

AMF Recommendation

Corporate governance and executive compensation in companies referring to the AFEP-MEDEF code – Consolidated presentation of the recommendations contained in the AMF annual reports – DOC - 2012-02

Reference Texts: Articles L. 225-37, L. 225-37-2, L. 225-37-3, L. 225-37-4, L. 225-37-5, L. 225-68, L. 225-82-2, L. 225-100, L. 225-100-1, L. 225-185, L. 225-197-1, L. 226-10-1, L. 823-19 and L. 823-20 of the Commercial Code and Article L. 621-18-3 of the Monetary and Financial Code

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Pursuant to Article L. 621-18-3 of the Monetary and Financial Code, the Autorité des Marchés Financiers (AMF) prepares a report each year on corporate governance and executive compensation, based on the information published by corporate entities whose shares are traded on a regulated market and who have their registered office in France. With this report, the AMF ensures the transparency of the information disclosed by listed companies on corporate governance and executive compensation and also reviews the way in which companies implement the recommendations laid out in the corporate governance code jointly issued by the AFEP and the MEDEF (hereinafter referred to as the “AFEP-MEDEF code”).

As such, Article L. 621-18-3 of the Monetary and Financial Code allows the AMF to “*approve any recommendation it may consider relevant*”, and its report aims to review the best practices of listed companies in this field and to promote these practices through recommendations and avenues of discussion.

A recommendation, made in this case to listed companies, is a call to adopt a behaviour or comply with a provision that the AMF views as likely to support the achievement of objectives, standards or general principles falling within its jurisdiction. However, other behaviours or provisions may also be consistent with these standards or general principles.

Avenues of discussion do not, in principle, target issuers but rather the professional associations that develop the corporate governance codes. The AMF suggests that the AFEP and the MEDEF consider these guidelines in any relevant discussions. Issuers may, however, also apply them directly and voluntarily as best practices.

Each year, the AMF thus calls on issuers to apply the recommendations it makes in its annual report on corporate governance and executive compensation and, where applicable, on the AFEP and the MEDEF to amend their code based on the avenues of discussion it suggests.

To make it easier for issuers to consult and apply these recommendations, this document compiles all the recommendations applicable, as of the publication date, to companies referring to the AFEP-MEDEF code. The recommendations the AMF has published since 2009 have therefore been consolidated and harmonised¹, after accounting for changes in the AFEP-MEDEF code in the new version published in November 2016. They can be found in the following documents:

- the 2017 report on corporate governance, executive compensation, internal control and risk management;
- the reports published from 2010 to 2016 on corporate governance and executive compensation;
- the report of 8 December 2009 on corporate governance and internal control; and
- the report of 9 July 2009 on executive compensation in listed companies and on the implementation of the recommendations in the AFEP-MEDEF code.

This document is intended only for companies that refer to the AFEP-MEDEF code regardless of their corporate form².

However, this document does not include the recommendations found in the recommendation on the information to be provided about remuneration paid to corporate officers³ and the recommendation on internal control⁴, which are also intended for issuers referring to the AFEP-MEDEF code.

With respect more specifically to the audit committee and to internal control, the AMF refers to its recommendation 2010-19 on audit committees, mentioned in the text below, as well as to its recommendation of the same day on risk management and internal control systems (Reference framework – Implementation guidance for small and mid caps).

¹ With some rephrasing and minimal clarifications.

² With the exception of the provisions of the Sapin II Act that do not apply to limited partnerships with share capital, the recommendations are directed at all companies regardless of their corporate form or governance model.

³ AMF position-recommendation 2009-16 – Guide for compiling registration documents.

⁴ In this respect, attention should be drawn to AMF position-recommendation 2010-16 on the reference framework for risk management and internal control systems. Furthermore, in February 2016 the report of the working group chaired by Mr Jean-Claude Hanus made several proposals aimed at simplifying and giving renewed relevance to the information provided to shareholders and to the market on internal control and risk management procedures.

1. Recommendations and avenues of discussion for corporate governance

1.1 Recommendations for corporate governance

1.1.1 Preparation and presentation of the information

To improve the clarity and comparability of the corporate governance information, the AMF recommends that all of the relevant information be centralised in the section of the registration document or annual financial report dedicated to corporate governance.

The AMF recommends using summary tables to demonstrate implementation of the code's corporate governance recommendations. Such presentation may be preferable to text for the purpose of legible and summary information. For example, the AMF proposes that tables be used to show each director's nationality, gender, whether they are independent, whether they represent the government, employees or employee shareholders if such is the case, whether they sit on any committee(s), their rate of attendance at board and committee meetings, their terms' expiration dates, etc.

The AMF recommends describing the due diligence done when preparing the report on corporate governance and the list of units, departments, and bodies concerned. For greater clarity, this description should preferably be presented in the introduction to the report.

The AMF encourages companies to not merely list due diligence activities, but to provide a clear and detailed summary of the work carried out in this regard.

The AMF reiterates the requirement of clarity in presenting the report on corporate governance⁵. As a reminder, this report is incorporated into the registration document. The AMF recommends that when the content of the report on corporate governance is presented in different chapters in the registration document, this should be specified in the body of the report with references to the appropriate sections. For companies publishing a registration document in the form of an annual report, the cross-reference table must be completed to this effect.

1.1.2 Implementation of the “comply or explain” principle

The AFEP-MEDEF code states that listed companies referring to the code “*should report in detail in their annual reports on the implementation of these recommendations and, if applicable, provide an explanation of the reasons why they have deviated from any of them*”.

The AMF recommends that companies show in a specific section or table all the recommendations that they have not implemented and the related explanations.

This recommendation applies to the presentation of corporate governance and of compensation.

⁵ Order No. 2017-1162 of 12 July 2017 containing various measures for simplifying and clarifying companies' disclosure requirements and Order No. 2017-1042 of 7 July 2017 on simplifying corporate document filing requirements for companies that prepare a registration document.

1.1.3 Organisation of the board's work

The AMF recommends:

- that companies that have changed their governance system describe and explain this change precisely and in detail and indicate the steps taken to avoid any conflicts of interest;
- that companies present the specific measures taken, where applicable, to ensure that there are checks and balances within the board when the roles of chairman and chief executive officer are held by the same person.

1.1.4 Membership of the board

The AMF recommends the inclusion of a table summarising the changes that have occurred in the board's membership, such as departures, nominations, and reappointments, and showing any changes that reflect greater diversity (in terms of percentage of women directors, nationality and international experience).

1.1.5 Independent board members and management of conflicts of interest

As regards the management of conflicts of interest, the AMF recommends that companies referring to the AFEP-MEDEF code, which expressly provides for reporting and managing conflicts of interest⁶ involving members of the board:

- provide information on the management of these conflicts within the board;
- present in their registration document or annual report excerpts from their internal rules or code that cover the prevention of conflicts of interest and are applicable to directors.

As regards the independence of board members, the AMF recommends that companies:

- clearly identify the members who have been classified as independent by the board, regardless of whether these directors are members of specialised committees;
- plainly specify that they are compliant with the director independence criteria set forth in the AFEP-MEDEF code and, when they fail to comply with one of these criteria, explain in detail as to why. To do so, the AMF recommends that companies include this information in a summary table detailing directors' status (compliant or non-compliant) in light of the director independence criteria set forth in the AFEP-MEDEF code;
- not justify their disregard of the independence criterion of serving as director for more than 12 years in a row⁷ merely by the experience or expertise of the director concerned;
- provide detailed information each year to explain how their board has come to the decision as to whether or not the business relationships that are likely between members qualified as independent and the company in which they are directors or supervisory board members are significant. As such, the AMF recommends that companies describe in detail the qualitative and/or quantitative criteria for appraising the significance of the relationship with the company or its group, as well as the content of any commitment the relevant directors might have made to preserve the terms of such qualification as independent director, as well as the consequences of any breach of these commitments. Thus, the AMF recommends that issuers not appraise the significance of business relationships solely with quantitative criteria, but that they also perform as much of a qualitative analysis as possible, based on various parameters to assess whether such a relationship is not significant and is exempt from conflicts of interest, including but not limited to:
 - ✓ length and continuity (seniority, history, renewals);
 - ✓ the degree or "intensity" of the business relationship (any economic dependency, exclusivity, or dominance in the sector that is the purpose of the business relationship, division of bargaining power, etc.);

⁶ Proposition 27 of AMF Recommendation 2012-05 – "General meetings of shareholders of listed companies" – Document created on 2 July 2012 and amended on 24 October 2017.

⁷ Loss of the status of independent director occurring on the date at which this period of twelve years is reached in the AFEP-MEDEF code amended in November 2016 (§ 8.5.6)

- ✓ the organisation of the relationship (position of the relevant director in the contracting company, direct decision-making power over the contract(s) constituting the business relationship, remuneration of the director related to the contract, any business ties or relationship with companies that other directors are from, amounts of mutual commitments between the companies, etc.).

If, for the purposes of this appraisal, a company wants to keep only one quantitative criterion, a ceiling on the absolute amount (such as what certain proxy advisors stipulate⁸) seems more relevant for appraising the significance of a business relationship. Whatever the case, any quantitative threshold as a percentage of business volume should be appraised for each of the two companies or contracting parties.

As regards boardroom diversity, the AMF recommends:

- that companies which do not give any information on the nationality or international experience of their directors adopt such a policy;
- that companies explicitly state which directors represent employee shareholders and which represent employees;
- that companies that are subject to Order no. 2014-948 of 20 August 2014 on governance and transactions affecting the share capital of companies with public shareholding state the measures relating to its implementation in their registration document or annual financial report, clearly distinguishing directors who are government representatives appointed by administrative decision from those named by the competent body.

Lastly, the AMF recommends that all companies:

- provide details of the tasks of and work actually done by the board;
- give a complete overview of the board's activity;
- disclose each director's attendance rate at board meetings.

1.1.6 Directors' term of office

The AMF recommends not justifying a term of office of more than four years – the term recommended in the AFEP-MEDEF code – by a long, company-specific business cycle, as such a justification does not appear to be relevant given the very purpose of this limitation. As the AFEP-MEDEF code states, the decrease in the duration of the directors' term of office is warranted by the desire for shareholders to be able to express their wishes more frequently on the nomination and reappointment of directors, which does not necessarily decrease the actual duration of the director's time on the board.

1.1.7 The board's internal rules and code of ethics

The AMF recommends that:

- the board's internal rules be reviewed on a regular basis and, where applicable, be supplemented or amended to reflect the regulatory environment;
- the board's internal rules or code of ethics be available on companies' websites.

⁸ Indeed, the AMF notes that certain proxy advisors adopt a strict concept of the appraisal of these business relationships, and specify certain criteria to appraise their significance. Thus, ISS holds that a director cannot be called independent if he, or a person with whom he has close family ties, offers "professional services" to the company, one of the companies that is affiliated with it, or a manager of these companies for an amount in excess of \$10,000 per year. Proxinvest also considers as "not free from interests" those who have been directors or former directors of the company or its subsidiaries for fewer than three years, and who collect significant specific remuneration of €100,000 or more for services provided to the group's companies, controlling shareholder, or management.

1.1.8 The board's specialised committees and the audit committee

The AMF recommends that companies describe the way in which committees operate, as well as their tasks and the results of their work by detailing the interactions between these committees and the board.

As regards the membership of the committees and of the audit committee in particular, the AMF encourages companies to appoint independent directors as chairs and to increase the proportion of independent directors on all these committees. The AMF also urges companies to avoid, as far as possible, having corporate executive officers as members, much less chairmen, of such committees.

The audit committee or accounts committee

As regards companies which have set up an audit committee or accounts committee, the AMF recommends that their members and chairman all be clearly identified. It also recommends that the paragraph introducing the members of board should include specific information on the audit committee members' expertise. As regards the membership, operation and tasks of the audit committee, the AMF refers to the conclusions of the working group on audit committees of July 2010 and to AMF recommendation 2010-19 on audit committees.

The AMF also recommends that companies improve the information on how the chairman/chief executive officer, as appropriate, participates in board meetings when the board meets as the audit committee. It notes that the working group on audit committees recommended that the chairman, when he also takes on executive responsibilities, refrain from attending these meetings⁹. Moreover, since there is no chairman for such meetings, it encourages boards meeting as the audit committee to choose the person designated as competent and independent within the meaning of Article L. 823-19 of the Commercial Code to chair the meeting.

The nomination and compensation committee(s)

The AFEP-MEDEF code states that the compensation committee must consist mostly of independent directors. In practice, this recommendation means that the number of such directors should be greater than half the number of members (in particular for four-member committees) and when this is not the case an explanation should be provided.

The AMF recommends that the board of any company that has one committee in charge of both compensation and nominations refrain from appointing the current chairman to this committee, as the AFEP-MEDEF code provides for this corporate officer's presence only for nomination committees that are separate from compensation committees.

1.1.9 Evaluation of the board's work and that of its committees

Under the AFEP-MEDEF code, amended in 2016, the board's work must be evaluated in accordance with predefined procedures: the board debates its operation once a year, there is a formal evaluation at least once every three years, and shareholders are informed each year in the annual report of the evaluations carried out and, if applicable, of any steps taken as a result. The AMF recommends:

- that companies conduct, as far as possible, an evaluation of the board's operation and that they provide details of how that evaluation was conducted, in particular whether an outside consultant was involved. The AMF urges companies to disclose in sufficient detail the procedure put in place to evaluate the operation of the board and the results of this evaluation, as well as any follow-up actions and, more specifically, any areas of improvement that the company might consider;
- that companies include, when they disclose information about the results of board evaluations as well as the desirable changes discussed as part of these assessments, the contents of the discussions on the issue of greater boardroom diversity;
- that the board's collegiality, in and of itself, not excuse any failure to measure the actual contribution of each director to the work of that board, but that such failure should be backed by substantiated explanations that are suited to the company's particular situation. In that respect, an evaluation that takes place exclusively when a director's term of office is up for renewal does not justify a failure to

⁹ However, the executive chairman may be invited to attend part of the meeting.

measure his actual contribution to the work of the board. Indeed, this assessment cannot respond to the spirit of the AFEP-MEDEF Code's recommendation for ongoing continuous improvement of each director's contribution to the work of the board.

1.1.10 Information on multiple directorships

The AMF recommends that companies specify whether or not the directorships in question are held outside the group and whether or not the companies in which these directorships are held are listed.

The AMF also reiterates that particular attention should be paid to complying with the AFEP-MEDEF recommendation on directors and corporate officers holding multiple directorships or explaining non-compliance.

1.1.11 Restrictions on the powers of the chief executive officer

The AMF encourages companies to establish, maintain or strengthen the restrictions on the powers of the chief executive officer, whether or not he is also the chairman of the board, as well as on the powers of his deputies.

The AMF recommends that all restrictions on the powers of the chief executive officer, and on those of his deputies as the case may be, should be disclosed. If these restrictions have been adopted officially, companies should provide a cross-reference to the internal rules. If no restrictions have been applied, the AMF recommends that companies state this explicitly.

1.1.12 Non-voting members

The AMF recommends that companies that have appointed one or more non-voting members describe in detail their methods of nomination, duties and prerogatives, for example in the section dedicated to the activities and evaluation of the board.

1.1.13 The chairman of the board

As with the chairman of the board of directors, the AMF recommends that public limited companies (*sociétés anonymes*) which have an executive board and a supervisory board and which consider their chairman of the supervisory board to be independent provide a substantiated explanation that is adapted to the company's particular situation

The AMF also recommends that companies, in view in particular of shareholders' ex ante and ex post votes on compensation, and to prevent any confusion, publish specific, substantiated information about the tasks carried out by the chairman of the board of directors or the supervisory board in addition to his responsibilities under the law and present an overview of his activity for the year. The recommendation in the code should also apply if a resolution on the nomination or reappointment of a chairman of the board is submitted for the approval of the shareholders' meeting.

1.2 Avenues of discussion for corporate governance

1.2.1 Presentation of information on the board and its committees

The AFEP and the MEDEF could encourage issuers to consider standardising the presentation of the membership of the board and the committees, similar to what is proposed in Annex 3 of their code for the compensation of corporate executive officers, to improve the clarity and comparability of the information. The tables presented by certain companies in the sample could be effectively standardised in a future amendment to the AFEP-MEDEF code. These tables could:

- summarise important information about the membership of the board at the end of the year and include the following information for each director: (i) main position held outside the company, (ii) summary of the director's key areas of expertise and experience with a cross-reference, where applicable, to a biography, (iii) gender, (iv) age and nationality, (v) year first appointed, (vi) term of office, (vii) independence,

- (viii) representation of employees or employee shareholders, (ix) membership in or chairmanship of board committees, (x) number of directorships in outside listed companies, (xi) number of shares held;
- incorporate changes made to the membership of the board during the year and include the following specific information: director concerned, end of term, departures, nominations, reappointments, nationality;
- detail the status of all directors (and not just independent directors) in light of the independence criteria in the AFEP-MEDEF code (including whether or not there are significant business relationships);
- include, for the board and the various board committees, the number of meetings as well as the overall and individual attendance rate.

1.2.2 Independence of board members

Given the relatively diverse interpretations of the concepts of independence and of financial and accounting expertise, concepts that are moreover referred to in laws and regulations, discussions could be held on:

- clarifying the concepts of independence and of financial and accounting expertise and the independent director compensation arrangements;
- finding the right balance between independence and expertise by appointing directors with an appropriate professional activity;
- having the possibility of considering as independent a director who has business, banking or advisory relationships, through corporate appointments. It would be appropriate for organisations representing companies, where applicable in their corporate governance code, to specify the qualitative criteria for analysing the significance of these business relationships, as well as examples of when a director may no longer be considered independent. The AFEP-MEDEF code should, in any event, specify that the board must pay particularly close attention to assessing whether the business relationship with the company or its group is significant and to the criteria that led to this assessment, in particular when the director is an investment banker. Despite the improvements made when the code was amended in November 2016, there remains a lack of uniformity in the information on business relationships, particularly with regard to relationships with directors who are bankers or have ties to banks. The Haut Comité de Gouvernement d'Entreprise (HCGE, or high committee for corporate governance) had also acknowledged in its November 2016 annual report and again in its October 2017 report that this was “an important and sensitive topic on which there is still room for improvement”. The AFEP and the MEDEF should therefore consider the level of detail and relevance of the information that should be provided, in particular whether it is reasonable to claim confidentiality to avoid disclosing materiality thresholds;
- applying the “comply or explain” principle to the criterion of serving as director for more than 12 years in a row, as the justifications provided are very rarely substantiated and suited to the company’s particular situation (experience, independence, long business cycle, etc.).

1.2.3 Management of conflicts of interest

The AMF calls on the AFEP and the MEDEF to supplement the section of their code on ethical rules for directors to clarify that, in addition to the obligation to report to the board any potential conflict of interest and to abstain from taking part in voting on the related resolution, directors can also not participate in discussions that relate to this vote.

1.2.4 Changes to and the consistency of the governance model of listed companies

Discussions could be held on changes to and the consistency of companies’ governance models as well as on the quality of the explanations provided for them, particularly when a company reverts to a governance structure it has recently abandoned.

1.2.5 Lead director

The nomination of a lead director is one interesting organisational arrangement which aims to prevent potential conflicts of interest and any lack of checks and balances on the board, in particular when the roles of chairman and chief executive officer are combined. In this respect, it is important that companies that have decided to appoint a lead director give him the powers and resources needed to perform his duties, in particular that of convening a board meeting, and it is essential that these powers and resources be formalised and transparent.

Furthermore, companies that have appointed a lead director could consider addressing his corporate governance activities in the board evaluation and/or the report on corporate governance.

The amended AFEP-MEDEF code now recommends that the lead director be independent (§ 6.3) and, when there is a lead director, that the “*tasks and the resources and prerogatives to which he or she has access must be described in the internal rules*”.

In addition, companies should publish an overview of the lead director’s activity so that, first, the nature of the work and the tasks he has carried out to that end and, second, the use he has made of the prerogatives assigned to him can be assessed.

1.2.6 The status and role of the non-executive chairman

Initiating a discussion on the governance model means asking questions about the status and role of the non-executive chairman, and in particular about his current qualification as corporate officer by the AFEP-MEDEF code. These questions require, in particular, an examination of (i) the nature of the tasks assigned to the non-executive chairman of the board, (ii) the limits placed on these tasks, in particular as regards the powers of the chief executive officer and (iii) the way in which the performance of these tasks is taken into account when the board determines the different components of his compensation.

The amended AFEP-MEDEF Code eliminates the prior text, which stated that “*although he or she may be an executive director, a Chairman of the Board may be considered as independent if the company can justify this based on the criteria set out above.*”

It specifies that “*A non-executive Officer cannot be considered independent if he or she receives variable compensation in cash or in the form of shares or any compensation linked to the performance of the corporation or group*” (§ 8.6.). Furthermore, the first independence criterion is now not to be an “executive Officer” (§ 8.5.1.).

The AMF considers that, insofar as he does not have management powers, the chairman of the board should not be paid variable compensation in cash or shares, except if there is a particularly substantiated reason with regard to specific duties, exceeding those assigned by law. In any event, the AMF considers that the qualification of independent implies the lack of any such compensation.

1.2.7 Evaluation of the board's work

The AMF notes that, according to the AFEP-MEDEF code, the evaluation of the board's work should aim in particular to “*measure the actual contribution of each director to the Board's work through his or her competence and involvement in discussions*”. In light of the observations made regarding implementation of this recommendation, it might be helpful to specify what is expected, in practice, of companies on this issue.

1.2.8 Non-voting members

The AMF calls on the AFEP and the MEDEF to consider whether it would be appropriate to apply some of the rules applicable to directors to non-voting members, in particular those relating to independence, reporting of interests and multiple directorships.

2. Recommendations and avenues of discussions for executive compensation

2.1 Recommendations on the presentation of information about compensation of corporate executive officers

The AMF recommends that companies make sure that the explanations provided to justify certain components of the compensation paid to corporate executive officers for a given year, even when they have already been disclosed to investors (in the annual report or registration document for the previous year, press releases or a

post on the issuer's website), are included in the registration document or annual financial report for the year in question to ensure that the information is clear and comprehensive.

2.1.1 Change in fixed compensation

As regards the presentation of their compensation policy, the AMF recommends that companies present increases in their executives' fixed compensation with an indication of the percentage increase over the previous year.

2.1.2 The annual variable component of compensation

The AMF recommends that companies:

- differentiate between each of the criteria used by specifying whether it is a quantifiable or qualitative criterion;
- precisely define the qualitative criteria for determining the variable component of compensation, or indicate, at least, that some qualitative criteria have been predetermined and precisely defined, though not published for confidentiality reasons;
- specify the expected level of achievement of quantifiable targets used to determine the variable component of compensation or indicate, at least, that the level of achievement of these quantifiable targets has been established in an accurate manner, though not published for confidentiality reasons, provided that the nature of these quantifiable targets is documented;
- clearly and precisely present the distribution key for the criteria used to determine the variable component of compensation;
- specify the ceiling on variable compensation, either as a percentage of fixed compensation or as a maximum numerical amount for those companies that do not pay fixed compensation;
- provide clear and accurate information on the implementation of adjustment clauses that affect the calculation or payment of certain components of compensation and ensure that the predetermined nature of the criteria used to determine these components is not called into question.

The AMF also recommends, when calculating the annual variable compensation to be paid, that:

- companies specify clearly, at least for each quantifiable target, the extent to which it has been achieved;
- the board of directors or supervisory board justify its decision when the share of annual variable compensation awarded on the basis of the observed achievement of qualitative targets deviates significantly from the ratio initially set and starts to outweigh the component based on the achievement of quantifiable targets. This situation should remain exceptional and the justification provided must allow an understanding of its decision making.

2.1.3 Long-term compensation (including stock options, performance shares and multi-annual variable compensation)

The AFEP-MEDEF code recommends that long-term compensation be tied to demanding performance conditions to be fulfilled over a period of several consecutive years. These conditions may be performance conditions that are internal to the company or relative conditions, i.e. linked to the performances of other corporations or of a reference sector. Whenever possible and relevant, these internal and relative performance conditions should be combined.

As such, the AMF recommends that the beneficiary's continued presence within the company when stock options are exercised or performance shares are finally allotted not be considered a demanding performance criterion.

The AMF also recommends that:

- companies stipulate that, to the best of their knowledge, they do not have any hedging instruments either for the options or for the shares resulting from the exercise of options, or for performance shares, and that this is true up until the end of the holding period for the shares specified by the board of directors;

- the obligations to hold shares resulting from the exercise of stock options or from bonus shares, provided for in Articles L. 225-185 and L. 225-197-1 of the French Commercial Code, (i) be disclosed and (ii) be sufficiently binding so as to allow actual recognition of the company's performance in the long term;
- when the board of directors or supervisory board decides, upon the departure of an executive, to exempt him from the continued presence condition provided for in a bonus share plan or stock option plan, the exact number of options or shares to which the executives are entitled under these plans should be noted and the amount of the benefit awarded should be evaluated;
- companies provide information on the implementation of criteria that led to the payment, during the year, of a portion of the multi-annual compensation.

2.1.4 Justification for maintaining the employment contract

The seniority of the executive as an employee of the company and his personal circumstances may justify maintaining his employment contract. However, the AMF believes that a generic reference to seniority and personal circumstances is not a sufficient explanation under the “comply or explain” principle. It is recommended that the company provide substantiated explanations of the personal circumstances of the executive in question.

In that case, the AMF recommends that the company provide justifications suited to the specific situation of each executive (length of service, description of benefits associated with the employment contract).

2.1.5 Communication when an executive leaves a company

The AMF recommends that the information to be published when an executive leaves a company be made public in a press release distributed fully and effectively within the meaning of Article 223-9 of the AMF General Regulation.

The AMF also recommends that this information include a valuation of the components of compensation awarded to the executive but not yet paid.

2.1.6 Supplementary pensions schemes

The AMF recommends that companies specify that overall executive compensation was determined by taking into account, where appropriate, the benefit of having a supplementary pension scheme.

2.1.7 Say on pay

The AMF recommends that companies:

- provide a precise reference, when their general meeting resolution refers to a document presenting the components of compensation subject to a vote, to ensure that shareholders can easily access this information;
- draft separate resolutions for each category of executive when the principles and criteria for determining, allocating and awarding components of compensation specific to these executives are distinct and/or the scope of the vote by shareholders is different.

2.2 Avenues of discussion for compensation of corporate executive officers

2.2.1 The concurrent holding of an employment contract and corporate office in listed subsidiaries

The AMF, unlike the AFEP-MEDEF code, believes that the rule on not concurrently holding a corporate office and an employment contract should also apply to employees that perform corporate executive officer tasks in a listed subsidiary and that have entered into an employment contract with the parent company of this subsidiary. It seems reasonable for the director of the listed subsidiary to also be subject to the code and for the issuer to explain, if applicable, the reasons behind its decision to maintain the employment contract with the parent

company, in accordance with the “comply or explain” principle. In this case, it seems appropriate for the director holding an employment contract not to be granted termination benefits if he remains an employee of the group.

2.2.2 Pension systems

Pension plans replacing those provided for in legislation are set up by the companies. They are based on the payment of a numerical amount or an amount of equity securities to the executive and sometimes include the requirement to invest this amount in an outside body.

An initial contribution is made in the first year with the payment of significant capital (generally corresponding to the balance of the previously recorded pension provisions) and an annual contribution (X% of annual compensation) is subsequently made to increase the accumulated capital.

On reading the information presented by companies, it does not appear that the annual contribution is systematically subject to performance conditions. Furthermore, this mechanism is presented only for the top corporate executive officer and does not seem to benefit other categories of persons within the company.

The AMF therefore believes, to ensure consistency with the rules already applicable to existing pension systems, that the professional associations should discuss rules for this type of mechanism to specify the provisions in the code applicable thereto and, where appropriate, to condition the award of annual contributions on performance conditions.