devolved to the management board." The Commercial Code states that a sole chief executive – i.e. a single individual carrying out the duties devolved to the management board – may only be appointed in companies with share capital of less than €150,000.
[31] AMF report on corporate governance and internal control – 8 December 2009

3.3 Special cases: groups of companies

The AFEP/MEDEF code recommends that executive directors holding corporate office in a listed company terminate any employment contract between them and that company or another company in the group.

The AMF reiterates that this rule also applies to staff with the role of executive director in a listed company and an employment contract with a group company located outside France.

Executive directors in two sample companies have employment contracts with foreign companies belonging to their groups. One of these companies explained its reasons for maintaining this contract, in accordance with the "comply or explain" principle.

- The chairman and CEO of one of the issuers in the sample has an employment contract with a British company in the group. The issuer cannot terminate this contract, since the executive director in question is also chief executive of the group and receives part of his compensation from a British group company. It states that: "under UK law, which cannot be waived, an employment contract is technically mandatory".
- The chief executive of another issuer has a suspended foreign employment contract with a major foreign subsidiary of the group (arising from his previous position as the company's chief executive) with which a termination payment is associated.

All companies that renewed the directorships of executives in 2009 complied with the AFEP/MEDEF recommendations on combining corporate office with an employment contract:

- **14 companies withdrew their executive directors' employment contracts. Four issuers that decided to withdraw their executive directors' employment contracts made up for the loss of benefits associated with employee status <u>by paying compensation or maintaining those same benefits under the terms of corporate office</u>.**
- **7 companies maintained their executives' employment contracts but, in accordance with the "comply or explain" principle, explained that they were doing so in light of those executives' length of service as employees of the company. The AMF considers that a company is complying with the code if it explains that it is maintaining an executive's employment contract because of the person's length of service as an employee and his personal circumstances.**
- **3 companies in the sample also applied the rule of not combining corporate office with an employment contract either to the deputy chief executive or to members of the management board in 2009, withdrawing their employment contracts.**

4. Review of executive directors leaving their companies in 2009 or early 2010

4.1 Reminder of legislation and recommendations

Under the "TEPA" Act,[32] compensation or benefits due or that may be due to executives on appointment or termination or following a change of position are subject to the same procedure as regulated agreements, and also to compliance with criteria linked to the beneficiaries' performance. Commitments entered into by listed companies in this area are also subject to approval at a shareholders' general meeting by way of a specific resolution for each beneficiary, and no payment may be made until the board of directors or supervisory board has confirmed that the criteria laid down have been met.

The requirements arising from the TEPA Act are applicable to commitments entered into with effect from 22 August 2007, the date on which the statue was published. For commitments already entered into at that date, the companies in question were given 18 months to comply (i.e. no later than February 2009).

[32] Act no. 2007-1223 of 21 August 2007 in favour of labour, employment and purchasing power

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

- Termination payments may only be made where executives are forced to leave as a result of a change of control or strategy; such payments may not, therefore, be made where an executive elects to leave the company, moves to another post in the same group or is eligible to benefit from pension rights in the near future.
- Performance criteria should be demanding.
- Termination payments should be capped at two years' fixed and variable compensation, including any non-compete compensation.
- Any artificial swelling of compensation in the period prior to leaving office should be prohibited.

Statutory obligations applicable to termination payments in France and the AFEP/MEDEF code are thus aligned with European Commission recommendations on compensation, with the exception of the maximum amount of payments.

In its recommendation dated 30 April 2009[33], the Commission states that "termination payments should not exceed a fixed amount or fixed number of years of annual remuneration, which should, in general, not be higher than two years of the non-variable component of remuneration or the equivalent thereof."

4.2 Findings concerning executives leaving their company

The AMF has reviewed the conditions under which executives left office in 2009 or early 2010.

➢ **24 executives left 19 companies, representing 32% of companies in the sample:**

- 3 chairmen of the management board,
- 3 chairmen of the board of directors,
- 5 chairmen and CEOs,
- 1 chief executive,
- 7 deputy chief executives,
- 5 members of the management board.

Of the 19 companies in which executives left office, 8 say that they made termination payments. These payments were made to ten executives out of a total of 24.

They were within the limit of two years' compensation (fixed and variable). No company explicitly states that the amount is capped at two years' compensation. However, with almost all companies explaining in detail how termination payments were calculated, it may be noted that, in practice, those companies that do not refer to the existence of a cap nevertheless made payments less than or equal to two years' compensation.

Of the eight companies in question:

➢ **4 provide incomplete information on the terms and conditions under which these payments were made:**

- 2 companies simply state that when their deputy chief executives resigned, they paid them compensation for contract termination under the terms of a collective bargaining agreement.

[33] Commission Recommendation complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies

- In two cases, the chairman and CEO of a company retired. The first was paid compensation of €400,000 for services rendered to the company throughout his term of office, which lasted more than 12 years; the second was paid compensation of €417,000 (part of which consisted of a retirement allowance under the terms of a collective bargaining agreement). These compensation payments, classified by the companies as "exceptional compensation", were not subject to performance criteria.

None of the four companies in question specify the terms and conditions under which the payments were made or state whether they were subject to performance criteria. In the absence of further information on this subject, the AMF considers these companies to be in breach of the AFEP/MEDEF recommendations on termination payments.

➢ **2 companies provide precise and exhaustive information on the terms and conditions under which these payments were made:**

- The chairman of the board of directors of one company, who was removed following a reform of corporate governance arrangements, received payment equal to one year's compensation (€200,000). Payment of this sum was subject to two performance criteria which the board of directors confirmed had been met. The registration document provides precise and exhaustive information on achieving those targets. In addition to this compensation, the executive retained his entitlement to shares previously allotted to him.
- One company said it had paid its outgoing chairman of the management board a total of €955,000 after reactivating his employment contract. This included a pro rata component of salary, compensation in lieu of notice, nine weeks' compensation for termination of an employment contract under the terms of a collective bargaining agreement and compensation for paid leave. In accordance with agreements between the members of the management team and the company, one of the company's subsidiaries bought the shares that the executive had purchased under a co-investment mechanism, and that were not fully vested at their subscription value irrespective of market value.

➢ **The AMF also noted two special cases, on which the following information was provided:**

- A chairman and CEO received a payment of €3.2 million, equivalent to two years' fixed and variable compensation, even though only three of the five performance criteria set by the board had been met[34]. The board of directors considered that the fourth criterion, based on net income, should be assessed without taking into account exceptional provisions recognised in the accounts in 2008. This executive also retained entitlement to stock options awarded to him. Following the discovery of secret recordings of some directors' meetings, the board of directors decided to refer the matter to the courts. At the recommendation of the board of directors, the shareholders voted at a general meeting to reject the resolution covering agreements entered into with the executive in question. Proceedings are currently underway in an effort to cancel the agreement on the grounds of defect in consent and to recover the amounts paid out.

- A company's chairman and two members of its management board had their employment contracts reinstated when their directorships were terminated, enabling them to benefit from termination payments arising from those contracts. No termination payments were due in connection with their directorships. In order to have their contracts reinstated in this way, the relevant members of the management board were required to earn an average variable premium over the term of their directorships equal to 60% of their average fixed compensation over the same period. Although none of the dismissed members fulfilled this condition, the company decided to reinstate their suspended contracts because "the reduced term of office made it impossible to correctly assess the performance criterion and was therefore a circumstance justifying such an exemption."
  No indication was given about the terms and conditions of these payments, which were contingent upon compensation levels determined after removal from corporate office.

[34] The executive director needed to meet four of the five criteria to be eligible for this payment.

The AMF notes that only four of the eight companies that said in their registration documents that they had made termination payments (i.e. 50%) explained the terms and conditions governing such payments to executives. These four companies set out the terms and conditions under which these payments were made.
The other four companies simply state that they paid either contract termination payments as laid down in collective bargaining agreements or exceptional compensation on retirement, and they provide the corresponding amounts without additional information. While compensation owed to executives under the terms of a collective bargaining agreement is not subject to the terms of the "TEPA" Act, the AMF reminds companies that payments made under an employment contract should also be subject to performance criteria, in accordance with "TEPA". Indeed, the act stipulates that "where a person bound to the company by an employment contract is appointed chairman, chief executive or deputy chief executive [...], provisions in that contract which correspond to components of compensation, indemnities or benefits due or that may be due on termination or following a change of position" are subject to the terms of the "TEPA" Act summarised above.
In the absence of precise information, the AMF considers these four companies to be in breach of the AFEP/MEDEF recommendations on termination payments.

5. Supervision of supplementary pension schemes

5.1 Reminder of legislation and recommendations

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

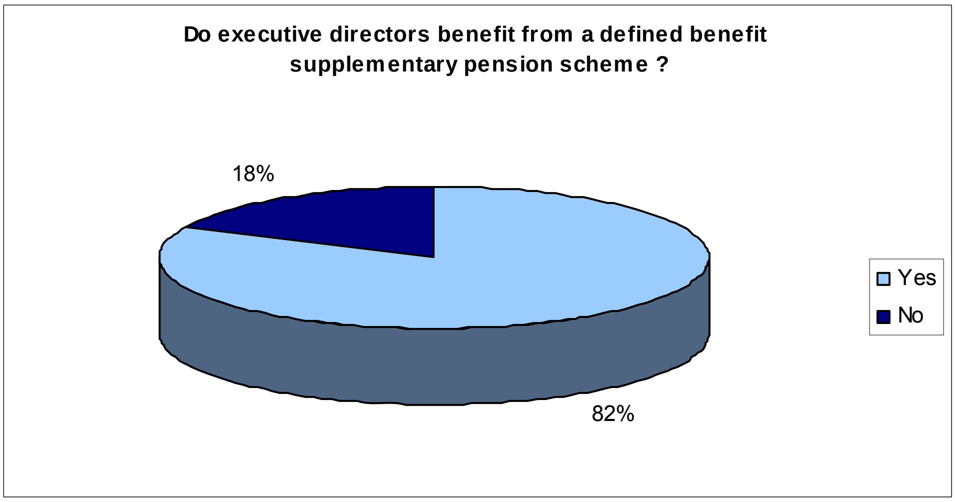
The AFEP/MEDEF code sets the following conditions for awarding defined benefit pension schemes, under which executives receive a pension calculated on the basis of a reference salary:
- Beneficiaries must be corporate officers or employees of the company when they exercise their pension rights.
- The value of this benefit must be taken into consideration when determining compensation.
- The group of potential beneficiaries must be materially broader than the executive directors alone.
- The beneficiaries must meet reasonable requirements of length of service within the company.
- Potential entitlements may only represent a limited percentage of each beneficiary's fixed compensation each year.
- The reference period used to calculate benefits must cover several years, and any artificial swelling of compensation over this period should be prohibited.

Furthermore, for supplementary pension schemes, the AMF recommends that issuers publish full information on individual potential entitlements, including the method used to determine and calculate pension benefits for each beneficiary (reference salary period and amount, potential annual entitlement as a percentage of reference compensation, cumulative potential annual entitlement at the end of the period, maximum potential entitlement and conditions in relation to length of service and presence within the company)[35].

[35] AMF 2009 Report on Compensation and implementation of the AFEP/MEDEF recommendations – page 55

5.2 Findings

- **46 out of 60 companies – i.e. more than three quarters of companies in the sample – say they operate a defined benefit pension scheme for their executives. This figure is equivalent to that recorded in 2008, although the sample is not the same.**



Source: AMF

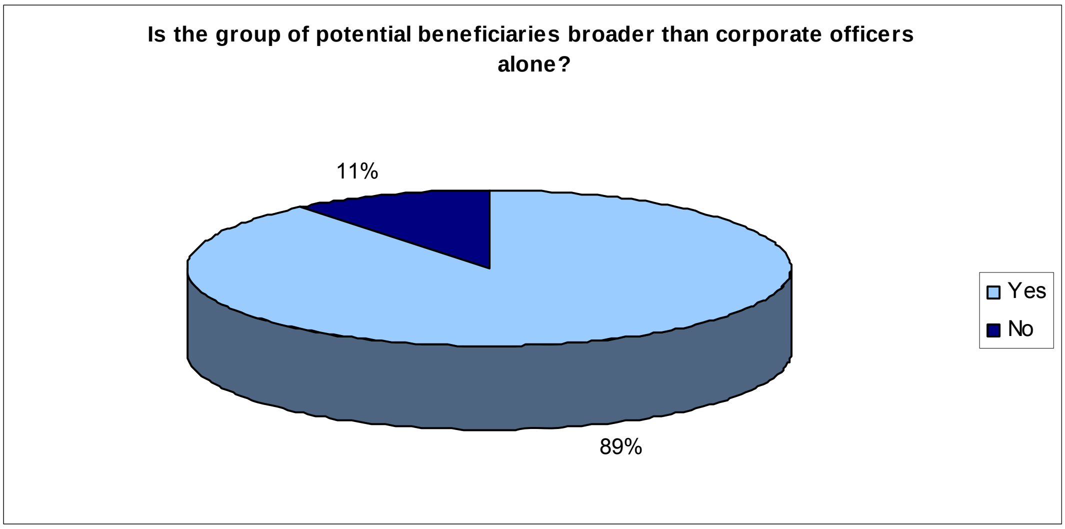
These supplementary pensions are provided to 125 of the 152 executives included in the sample, representing 82% of the total population of executives, compared with 65%[36] in 2008. The AMF thus notes that there has been a general increase in the number of companies that say they operate defined benefit supplementary pension schemes for their executives.

Among these 46 companies, 33 of the 34 CAC 40 companies in the sample say they have a defined benefit supplementary pension scheme, compared with 29 of 32 companies in 2008. Of the 32 such companies in 2008, three provided no information as to the type of supplementary scheme they operated.

- One CAC 40 company has not set up a defined benefit pension scheme for its executives.
- Another CAC 40 company introduced a group defined benefit pension scheme for its key executives in 2009. This company correctly described the situation in its registration document.

[36] This figure was corrected after the 2009 report was published.

- **In 89% of the companies that operate defined benefit supplementary pension schemes (41 out of 46 companies), the group of potential beneficiaries is materially broader than the executive directors alone.**



Source: AMF

All companies in the sample provide information on this subject as part of their description of the schemes they operate. As can be seen, there has been a clear increase in the implementation of this recommendation: 89% of the companies concerned say that they apply it, compared with 78% in 2008.

It can also be seen that the number of CAC 40 companies providing information on the population of potential pension scheme beneficiaries doubled in 2009. Thirty of the 33 CAC 40 companies concerned implement this recommendation, compared with 15 in 2008.

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

For the purposes of this report, the condition was deemed to have been met as long as a supplementary pension scheme was operated not for corporate officers only but for an extended committee of directors, deputy chief executives, deputy directors or executive directors.

In five companies (11%), three of which are listed in the CAC 40, the supplementary pension scheme applies to corporate officers only. The three CAC 40 companies in question applied the same policy in 2008.

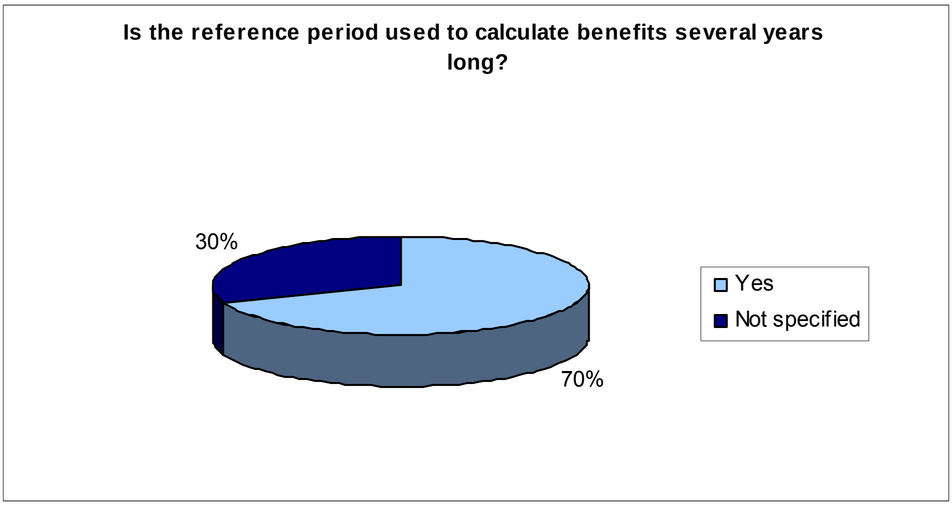
One of these CAC 40 companies said that it had authorised a specific scheme to be set up for its deputy chief executive in early 2010 because of his length of service with the group; this scheme replaced a collective defined benefit supplementary pension scheme that was withdrawn from all beneficiaries in 2009.

Of the remaining four companies:

- 2 have set up a specific scheme for the chairman of the board of directors;
- 1 CAC 40 company operates a scheme for its chairman and CEO and its deputy chief executive;
- the final company, which also belongs to the CAC 40, operates a scheme for the chairman of its management board only.

The AMF considers these four companies to be in breach of the AFEP/MEDEF recommendations on supplementary pension schemes.

- **70% of the companies concerned – i.e. 32 of 46 companies – state that the reference period for calculating benefits covers several years. This figure is equivalent to that recorded in 2008, although the sample is not the same.**



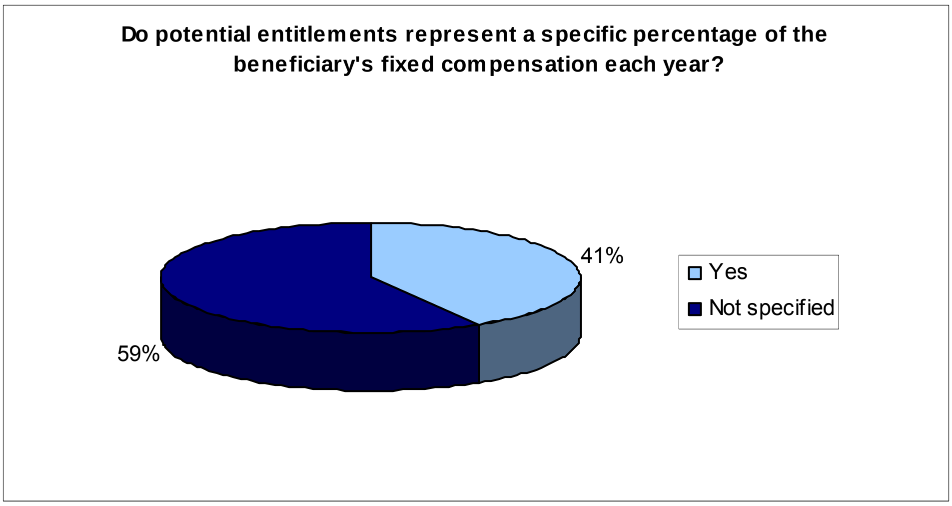
Source: AMF

In both 2009 and 2008, 24 CAC 40 companies specified that the reference period for calculations covered several years.

Where the reference period used to calculated benefits covers several years, the duration varies between two and ten years. For the majority of companies, the reference period is between three and six years. Where the reference period is longer (e.g. ten years), benefits are calculated on the basis of the best three years in the period.

In almost all cases, the amount of compensation used for calculation purposes includes both fixed and variable compensation.

- **Nineteen of 46 companies – i.e. 41% (compared with 46% in 2008) – state that potential entitlements represent a specific percentage of fixed compensation each year.**



Source: AMF

As in 2008, few companies explicitly state in their registration documents that potential pension entitlements account for only a "limited" percentage of beneficiaries' fixed compensation, as recommended in the AFEP/MEDEF code.

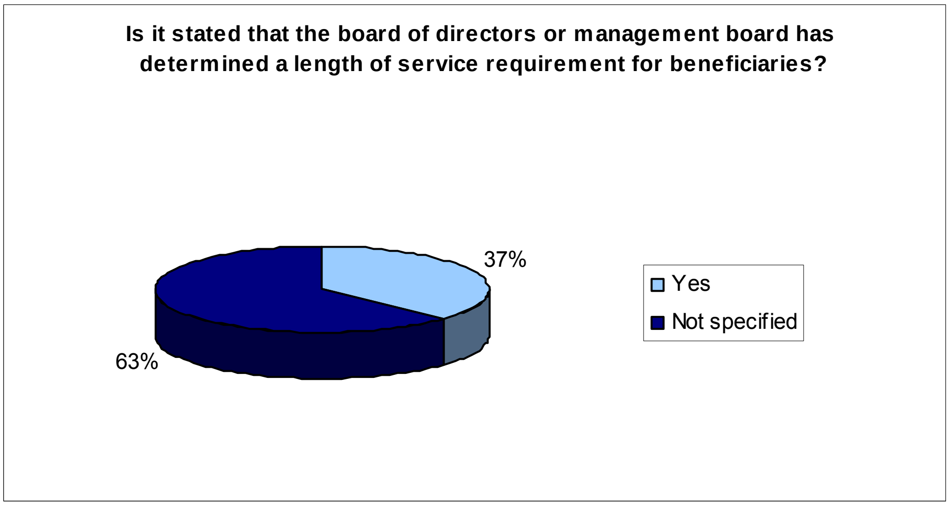
For these companies, the percentage of potential entitlements varies between 1% (0.92% for several companies) and 4% of the reference salary per year's service. While the AFEP/MEDEF code refers to a limited percentage, the AMF is not in a position to say whether the observed percentages meet this requirement.

However, almost all companies state the maximum percentage of the reference salary that the beneficiary may receive upon retirement. In all cases, the amount of pensions paid to scheme beneficiaries is capped.

In 2009 12 CAC 40 companies specify that potential entitlements for their corporate officers represent a specific percentage of fixed compensation each year. Of these companies:

- 10 specified the specific percentage represented by potential pension scheme benefits in both 2008 and 2009;
- the other two, one of which did not introduce a supplementary scheme until 2009, disclosed this information in their 2009 registration documents.

➢ **17 of 46 companies – i.e. 37% – state the length of service requirements that must be met to qualify for a supplementary pension scheme.**



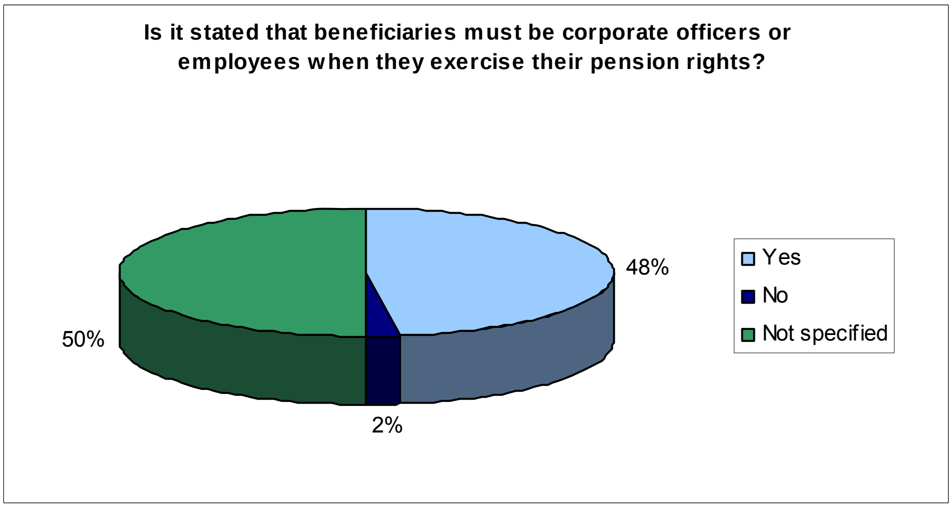
Source: AMF

Eleven CAC 40 companies state the length of service requirements that must be met to qualify for a supplementary pension scheme, compared with ten in 2008; one of these only introduced a supplementary pension scheme with effect from 2009.

The absence of information in most companies' registration documents means that it is not possible to categorically conclude whether length of service criteria are applied.

For the 17 companies concerned, the required length of service in order to qualify for the pension scheme ranges from five to 15 years. However, the vast majority of these companies require a minimum length of service of between five and ten years.

➢ **Almost half the companies concerned – 22 out of 46 companies (including 17 in the CAC 40), or 48% – say that beneficiaries must still be with the company when they exercise their pension rights.**
This finding reflects a slight fall in 2009, with 52% of companies having referred to a similar condition in 2008.



Source: AMF

Two companies stated that executives were not required to be with the company in order to benefit from the pension scheme. These companies are in breach of the AFEP/MEDEF recommendations on supplementary pensions.

No information is disclosed in 50% of registration documents (45% in 2008). However, the absence of any reference to a requirement to still be with the company when pension rights are exercised cannot be assumed to indicate that beneficiaries would continue to benefit from the scheme if they left the company. These companies should make an effort to disclose this information transparently.

➢ **14 of 46 companies – i.e. 30% – disclose individual information on supplementary pension schemes, compared with eight of 46 companies in 2008 (17%).**
The AMF notes that the percentage of companies disclosing this information virtually doubled in 2009.

- **3 companies provide an estimate of the cumulative amount of defined benefit supplementary pension entitlements owed to each corporate officer.**

  Example:
  One company states that the company's liability At 31 December 2009 amounted to €[●] for Mr [●] and €[●] for Mr [●].

- **5 companies provide an estimate of the annual amount of defined benefit supplementary pension entitlements accruing to each corporate officer:**

  Example:
  One company states that the annual pension costs borne by [●] in respect of [●] and [●], both of whom have retired, amount to €[●] and €[●] respectively.
  Another company sets out the amount of these contributions in its summary compensation table.

- **2 companies indicate the annual pension amount their executives would receive if they exercised their pension rights on 31 December of the current year.**

  Example:
  One issuer stated that the annual amount of benefit granted to the chairman of its board of directors corresponded to an annual pension valued at €[●] At 31 December 2009.

- **4 companies state the percentage of corporate officers' current compensation represented by annual pension benefits.**

Examples:
Another company points out that, at 31 December 2009, its liability in respect of the supplementary pension for its chairman corresponded to an annual pension equal to [●]% of his annual compensation received in 2009. The company's liability in respect of its chief executive's pension at 31 December 2009 corresponded to an annual pension equal to [●]% of compensation received in 2009.

The number of CAC 40 companies providing an individual estimate of the amount due under defined benefit supplementary pension schemes has increased significantly. Ten CAC 40 companies (compared with six in 2008) provided an individual estimate of the amount due in respect of supplementary pension liabilities.

Furthermore, two of the six CAC 40 companies that provided information in their 2008 registration documents about the amount of their liability at 31 December that year did not repeat this information in their 2009 registration documents, indicating only the percentage of the reference compensation amount represented by benefits under these schemes.

The AMF notes a marked improvement in the standard of disclosure about defined benefit supplementary pension schemes in 2009. In particular, issuers are providing more specific and detailed information on defined benefit schemes operated for their corporate officers by comparison with 2008. All companies in the sample disclosed information on the population of supplementary pension scheme beneficiaries.
Two companies stated that executives were not required to still be with the company in order to benefit from the pension scheme; as such, they failed to comply with one of the AFEP/MEDEF recommendations on supplementary pension schemes.
Furthermore, the percentage of companies that provide individual information on executives' pension benefits, in accordance with the AMF Recommendation, doubled in 2009, from 17% to 30%.

6. Variable executive compensation

6.1 Reminder of legislation and recommendations

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

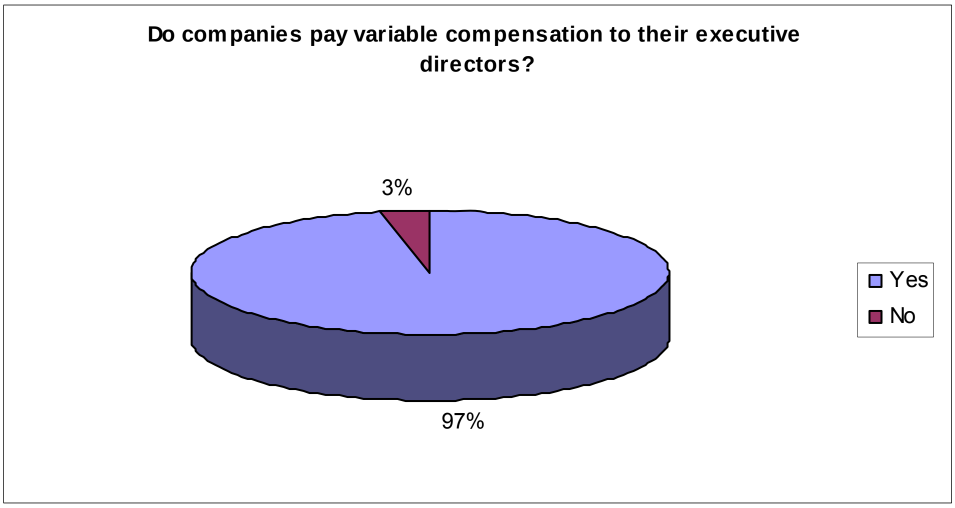
- The variable component should be clear to shareholders and be set by the board of directors or supervisory board for a specified period.
- There should be a clear relationship between variable and fixed components. The variable component should represent a maximum percentage of the fixed component,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

Furthermore, in its previous report the AMF recommended that companies should precisely and explicitly define the qualitative criteria they use to determine the variable component of compensation, with the exception of special cases in which companies may, as a minimum, indicate that certain specific, predefined qualitative criteria are not publicly disclosed for confidentiality reasons.

6.2 Findings

- **Of the 60 companies in the sample, 58 (97%) state they pay variable compensation to their executive directors. This figure is equivalent to that observed in 2008, although the sample is not the same. The 34 CAC 40 companies in the sample all apply a policy of paying variable compensation.**

- **2 companies do not pay their executives any variable compensation.**

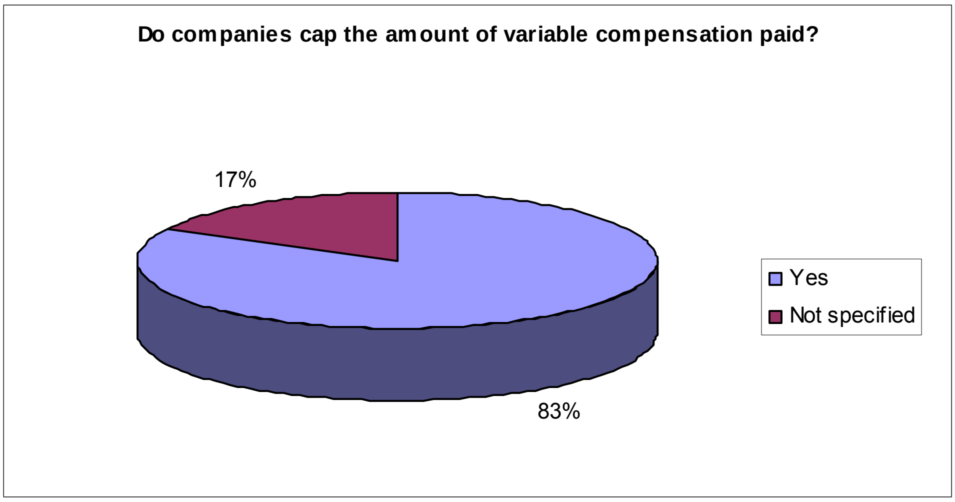


Source: AMF

Of these 58 companies, seven state that their executive directors either did not collect any variable compensation in respect of 2009 or that such compensation has not yet been determined:

- 2 CAC 40 companies awarded no variable compensation in respect of 2009 because of the general economic situation. The executive directors concerned waived their variable compensation in 2008. Both companies are receiving exceptional support from the government.
- An executive of another CAC 40 company waived his variable compensation in both 2008 and 2009. The company in question received exceptional support from the government in 2008 and part of 2009.
- 4 CAC 40 companies said that variable compensation in respect of 2009 had not yet been determined when their 2009 registration documents were published. Executive directors in three of the companies waived their variable compensation in 2008. All three companies received exceptional support from the government in 2008 and part of 2009.
- 1 company noted that the performance criteria it had set for the payment of variable compensation had not been met. The executive director in question waived his variable compensation in 2008 in light of the low variable compensation paid to employees as a result of the group's performance in 2008 and the decision not to increase salaries in 2009.

- **The AMF notes an increase in the proportion of companies whose registration documents refer to a cap on variable compensation, consisting of a percentage of fixed compensation. This information has been provided by 48 of 58 companies, or 83%, compared with 78% in 2008.** Ten companies provide no information on this point.



Source: AMF

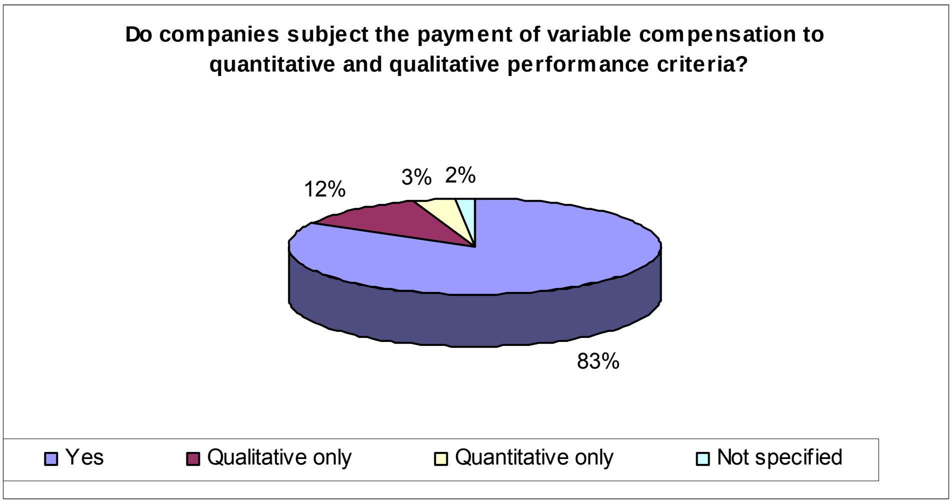
- Of the 48 companies that applied this recommendation, four CAC 40 companies did not refer to a cap on variable compensation, compared with five in 2008. One company awarded no variable compensation in 2008 or 2009.

- 1 CAC 40 company that received exceptional government support in 2008 states that it lowered its maximum variable compensation to 40% in 2008, maintaining it at this level in 2009.

Companies that disclosed information on this subject apply caps ranging from 33% to 300% of fixed compensation. In 2008, these caps ranged from 50% to 240% of fixed compensation. For CAC 40 companies, these caps ranged from 60% to 300% of fixed compensation in 2009, compared with a range of between 60% and 240% in 2008.

➢ **All 58 companies that offer their executives variable compensation state that the payment of such compensation is subject to performance criteria. This figure is equivalent to that observed in 2008, although the sample is not the same..**

Of these 58 companies:
- 48, or 83% (79% in 2008) apply a combination of quantitative and qualitative performance criteria.
- 7, or 12% of the 58 companies, apply only quantitative criteria. This proportion has fallen from 16% of relevant companies in the sample in 2008.
- 2 companies apply qualitative criteria only.
- 1 company does not say whether any performance criteria have been established, but did not award any variable compensation in 2008 or 2009.



Source: AMF

Of these 58 companies, five disclosed no information about the qualitative and quantitative performance criteria applied.

Of these five companies, three belong to the CAC 40:
- One did not specify any criteria in 2008.
- Another CAC 40 company that did not award variable compensation because of the general economic situation did not detail its qualitative and quantitative performance criteria, in contrast with 2008.
- The last company neither awarded any variable compensation nor disclosed any information on performance criteria in 2008 or 2009.

With regard specifically to the 34 CAC 40 companies:
- 3 CAC 40 companies applied only quantitative criteria in both 2008 and 2009.
- 1 company neither awarded variable compensation nor disclosed information on performance criteria in 2008 or 2009.
- 30 companies applied both qualitative and quantitative criteria in 2009, compared with 29 of 33 relevant companies in 2008.

Of these 30 CAC 40 companies that say they apply both qualitative and quantitative criteria:
- 2 companies that awarded no variable compensation in 2008 or 2009 say they apply both qualitative and quantitative performance criteria but provide no further information about them.
- 1 CAC 40 company that did not specify the applicable criteria in 2008 states, in accordance with the AMF's recommendation in its 2009 Report on Compensation: "These demanding criteria, which have not been divulged for reasons of confidentiality and professional secrecy, were precisely defined during the first quarter of 2009 in such a way that achieving them at the year-end would indicate that the Group had proven very resilient in the face of the crisis. These criteria were submitted to the supervisory board, which approved them."

➢ **Qualitative performance measurement criteria**

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

On this subject, the AMF has noted the following:

- 13 companies, 8 of which belong to the CAC 40, do not define the qualitative criteria used in their registration documents, compared with 21 in 2008. For example, one company said "the variable component is based on the achievement of personal targets (representing one third of the bonus)." Another company assesses these criteria "in light of individual targets." A third states that variable compensation is paid in light of "qualitative personal targets." Seven of the eight CAC 40 companies in question had not defined any such criteria in 2008, while one had specified such criteria in 2008 but did not do so in 2009.
- 4 companies define these criteria in broad terms, compared with 9 in 2008. One company states that performance will be appraised in light of the achievement of group strategy. Another refers to key objectives underpinning the success of the corporate strategy, set in advance for the year. One of these 4 companies belongs to the CAC 40, and defined these criteria in the same way in 2008.
- 6 CAC 40 companies which either did not detail qualitative performance criteria in 2008 or did so only very broadly specified these criteria in 2009.
- The 11 CAC 40 companies that defined their qualitative performance criteria in detail in 2008 continued to do so in 2009, with some even improving or amending their criteria to reflect the prevailing economic environment.

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

- Criteria based on the implementation of group strategy (proposing and developing major projects, implementing business plans, pursuing a sustainable development policy, establishing foreign businesses, making use of research and development findings, etc.).
- Criteria linked to an executive's management skills (ability to unite teams, communication skills, team leadership and motivation, etc.).
- Criteria related to operational management in the context of the economic crisis.
- Corporate social responsibility criteria (employment-related parameters such as workplace security, employee training and talent development, together with environmental parameters such as water or energy consumption, carbon footprint, etc.). One CAC 40 company included CSR-related targets in 2009.

<u>Example</u>:
One company states that qualitative criteria account for 50% of variable compensation: "(1) 20%: strategy; (2) 10%: performance in the area of health, safety and the environment; (3) 10%: preparation of a development and succession plan for the extended Senior Management Committee and identification of high-fliers; and (4) 10%: financial reporting."

➢ **Quantitative performance measurement criteria**

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

Of the 48 companies that detail the quantitative criteria they use, 41 say that variable compensation depends on more than one criterion (between two and seven criteria). Seven companies apply only one quantitative criterion.

<u>Example</u>:
"The variable component corresponds to the amount of the variable component paid in respect of the previous year multiplied by a performance index calculated using a formula based on the following indicators: (a) earnings per share; (b) operating cash flow per share; (c) return on capital employed; (d) change in the share price of [●]; (e) performance of [●] shares relative to the CAC 40 index; (f) performance of [●] shares relative to a panel of European companies in the sector; and (g) changes in the dividend."

Only one company specifies the required level of achievement using a quantified target.

Example:
The company in question specifies that the variable component of compensation is linked to four criteria:

- a restated EPS growth target, set at €1.85 with a fluctuation range for 2009 of +/- 10%;
- an organic revenue growth target, set at 1% for 2009;
- an external growth target measured using pro forma annualised revenue from acquisitions, set at €100 million for 2009 (based only on companies that qualify as "organic acquisitions");
- an individual factor.

Of the 30 CAC 40 companies that detailed their quantitative criteria:

- 23 applied the same quantitative performance criteria in 2009 as in 2008;
- some of the seven that defined their quantitative performance criteria in detail in 2008 upgraded those criteria to reflect the prevailing economic environment.

The AMF notes a marked improvement in the information disclosed by companies in the sample. Indeed, while 58 companies allocate variable compensation to their executive directors – the same as in 2008 – 48 of those 58, or 83% (compared with 78% in 2008), specify a cap on variable compensation, consisting of a percentage of fixed compensation, in their registration documents. Furthermore, 83% of companies applied a combination of quantitative and qualitative performance criteria in 2009 (79% in 2008). Regarding qualitative criteria, there has been a marked improvement in the information disclosed, in line with the recommendation made by the AMF in 2009: in 2009, only 14 companies did not define qualitative performance criteria or did so very broadly (compared with 30 in 2008). While almost all companies specify the quantitative criteria they apply, these criteria are hard to measure since only one company provided precise figures on the level of performance to be achieved. The AMF recommends that companies clarify the extent to which executives are expected to achieve quantitative targets in relation to variable remuneration or, at the very least, explain that the required level of achievement has been determined precisely but is not publicly disclosed for reasons of confidentiality.

7. Additional rules on stock options and performance shares

In its 2009 Report on Compensation, the AMF reminded companies that the exercise of all options granted to executives, or the acquisition of all performance shares, should be subject to performance criteria or, failing that, that an explanation of the policy applied should be provided. Given the code's publication date, companies were unable to implement the recommendations on stock options and performance until in 2009; it has therefore been possible to assess their implementation over that one year only.

As a result, this section does not include any comparative statistics for CAC 40 companies, most of which had already allotted stock options or performance shares in 2008 before the recommendations were published.

7.1 Reminder of legislation and recommendations

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

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

▪ **Exercise**
  - Performance criteria: the exercise of all stock options and the acquisition of performance shares should be subject to performance criteria that must be met over a period of several consecutive years. These criteria must be serious and demanding and may be internal to the company and/or external. The AMF noted in 2009[37] that the wording of the AFEP/MEDEF recommendations of 6 October 2008, recommending that both internal and external performance criteria be applied, was amended in the Corporate Governance Code: the code recommends the use of internal and/or external performance criteria, meaning that companies can usually waive any peer performance comparisons. The AMF suggested in the aforementioned report that the AFEP/MEDEF code should be amended so that the exercise of all options granted to executives or the acquisition of all performance shares is subject to both internal and, where possible and relevant, external performance criteria.
  - Periods should be stipulated preceding the publication of the financial statements during which options may not be exercised.

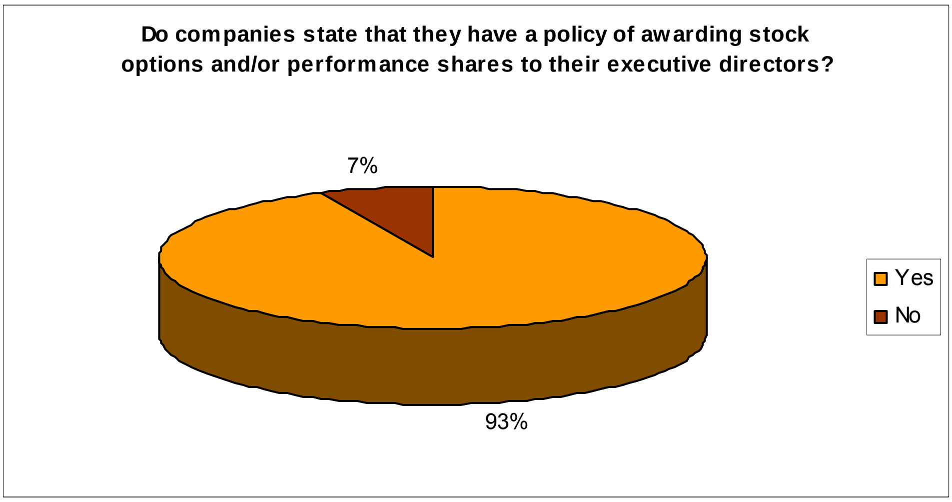
[37] 2009 AMF report on corporate governance and internal control – 8 December 2009

- **Holding period for acquired shares**
  Executive directors should hold a material and increasing number of shares acquired in this way. The board may use a benchmark to determine the amount of annual compensation for each executive director, or a percentage of the net capital gain after disposals required to exercise options and pay the related taxes, social security contributions and transaction fees, or a combination of the two; it may also use a fixed number of shares as a benchmark. Regardless of which standard is used, it should be compatible with any existing performance criteria and should periodically be revised in light of each executive director's situation, and at least each time the corporate office is renewed.

The AMF recommended in its 2009 report that companies should continue to use the existing standard tables to provide summary information on stock option and performance share plans and the top ten non-executive beneficiaries.

7.2 Findings

- **93% of companies in the sample, i.e. 56 out of 60 companies, state that they operate a policy of granting stock options and/or performance shares to their executive directors.**



Source: AMF

- **In 2009, of the 56 companies in question, 35 (or 62% of companies in the sample) granted stock options and/or performance shares to their executive directors. Of the 56 companies operating a policy of granting stock options and/or performance shares, 21 granted no such options or shares to their executives in respect of 2009.**

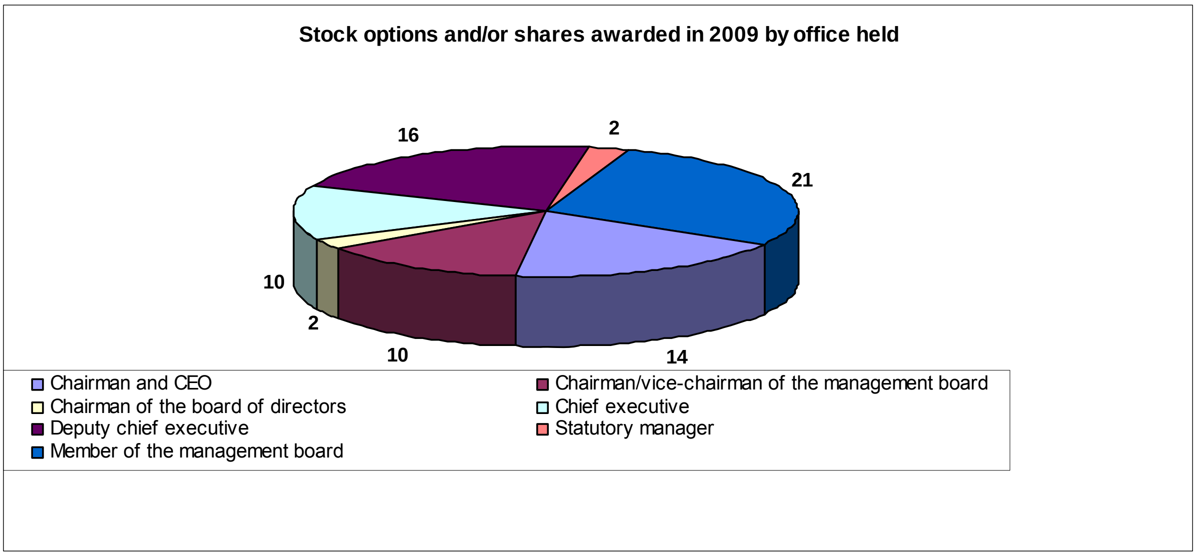
- **For CAC 40 companies, 32 of the 34 companies in the sample state that they operate a policy of granting stock options and/or performance shares to their executive directors, as compared with 31 in 2008; one CAC 40 company has a policy of awarding performance shares to its executive directors in 2009. Two companies grant neither stock options nor performance shares to executive directors.**

The figures set out below cover only stock options and performance shares granted in 2009.

	Number of companies	Number of executives
Stock options granted in 2009	10	21
Performance shares granted in 2009	13	22
Stock options and performance shares granted in 2009	12	32
TOTAL	**35**	**75**

Source: AMF

A breakdown by position of the 75 executive directors who received stock options and/or performance shares in 2009 is as follows:



Source: AMF

- **Stock options and performance shares granted by the 35 companies that made such grants in 2009 represent an average of 35% of overall compensation (fixed compensation, variable compensation, directors' fees, benefits in kind, stock options and performance shares[38]) due to executives in respect of 2009, as compared with 48% in 2008.**
  The number of companies granting stock options and/or performance shares fell significantly, from 44 in 2008 to 35 in 2009. The valuation of stock options as a proportion of overall compensation also fell considerably, from 47% in 2008 to 32% in 2009.

	Stock options granted in 2009	Performance shares granted in 2009	Stock options and performance shares granted in 2009	2009 TOTAL
Number of executives	21	22	32	75
Number of companies	9	13	13	35
Valuation of stock options and performance shares under method used for consolidated financial statements (A)	€19,497,000	€6,853,000	€30,962,000	€57,311,000
Total compensation (fixed, variable, directors' fees and benefits in kind) due in respect of 2009 (B)	€41,806,000	€16,788,000	€48,789,000	€107,382,000
Total compensation (C) = (A) + (B)	€61,303,000	€23,640,000	€79,751,000	€164,694,000
Valuation of stock options and performance shares as a proportion of total compensation (A)/(C)	32%	29%	39%	35%

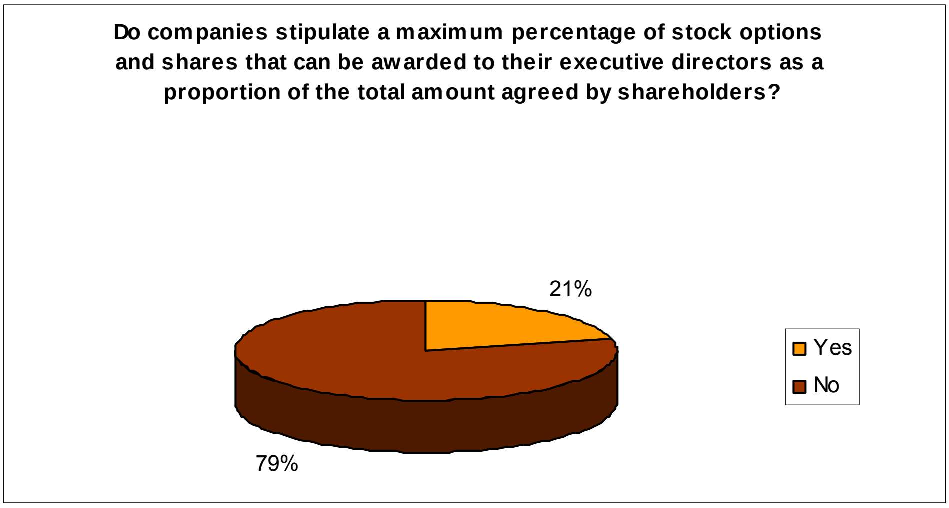
Source: AMF

The 35 companies that granted stock options and/or performance shares in 2009 used the tables contained in the AMF Recommendation and disclosed the valuation of options and/or shares at the point at which they were granted using the same method as that used for the consolidated financial statements.

[38] Excluding pension benefits

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

- **12 of the 56 companies that grant stock options and/or performance shares (21%) set a maximum limit on options and shares that may be granted to executive directors, as a proportion of the overall number agreed by shareholders.**

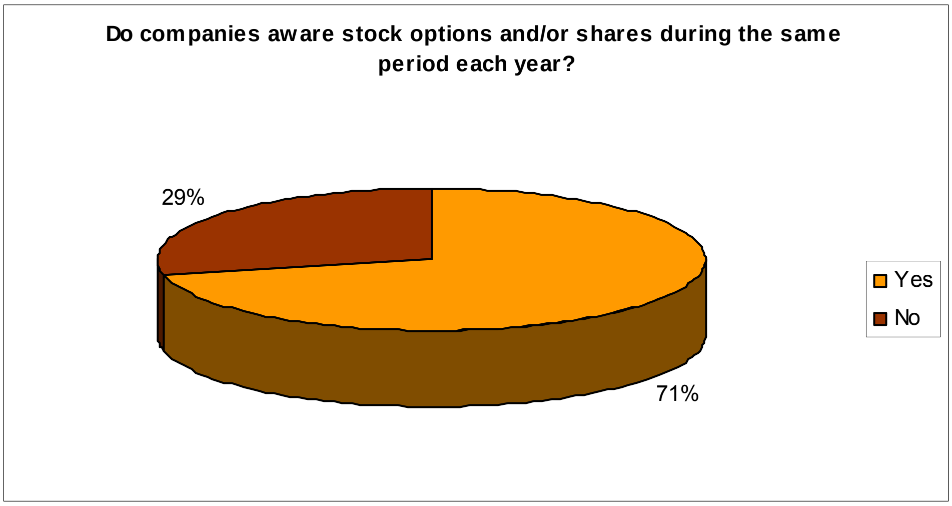


Source: AMF

The percentage of stock options and performance shares that may be granted to executive directors by each of these 15 companies varies between 7.5% and 33% of the total amount agreed by shareholders.

Nine CAC 40 companies disclosed in their registration documents a maximum percentage of stock options and performance shares that may be granted to executive directors as a proportion of the total amount agreed by shareholders in 2008 and 2009.

- **Of the 35 companies that granted stock options or performance shares in 2009, 25 (71%) said they grant such options or shares during the same period each year.**



Source: AMF

Of the 35 companies that granted stock options or performance shares in 2009, two explicitly stated that they make these grants during the same period each year.

Furthermore, an analysis of past grants of stock options and performance shares disclosed in registration documents reveals that, of these 35 companies:
- 23 grant stock options and/or performance shares during the same period each year;
- 10 do not grant stock options and/or performance shares during the same period each year.

Most of the companies that grant stock options or performance shares during the same period each year grant them annually, after the annual financial statements have been published.

- **All 22 companies that granted stock options in 2009 explicitly state that they do not apply any discount to the price at which options may be exercised.**

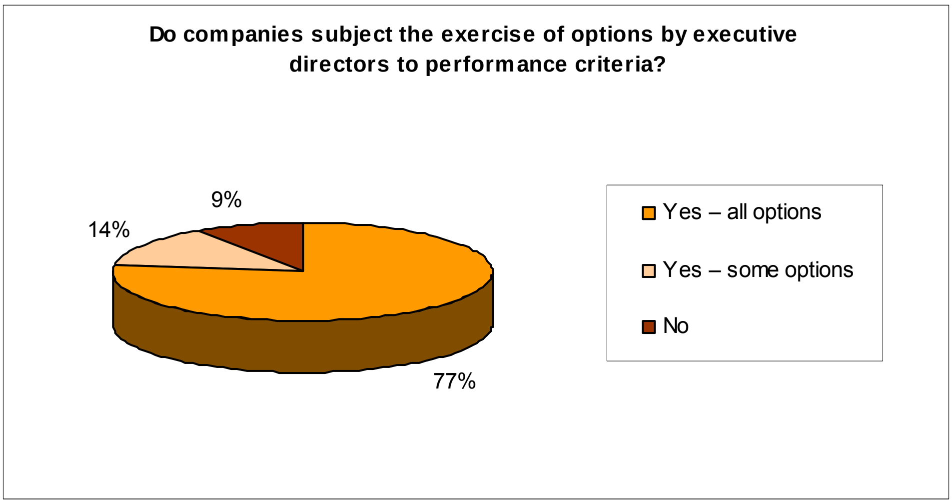
- **Of 22 companies that granted options in 2009, 13 (59%) specify that their executives are not allowed to hedge their options. In some cases, the companies prohibit the hedging of options; in other, executives give formal undertakings, inserted into the companies' registration documents, not to hedge their options.**

In accordance with the area for discussion put forward by the AMF in its 2009 Report on Compensation, the executive directors of five CAC 40 companies gave formal undertakings in their companies' registration documents not to hedge their options throughout their terms of office.

7.2.2 Exercise of stock options and final allotment of performance shares

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

- **22 companies granted stock options to their executive directors in 2009.**
- **Of the 22, 17 (77%) state that the exercise of all stock options is subject to performance criteria.**



Source: AMF

Two CAC 40 companies do not impose performance criteria on the exercise of all stock options.

The first of these two companies says that it does not intend to apply this recommendation from the AFEP/MEDEF code. It states that "by way of an exception to the AFEP/MEDEF corporate governance code, the Compensation and Appointments Committee recommended that the Board not make the exercise of stock options by corporate officers contingent upon performance criteria, considering that the company's stock market performance in itself constitutes a criterion upon which the exercise of options is contingent."

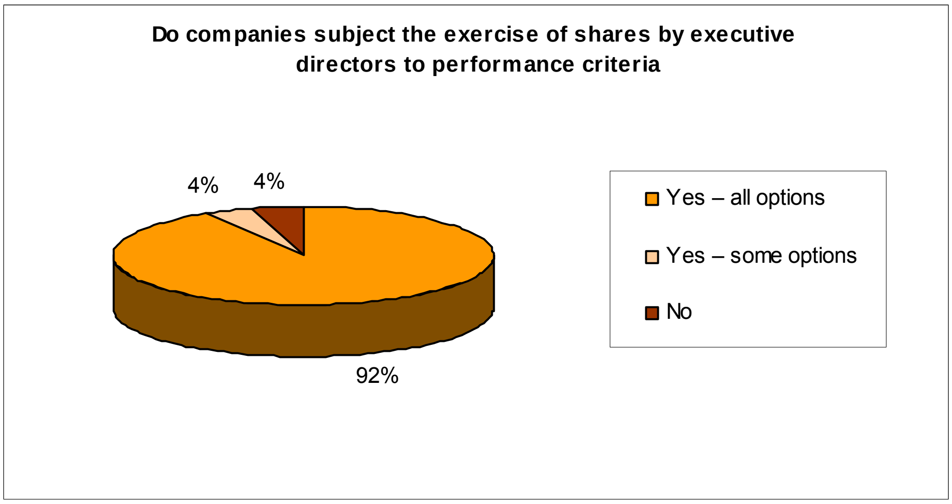
The second company that granted stock options to its corporate officers in 2009, without any associated performance criteria on the basis of a resolution put to shareholders at its annual general meeting in 2007, points out that its policy on granting stock options is to be amended. It says that its 2010 stock option programme "is liable to evolve, further to the Board's decision on 10 February 2010 to put forward a resolution at the forthcoming annual general meeting in April 2010 authorising the issuance of shares subject to performance criteria which, if accepted, will supersede the current stock option programme [...]."

Three other companies made the exercise of all stock options only partly subject to performance criteria in 2009.

The AMF notes that these five companies are in breach of the AFEP/MEDEF recommendations on this issue. However, one of these companies has undertaken to amend its stock option policy in 2010.

Twenty-four companies that make use of performance shares granted performance shares to their executive directors in 2009.

- **Of these 24 companies, 22 make the final allotment of all shares subject to performance criteria.**



Source: AMF

One of the 24 companies in question makes a portion of the performance shares granted contingent upon performance criteria, stating that "moreover, the final allotment of half of the bonus shares granted to members of the Management Board is contingent upon a stock market performance criterion."

Another company states that "in order to receive the final allotment of bonus shares granted to executive directors between 2007 and 2009 as set out above, those executive directors are required only to still be with the company on the allotment date."

7.2.2.2 Types of performance criteria applied

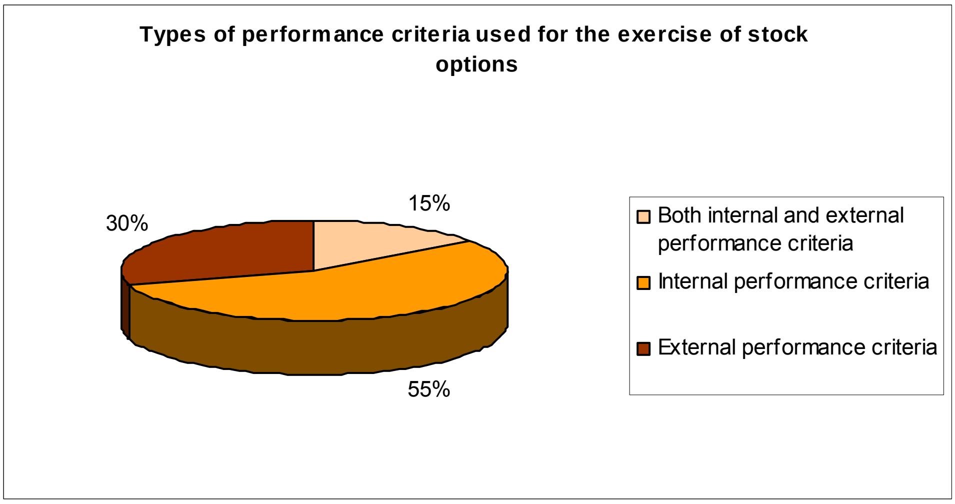
Those companies that subject the exercise of some or all stock options and/or the allotment of performance shares to performance criteria apply the following:

- internal performance criteria: change in adjusted net income, cash flow, consolidated net operating income, ROCE (return on capital employed), profit before tax and non-recurring items, revenue, growth in operating profit, share price growth or a combination of more than one of these criteria; and/or

- external performance criteria: share price performance or net operating income relative to a benchmark sector index or a given sample of companies representative of the competition faced by the group.

➢ **Of the 20 companies that say they subject the exercise of some or all stock options to performance criteria**[39]:

- 3 apply both internal and external performance criteria;
- 11 apply internal performance criteria only;
- 6 apply external performance criteria only.

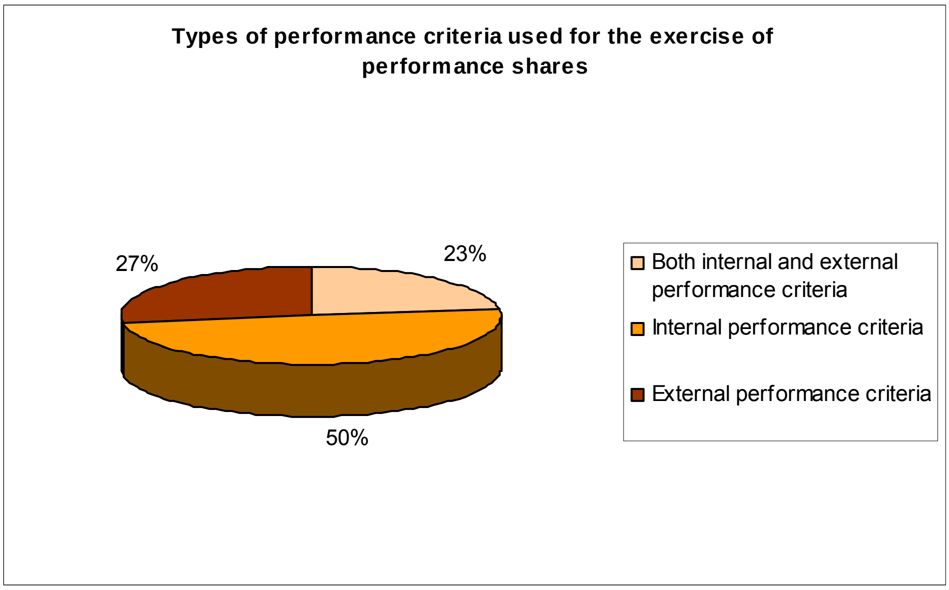


Source: AMF

[39] As stated in section 7.2.2.1, of the 22 companies that granted stock options in 2009, two did not subject the exercise of those options to performance criteria.

➢ **Of the 24 companies that say they subject final allotment of performance shares to performance criteria, 21 provide information about the performance criteria applied:**

- 1 only requires the beneficiary to be with the company at the date on which shares are allotted;
- 5 apply both internal and external performance criteria;
- 11 apply internal performance criteria only;
- 6 apply external performance criteria only.



Source: AMF

One company does not specify the type of criteria to which final allotment of performance shares is subject.

Three companies that subject the allotment of performance shares to one or more performance criteria consider the fact of the beneficiary being with the company at the date on which shares are allotted as a performance criterion. Another company states that "in order to receive the final allotment of bonus shares granted to executive directors between 2007 and 2009 as set out above, those executive directors are required only to still be with the company on the allotment date." **The AMF considers that a requirement to still be with the company cannot be considered a serious and demanding performance criterion as defined in the AFEP/MEDEF code.**

The majority of companies subject the allotment of performance shares to one of these two types of criteria. The AMF notes that few companies apply both internal <u>and</u> external performance criteria.

Examples of criteria applied:

- Internal performance criteria:
  - One company links the number shares allotted to the extent to which revenue and operating profit targets are achieved: if 100% or more of the target is achieved in a given year, a quarter of stock options and half of performance shares are finally allotted; if less than 50% of the target is achieved in a given year, a quarter of stock options and half of performance shares are suspended; if between 50% and 100% of the target is achieved, stock options and performance shares are allotted on a pro rata basis.

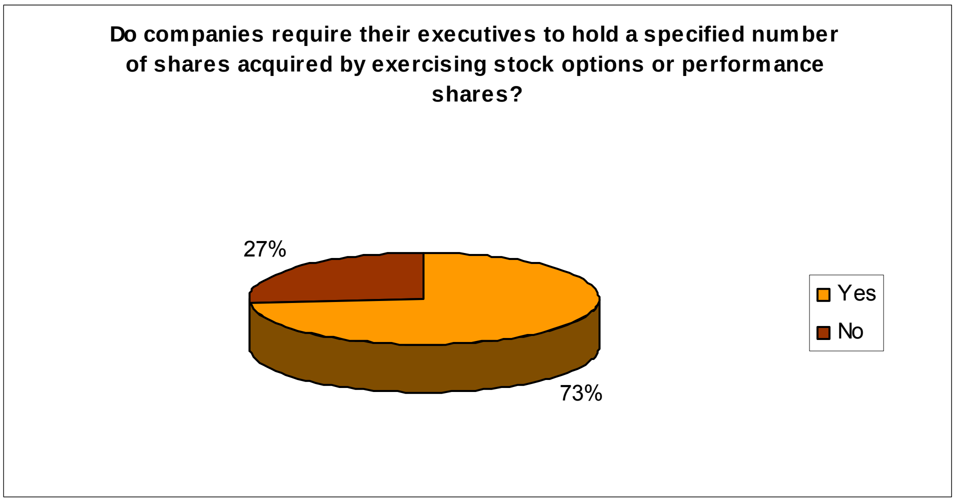
- External performance criteria:
  - One issuer subjects the right to exercise stock options to two external criteria: (i) the company's share price performance relative to the SBF 120 index, and (ii) the company's share price performance relative to a sample of comparable shares from the same business sector.

  - Another company makes the right to exercise stock options contingent on the increase in group net operating income over a four-year period relative to the average income of a representative sample of the group's competitors. Stock options may not be exercised if the increase in group net operating income is less than the increase in net operating income for each of the companies in the sample.

- Both internal and external performance criteria:
  - Another company uses (i) performance of the company's shares relative to three stock market indices (20% weighting) and (ii) the increase in adjusted net income (50%) and cash flow from operating activities (30%).

7.2.3 Holding periods

- **41 companies, or 73% of the 56 companies that granted stock options or performance shares, state that their executives are required to hold onto a fixed number of shares throughout their terms of office. Fifteen companies do not state that their executives are bound by this obligation, even though it is required by Articles L. 225-185 and L. 225-197-1 of the Commercial Code[40].**



Source: AMF

[40] Taken from Act no. 2006-1770 of 30 December 2006 on the development of employee profit-sharing and share ownership, as stipulated by the AFEP/MEDEF code.

These 41 companies apply a wide range of policies:

1. Requirement to hold a number of shares equivalent to a percentage of (i) the net capital gain on acquisition or (ii) the number of shares allotted. This obligation to retain shares may be applied either to all allotments as or to each individual allotment. The percentage of shares to be held varies between 5% and 100% of the capital gain or number of shares acquired.

2. Requirement for executives to hold a number of shares in the company corresponding to a multiple of their fixed or total (i.e. both fixed and variable) annual compensation. In some companies, executive directors are required to allocate a percentage of the capital gain on acquisition from each share award in order to fulfil this holding objective. Other companies simply state that their executives must have reached this target within a predetermined number of years. The multiple of compensation to be reached varies according to the executive's position in the company:
   - seven times' annual fixed compensation or three times' gross annual compensation for a chairman of the management board or chief executive
   - twice fixed or gross annual compensation for members of the management board or deputy chief executives

For example, one issuer states that its holding target is a number of shares representing three years' worth of basic fixed compensation for the chairman of its management board and two years' worth of basic fixed compensation for members of its management board. To reach these targets, the company requires executives to hold a number shares equal to a percentage of option exercise gains (net of tax, compulsory contributions and amounts needed to finance acquisition of the shares) in a registered share account. That percentage is 25% for the chairman of the management board and 15% for members of the management board. These obligations are suspended once the target level of shares held, as set out above, is reached.

Almost all companies that awarded stock options or performance shares in 2009 state that they apply performance criteria which must be met before all options can be exercised or shares finally allotted. The AMF notes that only five companies fail to comply with the AFEP/MEDEF code on this issue: four of these apply performance criteria only to the exercise of some of the stock options awarded or to the final allotment of some shares, while one does not apply any performance criteria, considering the company's stock market performance alone to be sufficient.

Furthermore, the vast majority of companies link grants of stock options and performance shares to the achievement of either internal or external performance criteria. The AMF notes that few companies apply both internal <u>and</u> external performance criteria. The AMF recommends that the exercise of all stock options granted to executives and the final allotment of all performance shares should be subject to both internal and, where possible and appropriate, external performance criteria.

The AMF considers that the beneficiary's continued presence within the company when options are exercised and performance shares are finally allotted cannot be considered a serious and demanding performance criterion.

Finally, <u>15 companies in the sample do not state whether their executives are bound by an obligation to hold shares for a mandatory period, while such an obligation is required</u> by Articles L. 225-185 and L. 225-197-1 of the Commercial Code <u>and stipulated by the AFEP/MEDEF code</u>.

ANNEX

Companies in the sample:

ACCOR
AIR LIQUIDE
ALCATEL-LUCENT
ARKEMA
ATOS ORIGIN
AXA
BNP PARIBAS
BOUYGUES
CAP GEMINI
CARREFOUR
CIMENTS FRANCAIS
COMPAGNIE GENERALE DE GEOPHYSIQUE-VERITAS
CREDIT AGRICOLE
DANONE
EDF
ESSILOR INTERNATIONAL
EULER HERMES
EURAZEO
FAURECIA
FRANCE TELECOM
GDF SUEZ
GROUPE EUROTUNNEL
HAVAS
INGENICO
IPSOS
LAFARGE
LAGARDERE S.C.A.
L'OREAL
LVMH
MAUREL ET PROM
MERCIALIS
METROPOLE TV
MICHELIN
NEXANS
NEXITY
NICOX
PEUGEOT
PPR
RENAULT
REXEL
RHODIA
S.E.B
SAINT GOBAIN
SANOFI-AVENTIS
SCHNEIDER ELECTRIC
SECHE ENVIRONNEMENT
SILIC
SOCIETE GENERALE
STALLERGENES
SUEZ ENVIRONNEMENT
TECHNIP
TELEPERFORMANCE
TOTAL
UNIBAIL-RODAMCO
VALEO
VALLOUREC
VEOLIA ENVIRONNEMENT
VINCI
VIVENDI
WENDEL