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QUESTIONNAIRE ON DELISTING

France

PART I. VOLUNTARY DELISTING

A delisting is deemed voluntary if it is initiated by the company or a shareholder.

1. Is voluntary delisting explicitly allowed by national laws or by jurisprudence?

Yes (X) No

Relevant provision:

- Article 6905/1 of the EURONEXT RULE BOOK I (Harmonised Rules, issue date: 23 March 2023): *'Subject to National Regulations, each Relevant Euronext Market Undertaking may remove Securities admitted to listing and/or trading on its markets: (i) at the request of the relevant Issuer; or (ii) on its own initiative as market operator or as competent authority in terms of listing, as the case maybe (iii) at the request of the competent authority pursuant to National Regulations.'*
- Article L. 420-10 of the French Monetary and Financial Code (*Code monétaire et financier*)

The French Monetary and Financial Code, in particular Article L. 420-10, does not mention explicitly the delisting occurring at the request of the issuer. However, according to case law, a delisting may be carried out at the initiative of the issuer.

Indeed, the wording of Article L. 420-10 of the French Monetary and Financial Code (*Code monétaire et financier*) shows that the French legislator only targets delisting decided by the market operator. The latter '*may suspend, for a fixed period, or remove from trading a financial instrument, when this instrument or the conditions of its trading no longer obey the rules of the platform, unless such a measure is likely to significantly harm the interests of investors or compromise the orderly functioning of the platform*' (para 1). In addition, the third paragraph refers explicitly to delisting required by the Chair of the Autorité des marchés financiers (AMF), the French Financial Markets Authority. This seems to imply that the scope of Article L. 420-10 of the French Monetary and Financial Code does not concern delisting carried out at the initiative of the issuer and/or its shareholders.

Such an interpretation was however not convincing, and the Cour de cassation, the highest court in the French judiciary, did logically not accept it (Cass. com., 6 December 2016, no. 15-10.275, *Radiall*; for an analysis of that decision, see in particular R Vabres (2017) no 3 *Droit des sociétés* comm 48; P Barban (2017) 92 *La Semaine juridique Entreprise et Affaires* no 1075; S Torck, 'Sortir de la cote' (2017) *Bulletin Joly Bourse* 227; T de Ravel d'Esclapon,

'L'encadrement de la décision de radiation de la cotation d'un instrument financier' (2017) 193 *Recueil Dalloz* 691). First, by referring to delisting decided by the market operator, Article L. 420-10 of the Monetary and Financial Code only captures the entity with the power to decide a delisting but does not say a word about the initiator of that delisting request. Delisting may be decided by the market operator taking action *ex officio* or following a request to that effect by the issuer. By focusing on the author of the delisting decision, Article L. 420-10 of the French Monetary and Financial Code is flexible enough to cover all hypotheses, regardless of the author of that delisting initiative. So, if the criteria of the absence of harm to investors were not to be taken into account in the event of delisting requested by the issuer, this would lead to an objective of general interest, fixed by law, being able to be circumvented by a simple conventional mechanism, which are in this case the Euronext market rules. Finally, by deciding that Article L. 420-10 of the French Monetary and Financial Code applies, whether the delisting is requested by the issuer or not, the Cour de cassation confirms that the law has to set general rules for delisting (excluding automatic delisting), whereas Euronext rules only have to specify the terms and conditions of those rules, due to a delegation of normative power. Euronext's rules may provide for arrangements that are contractual in nature, but they nonetheless remain infra-legislative rules.

2. If the answer to 1. is yes, who decides so?

BoD GA Other

Relevant provisions:

Article L. 225-35 of the French Commercial Code; Article P 1.4.5 of the EURONEXT RULE BOOK II

According to Article L. 225-35 of the French Commercial Code (*Code de commerce*), '*the board of directors is vested with the broadest powers to act in all circumstances on behalf of the company. It exercises them within the limits of the corporate purpose and subject to those expressly assigned by law to shareholder meetings*.'

Under French law, no specific provision explicitly grants powers to shareholders in matters of delisting. In other words, even though it can be considered as a fundamental question for the company and its shareholders, delisting seems to not fall within the competence of the general meeting.

However, Article P 1.4.5 of the EURONEXT RULE BOOK II (Specific rules applicable to the French regulated markets, issue date: 2 July 2019) requires explicitly a previous decision of the company's general meeting, but only for the particular case of admission to an organised MTF after being delisted from a regulated market: *'An issuer that applies to delist its equity securities but that plans at the same time to seek admission to an organised multilateral trading facility on which it would be subject to equivalent public offering rules shall present the approval decision of the general meeting of shareholders that voted on the plan after being duly informed of how the transfer would affect the periodic or ongoing disclosure regime of the issuer.*'

Furthermore, the articles of association of the company may also require a decision of the general meeting approving a delisting.

3. What is the quorum requirement for the delisting decision of the competent organ?

4. What is the majority requirement for the delisting decision of the competent organ?

The decision to delist, or at least the transfer from Euronext Paris to Euronext Growth, is taken by the general meeting by a simple majority of 50 per cent of the shareholders (see Chemin-Bomen (2009) 36 *RLDA* no. 2196; Bensaid, (Dec. 2009) *Journ. sociétés* 67; Kessler and Kuntz (2009) No 1027 *Option Finance* 36; E Blary-Clément and J Duhamel, 'Le transfert d'Euronext vers Alternext, la transparence au cœur du débat' (2010) *Bulletin Joly Bourse* 348.

n5. Do (minority) shareholders have statutory veto rights as to a delisting decision?

Yes No (X)

6. Should delisting take place within a specific timeframe after the relevant decision? Is there a specific period of time after the decision in which the delisting should be completed?

Yes No (X)

7. Should the delisting application give a full statement of reasons for the submission of such application?

Yes No (X)

Relevant provisions:

Article 6905/3 of the EURONEXT RULE BOOK I; Article P 1.4.2 (b) of the EURONEXT RULE BOOK II

The procedure to be followed by a listed company wishing to be delisted is not developed in depth by the French legislator, the financial markets authority (AMF) and/or the market operator (Euronext). They are obviously devoting all their efforts to the listing on the securities exchange.

Article 6905/3 of the EURONEXT RULE BOOK I simply provides that

> *If a request for removal of Securities is made by the Issuer pursuant to Rule 6905/1 (i), the following procedure shall apply:*
>
> > *(i) the Issuer of the relevant Securities shall request the removal in writing and state the relevant grounds for removal.*
> > *(ii) subject to the relevant conditions for the removal of the Securities being satisfied, the Relevant Euronext Market Undertaking shall determine the date on which the removal of the Securities shall become effective.*

> *(iii) the Relevant Euronext Market Undertaking shall publish the date on which removal of the Securities shall become effective and other relevant information concerning the removal of the Securities. The Relevant Euronext Market Undertaking may specify by Notice the conditions that should be satisfied in relation to a removal of Securities at the request of an Issuer.*

In the absence of precise indications on the content of the formal delisting request, to be filed by the issuer, it is necessary to build its content by using common sense and reasoning by analogy with the elements which may lead the market operator to take the initiative of such a delisting. The lack of market liquidity, for example, appears to be an appropriate justification for delisting.

In addition, in the case of delisting for illiquidity (with no squeeze-out to be implemented), the issuer must ensure compliance with a certain number of requirements provided for in Article P 1.4.2 (b) of the EURONEXT RULE BOOK II (see infra) and has in particular to provide ' *evidence that over the last 12 (calendar) months before the delisting application, the total value traded on the Issuer's Shares represents less than 0.5% of the Issuer's market capitalization'*.

8. Is it required that a competent authority approves the voluntary delisting?

Yes (X) No

Relevant provision:
Article L. 420-10 I of the French Monetary and Financial Code; Article 6905/4 of the EURONEXT RULE BOOK I; Article 6905/5 of the EURONEXT RULE BOOK I.

If the answer to 8. is yes, who is the competent authority?
Market operator/Euronext

If the answer to 8. is yes, does the competent authority has the competence to verify the reasons of delisting?

Relevant provision:
Article L. 420-10 I (1) of the French Monetary and Financial Code; Arts. 6905/4 and 6905/5 of the EURONEXT RULE BOOK I

'*Notwithstanding the above, the Relevant Euronext Market Undertaking may decide not to remove Securities upon the Issuer's request if such removal would adversely impact the fair, orderly and efficient functioning of the market.*' (Article 6905/4 of the EURONEXT RULE BOOK I). And Article 6905/5 of the EURONEXT RULE BOOK I adds that '*The Relevant Euronext Market Undertaking may subject any removal of Securities to such additional requirements as it deems appropriate.'*

In the Radiall decision ruled by the Cour de cassation on December 6, 2016, the highest French judiciary considered that Article L. 420-10 I (1) of the French Monetary and Financial

Code applies not only to a delisting initiated by the market operator, but also to delisting requests of an issuer.

Consequently, and quite similar to the Euronext market rules, the market operator may, at the request of the issuer, decide to remove a financial instrument previously admitted to trading, but only if (1) the financial instrument no longer meets, wrongfully or not, the admission conditions – a rather general term (see also P Barban (2017) 92 *La Semaine juridique Entreprise et Affaires* no 1075) – , and (2) its delisting is not likely to significantly harm the interests of investors or to compromise the orderly functioning of the trading platform. Delisting is therefore not automatic when requested by the issuer; the market operator has to power to refuse, for specific grounds, the delisting request of the issuer.

It follows that the market operator in France has also the competence to verify the reasons of delisting.

If the answer to 8. is yes, does the competent authority have any discretion? Can the competent authority impose additional terms for investor protection? Can the competent authority postpone the decision? If Yes, do you know whether this discretion has been used in the past?

Relevant provision:
Article L. 420-10 I (1) of the French Monetary and Financial Code; Article 6905/4 and 6905/5 of the EURONEXT RULE BOOK I.

Delisting is not automatic when requested by the issuer (see above). More generally, the market operator has some leeway and is practically almost never 'forced' to give a positive response to the issuer's request, even if the delisting ground presented by the issuer is legitimate.

However, the market operator must justify its decision not to delist, which is nothing other than the expression of general principles, as the consequences of that decision have clearly an impact on the legal situation of an issuer (and its stakeholders).

Illustration:
The company Radiall, whose shares were listed on compartment C of the regulated market of NYSE Euronext Paris since 1988, filed in January 2010 an issuer bid to repurchase its own shares (*offre publique de rachat*); the majority family group intended, if it would hold 95 per cent of the voting rights at the end of the offer, to obtain the delisting of Radialls' securities. At the end of that bid, the family group held 86.68 per cent of the shares, the Radiall company 2.07 per cent and the public 11.25 per cent. Radiall presented several requests for delisting of its securities to the market operator (Euronext Paris), which nevertheless refused it. Considering the refusal of the Euronext Paris company to be faulty, Radiall sued in order to obtain this delisting and subsidiarily damages.

9. In case of a voluntary delisting does the issuer have to make an offer to buy the shares of (dissenting) shareholders?

Yes (X) No

Relevant provision:

Article L. 433-4 of the French Monetary and Financial Code; Arts. 236-1 ff of the AMF General Regulation (*Règlement général de l'AMF*); Article P 1.4.2 of the EURONEXT RULE BOOK II

If the answer to 9 is yes, at what price should the offer be made? How is the price calculated?

In the case of a voluntary delisting, the issuer does often but not necessarily make an offer to buy the shares of (dissenting) shareholders. Indeed, two cases have to be distinguished here.

- Delisting resulting from a squeeze-out

  The squeeze-out allows the majority shareholder (or the majority group) of a listed company to acquire all the securities not tendered by the minority shareholders in the offer. At the end of such a procedure, the majority shareholder (or the majority group) holds 100 per cent of the capital and the company is automatically delisted.

  Under French law, a squeeze-out can be initiated following a public offering, provided that minority shareholders do not hold more than 10 per cent of a company's capital and voting rights.

  More precisely, Article L.433-4 II (1) of the French Monetary and Financial Code provides that:

  > *The general regulation of the Financial Markets Authority establish the terms according to which, at the end of any public offering and within a period of three months following the closing of this offer, the securities not tendered by the minority shareholders, as long as they do not represent more than 10% of the capital and voting rights, are transferred to the majority shareholders at their request, and the holders of those securities are compensated.*

  And according to Article 237-1 (1) of the AMF General Regulation and

  > *Following any public offering and within three months of the close of the offer, securities not tendered by minority shareholders may be transferred to the offeror, provided that they represent not more than 10% of the shares and voting rights, in return for compensation*.

  Besides, Article P 1.4.2 a) of the EURONEXT RULE BOOK II states that:

  > *an Issuer controlled by a majority shareholder or shareholder group holding, alone or in concert, 90% or more of the Issuers' Shares and 90% or more of the voting rights attached thereto can apply for delisting of its Shares provided that* (a) *a squeeze-out procedure is implemented; …*

The squeeze-out must necessarily be preceded by a public offer, whatever its form, following the usual procedure relating thereto. The procedure is however different depending on whether the public offer is a buyout offer (*offre publique de retrait*) or not:

- *A squeeze-out following a buyout offer (Arts. 236-1 ff. of the AMF General Regulation)*

  If the majority shareholder (or majority group) already holds at least 90 per cent of the voting rights, the squeeze-out will be preceded by a public buyout offer. Indeed, the majority shareholder(s) holding 90 per cent or more of the shares or voting rights in a listed company '*may file with the AMF a draft buyout offer for the equity securities, and any other securities giving access to the capital or voting rights in the company, that they do not already hold*' (Article 236-3 of the AMF General Regulation; and Article 236-4 regarding investment certificates).

  The buyout offer may also be required by the AMF in certain cases in order to provide liquidity to minority shareholders:
  - at the request of minorities (Articles 236-1 f of the AMF General Regulation);
  - in the event of conversion of a listed public limited company (*société anonyme*) into a limited partnership with shares (*société en commandite par actions*) (Article 236-5 of the AMF General Regulation);
  - in the event of significant amendments to the company's articles or bylaws (Article 236-6 (1) of the AMF General Regulation);
  - in the event of merger of the company into the company that controls it or with another company controlled by the latter (Article 236-6 (2) of the AMF General Regulation);
  - in the event of suspension of dividends for a period of several financial years
  - (Article 236-6 (2) of the AMF General Regulation);
  - in the event of transfer or contribution to another company of all or most of the company's assets (Article 236-6 (2) of the AMF General Regulation);
  - in the event of a reorientation of the company's business (Article 236-3 of the AMF General Regulation).

  As soon as the draft buyout offer is filed, the offeror, ie majority shareholder or the majority group, must inform the AMF whether it intends, depending on the result of the offer, to implement a squeeze-out (Article 237-2 of the AMF Regulation). In addition, the offeror has to provide, in support of its proposed squeeze-out, an valuation of securities, which is strictly regulated by law (Article L. 433-4 II (2) and (3) of the French Monetary and Financial Code):

> *According to the terms set by the general regulation of the Financial Markets Authority, compensation is equal, per security, to the price offered during the last offer or, where applicable, to the result of the evaluation carried out according to the objective methods practiced in the event of a transfer of assets and takes into account, according to an appropriate weighting in each case, the value of the assets, the profits made, the stock market value, the existence of subsidiaries and the business outlook. When the first public offering took place in whole or in part in the form of an exchange of securities, the compensation may consist of settlement in securities, provided that settlement in cash is offered as an option, according to terms set by the general regulation of the Financial Markets Authority.*

An independent appraiser providing a fairness opinion on the squeeze-out price, has to be appointed (Article 261-1 II of the AMF General Regulation).

The AMF rules on whether the proposed squeeze-out is compliant, at the same time as it reviews the buyout offer (Article 237-3 of the AMF General Regulation), ie the AMF compliance decision concerns both the buyout offer and the squeeze-out.

In addition to the publications common to all public offers, the majority shareholder (or the majority group) must, following the AMF's statement of compliance, '*place a notice informing the public of the squeeze-out in a newspaper carrying legal notices published in the vicinity of its registered office*' (Article 237-5 of the AMF General Regulation).

According to Article 237-6 (1) of the AMF General Regulation '*The statement of compliance shall specify the date on which it becomes enforceable*.' That '*statement shall result in the delisting of the relevant securities from the regulated market where they are traded*' (Article 237-5 (2) of the AMF General Regulation).

- *A squeeze-out following any public offer*

The squeeze-out may also take place following any public offer and within three months following the closing of the offer. The majority shareholder (or the majority group) who already holds at least 50 per cent of the company's equity and voting rights, may indeed launch a simplified public offer (according to Article 233-1 (1) or (2) of the AMF General Regulation) followed, depending on its result, by a squeeze-out. A shareholder who holds less than 50 per cent of the capital and voting rights will also be able to launch a public offer followed, depending on

its result, by a compulsory withdrawal; it may be a public purchase offer, voluntary or compulsory, from an initiator who may not be even a shareholder when the offer is submitted. As soon as the squeeze-out is implemented, the concerned securities are delisted from the relevant market.

In any case, the statement of compliance on a public offer (buyout offer or not), followed by a squeeze-out, may be the subject of an appeal according to the normal procedure applicable against any decision of individual scope taken by the AMF. Thus, the appeal against a compliance decision is brought before the Paris Court of Appeal (Arts. L. 621-30 and R. 621-45 II of the French Monetary and Financial Code).

- Delisting without a squeeze-out

  In addition to the delisting resulting from the squeeze-out procedure, Euronext market rules provide for the possibility of pure and simple delisting from the Euronext Paris and Euronext Growth markets, ie without a squeeze-out, '*unless such a measure is likely to significantly harm the interests of investors or compromise the orderly functioning of the market*' (Article L. 420-10 I (1) of the French Monetary and Financial Code).

  More precisely, Euronext may decide to delist upon written request from the listed company to the extent that this is authorized by national regulations (Article 6905/1 of the EURONEXT RULE BOOK I), ie

  - in the event of an orderly withdrawal procedure (*procédure de retrait ordonné*) for secondary listings (see below);
  - infringement of the threshold of 90 per cent of the issuers' shares and voting rights as well as low liquidity (Article P 1.4.2 (b) of the EURONEXT RULE BOOK II; Article 4.6 of Part II of the EURONEXT GROWTH MARKETS RULE BOOK 2020);
  - transfer from a regulated to a MTF (see below).

  Making a public offer is thus not always required.

  Regarding specifically the case of delisting due to illiquidity, Euronext's (and Alternext/Euronext Growth's) former market rules initially provided for the possibility of the issuer to request a delisting due to illiquidity when its securities available for trading represented less than 5 per cent of its capital. However, in particular the method of calculating the 5 per cent threshold has proved to be rather imprecise, and the forementioned Radiall case offered a perfect illustration. The Radiall case law created indeed insecurity that did not respond to issuers' concern to obtain greater fluidity and flexibility when listing and delisting on the securities exchange. The Euronext market rules therefore had to change.

  Therefore, in 2015, a new case of delisting was added to the Euronext Paris market rules (Article P 1.4.2 (b) of the EURONEXT RULE BOOK II) (see Muller (2015) no 6

Revue de Droit bancaire et financier 71; N Cuntz, 'Euronext Paris fait évoluer ses règles de radiation du marché en cas de disparition de la liquidité' (2015) *Bulletin Joly Bourse* 457; S Roy, 'Anticiper les voies de sortie de la cote ou le parcours de l'initiateur en quête d'une radiation' (2016) *Bulletin Joly Bourse* 175) According to that provision:

> *Without prejudice to other possibilities of delisting as provided by the Rules or the National Regulations, an Issuer controlled by a majority shareholder or shareholder group holding, alone or in concert, 90% or more of the Issuers' Shares and 90% or more of the voting rights attached thereto can apply for delisting of its Shares provided that:*
> *a)* (…)
> *b) if applicable law does not provide for squeeze-out, a public offer is implemented ('the delisting offer'), subject to the following conditions:*
>
> *(i) it provides evidence that over the last 12 (calendar) months before the delisting application, the total value traded on the Issuer's Shares represents less than 0.5% of the Issuer's market capitalization; The market capitalization used for the purposes of such computation shall be observed at the end of the last calendar month before the filing of the delisting application and the total traded value shall be computed over a retrospective period of 12 months starting from the same month-end date. The total traded value includes the trades carried out on the central order book of the Euronext Paris regulated market and the off-order trades deemed executed on the same regulated market. Those specific periods, within the said 12-month period, where some public tender offers were taking place (« offer period » with the meaning of AMF general regulations) are disregarded for the purposes of such computation;*
>
> *(ii) it files the application after a delay of 180 (calendar) days has elapsed since any previous public tender offer (i.e. prior to the « delisting offer »);*
>
> *(iii) it provides evidence that the offeror has committed, for a period of 3 months following the end of the delisting offer, to acquire at the same price as such delisting offer the Shares of remaining shareholders who have not tendered them under the delisting offer; and*
>
> *(iv) it provides evidence that the offeror has committed, for a transitional period of one financial year following the year when delisting takes place, to publishing any crossing up above or below the squeeze-out threshold in applicable law of the delisted Issuer' Shares or voting rights attached thereto.*

That procedure was for the first time initiated by Radiall in December 2016, being finally delisted in June 2017.

This case of delisting can be triggered as soon as the majority shareholder reaches the threshold of 90 per cent of the shares and 90 per cent of the voting rights. However, a public offer consisting of a cash or exchange public tender offer, prior to the delisting (offer) has to be made, and its implementation is conditional on the low liquidity of the shares (for more details, see in particular Goldberg-Darmon and Guérin (2017) *Actes pratiques & ingénierie sociétaire*, Dossier, no 5; C Cardon (2015) *Bulletin Joly Bourse* 457). The delisting occurs at the end of this offer. However, unlike a squeeze-out, shareholders who have not tendered their shares to this offer will remain shareholders of the now unlisted company.

This voluntary delisting procedure was significantly revised, in particular regarding its scope of application, while taking into account the setting of the minimum threshold of the squeeze-out at 90 per cent of the capital and voting rights by Law No 2019-486 of 22 May 2019, known as the PACTE law. The lowering of the threshold made in fact the question of coexistence, or even competition, between those two procedures (delisting due to illiquidity, and delisting resulting from a squeeze out) more acute (the Paris Court of Appeal underlined indeed in 2017 the autonomy of the delisting procedure according to Article P 1.4.2 (b) of the EURONEXT RULE BOOK II with regard to the squeeze-out procedure (CA Paris, 18 May 2017, no 2016/26029, *Bulletin Joly Bourse* 2017, 27 and 269, note Torck). Upon adoption of the PACTE law, Euronext therefore submitted to the AMF for approval a revision of the relevant rules of the Book II, modification which was carried out in July 2019. Henceforth, delisting can only be requested by an issuer of which 90 per cent of the capital and 90 per cent of the voting rights are held by the majority shareholder(s) following the implementation of a squeeze-out procedure, under the control of the AMF (Muller, (2023) *Droit financier* 218 f). In other words, only foreign issuers whose national law does not allow the squeeze-out procedure may request a delisting due to illiquidity.

10. Are there any restrictions due to the principle of maintenance of the share capital?

11. Does a (majority) shareholder or a third person has the right to offer to buy the shares of (dissenting/all) shareholders and relieve the issuer?

Yes (X) No

See supra.

12. In case of a voluntary delisting does the issuer or a third person have the obligation to publish a prospectus / informational document?

Yes (X) No

Relevant provision:

Article L.433-4 II of the French Monetary and Financial Code; Arts. 231-27 ff (distribution of the offer document), 231-16 f (mandatory buyout offer document) and 237-3 (mandatory

squeeze-out document) of the AMF General Regulation; Article P 1.4.2 of the EURONEXT RULE BOOK II (*'all the aforementioned commitments shall be duly described in the delisting offer document* ').

13. Is an exit opportunity / mechanism that allow investors to exit their investments (e.g. sell – out right) available for shareholders in case of delisting? What are the relevant provisions (please provide translation).

Yes (X) No

Relevant provision:

Article L. 433-4 I 1° of the French Monetary and Financial Code; Articles 236-1 ff AMF General Regulation (buyout offer)

If yes, please define:

According to Article 236-1 of the AMF General Regulation:

> *Where the majority shareholder(s) hold, in concert within the meaning of Article L. 233-10 of the Commercial Code, 90% or more of the shares or voting rights in a company whose shares are or were admitted to trading on a regulated market in a Member State of the European Union or in a State party to the EEA Agreement, including France, any holder of voting equity securities who is not part of the majority group may apply to the AMF to require the majority shareholder(s) to file a draft buyout offer.*
>
> *Once it has made the necessary verifications, the AMF rules on such application in the light of, inter alia, the state of the market for the securities concerned and the information provided by the applicant.*
>
> *If the AMF declares the application to be acceptable, it notifies the majority shareholder(s), which must then file a draft buyout offer, within a time limit set by the AMF and drawn up in terms that can be deemed compliant by it.*

14. Is there any specific provision on downlisting? If not, is downlisting allowed, and how does it take place?

A downlisting occurs when the shares are no longer traded on a regulated market (as defined by Union law) but on an MTF.

Yes (X) No

If yes, please define:

Admission to a MTF after being delisted from a regulated market (ie transfer from Euronext Paris to Euronext Growth) entails a delisting.

However, all issuers whose shares are listed on the Euronext Paris market cannot claim to have their shares transferred to the Euronext Growth market. Only companies meeting certain criteria are eligible for such a transfer.

The transfer procedure also requires market information. A notice must be published at least two months before the planned date for the transfer to a MTF subject to the provisions of II of Article L. 433-3 of the French Monetary and Financial Code (obligation to make a public offer when holding more than five tenths of the capital or voting rights of the company) (Article L. 421-14 V (1) of the French Monetary and Financial Code), specifying the reasons for the transfer, the consequences for shareholders and the public and the provisional timetable for the transfer (Article 223-36 (1) of the AMF General Regulation).

The transfer requires in addition consultation of shareholders. The ordinary general meeting must be convened in accordance with the usual procedures (Article R. 225-73 of the French Commercial Code). The meeting of the ordinary general assembly must take place at least two months before the transfer. On this occasion, the shareholders must expressly decide on the application for admission to the Euronext Growth market (Article L. 421-14 V (2) of the French Monetary and Financial Code) after having been duly informed about the consequences of the transfer on the periodic and permanent information obligations of the company. Article P 1.4.5 of the EURONEXT RULE BOOK II requires furthermore that

> *An issuer that applies to delist its equity securities but that plans at the same time to seek admission to an organised multilateral trading facility on which it would be subject to equivalent public offering rules shall present the approval decision of the general meeting of shareholders that voted on the plan after being duly informed of how the transfer would affect the periodic or ongoing disclosure regime of the issuer.*

Within fifteen days following the general meeting, the company must publish the results of the votes on its website (Article R. 225-106-1 of the French Monetary and Financial Code).

A second notice must be published immediately after the decision to implement the transfer by the board of directors, specifying the reasons for the transfer, the consequences for shareholders and the public, the procedures and the timetable for the transfer (Article 223-36 (2) of the AMF General Regulation).

A presentation document must finally be made public for the admission to the Euronext Growth market, to be posted on the website of the company and on that of Euronext at the latest on the day on which Euronext makes public the planned date of transfer (Article 3.6.2. of the EURONEXT GROWTH MARKETS RULE BOOK), and containing in particular the latest financial statements, a cash flow situation and the evolution of the stock price and a statement of communications made on the Euronext Paris market over the year preceding the transfer (Article 3.2.1 (iii) of the EURONEXT GROWTH MARKETS RULE BOOK).

The transfer to the Euronext Growth market is equivalent to a request to Euronext for the delisting of securities admitted to trading on the Euronext Paris market, concomitantly accompanied by a request for admission to the Euronext Growth market. More precisely, the company listed on the Euronext Paris market must first submit a request submitted to the Euronext board of directors (Article P 1.4.1 of the EURONEXT RULE BOOK II). The Euronext board of directors has one month after submitting the request to render its decision regarding

the delisting of the securities on the Euronext Paris market and the concomitant admission to the Euronext Growth market (Article 3.7.1 of the EURONEXT GROWTH MARKETS RULE BOOK).

15. Is there any specific provision on market migration (delisting from a regulated market and listing in another)?

Yes (X) No

Relevant provision:

Article P 1.4.4 of the EURONEXT RULE BOOK II

If yes, please define:

The orderly withdrawal procedure allows the delisting from the Euronext Paris market of shares of foreign companies that are the subject of a secondary listing there. This procedure is in fact only open to issuers who request the delisting of their equity securities even though they plan to remain admitted to trading on another regulated market or a market in a third country with equivalent characteristics.

Article P 1.4.4 of the EURONEXT RULE BOOK II provides in this regard that:

> *Without prejudice to the other delisting motives, an issuer that applies to delist its equity securities but that intends to remain listed on another regulated market or on a third-country market with equivalent characteristics shall follow a sales facility procedure, which is defined in an instruction and implies, inter alia, that existing shareholders are first invited to sell their securities on the most liquid market at no expense. Euronext Paris can waive this obligation if the issuer remains listed on a regulated market operated by another Euronext market operator, where the settlement system is the same as far as the shareholder is concerned*.

The issuer must make a request to this effect, and it is up to the Euronext board of directors to assess this request and decide on delisting, '*unless such a measure is likely to significantly harm the interests of investors or compromise the orderly functioning of the market*' (Article L. 420-10 I (1) of the French Monetary and Financial Code).

16. Is there any specific provision on voluntary delisting in case of increase of listing requirements by both the Law and Stock Exchange?

Yes No (X)

17. Are there different rules on delisting for national and foreign listed companies?

Yes No (X)

18. Cold delisting is usually described as a transformation of a listed company resulting to its delisting, including especially the merger by absorption of a listed company by an unlisted company. What is defined as cold delisting in your legal order? Is there any specific provision on cold delisting?

According to Article L.433-4 I (3) of the French Monetary and Financial Code:

> I. – *The general regulations of the Financial Markets Authority set the conditions applicable to the offer and withdrawal request procedures in the following cases:*
> *(…)*
> *2° When a company whose head office is established in France and whose shares are admitted to trading on a regulated market of a Member State of the European Union or another State party to the agreement on European Economic Area takes the form of a limited partnership with shares;*
>
> *3° When the natural or legal person(s) who control, within the meaning of Article L. 233-3 of the Commercial Code, a company whose head office is established in France and whose shares are admitted to trading on a regulated market of a Member State of the European Union or another State party to the agreement on the European Economic Area intends to submit for approval by an extraordinary general meeting one or more significant modifications to the articles of association, in particular relating the form of the company, the conditions of transfer and transmission of equity securities as well as the rights attached thereto, or decide the principle of the merger of this company with the company which controls it or with another controlled company by the latter, the transfer or contribution to another company of all or the principal of the assets, the reorientation of the corporate activity or the elimination, for several financial years, of any remuneration of equity securities. In these cases, the Financial Markets Authority assesses the consequences of the transaction with regard to the rights and interests of the holders of capital securities or voting rights of the company to decide whether it is necessary to implement a buyout offer*.

Accordingly, the AMF General Regulation provides that:

> Article 236-5:
>
> > *Where a public limited company (société anonyme) whose equity securities are admitted to trading on a regulated market is converted to a limited partnership with shares (société en commandite par actions), the person(s) that controlled it prior to conversion, or the active partners in the limited partnership with shares, are required to file a draft buyout offer once a resolution regarding the conversion has been adopted at a general meeting of shareholders. The draft offer cannot include a minimum acceptance condition and must be drawn up in terms that can be declared compliant by the AMF.*
> > *The offeror informs the AMF whether it reserves the right, depending on the result of the offer, to request that all equity securities and securities giving access to the capital and voting rights of the company be delisted from the regulated market on which they are traded.*
>
> Article 236-6:
>
> > *The natural or legal persons that control a company within the meaning of Article L. 233-3 of the Commercial Code must inform the AMF:*
> > *1. When they intend to ask an extraordinary general meeting of shareholders to approve one or more significant amendments to the company's articles or bylaws, in particular the provisions concerning the company's legal form or disposal and transfer of equity securities or the rights pertaining thereto;*
> > *2. When they decide in principle to proceed with the merger of that company into the company that controls it or with another company controlled by the latter; to sell or contribute all or most of the company's assets to another company; to reorient the company's business; or to suspend dividends for a period of several financial years.*

The AMF evaluates the consequences of the proposed changes in the light of the rights and interests of the holders of the company's equity securities or voting rights and decides whether a buyout offer should be made.
The draft offer cannot include a minimum acceptance condition and must be drawn up in terms that can be declared compliant by the AMF.

19. Does the merger of a listed company with a non-listed company lead to delisting? Is an exit opportunity available for shareholders? What are the relevant provisions (please provide translations)
Yes No

Relevant provision:
Article 236-6 of the AMF General Regulation

See above.

20. Does the successful completion of a mandatory bid give the right to delisting? If yes, are there any preconditions?
Yes (X) No

If yes, please define:
See supra.

21. Are there specific rules on delisting from an MTF?
Article 5.1 ff of Part 1 (REMOVAL) and Article 4.6 of part 2 (REMOVAL CONDITIONS) of the EURONEXT GROWTH MARKETS RULE BOOK.

PART II. OBLIGATORY DELISTING

A delisting is deemed compulsory/obligatory, if it is initiated by a supervisory authority or a market operator without consent of the company.

22. What are the prerequisites for compulsory delisting by the competent national supervisory authority?

23. Which body has been designated as the competent authority, in particular regarding the power to require the removal of a financial instrument from trading pursuant to art. 69(2)(n) MiFID II?
According to Article L. 420-10 (3) of the French Monetary and Financial Code, a delisting may also be requested by the Chair of the AMF, although this prerogative is not frequently used in practice.

The natural person, being the Chair of the AMF, has the power to request the market operator to delist a financial instrument listed on Euronext Paris.

As the AMF is endowed with legal personality, it may seem surprising that their chair is granted, by law, an individual prerogative that one would have imagined entrusted more to the institution itself, especially since it is not a question of posing as an 'arbiter' between two internal AMF bodies. This is an important difference from the other example constituted by the right of appeal against the decisions of the sanctions committee of the AMF, which the Chair of the AMF can challenge before the Paris Court of Appeal, without prejudice to the AMF's ability to communicate its own observations, which raises delicate coordination problems. Indeed, the AMF will find itself torn between, on the one hand, the desire to defend the position adopted by its sanction committee and on the other hand, the expression of the dissatisfaction of the prosecuting authority - the college - which was not followed.

Anyway, given the general mission of protecting public savings, which is that of the AMF, it may seem normal for the AMF to hold the power to 'whistle the end of the game'.

The question that arises then is whether third parties (shareholders, creditors, investors, competitors, etc) may contact the Chair of the AMF to ask them to implement the prerogative from which the law has endowed them by recognizing their power to request delisting from the market operator. As is often the case on such occasions, it is necessary to have the presence of an 'interest to act' recognized, which is likely to keep many of the suitors out of court.

On the other hand, one can imagine that the listed company could itself be admissible to file such an appeal, either because they challenge the AMF's analysis and refuse to be delisted, or because, on the contrary, they have asked the Chair to come and support in the desire to obtain a delisting and the market operator has turned a deaf ear.

Regarding the question of the means of appeal against a decision of the Chair of the AMF, it should be noted that the following few developments are essentially intended to explore the subject from a theoretical angle. Indeed, not only are these decisions rare, but the concerned issuer would bow out thinking of initiating a lawsuit, since the regulator enjoys a prestige in France which keeps them safe from this kind of litigation.

As the Paris Court of Appeal is only competent for individual decisions taken by the AMF (see above) and not for those of its Chair, one may consider that the Administrative Court of Paris would be competent to judge a possible appeal for excess of power committed by the Chair of the AMF having requested (or refused to request) the delisting of a company. However, like any positive act potentially causing harm, the decision that would be taken by the Chair of the AMF is likely to engage the responsibility of the independent public authority they chair.

24. What are the rules of the market that can justify a compulsory delisting imposed by market (art. 52 MiFID II)?

Delisting may also be initiative by the market operator.

There are different hypothesis.

The operator of the regulated market for which it is responsible may remove issuers, notably because they have committed (multiple) breaches of the market rules, which constitute the

'general conditions of sale' to which listed companies have to adhere, or because the issuers no longer have the qualities required to be a listed company.

Article 6905/1 of the EURONEXT RULE BOOK I provides thus that:

> *Each Relevant Euronext Market Undertakings may remove Securities listed on its markets at its own initiative on any appropriate grounds including (without limitation):*
> *a) manifest failure of the Issuer to comply with the obligations imposed and the requirements set pursuant to the Rules or the Application Form; or*
> *b) the legal entity that has issued the Securities shall cease to exist pursuant to a liquidation, merger, dissolution (or equivalent corporate event in any jurisdiction);*
> *c) the Issuer of the Securities has been declared bankrupt (or analogous procedure has been declared applicable in any jurisdiction); or*
> *d) without prejudice to Rule 4403/2, in the opinion of the Relevant Euronext Market Undertaking, facts or developments occur or have occurred with regard to a Security which prevent the continued listing of that Security or which cause the Relevant Euronext Market Undertaking to believe that a fair, orderly and efficient market for a Security cannot be maintained; or*
> *e) adequate clearing and/or settlement services for a type of Securities are no longer available; or*
> *f) the removal of the Shares or other Securities into which they are convertible or for which they are exchangeable, as the case may be; or*
> *g) facts or developments occur or have occurred in respect of an Issuer which in the opinion of the Relevant Euronext Market Undertaking is detrimental to the reputation of Euronext as a whole;*
> *h) the Issuer or its beneficial owners are on the EU Sanction List or the list drawn up by the Office of Foreign Assets Control (OFAC).*

Article L. 420-10 I of the French Monetary and Financial Code, although being drafted more generally and briefly, is also clear in this respect since it provides that the market operator:

> *may suspend, for a fixed period, or remove from trading a financial instrument, when this instrument or the conditions of its trading no longer obey the rules of the platform, unless such a measure is likely to significantly harm the interests of investors or compromise the orderly functioning of the platform.*

It's worth mentioning here that the Cour de cassation in its forementioned 2016 decision highlighted that the Court of Appeal '(...) *was not bound by the criteria provided for by article 6905/1 (ii) of the Euronext market rules, applicable only in the case of a delisting at the initiative of the market operator*'.

This notwithstanding, the delisting decided by the market operator acting on its own initiative is often, but not necessarily, considered as a sanction, in particular by the issuer. This is why it is perfectly appropriate that the regime is framed by law, in order to limit a purely discretionary use on the part of the market operator, which could otherwise 'tidy up' the market/platform as it pleases, thus depriving companies hitherto listed of any access to the financial market overnight, which can prove to be extremely penalizing.

The delisting has therefore to be justified, and 'public order' considerations have to be taken into account by the market operator. In particular, the decision to delist (or not to delist) must not '*significantly harm the interests of investors or compromise the orderly functioning of the platform'* (Article L. 420-10 I of the French Monetary and Financial Code). Likewise, Article 6905/4 of the EURONEXT RULE BOOK I requires that '*Notwithstanding the above, the Relevant Euronext Market Undertaking may decide not to remove Securities upon the Issuer's request if such removal would adversely impact the fair, orderly and efficient functioning of the market*'; and Article 6905/5 adds that '*The Relevant Euronext Market Undertaking may subject any removal of Securities to such additional requirements as it deems appropriate.*'.

This illustrates the ambiguity of the contractual relations between the market operator and the companies listed on that market: notwithstanding the fact that the market operator remains in control of the delisting, since it is up to the latter to pronounce the final decision, this does not mean that a market operator is totally free to take this decision unilaterally and based on no ground.

For example, keeping a company's securities listed may affect the orderly functioning of the market, and delisting is therefore the only way to preserve it. This is the case with an excessively reduced liquidity, resulting in particular from a drastic reduction in the 'free float' well below the initial 25 per cent to be disseminated to the public at the time of the IPO. Indeed, such a scenario is detrimental to the market as a whole and the AMF has therefore logically identified delisting as one of the possible consequences of a public tender offer, in particular when the initiator is unable to file a squeeze-out because it does not total 90 per cent of the capital and voting rights.

Even though the market operator remains largely free to decide whether or not to delist a company, in practice, it will certainly not carelessly reduce the number of companies listed on the markets it operates. Indeed, the richness of its 'catalogue' of listed companies is one of the main criteria for valuation of the market operator.

Concerning the delisting procedure, Article 6905/2 of the EURONEXT RULE BOOK I provides that:

> *If the Relevant decides to remove a Security pursuant to Rule 6905/1 (ii), the following procedure shall apply:*
>
> (i) *the Relevant Euronext Market Undertaking shall inform the Issuer of its intention to remove and give the Issuer the opportunity to respond before the relevant decision on the removal is made;*
> (ii) *the Relevant Euronext Market Undertaking shall determine the date on which removal of the Securities shall become effective;*
> (iii) *the Relevant Euronext Market Undertaking shall notify the Issuer in writing of the scheduled date of the removal;*
> (iv) *the Relevant Euronext Market Undertaking shall publish the date on which removal of the Securities shall become effective as well as the conditions of removal and any other relevant information concerning the removal;*

> *On the date on which the removal of the Securities becomes effective the agreement between the relevant Issuer and the Relevant Euronext Market Undertaking (constituted by the Application Form) will be terminated without any further action being required.*

There is no equivalent provision in French law, and there is no instruction going into more detail.

In other words, the procedure leading to the delisting of the securities of a listed issuer at the initiative of the market operator is only described – with relative precision – in the rules of the regulated market, which is regrettable.

Besides, as the delisting decided unilaterally by the market operator may be perceived as a 'sanction' by the listed company, the market rules logically provide that the issuer can file a legal action against that decision. Indeed, Article 6906/1 of the EURONEXT RULE BOOK I, relating to the possible appeal of an issuer against a delisting decision of the market operator, states '*An Issuer may appeal against the decision of the Relevant Euronext Market Undertaking to remove in accordance with National Regulations*.' Such an appeal against the decision of the market operator to delist has to be brought before the judiciary courts, namely the Paris Commercial Court (T. confl. (conflict tribunal), 13 December 2004, RJDA 2005, no 11, 1085; JCP E 2005, no 783, 872). This attribution reflects, moreover, the 'privatization' of listing/delisting issues, which are now the responsibility of a private company (Euronext) and no longer of public authorities, even if the operating rules governing relations with listed companies (or market members) are subject to approval by the financial market authority (AMF in France).

Finally, the decision to delist a financial instrument from trading has to be made public by the market operator which also '*informs the Financial Markets Authority, specifying whether this measure results from a suspicion of market abuse, a public takeover offer or the non-communication of inside information relating to the issuer or the financial instrument in violation of Articles 7 and 17 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of April 16, 2014 on market abuse*' (Article L. 420-10 I (5) of the French Monetary and Financial Code).

25. Have any of the voluntary or obligatory delisting requirements above changed materially since 2010 (e.g., due to a legal decision or amendment of the regulations)?
See above.

PART III. GENERAL QUESTIONS (if not already answered)

26. How are dissenting shareholders protected in voluntary delisting?
See above.

27. What are the sanctions in case of a breach of the delisting rules?
See above.

See also Chapter 9 of the EURONEXT RULE BOOK I (Measures in case of violation of the rules).

28. Is there a special duty of loyalty (for the board or, if applicable, the shareholders) imposing further restrictions in connection with a delisting?

29. How are shareholders protected in obligatory delisting?
See above.
30. Have shareholders successfully challenged delisting decisions in the past? If Yes, could you provide any names of cases?
See above (in particular the Radiall case).

31. How is the issuer protected in (obligatory) delisting?
See above.

32. How does insolvency and restructuring of a listed company affects delisting? Specifically: a) Does the initiation of formal insolvency (liquidation) procedures automatically trigger mandatory delisting? b) Does the initiation of formal restructuring / reorganization procedures automatically trigger mandatory delisting? c) If the above scenarios do <u>not</u> automatically trigger mandatory delisting, what else are the implications? d) Please give empirical information (if available) on the treatment of insolvent listed firms by trading venues in your jurisdiction e) What are the relevant provisions (please provide translations)
According to Article P 1.4.6 of the EURONEXT RULE BOOK II: '*Delisting of financial instruments in connection with insolvency proceedings is contingent on the opening of liquidation proceedings for the Issuer concerned.*'

33. Do relevant courts have the power to examine the delisting reasons on the merits?
See above.

34. What are the legal consequences of delisting: a) on shares, b) on shareholders, c) on the issuer?
See above.

See also
- Article L. 420-10 I (4) of the French Monetary and Financial Code, the market operator that '*removes from trading a financial instrument, also (…) removes from trading financial contracts linked to or referring to it where this is necessary to achieve the objectives of the (…) delisting of the financial instrument.*'
- Article L. 420-10 I (6) of the French Monetary and Financial Code: '*The Financial Markets Authority requires other trading platforms and systematic internalizers who trade financial instruments subject to a suspension or delisting decision to suspend or delist them from trading as well as financial contracts which are linked to it or refer to it when the suspension or delisting results from suspected market abuse, a public*

takeover offer or the non-communication of inside information relating to the issuer or the financial instrument in violation of Articles 7 and 17 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse, except in situations where the interests of investors or the orderly functioning of the market could be significantly affected by such a measure.'

- Article L. 420-10 I (5) of the French Monetary and Financial Code: '*Decisions to suspend or delist a financial instrument from trading are made public by the person who took them. When a suspension or delisting decision is taken by the management of a market operator, the latter informs the Financial Markets Authority, specifying whether this measure results from a suspicion of market abuse, a public takeover offer or the non-communication of inside information relating to the issuer or the financial instrument in violation of Articles 7 and 17 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of April 16, 2014 on market abuse.*'

35. Are there any statistical data on delisting in your Country? If yes, please provide further details. Are there any statistical data, or evidence, on downlisting in your Country? If yes, please provide further details. Are there any statistical data, or evidence, on delisting from an MTF in your Country? If yes, please provide further details.

See Euronext Yearly Factbooks 2014-2023, available at live.euronext.com/resources/statistics/factbook.

36. More specifically, how many cases of voluntary delisting and / or obligatory delisting by the competent national supervisory authority have there been since MiFID I entered into force in 2007? Please also provide the main reasons for mandatory delistings, if available.

See Euronext Yearly Factbooks 2014-2023, available at live.euronext.com/resources/statistics/factbook.