



2 DECEMBER 2021

**2021 REPORT ON CORPORATE
GOVERNANCE AND EXECUTIVE
COMPENSATION IN LISTED
COMPANIES**

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AUTORITÉ
DES MARCHÉS FINANCIERS



EXECUTIVE SUMMARY

SECTION 1: RECENT DEVELOPMENTS IN GOVERNANCE

The first section of the report focuses on news and recent developments in governance.

Once again this year, due to the ongoing health crisis and the resulting changes in regulations, the main topical issue is the functioning of shareholders' general meetings. This section deals mainly with holding general meetings in France within the context of the restrictions imposed by exceptional legislation.

In short, a mixed picture emerges from the general meetings of SBF 120 companies over the past year, just as in the previous year. Broadly speaking, the report makes the following observations:

- Once again this year, issuers overwhelmingly decided to hold general meetings “in camera”, an option available to them under the exceptional provisions introduced by Order 2020-321 of 25 March 2020. The fact that shareholders were unable to attend these general meetings undermined their ability to exercise some of their rights.
- Order 2020-1497 of 2 December 2020 and Decree 2020-1614 of 18 December 2020 introduced several changes to the regulations applicable to meetings during a health crisis. These changes, some of which stem directly from the AMF's 2020 Corporate Governance Report, strengthened – compared with the exceptional provisions that applied at the start of the health crisis – the rights of shareholders at “in camera” general meetings and included live and recorded broadcasts of these meetings, a choice of deputy returning officer from among the main shareholders, granting shareholders additional time to submit written questions, and the publication of responses.
- Issuers have made significant efforts to ensure that their shareholders' meetings are still held despite the ongoing health crisis. Due in part to the above-mentioned changes in regulations, some progress was noted in 2021 in terms of shareholder involvement and respect for their rights at “in camera” general meetings. Generally speaking, the new provisions mentioned above were properly complied with, with some variations.
- While many issuers allowed their shareholders to vote online via a secure platform before the general meeting, only one SBF 120 company gave its shareholders the opportunity to vote live and remotely.

The AMF emphasises its commitment to the effective exercise of all shareholders' rights at general meetings. It reiterates the importance for shareholders of listed companies to be offered, in addition to the right to attend general meetings “in person”, voting and participation procedures that enable them to exercise their powers – live and remotely – under conditions similar to those available to them at general meetings. Because this is an important issue for the future of the financial community, the AMF stresses the importance and usefulness of the work that some industry associations are currently undertaking on the development of “hybrid” general meetings. The AMF will be interested to learn about the findings and any recommendations that emerge from this work, including any regulatory changes that might be needed to support the development of hybrid general meetings and live remote voting in France.

The first section also presents the main trends in governance and the main European and French regulatory news:

- the consideration of governance and ESG issues by financial market participants;
- the improvement of diversity in executive management and anti-discrimination measures;
- the ministerial response to the written question on “say on pay”;

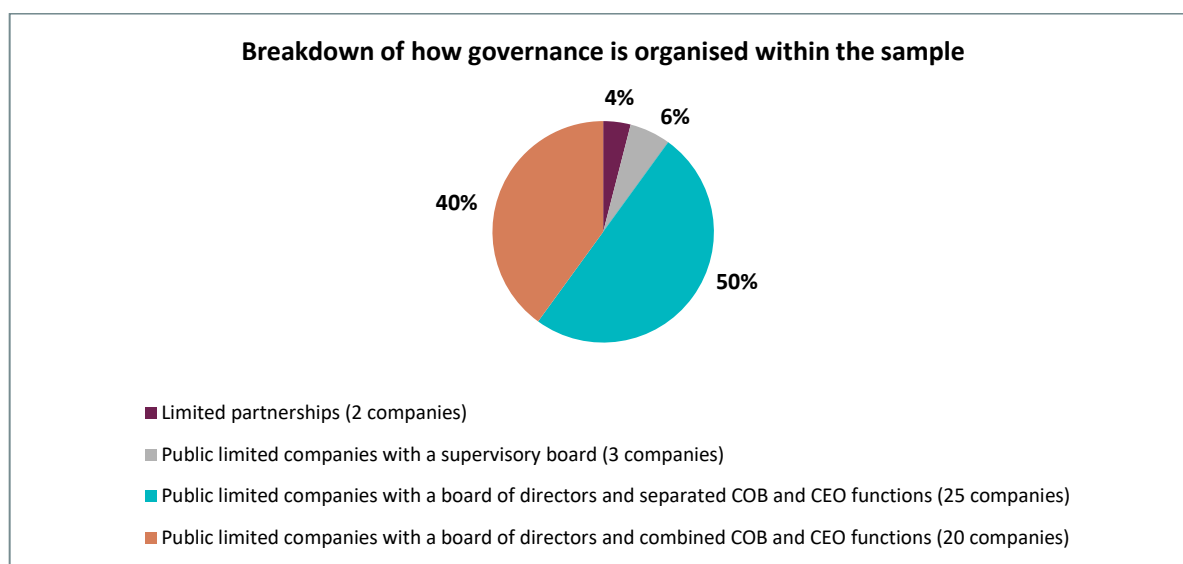
- sustainable governance;
- duty of care;
- transparency and equal pay between men and women, and gender pay gap ratios (or “gender equity ratios”);
- implementation of the Shareholder Rights Directive;
- corporate mission and companies with a mission;
- updates to the Middlednext corporate governance code.

SECTION 2: INFORMATION PROVIDED IN THE CORPORATE GOVERNANCE REPORT

The second section of the report deals with the information provided by companies in their corporate governance reports, with, as in previous years, an analysis of the information provided on executive compensation. The aim is twofold: to verify that the information published by listed companies complies with their obligations in this area and to recommend changes in corporate governance practices, where appropriate. In this section, the analysis is based on a sample composed of the 50 French companies with the largest market capitalisations in the SBF 120 index as at 31 December 2020 (including 35 in the CAC 40).

1. BOARD OF DIRECTORS’ INTERACTION WITH EXECUTIVE MANAGEMENT AND SHAREHOLDERS

First, with regard to the board of directors’ interaction with executive management, the AMF notes that 25 of the 45 public limited companies with boards of directors in the sample have separated the functions of Chairman of the Board (COB) and Chief Executive Officer (CEO). Among the 30 CAC 40 public limited companies with boards of directors in the sample, 17 have separated these functions. Among the 25 public limited companies with boards of directors in the sample that have separated these functions, five companies did so in the second half of 2020 or in 2021.



The AMF analysed the explanations provided by these companies regarding their choice to adopt or retain either one of the two governance methods. It notes that almost all companies provide an explanation every year in their corporate governance report. This recent trend towards having separate functions, which is often part of a management transition, is in response to requests from proxy advisors and seems to be in line with investors’ expectations.

In addition to complying with transparency requirements, companies need to consider the issues and risks involved in choosing a governance structure so they can determine the best way for the board to operate and interact with executive management.

The AMF analysed whether the measures taken by companies to ensure there are sufficient checks and balances and to prevent and manage the risk of conflicts of interest comply with the AFEP-MEDEF code.

In the case of companies whose board has chosen to maintain a single Chairman and CEO, the necessary checks and balances are provided by putting in place specific measures, such as:

- defining a list of the Chairman and CEO's decisions subject to prior approval by the Board of Directors;
- appointing a lead director to manage conflicts of interest in particular, especially potential conflicts of interest specific to the Chairman and CEO, who by definition is not independent;
- defining the composition of the Board's specialised committees and the potential role of the Chairman and CEO on these committees;
- organising at least one annual executive meeting without the Chairman and CEO;
- establishing a succession plan for the Chairman and CEO.

In the case of companies whose board of directors has chosen to separate the functions of Chairman and CEO, the board also puts in place specific measures to manage how it interacts with executive management, such as:

- defining a list of the CEO's decisions subject to prior approval by the Board of Directors;
- clearly allocating powers and duties between the Chairman of the Board and the Chief Executive Officer, avoiding areas of potential overlap; establishing a differentiated compensation policy; possibly proposing to the shareholders that the CEO be appointed as a director;
- possibly appointing a lead director to manage conflicts of interest in particular, especially potential conflicts of interest specific to the Chairman of the Board when he/she is not independent;
- establishing the composition of the Board's specialised committees and defining the role of the Chairman of the Board on these committees;
- organising at least one annual executive meeting without the CEO;
- establishing individual succession plans for the Chairman of the Board and the CEO.

Furthermore, with regard to the board's interaction with shareholders, the AMF mentions, firstly, the "climate change resolutions" submitted to shareholders by boards of directors in 2021 and, secondly, the shareholders' request to include an item on the general meeting agenda for "individual public position statements by directors".

2. COMPENSATION ADJUSTMENTS FOR EXECUTIVE CORPORATE OFFICERS DURING A HEALTH CRISIS

A decrease in the compensation paid to executive corporate officers¹ was a prominent feature of 2020, the first year of the Covid-19 crisis. One or more executive corporate officers at 35 of the 50 companies in the sample waived part of their 2020 compensation, often in a spirit of fairness to stakeholders (employees and shareholders), given the efforts required of them.

The boards of directors at 18 companies in the sample² adjusted the criteria for determining the 2020 compensation of executive corporate officers, either during or at the end of the 2020 financial year:³

¹ Executive corporate officers are defined as the chairman and chief executive officer, the chief executive officer, and the deputy chief executive officer(s) of public limited companies with a board of directors; the chairman and members of the management board of public limited companies with a management board and supervisory board; and the managers of limited partnerships with share capital.

² Some of these companies made several of the adjustments discussed below during the year.

³ Of the supervisory board in dual structures or of the general partners in limited partnerships with share capital.

Adjustments to the criteria for determining 2020 compensation



- Companies that added new performance criteria or changed the weighting of performance criteria for annual variable compensation
- Companies that updated the target objectives underlying the performance criteria set for annual variable compensation
- Companies that adjusted the level of achievement of the performance criteria for annual variable compensation
- Companies that modified the performance criteria or achievement rate of one or more performance share plans in the process of vesting

These adjustments raise the question of the respective roles of the board of directors and the general meeting, and the question of the extent of the board's discretionary power in assessing performance and determining compensation. They also raise the question of their compliance with the provisions of the AFEP-MEDEF code, according to which, firstly, *"the performance criteria used must correspond to the company's objectives, and be demanding, explicit, and, to the greatest extent possible, long-lasting"* and, secondly, the performance criteria for annual variable compensation must be *"precise and, of course, predetermined"*.⁴ The question is specifically whether the board of directors can change the performance conditions of the executives' annual or long-term variable compensation, either upwards or downwards, especially when the company's objectives change. The vast majority of the companies in the sample (64%) considered in 2020 that executive compensation should not be adjusted because of the health crisis.

Under the "comply or explain" principle,⁵ it is up to companies to explain clearly how these adjustments comply with the AFEP-MEDEF code. **The AMF emphasises that it is important that the executive's objectives always be demanding.** In this regard, the AMF notes interesting practices by companies that have lowered the achievement rate, set according to predetermined criteria, in a context where it was difficult to ensure that the predetermined criteria were demanding from the outset, for example when an exceptional capital gain was recorded.

Secondly, as these are adjustments to the compensation policy approved by shareholders and should therefore be exceptional, it is also important for companies to provide information at the earliest possible stage on these adjustments and on their impact, to ensure that there is sufficient time for meaningful shareholder dialogue. The AFEP-MEDEF Code requires companies to indicate in *"a specific section or table the recommendations that they have not implemented and the respective explanations"*.⁶ The AMF notes that none of the companies that made adjustments to their 2020 compensation policy included their explanations in this summary table, hence calling into question the requirement, under Article 25 of the AFEP-MEDEF Code, that the compensation criteria be predetermined. The information is provided in these companies' corporate governance reports, but is distributed piecemeal throughout them. However, this information is especially important because, pursuant to Article L. 22-10-34 of the Commercial

⁴ Article 25.3.2 of the AFEP-MEDEF Code states that: *"The board defines the criteria that make it possible to determine the annual variable compensation as well as the objectives to be achieved. These must be precise and, of course, predetermined. These criteria must be reviewed regularly, while avoiding overly frequent revisions."*

⁵ Article 27.1 of the AFEP-MEDEF code.

⁶ Article 27.2 of the AFEP-MEDEF code.

Code, payment to an executive corporate officer of the variable compensation awarded by the board for the previous year is subject to shareholder approval at the general meeting called to approve the accounts for that financial year.

Lastly, in reading the terms of the compensation policies for 2021, the AMF notes that 36 companies allow their boards of directors (or supervisory boards) to make exceptions to this policy throughout the year. In view of this, this report highlights both good and less good practices.

3. OTHER SALIENT FINDINGS ON CORPORATE GOVERNANCE

Among the other salient findings on governance (either off-topic or not related to the sample), the AMF notes the poor practice in 2021 (and highlighted previously in 2020) of a company in which the board of its holding company assesses the performance and determines the compensation of its executive corporate officers. The holding company pays the listed company's Chairman and CEO directly and re-invoices the listed company for part of this compensation through a service agreement. This chargeback agreement was overwhelmingly rejected for the fourth time by the general meeting of shareholders in 2021. The AMF therefore reiterated its request that the company (i) clarify the role of its board with regard to the compensation policy and compensation paid and (ii) provide information about the views taken by the board following the four consecutive votes against the agreement.

The AMF also notes some problematic or questionable practices:

- The case of a company that appointed the Chairman of the Management Board of a competitor as a director, raising questions about how to manage conflicts of interest and how this director could possibly participate effectively in debates and votes;
- The case of retaining in 2021 the combination of the status of censor and advisor to the Chairman of the Management Board, although this was highlighted in 2020 by the High Committee on Corporate Governance (HCGE) as being incompatible with the spirit of the AFEP-MEDEF code's recommendations, in terms of separating management and control bodies and preventing conflicts of interest;
- The case of a company that, in exceptional circumstances, "*deemed to have met*" the performance criteria for the long-term compensation plans at the time of its chief executive officer's departure, which raises a question over compliance with the AFEP-MEDEF code;
- The case of a company that announced, before the general meeting, the "*decision*" of the board of directors to separate the Chairman and CEO functions and its "*choice*" of future Chairman and future CEO, proposed as directors at the 2021 general meeting of shareholders. The board of directors only presented to this general meeting the compensation policy for the combined function of Chairman and CEO, which was to become obsolete immediately after the general meeting. The board had planned to use the "*compensation principles*" set out in this policy as a basis for determining the components of the respective compensation of the future Chairman and future CEO.

Lastly, the AMF notes one good practice: the case of a company that entered into a "settlement agreement" at the time of the departure of the Chairman of its executive board. This agreement included a severance payment and the retention of existing long-term variable compensation awards (subject to performance criteria) on a pro rata basis, in return for an irrevocable mutual waiver of all legal action and other commitments. This settlement agreement was both "*qualified as a regulated agreement as defined by Article L. 225-88 of the Commercial Code and, as such, was provided to the company's statutory auditors*" and submitted to "*the shareholders for approval in a binding vote at the 2021 general meeting*".

SECTION 3: INFORMATION PROVIDED BY PROXY ADVISORS

In the context of Article L. 621-18-4 of the Monetary and Financial Code introduced by the PACTE Law (Action Plan for Business Growth and Transformation), the third section of the report deals with the information provided by proxy

advisors, which institutional investors frequently use to analyse listed companies' draft resolutions and provide voting recommendations.

These proxy advisors *“play an important role in corporate governance by helping to reduce the costs of analysing company information and can also exert a significant influence on investors' voting behaviour. Investors with highly diversified portfolios and many shares in foreign companies in particular rely more heavily on the voting recommendations of proxy advisors.”*⁷

The PACTE Law,⁸ transposing the Shareholder Rights Directive, introduced transparency obligations and an obligation for proxy advisors to make public the code of conduct to which they refer. Under the “comply or explain” principle, when a proxy advisor does not refer to a code of conduct or when referring to such a code, it deviates from some of its provisions, it must state the reason for doing so and indicate the list of provisions thus set aside and, if applicable, the provisions adopted in substitution. The aim is to ensure that investors have clear, comprehensive and comparable information. The quality of the recommendations made by proxy advisory firms has a direct impact on the quality of investors' votes and decisions, particularly at general meetings, and therefore on the decisions made by the company concerned.⁹

The three proxy advisory firms whose information was reviewed by the AMF (ISS, PROXINVEST and GLASS LEWIS)¹⁰ have adopted the Code of Conduct of the Best Practice Principles Group (hereinafter, the BPPG). Its independent oversight committee, which is responsible for overseeing the implementation of the code's principles, published its first report in July 2021.¹¹ It reviewed the compliance statements of proxy advisors subscribing to the BPPG Code and at the same time launched a public consultation with stakeholders. In the future, this committee may propose changes to the Code of Conduct.

The AMF points out that disclosure of conflicts of interest and managing them is a key consideration for investors. For example, a proxy advisor with sources of income from both investors and issuers is in a structural conflict of interest situation. The BPPG's independent oversight committee encourages proxy advisors to publish detailed information on non-investor sources of revenue. Only PROXINVEST did this in its compliance statement published in December 2020, stating that 93.8% of its revenue is from investors. The AMF notes that this high proportion of income from investors is likely to limit the structural conflict of interest considerably. The AMF also notes that, in their response to the BPPG's public consultation, one investor and one industry association said that it was important for these potential conflicts of interest to be highlighted on voting platforms as well.¹²

The other main findings in 2021 are set out below.

Firstly, the French Management Association (Association Française de Gestion, AFG) stressed to the AMF the importance of making proxy advisors' recommendations available in good time before the general meeting. The deadlines for shareholders to vote are in practice often shorter than those published by issuers in their notices of meeting because of the chain of intermediaries. As a result, the window of opportunity for shareholders to engage in dialogue with issuers (after the proxy advisors' analysis has been published and before the voting deadline) is often very small. Similarly, the French Association of Institutional Investors (Association Française des Investisseurs Institutionnels, AF2i) would like to see *“guidance on timelines for issuing this advice to investors, taking into account the date of general meetings. It seems that these timelines are sometimes very short, making it difficult for investors to properly assess the advice issued in this way”*. The BPPG's independent oversight committee also states that proxy advisors that have signed up to the Code of

⁷ Recital 25 of Directive (EU) 2017/828 of 17 May 2017 amending the Shareholder Rights Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.

⁸ Articles L. 544-4 and following of the Monetary and Financial Code.

⁹ See the impact study on the bill on business growth and transformation (PACTE Bill), 18 June 2018, p. 602.

¹⁰ GLASS LEWIS does not fall within the AMF's jurisdiction under this regulation and is included for comparison purposes.

¹¹ Independent Oversight Committee, Best Practice Principles for Providers of Shareholder Voting Research & Analysis, Annual Report, 1 July 2021: <https://bpgprp.info/wp-content/uploads/2021/07/2021-AR-Independent-Oversight-Committee-for-The-BPP-Group-1.pdf>

¹² 2021 BPP Stakeholder Survey Qualitative Responses Analysis Report, page 5.

Conduct should publish information on how they manage these timelines and on the timely publishing of research reports.¹³

Secondly, according to the responses to an AMF questionnaire received from 12 of the 50 companies in the sample,¹⁴ the AMF notes that regular discussions have been set up between these issuers and investors and/or proxy advisors. This dialogue takes place before the general meeting and is an important step in ensuring that the particular characteristics of the company in question are considered. Proxy advisors who do not take this dialogue into account must report this fact in their annual reporting, pursuant to Article R. 544-1 of the Monetary and Financial Code.

Companies report that they had access to factual information before the general meeting and, in most cases, were able to point out any factual errors or omissions where necessary. The AMF notes, however, that proxy advisors' policies on dialogue with issuers and investors need to be clarified to specify those cases in which no dialogue is planned.

From the responses to its questionnaire, the AMF notes that some parts of proxy advisors' voting policies are still not understood fully by French issuers. They also criticise these policies for being too dogmatic and for taking little account of the characteristics specific to France and/or the company. The companies in the sample mention, for example, the recommendations on performance share plans and the choice of governance method (separated or combined functions). As part of the annual review of their voting policies, the AMF encourages proxy advisors to take into account the market-related, legal and regulatory characteristics that are specific to France and, if they do not, to provide a detailed explanation of why these characteristics are not taken into account. Proxy advisors who do not take these into account must state this in their annual reporting, pursuant to Article R. 544-1 of the Monetary and Financial Code.

¹³ Page 53 of the independent oversight committee's 2021 annual report: *"The Independent Oversight Committee believes that each Signatory should disclose robust data showing the timeliness of Signatory company reports, and explanations for how timelines are conceived, managed, and executed. Compliance statements for 2020 indicate that EOS at Federated Hermes recommendations are available to investor clients 10 days prior to the cut-off for voting; ISS employed a minimum 2-week target delivery date; and Proxinvest on average delivered its reports within 16-19 days"*.

¹⁴ As defined in section 2 of this report.