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2020's general meetings and executive compensation: the AMF publishes its annual report on corporate governance

Given the exceptional context of the Covid-19 pandemic, the AMF provides details on the holding of general meetings in camera. It analyses the information published by listed companies about executive compensation with a focus on variable and exceptional compensation. For the first time this year, the AMF also presents comments on some proxy advisors' practices.

Since the French Financial Security Act of August 1st, 2003, the Autorité des Marchés Financiers has conducted an annual review of the disclosure of listed companies with regard to corporate governance and executive compensation. This is the opportunity to issue new recommendations for companies, as well as providing new areas for discussion to reinforce best practices. The 2020's annual report is obviously marked by the context of the health crisis, which has led the authorities to take lockdown measures.

General Meetings, a contrasting picture

Although listed companies have made significant efforts to ensure that general meetings take place, the AMF takes a mixed view of the 2020 general meetings' season. A very large majority of meetings were held in camera (110 out of the 118 companies under review), thereby infringing on certain shareholders' rights, such as the right to ask oral questions during the meeting, submit new resolutions or dismiss directors during the meeting. However, the stable level of attendance at general meetings compared with 2019, as well as

the significant increase in the rate of contestation of resolutions, testifies to the sustained involvement of shareholders.

More than 80% of the 118 companies in the sample offered their shareholders a live and/or recorded webcast of the general meeting. On the contrary, some companies did not provide any webcast, despite the fact that shareholders were not able to attend the general meeting. Over a quarter of the sample allowed extra time for shareholders to submit written questions ahead of the general meeting. Some companies set up web platforms to receive live questions and comments from shareholders during the general meeting. Many companies allowed their shareholders to vote on a secure web platform before the general meeting. However, unlike some European issuers, no French issuer allowed shareholders to use live electronic voting during the meeting. For just under twenty companies, only postal or proxy voting was possible this year.

The AMF reiterates its attachment to the effective exercise of all shareholders' rights at general meetings. In the digital age, it is important that, beyond the right to attend general meetings in person, shareholders of listed companies be offered voting and participation procedures at general meetings that enable them to exercise their prerogatives - both remotely and directly - under the same conditions as those they experience during in-person meetings. Such progress requires that the various stakeholders, including centralizing institutions, work together over the long term, not only on the technical aspects, but also on costs.

The 2020 report is also an opportunity for the AMF to make other observations on issues such as the consideration of abstention, shareholder activism, diversity of management bodies, climate resolutions and the corporate mission ("raison d'être"), introduced by the Pacte legislation.

Transparency and voting on compensation

Regarding compensation, the AMF analysed public information of a second sample of 58 issuers. These issuers indicate, in their compensation policy, the respective weigh of fixed, variable and exceptional components and the criteria used to determine them. However, the information about the level of fulfilment of performance criteria is not always detailed. The report also points out the non-compliance of some thirty companies with the recommendation of the AFEP-MEDEF code regarding the rule on the presence of an employee director on the compensation committee. The AMF invites the Haut Comité de Gouvernement d'Entreprise (HCGE) to monitor this issue.

A few companies are planning, in their 2020 policy, to increase the fixed compensation of one of their executives in particular, when it follows a merger with other companies. In this respect, the AMF recommends that they provide detailed explanations. The AMF also points out that it is sometimes difficult to distinguish between what is paid as annual variable compensation and as exceptional compensation.

Regarding long-term share-based variable compensation paid to executive directors, the AMF indicates that the practice consisting in excluding this compensation from the sanction of non-payment – in case the shareholders would vote against compensation components for the past financial year (ex post say-on-pay) - raises concerns with regard to the Commercial Code and the legislator's intent.

The exceptional context of 2020's health crisis could lead listed companies to modify certain compensation components or pre-established performance criteria. However, the compensation policy approved by the general meeting is binding. According to the French Commercial Code, a company shall not grant or pay components of compensation that do not comply with this policy, except under exceptional circumstances and under the conditions provided for by law. The companies must submit any material change in the compensation policy to the general meeting for approval. The AFEP-MEDEF code also encourages issuers to implement pre-established performance criteria for annual and multi-year variable compensation - which may only be modified under exceptional circumstances - which maintain the alignment of shareholders and beneficiaries' interests.

A new feature of the corporate governance report for companies is the equity ratio, which measures the ratio between the executive's compensation and the average compensation of employees on the one hand, and the median compensation of employees on the other hand. In light of its initial observations, the AMF recommends that issuers be as transparent as possible on the compensation components taken into account in the calculation of the numerator, and also that they specify and justify the scope used to calculate the denominator.

Proxy advisors

The Pacte legislation introduced provisions to regulate the practices of proxy advisors in France. Proxy advisors are required to publish information concerning their possible conflicts of interest, the preparation of their research, advice and voting recommendations. In addition to the information provided on their website, the AMF invites proxy advisors to disclose all this information in an annual document. It recommends dialogue with issuers and considers that it is important for issuers to have access to data concerning them in order to be able to flag any factual errors or omissions.

About the AMF


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