Proxy Insight

Vive la difference

A review of proxy voting in France.

2015 saw a number of interesting developments in France, further demonstrating the unique nature of this market. For this study, Proxy Insight looked at some of the key issues facing French issuers and invited a selection of expert advisers to provide their views and opinions.

La Loi Florange

One of the most notable changes in recent years has been the Florange Law, which included provisions for granting double voting rights to investors which have held a stock for more than two years. At the end of March, companies without an opt-out provision in their bylaws will automatically be entitled to implement double voting rights. Surprised by the sharp departure from generally accepted corporate governance practices, many observers initially questioned why the changes were necessary.

According to Louis Barbier, France Country Manager at Sodali, the motivation came from the state itself. "The Florange Act was in reality a way given to the French government to reduce its stake in the share capital of investee companies without reducing its influence in terms of voting rights," he says. David Chase Lopes, Managing Director EMEA at D.F. King agrees, stating "The Florange Act was a political decision from a socialist government looking to lower its debt burden while maintaining its influence in the companies it invests in." That may prove short-sighted, as Chase Lopes goes on to say that the Act has "potentially damaged the market's attractiveness.

Political or not, the changes have been popular. Christine Genin, Senior Account Manager at Georgeson highlights that "only eight French CAC 40 companies continue to maintain the "one share – one vote principle (including Legrand which uniquely removed pre-existing double voting rights)."

> "Only eight French CAC 40 companies continue to maintain the one-share one-vote principle"

As detailed in Table 1, ten CAC 40 companies sought shareholder approval to opt out of the Florange Act in 2015 and only seven succeeded. The failed proposal at Renault followed the French government's purchase of €1.23bn worth of shares which Barbier notes "was simply a response to the close-to-unanimous position by institutional investors to oppose such a mechanism". Likewise, at Air France, the French state was forced to increase its stake to 17.6% to thwart the proposal. The failure at Engie was largely due to a 33.2% stake by the French state.

Virtually all asset managers covered by Proxy Insight supported proposals to repeal the double voting rights facility within their bylaws. GAMCO, which abstained at BNP Paribas and voted against the opt-out at L'Oreal, told Proxy Insight in an e-mail that it had intended to prevent deviation from the one-share, one-vote principle in accordance with its Magna Carta of Shareholder Rights. Likewise CalSTRS who opposed the resolution at Vinci, told Proxy Insight that this had been an error as they very much support the concept of one share one vote. Both these issues demonstrate the challenges faced by institutional investors voting at thousands of issuers in a very short space of time often with limited information.

Table 1: CAC 40 Seeking to Repeal Florange in 2015

Company	% For	Result
Air Liquide	93.6	Pass
BNP Paribas	78.3	Pass
Cap Gemini	95.3	Pass
Credit Agricole	99.8	Pass
L'Oreal	99.9	Pass
Legrand	97.3	Pass
Unibail Rodamco	100.0	Pass
Vinci	99.4	Pass
Engie	39.8	Fail
Renault	60.6	Fail
Veolia Environnement	51.2	Fail

Source: Proxy Insight

"COMPANIES THAT RECIEVED HIGH OPPOSITION WERE MAINLY THOSE WITH THE FRENCH STATE AS A REFERENCE SHAREHOLDER"

Finally, it is worth noting the two shareholder proposals by French activist PhiTrust who attempted to force Orange and Vivendi to repeal their double voting applications. Both proposals were narrowly defeated. Vincent Bolloré, Chairman of Vivendi, had to spend about €2.8bn to increase his stake in the company from 5% to 14.5% ahead of the annual meeting in order to see off both the voting proposal and a challenge from activist investor P. Schoenfeld Asset Management.

Capital Increases

Capital increases were one of the most unpopular proposals in France, with 161 separate resolutions receiving less than 90% investor support. Moreover, voting patterns in 2015 highlight a massive reduction in support compared to 2014. While in 2014 only six companies suffered more than 10% opposition on capital increases, this number increased to 57 companies in 2015. The level of opposition also increased dramatically from 16% in 2014, to 35% last year.

> "161 resolutions recieving less than 90% investor support"

Judging by the rationales provided by Aviva, BMO, Calvert and others, shareholders were clearly concerned at their use as an anti-takeover defence. Genin points to this as "a secondary consequence of the introduction of the Florange Act" and remarks that "the main proxy advisors indicated that they would recommend against general capital increase authorities unless the company specifies in their notice of meeting that these authorities cannot be used during a public offer." Barbier also notes that issue of board neutrality stating that "Companies that received high opposition were mainly those with the French State as a reference shareholder."

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In contrast to his critical take on double voting rights, Chase Lopes feels the "categorical sanctioning of any capital increases non-neutralised during takeover periods is arguably counterproductive, with issuers sometimes stripped of basic and necessary authorisations that could not conceivably impact with any significance a takeover bid."

Table 2: Top Investors' voting on French Capital Increase

Company	2014 %	2015 %
BlackRock	79.3	65.5
Vanguard Group, Inc.	81.9	88.2
Fidelity Management & Research Co.	97.1	78.0
JPMorgan Investment Management, Inc.	87.2	89.4
BNY Mellon	81.0	74.6
T.Rowe Price	86.3	78.7
Northern Trust Investments	79.7	74.9
Wellington Management Company	87.8	87.2
Legal & General Investment Management	81.5	87.4
Norges Bank Investment Management	64.5	55.9

Source: Proxy Insight

"SUPPORT FOR ADVISORY COMPENSATION PROPOSALS AT CAC 40 COMPANIES FALLING TO 86.5% IN 2015"

Compensation

No review of proxy voting is complete without a section on compensation and, true to form, "Say on Pay" has proved a highly contentious issue in France, with support for advisory compensation proposals at CAC 40 companies falling to 86.5% in 2015 from 92% in 2014. This is further illustrated in Table 3 where every investor bar Wellington reduced their support for Say on Pay Votes at French companies in 2015 compared to 2014.

One issue commonly stated by investors is that remuneration policies are too short-term in nature. As Loïc Dessaint, Managing Director at Proxinvest, told Proxy Insight for this article, "There is a real problem of alignment between pay and performance and the lack of disclosure of the realization rate of underlying performance conditions does not help to restore trust."

Other investors drew positives from last year's proxy season, however. Marc Younes, Head of Product Developement, at BNP Paribas Securities Services suggests that "Investors recognised that Issuers made a lot of progress on transparency criteria for compensations," while Genin notes that shareholder voting on compensation became generally tougher in 2015 with some of the highest levels of opposition actually from votes cast by the state, "which played an active role in trying to limit executive remuneration."

With compensation rates lower than for North American or UK counterparts, adequate disclosure may be more of an issue for French executives. According to Chase Lopes, "On remuneration French corporations are generally good corporate citizens, especially in terms of the absolute amounts granted" and that "they generally follow the AFEP-Medef code requirements." Barbier agrees, noting "Boards and companies found it frustrating to see that some high performers executives received bad scores while some poor performing companies had incredible support, only because communication was quite transparent."

The message for French issuers is therefore to communicate fully, while tying compensation to the long term success of the company.

Board Structure

A unique feature of the French market is companies' ability to choose between a single or dual board structure. Most of the CAC40 have a single board structure, and there seems to be little difference when shareholder votes on director re-election proposals are compared for each arrangement.

> "There is a real problem of alignment between pay and performance"

Table 3: Top 10 investors voting on French SOP

Company	2014 %	2015 %
BlackRock	97.0	69.6
Vanguard Group, Inc.	100.0	99.6
Fidelity Management & Research Co.	100.0	89.9
JPMorgan Investment Management, Inc.	85.1	65.6
BNY Mellon	90.6	64.7
T.Rowe Price	97.2	64.2
Northern Trust Investments	99.4	98.4
Wellington Management Company	95.2	95.5
Legal & General Investment Management	90.6	61.3
Norges Bank Investment Management	96.7	85.7

Source: Proxy Insight

"COMPANIES HAVE REALIZED THEIR ESG PRACTICES CAN BE TRANSLATED INTO BUSINESS OPPORTUNITIES"

Combining the roles of Chairman and CEO has a greater impact, with those that fill the positions with separate individuals receiving on average 95.2% support for the re-election of their directors, compared to 91.7% for those that combine them. With the majority of the CAC 40 combining the roles, however, other factors could influence the data.

> "Levels of investor support are influenced more by the level of independence on the board"

Table 4 sets out some of the policies of the top French investors on the issue and shows clear support for a separation of powers. Given the historical combination of these roles in France, companies would do well to demonstrate the presence of a senior independent director to provide the appropriate balance which in turn should satisfy most investors.

Carbon Footprint

One of the developments that took place in the French market in 2015 was a new law requiring institutional investors to disclose the carbon footprint of their investments. The law also requires investors to disclose how much of their portfolios are invested in assets that already include the reduction of greenhouse gas emissions.

Most of the experts we surveyed had no view on this subject or believed the law would have little impact. As Younes puts it, on international terms "French Issuers communicate a lot on this topic." Barbier, however, went on to say that "companies have realized their ESG practices can be translated into business opportunities."

"Levels of investor support are influenced more by the level of independence on the board no matter its structure," says Genin, with Barbier concurring. "I don't think the issue of single or dual board structure is an issue for French investors. In 2016 they will focus on the governance of boards and the way they are evaluated," the Sodali manager says.

At the same time, climate issues have enjoyed a growing profile and US companies have seen a significant number of shareholder proposals seeking additional disclosure around environmental issues. Whether or not investors in French companies take a more proactive stance in requiring additional disclosure remains to be seen.

Table 4: Investor policies on Chairman/CEO

Amundi	Considering the responsibilities of each function and the required workload, it is desirable that the roles of chairman and CEO are separated and that an independent director is chosen for the role of chairman. In cases where this separation of powers does not exist, Amundi considers necessary to have sufficient explanation on the rationale of the combined responsibilities and considers that the creation of a lead independent director role with clear and distinct responsibilities can lead to a better balance of responsibilities within the board.
BNP Paribas	BNP Paribas vote for the election of directors if the Chairman and CEO roles are split and/or there is a sufficient counter-balancing structure with the presence of a Lead Independent Director.
AXA	Our general preference is that companies separate the roles of Chief Executive Officer (CEO) and Chairman; with the CEO responsible for leading executives in implementing Board strategy and the Chairman leading the Board's supervision of executive performance. Where these functions are combined there would be no independent person charged with leading the Board's discharge of its oversight responsibilities. A company's decision to combine these positions will be reviewed on the merits, taking account of the company's circumstances and whether there are checks and balances to mitigate against power being concentrated in the hands of one individual.
Natixis	Natixis AM favours the separation of management and supervisory functions. The board will therefore have to ensure that checks and balances are in place and sufficiently independent to exercise effective control over the executive directors.

Source: Proxy Insight