

October 2018

High Committee for Corporate Governance Annual Report

HCGE
Haut Comité de Gouvernement d'Entreprise

This document is an unofficial English translation of Part One of the 2018 annual report of the Haut Comité de Gouvernement d'Entreprise (High Committee for Corporate Governance), a body set up by French business associations Afep and Medef to monitor the implementation of the Afep-Medef Corporate Governance Code for Listed Companies. It does not include Part Two of the original report, which is a detailed analysis based on the monitoring of the annual reports/reference documents of SBF 120 index companies.

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Preface

This fifth annual report of the High Committee on Corporate Governance covers the period from September 2017 to September 2018. It follows on from the activity reports that the High Committee has published each year since October 2014 and reflects the profound changes in its work and the context in which this is carried out.

The High Committee on Corporate Governance, whose members serve voluntarily and independently, is tasked with ensuring the implementation of the Corporate Governance Code (hereinafter referred to as the "Code") established by Afep and Medef by the listed companies that refer to it and, in particular, the actual implementation of the fundamental corporate governance rule on which this Code is based, which is to "comply or explain".

To this end, the High Committee may, firstly, receive questions from boards regarding any provision or interpretation associated with the Code and, secondly, decide to investigate at its own initiative if it finds, after having reviewed a company's financial disclosure, that this company has failed to implement one or more of the Code's recommendations without sufficient explanations. In this case, a letter asking for clarification is sent to the company in question.

In accordance with the disclosure policy outlined in its previous reports, strengthened by the new provisions of the Code, the High Committee reserves the right to make public the investigation of companies that have not provided satisfactory explanations further to one of its letters.

This year, the High Committee noted a further improvement in the compliance of those French companies referring to the Code, reflected in particular by greater account being taken of the recommendations made by the High Committee following on from an increase in its monitoring activity and, beyond the formal aspects of this compliance, by governance practices that are among the most satisfactory in Europe.

In this context of maturity in terms of the governance of the SBF 120 companies, particular emphasis was placed on companies' monitoring and control activities, with the objective of identifying and responding faster, if necessary, in the event of proven breaches of and deviations from the recommendations of the Code. Furthermore, it continued its work to educate, in particular, newcomers to the SBF 120 and companies below SBF 120 level but which refer to the Code.

This year, the High Committee's work prioritised several themes where there is still room for improvement and which are evidently particularly sensitive in terms of societal concern, notably compensation and diversity within management and general management bodies.

Generally speaking, the High Committee is of the opinion that in addition to close monitoring of the implementation of the Code, its work should concern "corporate governance" and contribute to the development of good practices in this area. This year, it notably wanted to put in place communication tools and enhance its visibility. In this context, a website was set up at the beginning of 2018 to raise awareness about the High Committee's tasks, membership and work, and facilitate receiving questions.

In more global terms, the High Committee wants to be fully involved in the reflections underway regarding governance and the tasks of companies, particularly in the course of discussions regarding the draft PACTE law. It intends to be a key player in defining and implementing an outstanding and demanding governance model.

Michel Rollier
Chairman of the High Committee on Corporate
Governance

1. Tasks

The High Committee on Corporate Governance (HCGE) is responsible for both ensuring the implementation of the Afep-Medef Code (§ 27.2 of the Code) and proposing updates thereto. It was set up when the Code was revised in 2013.

According to the Code, the HCGE is responsible for:

"- monitoring the application of the principles contained in this code. To this end, it may firstly receive questions from boards on any provision or interpretation connected with the Code (for example, qualification as an independent director) and, secondly, it may decide to investigate at its own initiative if it establishes that a company has failed to implement one of the Code's recommendations without sufficient explanations and refer the matter to the board of the company in question. In the event of investigation, the company must reply to the High Committee's letter within a maximum period of two months. If it does not respond within this period, it runs the risk of the investigation being made public.

If a company decides not to follow the High Committee's recommendations, it must indicate the latter's opinion in its report on corporate governance, together with the reasons why it decided not to comply with these recommendations;

- proposing to Afep and Medef updates to the Code in the light of changing practices and recommendations that it may have made to companies in the course of its task of monitoring the implementation of the Code.

The High Committee publishes an annual activity report. "

2. Membership and governance

As of the date of this report, the High Committee consists of four individuals who either hold or have held executive positions in international groups (including the Chairman) as well as three qualified individuals representing investors and/or chosen for their legal or ethical expertise. These individuals have been appointed for a period of three years, which may be renewed once, on a staggered basis. The High Committee's current membership is shown on the website www.hcge.fr.

The past year has seen significant changes within the membership of the High Committee. In fact, at the beginning of 2018, it welcomed two new members, Jean-Luc Bélingard and Vincent Strauss, as replacements for Denis Ranque and Paul-Henri de la Porte du Theil, to whom the members of the High Committee would like to pay tribute for the key role they played in establishing it.

Following the revision of the Code in June and to promote greater diversity of profiles and skills on the High Committee, it will from now on consist of five experts who either hold or have held directorships in companies that refer to this Code, which should ensure a better balance between men and women on the High Committee, and four qualified individuals who represent investors and/or have been chosen for their legal or ethical expertise, making a total of nine members. The Chairman is still appointed from among the five individuals who either hold or have held directorships.

In this context, as from 1 November, following the departure of Dominique de la Garanderie and Michel Rollier, whose terms of office will come to an end without being able to be renewed, four new members will take office: Patricia Barbizet, who will take over as Chair, Marie-Claire Capobianco, Brigitte Longuet and Robert Peugeot.

These members are appointed for a three-year period which may be renewed once.

Also this year, the High Committee supplemented its internal governance by adopting and implementing Internal Rules to establish guiding principles for its operation, particularly in terms of independence, impartiality, confidentiality and preventing conflicts of interest. This document is available on the High Committee's website www.hcge.fr.

3. Activities relating to monitoring the Code and investigations

3.1. Meetings of the High Committee

The High Committee met 11 times between September 2017 and September 2018, with an attendance rate among its members of 89%. Between meetings, e-mail exchanges and conference calls took place as necessary.

3.2. Consultations by companies

Several requests for interpretation of the Afep-Medef Code were sent to the High Committee, either directly to its general secretary or through the legal departments of Afep and Medef, most often informally, particularly regarding compensation matters.

The High Committee considers this upstream aspect of its intervention to be particularly important and encourages companies to favour this approach and converse with it, particularly in the context of changes to their governance. This approach, which is confidential, avoids *ex-post* intervention, which is always more sensitive.

3.3. Investigations in connection with the implementation of the Code

As part of its task of monitoring the implementation of the Code's recommendations, the High Committee has the option to investigate at its own initiative if it sees that a company is not implementing one of the recommendations without sufficient explanation.

This course of action is essential in order to ensure that governance is improved and best practices are disseminated.

It is pointed out that the High Committee intervenes as part of its monitoring tasks based on a review and an analysis in respect of the law and the rules of the Code of just the public information communicated on companies' websites or after having observed stakeholders (employees, shareholders' association, proxy advisor, etc.) or the press reporting presumed deviations from the Code.

Furthermore, its scope of action is limited to companies referring to the Afep-Medef Code and mainly to SBF 120 companies (104 companies this year) whose annual reports are systematically reviewed each year.

Since October 2017, the High Committee has intervened with SBF 120 companies in the following ways:

- 1) Firstly, it reviewed the responses received to the 23 letters sent out in July 2017 relating to the content of their 2016 annual report.

It observed with satisfaction that all of the companies to which these letters had been sent implemented the recommendations made. However, it was sorry that some of them did not take the trouble to reply, opening themselves up to the High Committee's investigation being made public.

This review was all the more important in view of the fact that, of the 23 companies concerned, six had already been sent a letter in 2016 based on their 2015 annual report.

As these letters had produced no response, the High Committee had decided to mention these companies in its 2017 Report.

- 2) It subsequently carefully reviewed the 2017 annual reports. Following this review, 23 letters were sent out to SBF 120 companies, including two to CAC 40 companies, pointing out deviations from the Code, insufficient explanations or simply drawing attention to significant points.

As of 19 October, the High Committee had received 19 responses.

The High Committee will review all of the responses received or yet to be received and monitor the quality of the responses received.

- 3) During the year, the High Committee sent out four letters to companies to point out significant breaches that had come to its attention. These letters mainly concerned compensation arrangements relating to the departure of company officers. The discussions that took place with these companies following these letters enabled solutions to be found, in the majority of the cases, that were more compliant with the provisions of the Code.

Finally, as in previous years, using the simplified method implemented since 2015, the High Committee analysed the annual reports of certain companies referring to the Afep-Medef Code but not included in the SBF 120 index sample.

This analysis concerned CAC All-Tradable index companies with a market capitalisation higher than €200 million, i.e. 44 companies referring to the Afep-Medef Code.

The High Committee focused its interventions on an approach that educates and supports companies that do not comply with certain provisions of the Code without providing satisfactory explanations, and wrote to three companies in the sample to point out shortcomings notably concerning the proportion of independent directors on the board and within committees, the functioning of committees, the communication of the "comply or explain" table or concerning matters related to company officers' compensation. The High Committee will continue its work to raise awareness among companies referring to the Code but not part of the SBF 120 index.

3.4. Publicising investigations and "naming and shaming"

In some cases, the High Committee may issue communications regarding its interventions. Such communications do not concern the detailed content of its opinions.

This year, the High Committee was prompted to publish two press releases in relation to Carrefour's shareholders' meeting. The published press releases are available online on its website.

Furthermore, the High Committee always reserves the option to "*name and shame*" in the event of no response or unsatisfactory responses to its observations. This option was strengthened in the new version of the Code.

The High Committee implemented this option for the first time in its 2017 Report by naming six companies.

Reviewing the responses to the letters sent out in 2018 may, if necessary, lead to further mentions.

4. Main themes addressed by the High Committee in its investigations in 2017-2018

In terms of methodology, and in the same way as in 2017, the High Committee focused in 2018 on the recommendations of the Code where it saw significant room for improvement.

It should be noted that the High Committee's investigation work is based on the reference documents published for 2017 and on the documents sent to shareholders in respect of shareholders' meetings taking place in spring 2018 based on the November 2016 version of the Afep-Medef Code in force at the time when these documents were prepared.

This year, generally speaking, the High Committee once again observed a continuous improvement in companies' governance practices and in them taking into account the High Committee's recommendations.

Two recurring findings should be noted regarding the results observed in respect of the SBF 120 companies:

- The better quality governance, on average, of the CAC 40 companies compared with the SBF companies outside of the CAC;
- The effect of changes in scope: in fact, the governance of companies joining the SBF 120 is generally seen to require a period of adaptation to the recommendations of the Code combined with gradual upgrading.

Generally speaking, companies also seem to be increasingly responsive to feedback from shareholders, stakeholders and the press, and seek to explain and, where relevant, amend their practices in order to comply with the provisions of the Code and the expectations of stakeholders and particularly of investors.

For 2018, the themes monitored revolved around the following five themes: governance structure, compensation, board membership and, finally, board practises along with monitoring implementation of the recommendation to "comply or explain".

As part of its monitoring of the implementation of the Code, the High Committee has adopted several new priorities, notably regarding compensation and diversity within management and general management bodies.

The High Committee's reflections regarding some of these themes are shown in Part 5 of this report.

4.1. Governance structure

The split between the forms of company remained stable overall between 2016 and 2017, with the SBF 120 consisting 83.7% of public limited companies with a board of directors, 12.5% of companies with a management board and a supervisory board, and 3.8% of partnerships limited by shares.

In companies with a board of directors, the separation of the offices of chairman and chief executive officer remains a recurring and significant issue, particularly in the light of expectations of investors from English-speaking countries. There was a slight increase in the unified form of management for the CAC 40 (61.8% compared with 58.8% in 2016) and no change for the SBF 120 (51% for both 2016 and 2017), while the form of management changed in 2017 for 4.8% of the SBF 120 companies and 2.9% of the CAC 40 companies.

The High Committee remained vigilant regarding the explanations expected of companies in terms of the "motivation" for their choice, as recommended by § 2.3 of the Code (presentation of the measures enabling a balance of powers to be ensured, such as the presence of a lead director, meetings without the executive directors being present, role of the committees, etc. in companies where the offices are combined) and regarding any deviations (for example, maintaining disproportionate compensation for a chief executive officer who has become a "separate" chairman).

The High Committee, like the Code, holds a neutral position regarding either option but continues to be vigilant with regard to the implementation of the recommendation of the Code (§ 3.2) stating that "*when the board opts for separation of the offices of chairman and chief executive officer, if appropriate any tasks entrusted to the chairman of the board of directors in addition to those conferred upon him or her by law must be described*". All of the companies, with one exception, explained the motivation for their choice of mode of governance, and significant progress was observed regarding this point since last year (see Part 2, § 1.1 p.27).

Generally speaking, this important point was the focus of sustained reflection by the High Committee, as elaborated on in Point 5 of this report.

4.2. Compensation of company officers

The shareholders' vote on the individual compensation of company officers has been governed by the law with a binding dual mechanism, *ex-ante* since the shareholders' meetings in 2017 and *ex-post* as from the shareholders' meetings in 2018, in accordance with the provisions of the Sapin 2 law. This year, 2018, has therefore seen the implementation of the full legal mechanism for the first time.

As well as the strictly legal aspect of the shareholders' vote, the High Committee reviewed in particular the compliance with the Code's provisions of the compensation arrangements submitted to shareholders' meetings in relation to the compensation of company officers. The review concerned changes to the fixed part, the indicators and calculation methods for the variable parts and long-term compensation, the justification and motivation for the extraordinary nature of certain compensation as well as the compliance with the conditions governing the payment of termination benefits and non-competition clauses.

Variable compensation

With regard to this subject, the High Committee specifically wanted to draw the companies' attention to the terms for determining the annual variable compensation of executive officers.

By way of reminder, Article 24.3.2 of the Afep-Medef Code states that, "*The terms of the annual variable compensation must be understandable to shareholders, and clear and complete information must be provided each year in the annual report.*

The board defines the criteria that make it possible to determine the annual variable compensation as well as the objectives to be achieved. These must be precise and, of course, predetermined."

Furthermore, Article 25.2 of the Code specifies that the annual report must mention "*the rules governing the award of the annual variable part. Without jeopardising the confidentiality that may be linked to certain elements in the determination of the variable part of the compensation, this presentation must indicate the breakdown of the qualitative or quantifiable criteria on the basis of which this variable part is determined, their relative importance, how these criteria have been applied during the financial year and whether the individual targets have been attained. It must also, where necessary, specify whether the payment of this variable part is partly deferred and indicate the conditions and methods of this deferred payment;*"

From reviewing the annual reports of the companies, the High Committee found that these provisions are applied in a wide variety of ways, given that the descriptions of these terms are extremely detailed in some cases but very brief in others. Furthermore, at the time of the shareholders' meetings in 2018, shareholders' associations shared their requests for explanations reported by the press or voiced questions relating to the compensation of company officers. The 2017 report of the French Financial Markets Authority had also raised this point, observing "(...) that further clarification could be provided, notably by detailing, at the very least, the level of implementation achieved for each quantifiable objective".

The High Committee recognises that confidentiality regarding company officers' objectives may be invoked notably in order not to disrupt financial communication concerning the company's objectives. However, the High Committee observed that although Article 25.2 of the mentions not "*jeopardising the confidentiality that may be linked to certain elements in the determination of the variable part of the compensation*", certain companies do provide their shareholders with detailed information regarding this point.

In fact, the High Committee is of the opinion that in respect of the implementation of the Code, minimum information must be communicated, particularly regarding the nature of the indicators, their respective importance and how the board recognises the degree of attainment of the performance on which the variable compensation is conditional.

The High Committee therefore paid particular attention to information about the various (quantifiable and qualitative) indicators used by the board, their importance and the details given by the board about the level of implementation expected and about the results attained compared with the targets set both for determining the annual variable part of company officers' compensation and for long-term variable compensation.

The High Committee is of the opinion that there is room for improvement with regard to this point and urges issuers to find the best way to report on the board's work regarding the variable and long-term compensation of executive officers.

The High Committee found that some companies only communicated fragmented information and therefore notified 17 companies that their presentations in respect of these points could have been more detailed.

Termination benefits and non-competition agreements

With regard to other aspects of compensation, this year the High Committee carefully reviewed situations where company officers changed, and specifically the financial leaving arrangements, particularly where termination benefits and non-competition agreements were implemented. Some situations warranted a request for explanations from the High Committee.

Letters were exchanged regarding these themes with two companies in particular, and the revision of the Code in June 2018 takes into account the deviations observed in order to address this.

In the case of Carrefour, the company published two press releases relating to decisions by its board that took into account certain observations by the High Committee and revised the terms of the non-competition agreement for the former and the new chairman and chief executive officer.

Extraordinary compensation

The High Committee also spotted a decision by the board of directors of one company that decided, subject to a vote by the shareholders' meeting in 2019, to award its chief executive officer a very high extraordinary bonus to remunerate them for supporting and preparing for their successor's transition. The amount of the bonus can vary, without any further details, partly depending on the achievement of a financial criterion and partly depending on performance. The wording does not allow the criteria mentioned to be identified nor the detail or stringency of the targets.

Furthermore, the High Committee is of the opinion that preparing for the succession of a company officer is a formality that comes within the remit of the board and its specialist committee and that the chairman should prepare for this transition as part of the normal discharge of their mandate. Specific compensation for a company officer leaving office to remunerate them for preparing for their transition appears to require further explanations, given that this type of compensation cannot be described as extraordinary given that it is not specified by the Code.

The High Committee noted that this point also illustrates the need for the board of directors to ensure the existence of operational succession planning (cf. below in Point 2.3) and to ensure that the benefits described as such really are of an extraordinary nature.

The High Committee also paid close attention this year to a certain number of other cases where compensation was described as extraordinary, notably the reasons given and the payment terms. It should be pointed out in this regard that Article 24.3.4 of the Code states that "*Only highly specific circumstances may warrant the award of extraordinary compensation (for example, due to their importance for the corporation, the involvement they demand and the difficulties they present).*

Justified reasons for the payment of this compensation must be given, and the realisation of the event that gave rise to the payment must be explained. "

Supplementary pension schemes

With regard to information about supplementary pension schemes for company officers, the High Committee noted a decline in the statistics concerning the three recommendations examined, namely widening the scope of the scheme to beneficiaries other than company officers, the requirement of at least two years' seniority, the benchmark period being longer than one year and the maximum percentage of the reference income which the supplementary pension scheme would confer not being greater than 45% of the reference income (cf. 9.6 of Part 2).

Directors' fees

Finally, regarding the significant variable part related to regular attendance for calculating directors' fees, the High Committee found that most of the companies have now put in place rules for the award of directors' fees including a significant variable part, as recommended by § 20.1 of the Code. Compliance with this recommendation is rising both for the SBF 120 (87.5% in 2017 compared with 82.7% in 2016) and for the CAC 40, with 94.1% for 2017 compared with 88.2 % for 2016. The importance of this recommendation was pointed out to several of the companies concerned.

The High Committee found that themes related to company officers' compensation, in addition to the legal implementation of the "say on pay", still largely come within the remit of the Code and will be particularly vigilant with regard to compliance with the relevant provisions of the Code.

More generally speaking and in addition to monitoring the recommendations of the Code, the High Committee's reflections on the compensation of company officers are specified below in Point 5.

4.3. Board membership

Diversity

Given that the law governing the balanced representation of men and women on boards established by the law of 27 January 2011 has been in effect since 2017, the Afep-Medef Code no longer contains any provisions regarding this point.

Nevertheless, the High Committee continued to observe the implementation of this law for the companies referring to the Code.

Changes in the membership of the boards within these companies referring to the Afep-Medef Code are satisfactory, since the average proportion of women is up since last year at 44.9% for the SBF 120 companies and 46% for the CAC 40 companies (see Part 2, § 3.5 p.41) at the end of the 2018 general meetings. 100% of the SBF 120 and the CAC 40 companies are compliant with the 40% lower limit.

In addition to this aspect, the High Committee paid particular attention this year to the implementation of Article 6.2 of the Afep-Medef Code, "*Each board should consider what the desirable balance of its membership and that of the board committees should be, particularly in terms of diversity (gender representation, nationalities, age, qualifications, professional experience, etc.). It should make public in the report on corporate governance a description of the diversity policy applied to members of the board of directors as well as a description of the objectives of this policy, its implementation measures and the results achieved in the past financial year*".

The High Committee observed that only 72.1% of the SBF companies and 79.4% of the CAC 40 companies were compliant with this recommendation, with the reference document of a certain number of companies for 2017 not explicitly mentioning this information.

13 companies in the sample were reminded of this point.

On this occasion, the High Committee informed them, for information, that a new recommendation of the Code revised in June 2018 had extended companies' commitments regarding non-discrimination and diversity, since Article 1.7 of the revised Code now gives the board a new task, "*It also ensures that the executive officers implement a policy of non-discrimination and diversity, notably with regard to the balanced representation of men and women on the governing bodies*". Consequently, to expand the scope of the commitments regarding non-discrimination and diversity, the board of directors will now have to ensure that the company officers implement a policy in this area that, notably, focuses on more

balanced representation of men and women on the governing bodies which, as well as the board, includes the executive and management committees and, in broader terms, the senior management.

It should be noted that this extension, incorporated into the Code, of the board's diversity policy to include the general management bodies was a proposal made by the High Committee back in its 2017 Report.

Regarding this point, the High Committee observed that the executive or management committees of a very high number of companies included a very low number of women and indeed, in some cases, no women, and invited the companies in question to take this new recommendation into account. In 2018, the average proportion is 16% for the SBF and 20% for the CAC 40, and 23 SBF 120 companies do not have any women on their executive or management committees.

This High Committee will monitor this very important recommendation closely in the coming years.

Employee directors on the board and on the compensation committee

This topic is governed by the law on social dialogue and employment of 17 August 2015 (Rebsamen law) and is not intended to be monitored by the High Committee. However, for information purposes, we can observe that participation of directors representing employees on the board of directors has continued to rise in line with the timetable set by the law, particularly within the CAC 40, with a percentage of 91.2% in 2017 compared with 76.5% in 2016 (see Part 2, § 3.6 p.41).

With regard to the participation of employee directors on the compensation committee, this recommendation of the Code is more stringent than the law, since Article 7.1 of the Code states "*It is recommended that the chairman of the committee should be independent and that one of its members should be an employee director*".

Under these conditions, the High Committee continued its work on monitoring companies' compliance with these recommendations, particularly the second one, which has appeared in the Code since November 2016.

Like last year, the High Committee noted significant progress regarding this aspect connected to the ever-stronger presence of directors representing employees.

However, the High Committee contacted seven companies in the sample this year to request explanations about the lack of an employee director on this committee.

Proportions of independent directors on the board and on committees

On boards, the quota of independent directors remains stable at a high level, with 94.7% of controlled companies in the SBF 120 and 100% in the CAC 40 complying with the Code's recommendation in 2017. For non-controlled companies, the percentages are 95.5% for the SBF 120 and 96.6% for the CAC.

With regard to committees, the High Committee had noted that the proportions of independent directors recommended by the Code for committees (2/3 on the audit committee, majority on the compensation and nomination committees) seemed to be harder to comply with than the proportions of independent directors on the board itself (see 2016 Activity Report, p. 12). This persistent trend is diminishing significantly (see Part 2, § 3.2 p.31, § 4.1 p.51, § 4.2 p. 54 and § 4.3 p.58). This year has seen a slight rise in independent directors on audit committees, with 85.6% in 2017 compared with 81.7% in 2016 for the SBF 120 and 91.2% for 2017 compared with 88.2% in 2016 for the CAC 40. The situation is more variable for the compensation committee. The proportion of companies complying with the recommendation relating to the independence of the members of this committee has dropped very slightly. In fact, for 2017, three of the CAC 40 companies do not follow the

recommendation, and out of the SBF 120 companies, 15 are not compliant with the recommendation, compared with 19 in 2016.

However, all of the companies that do not comply with these proportions indicate this and provide justification, often related to their shareholding structure, but companies must keep up their efforts, notably when renewing directors' terms of office, to achieve the required proportions. The High Committee will remain particularly vigilant regarding this point.

Yet it is difficult for the High Committee to intervene in order to issue a recommendation or opinion to assess whether or not a company is controlled within the meaning of the Code.

However, the High Committee points out, in respect of Article 2.4 of the Code, "*When a corporation is controlled by a majority shareholder (or a group of shareholders acting in concert), the latter assumes a specific responsibility with regard to the other shareholders, which is direct and separate from that of the board of directors. They take particular care to prevent conflicts of interest and to take account of all interests*".

Independence and assessment criteria for "significant business relationships"

With regard to directors qualifying as independent and the review of any significant business relationships, the High Committee has always insisted on the importance of specifying in the annual report the criteria defined by the board of directors or supervisory board for assessing the significant or non-significant nature of the business relationships with the company that its board members liable to be considered independent may have. The issue of business relationships now seems to be addressed by almost all the boards, and the situation is stable, given that the criteria are mentioned by 98.1% of the SBF 120 companies in 2017, the same as in 2016, and by 97.1% for the CAC 40 companies, with no change between 2016 and 2017.

Like last year, significant business relationships are sometimes simply mentioned in a list of the criteria of the Afep-Medef Code, without the interests always being explained.

However, this year has seen a positive shift, since specifying the criteria for significant business relationships rose compared with last year from 70.6% to 75.7% in 2017 for the SBF 120, and from 84.8% to 91.2% in 2017 for the CAC 40.

As in previous years, the High Committee considers that this is an important and sensitive matter regarding which significant progress has been made but with room for improvement still.

The High Committee reminded some companies of the importance of mentioning the criteria used in the annual report (six companies this year).

The strengthening of the ethical rules for directors with regard to conflicts of interests should be noted, since the revised Code recommends, in the event of a conflict of interests, that the director in question, who already had to abstain from voting on the related resolution, should also abstain from attending the debate.

Independent lead director

The High Committee carefully reviewed the implementation of this important recommendation of the Code relating to the independence of the lead director. It seems that within the SBF 120 companies with a lead director (33 companies), 29 qualify as independent. For the CAC 40, out of 17 lead directors, 15 qualify as independent. The High Committee reviewed the explanations given in the few exceptional cases of the lead director not being independent and noted the case of one lead director compensated for board duties via a regulated agreement which was rejected by the shareholders in April 2018.

Furthermore, the High Committee continued its reflections on this theme in 2018 (cf. Point 5 below).

4.4. Board practises

Succession planning for company officers

Succession planning for company officers is one of the recurring themes regarding which the High Committee decided, as in 2017, to continue its analysis of the reference documents and regarding which it is repeating its recommendations (cf. 2017 Report, page 16). In fact, § 16.2.2 of the Code states that *"the selection or nominations committee (or an ad hoc committee) should design a plan for replacement of company officers in order to be in a position to propose succession solutions to the board, particularly in the event of unforeseeable vacancy. This is one of the committee's most important tasks even though it can, if necessary, be entrusted by the board to an ad hoc committee"*.

Significant progress was observed in 2018 compared with 2017, since 80.4% of the SBF 120 companies mentioned implementing or monitoring succession planning compared with 71.8% in 2016. Progress was also high for the CAC 40, as 88.2% of the companies mentioned this point compared with 85.3% in 2016.

However, the High Committee contacted 13 companies to point out to them that no information had been provided regarding the existence or updating of such planning by a specialist committee of the board.

The events of 2018 highlighted significant shortcomings in this regard and underlined the crucial importance of the board of directors having in place up-to-date and operational succession planning.

It should be noted that succession planning should also take into account the organisation and membership of the general management bodies, which are internal recruitment pools and key indicators regarding the quality of reflection and the practical implementation of a policy in the area.

For example, the High Committee carefully monitored in particular the succession processes of Société Générale following a dispute with the US justice system and those of Air France.

Generally speaking, the High Committee is of the opinion that failure to prepare for succession has significant negative impacts on companies in terms of strategy, competitiveness and social performance, and represents a highly prejudicial situation for the company, its shareholders, employees and stakeholders.

Evaluation of the individual contribution of directors

On page 14 of its 2017 Report, the High Committee highlighted the importance of the evaluation exercise and the aspect of it related to individual contribution for the smooth functioning of the board.

Like last year, the High Committee wanted to draw the attention of the companies to an aspect mentioned in § 9.2 of the Afep-Medef Code in relation to the evaluation of the board of directors, where it is specified that one of the three objectives sought by the annual evaluation of the board of directors is *"to measure the actual contribution of each director to the board's work"*.

Part 2 of the report features an analysis of the implementation of this provision by the SBF 120 companies (see Part 2, § 3.10 p.50). The rate of compliance noted is still low but rising, since of the 55 SBF 120 companies that carried out a formal evaluation this year, 36 companies, including 22 CAC 40 companies, reported that they had added an individual aspect to their process.

However, the High Committee pointed out this deviation to a number of companies in the sample.

The High Committee found that this individual aspect of the evaluation is rising, notably through the practice of formal evaluations whose methodology is increasingly systematically including this analysis. It should be noted that the revision of the Code in June 2018 supported this trend since, with the aim of transparency, the Code now recommends that the report on corporate governance should report the attendance level of each director at board meetings and at committee meetings, which was already widely practised.

It should be noted that, like last year, the annual reports do not always provide information about this matter, nor incidentally about the "*steps taken as a result*" as recommended by § 9.3 of the Code (see Part 2, § 3.10 p.50).

Meetings without executives being present

The implementation of the recommendation to hold a meeting of members of the board of directors each year without the executive officers being present is gradually becoming widespread.

2018 saw progress on this theme within the SBF 120, with 62.5% of the companies having arranged a meeting for the non-executive directors only compared with 60.6% in 2016, and even stronger progress within the CAC 40, with 91.2% compared with 76.5% in 2016.

The High Committee would like to point out that it has provided information about the practical arrangements for these meetings, notably in its 2017 Activity Report.

The High Committee indicated this point to seven companies in its sample.

4.5. Implementation of the recommendation to “comply or explain”

Finally, as it does every year, the High Committee reviewed in detail the compliance tables or sections included in the annual reports of companies, notably those which declared that they were fully compliant with the provisions of the Code without any exception (see Part 2, § 6 p.64). The Code states that "*companies must indicate in a specific section or table the recommendations that they have not implemented and the respective explanations*". The strict implementation of this "comply or explain" rule is particularly important as it forms the basis of soft law. Where applicable, companies must provide a relevant and comprehensive explanation when they deviate from one or more provisions. Explanations regarding deviations also need to be properly summarised in this table and not scattered throughout the annual report.

In 2018, the High Committee consequently contacted several companies which had stated that they were in full compliance with the Code's recommendations when, in reality, they had omitted certain deviations, in order to remind them of the rules of the Code. This situation was observed for three of the CAC 40 companies and eight of the SBF 120 companies. The High Committee will remain vigilant regarding this point.

5. High Committee's work and reflections on corporate governance themes

The end of 2017 and 2018 were characterised by a number of reflections on corporate governance themes, both in France surrounding the preparation of the PACTE law and the revision of the Code published on 21 June 2018, but also internationally, with the Financial Reporting Council, which presented its new corporate governance code, *the UK Corporate Governance Code*, on 16 July 2018.

The reflections and work carried out surrounding the draft PACTE law and the revisions made to the Code involved improving companies' governance and the effectiveness of their boards but also implementing the kind of corporate governance attractive to international investors.

5.1. External contacts

In October 2017, the Chairman, in the presence of the former chairman, Denis Ranque, presented the 2017 Activity Report at a press conference. The High Committee wanted to enhance its visibility and communication with the media, and various actors involved in governance, the Chairman, the general secretary and members of the High Committee, took part in various hearings, conferences and seminars on corporate governance themes.

During this period characterised by the authorities reflecting on the Action Plan for Business Growth and Transformation (PACTE), the High Committee took part in meetings and was heard by various actors as part of the preparatory work for the draft PACTE law regarding the High Committee's actions and corporate governance themes.

The High Committee also hosted Professor Bertrand Fages, Professor at the School of Law of the Sorbonne, who chairs the Club des Juristes' committee on dialogue between directors and shareholders, and members of this committee for a presentation of this committee's recommendations. This work should enable a deeper exploration of this theme taken into account in the revision of the Code of June 2018 in order to encourage issuers to develop this dialogue.

Furthermore, this year the High Committee wanted, in addition to its work monitoring the implementation of the Code, to widen its reflection by sharing this in the form of discussions with leading figures about corporate governance-related themes. In this context, the High Committee welcomed Delphine Geny-Stephann, Secretary of State at the Ministry of the Economy and Finance, to one of its meetings for a presentation of the High Committee's activities and to discuss the draft PACTE law and the government's priorities in this area.

Finally, at the same time as respecting, on both sides, the confidentiality of their contacts with companies and their mutual independence, the High Committee and the French Financial Markets Authority maintained informal contacts so as to share their reflections about developments in corporate governance matters. In this context, Robert Ophèle, chairman of the French Financial Markets Authority, and Martine Charbonnier, deputy general secretary, were also invited for discussions with the members of the High Committee during a working meeting.

Internationally, the HCGE carefully monitors changes in governance codes, notably in Europe (UK Corporate Governance Code), and contacts were maintained throughout this period with its counterparts abroad. As part of these dealings, as happens every year, the Chairman will attend a meeting in Rome in November 2018 with the chairmen of the committees responsible for monitoring corporate governance codes in Germany, the UK, Italy and the Netherlands. Sweden joined this group in September 2018.

These various exchanges enabled the High Committee to raise awareness of its tasks and activities.

5.2. High Committee's contribution to the public consultation ahead of the Code being revised in June 2018

The High Committee actively took part in the public consultation organised by Afep and Medef.

It made a number of proposals concerning long-term value creation and CSR, employee directors, organisation of governance and the separation of the offices of chairman and chief executive officer, communication with shareholders and the High Committee's membership and prerogatives. A high proportion of its observations was fully or partly incorporated into the new version of the Code.

5.3. External communication by the High Committee

The High Committee wanted 2018 to be characterised by the further expansion of its presence and visibility among corporate governance actors and, in particular, beyond the companies referring to the Code, among the authorities, the financial and mainstream press, associations representing shareholders or directors and academia.

In this context, the HCGE launched its website in March 2018. A new communication tool, the purpose of the www.hcge.fr website is to raise awareness in a transparent manner about the High Committee's organisation, tasks, actions and positions. Through this user-friendly platform, useful information about the High Committee, such as its membership and annual reports, the Afep-Medef Code and its press releases, is now available easily online. The English versions of the Code and activity reports are also available there. Finally, this site provides helpful information on contacting the High Committee via a dedicated e-mail address.

Launching this site has facilitated contacts with professionals and the media, and consequently raised awareness about the HCGE and its work.

Lastly, the High Committee would like to point out that the responses to the companies' consultations as well as the opinions expressed at its own initiative, in particular following the High Committee's systematic review of the annual reports, are sent to the chairmen of the boards or, if applicable, of the committees, on a confidential basis. As the High Committee has stated on a number of occasions, this confidentiality is a necessary condition in order for its preventive role to be effective. It should be noted, in any event, that the companies that receive opinions from the High Committee are free to make them public.

5.4. Review of "say on pay" shareholders' meeting resolutions and themes relating to company officers' compensation

The law of 9 December 2016, known as the Sapin 2 law, dramatically altered the legal framework by imposing binding *ex-ante* and *ex-post* voting for all listed companies.

Even though the arrangements for the approval of company officers' compensation are now covered by legal provisions, the High Committee is of the opinion that it is still its duty to monitor this theme closely related to the implementation of the Code.

At the shareholders' meetings in spring 2018, out of the 109 companies in the sample, the average approval rate was 88.89% in 2017 for *ex-ante* resolutions and 88.53% for *ex-post* resolutions. Overall, "say on pay" resolutions received a 87.05% approval rate in 2017.

It should be noted that while the approval rate is up, significant disparities nevertheless exist for certain specific situations, since scores lower than 80% were observed *ex-ante* for 16 companies and *ex-post* for 17 companies.

No resolution was rejected.

The "say on pay" mechanism appears to increase the influence of institutional investors and "proxy advisors", and determining compensation largely relies on dialogue, and indeed negotiation, between these two categories of actor, but also on the acceptability of the compensation amount to employees and company bodies more generally, particularly in the light of the company's economic and social performance.

It should be noted that the supervision of company officers' remuneration is undeniably the primary expectation of civil society in terms of corporate governance. The case of Carrefour, following on from others of the same kind this year and in previous years, brought to light the strong emotions aroused by this topic, as relayed by the press, the authorities and the political sphere. Monitoring the implementation of the governance rules for compensation is therefore a major challenge for the High Committee.

The Code revised in June 2018 took into account the need to continue this supervision. With regard to compensation, further advances and even stricter supervision of the clauses relating to the departure of company officers were introduced. The revised Code also increases the supervision of the non-competition clauses so as to avoid circumvention practises. In particular, there is no possibility of concluding a non-competition agreement at the time of the company officer's departure. For pre-existing clauses, the benefit cannot be paid in the event of retirement or above an age limit that the Code sets at 65 years of age.

Given a certain number of unsatisfactory situations or explanations regarding these themes, the High Committee will continue to be particularly vigilant regarding changes in fixed and variable compensation when company officers leave or join the company, regarding the concept of extraordinary compensation and compliance with the conditions relating to termination benefits and non-competition agreements, regarding which the terms laid down by the Code must be strictly complied with.

It should be noted that media pressure regarding compensation in particular, along with a better understanding by civil society of the often sophisticated and complex mechanisms put in place by certain issuers, also constitute a powerful brake on excesses. The consistency between the *ex-ante* and *ex-post* voting on the same compensation one year apart also provides food for thought which will no doubt be taken into account when the directive is transposed by order.

Furthermore, the High Committee points out that Article 25.1 of the Code states that "*All of the company officers' compensation components, whether potential or vested, must be publicly disclosed, immediately after the meeting of the board approving them*". The High Committee found, on several occasions, that this information had not been placed online or updated, or had taken place late, and that access to this section often remained difficult (tab hard to access, wording cryptic and rarely explicit). The High Committee would like to draw the attention of companies to the importance of transparent and easy-to-access information about company officers' compensation components.

Lastly, the High Committee considers that international cooperation is needed regarding these matters between bodies monitoring corporate governance codes. Several examples of compensation paid by companies with a registered office abroad and not referring to the Code have raised questions but transpired to be outside the High Committee's jurisdiction. This point has been raised by the High Committee, which is of the opinion that Afep and Medef should reflect on the implementation of the Code when a company is listed on the Paris stock exchange and/or conducts a significant proportion of its activities in France.

Finally, the High Committee finds it regrettable that these much-publicised compensation themes sometimes eclipse discussions regarding governance when many other very important but perhaps more technical themes are of lesser interest to directors, shareholders and stakeholders.

5.5. Diversity policy

As indicated in Part 4 of the report, the Code was updated in June 2018 with regard to the balanced representation of men and women below board level on the governing bodies of companies, and this point will be monitored closely. The law also addressed this subject in the law of 5 September 2018, one article of which organises the information regarding how the company seeks the balanced representation of men and women on general management bodies and regarding the 10% of positions with higher levels of responsibility.

These points are indicative of the wider development of non-discrimination and diversity policies and are key challenges for the future.

5.6. Separation of the offices of chairman and chief executive officer

The revised Afep-Medef Code dated June 2018 confirmed its neutrality regarding the choice of company form or form of management (separation of the offices of chairman and chief executive officer or combination of such offices).

The High Committee continued its reflection on the choice between separation of the offices of chairman and chief executive officer or combination of such offices (cf. 2017 Report, page 22) and is of the opinion, at this stage, that it is not necessary to favour either form, provided the form chosen and the reasons for this choice are properly brought to the attention of shareholders and third parties. The High Committee carefully monitored the ongoing debates on this subject and the publications made during 2018.

It should be noted that investors, particularly those from English-speaking countries, are overwhelmingly in favour of separation. This year, around one third of chairmen and chief executive officers tendered their resignation, and their re-election as director was approved by an average 82.7%. The US proxy voting agency ISS, which is influential among investors, systematically recommends that investors should vote against.

5.7. Communication with shareholders

The High Committee has observed that this dialogue is a key expectation among shareholders and has grown considerably in recent years, not only via specialist investor relations departments but also via secretaries of boards of directors and, if applicable, certain directors, considerably upstream of the board's discussions on preparing resolutions to be submitted to the annual shareholders' meeting.

The High Committee noted that the Code revised in June 2018 took into account certain observations made in its 2017 Report. Indeed, to respond to calls from shareholders wanting direct dialogue with members of the board of directors, particularly in relation to corporate governance matters, and at the same time support the development of this practice, the Code now states that such dialogue may be entrusted to the chairman of the board or, if applicable, the lead director, with them having to report to the board on their task.

While the option of direct communication is presented in principle, which is no doubt a significant step forward, the High Committee is of the opinion that the wording of the Code is slightly inferior to the UK code, which invites the chairman to discuss not just governance but also strategy and performance with major shareholders.

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