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High Committee for Corporate Governance Annual Report

HCGE

Haft Comité de Gouvernement d'Entreprise

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PREFACE

This eighth annual report of the High Committee for Corporate Governance covers, in a context of normative stabilisation, the period from September 2020 to September 2021.

It was again marked by the major operational constraints imposed on companies by the health crisis, which led almost all companies, for a second consecutive year, to hold their meetings behind closed doors. We welcome the widespread implementation of procedures and initiatives that encourage shareholder dialog, before the meeting, live and recorded broadcasts of meetings and the possibility for shareholders to ask questions not only before but during the meeting as well.

In line with its commitment to contribute to the improvement of good governance practices as promoted by the Code and to monitor their proper implementation, the High Committee has paid a particular attention to the application of the provisions of the Code relating to the gender diversity policy of governing bodies.

It acknowledges the companies' significant efforts to implement the recent revision of the AFEP-MEDEF code (January 2020), which aims to make gender diversity a central concern of the board of directors. The High Committee encourages nonetheless companies to pursue this approach and reiterates the importance of setting targets for the share of women in the highest governing bodies.

The High Committee also focused on the proportion of independent members on boards and committees, as well as the presence of a director representing employees on the Compensation Committee. Finally, despite the progress noted, executive compensation remains a subject of vigilance for the High Committee, which requires companies to provide a high level of detail in the information communicated, notably with regard to the CSR criteria (and particularly the environmental criterion) of the variable part of compensation and the perimeters retained for the ratios on compensation multiples.

While it calls for the continuation of the efforts already undertaken by companies subject to the AFEP-MEDEF Code in favour of better governance, the High Committee will promote sustainable and effective governance in the interpretation of the Code and in the monitoring of its implementation. It will pay particular attention to ensuring that the implementation and follow-up of the Code's recommendations relating to the social and environmental responsibility of companies are accurately reported, and to make soft law an effective tool to address environmental and biodiversity issues.

Patricia Barbizet
Chair of the High Committee for Corporate Governance

PART 1

2021 ACTIVITIES OF THE HIGH COMMITTEE FOR CORPORATE GOVERNANCE

1. Tasks

According to Article 27.2 of the AFEP-MEDEF Code, the High Committee is “responsible for monitoring the implementation of the Corporate Governance Code for the listed corporations that refer to it and ensures the actual implementation of the fundamental corporate governance rule, which is the ‘comply or explain’ principle”.

The task assigned to the High Committee by this article of the code is twofold: to monitor its implementation and propose any changes needed to AFEP and MEDEF. The task of monitoring was felt to be essential to ensure the proper implementation of the “comply or explain” principle. Therein lies the very feature of soft law that the High Committee promotes in accordance with the AFEP-MEDEF Code. It involves encouragement without constraint, so that undertakings adopt virtuous practices corresponding to their requirements and circumstances. In this regard, good practices should take hold beyond the mandatory standards that are for the law to lay down to protect shareholders and other stakeholders. However, the varying situations of undertakings means that it is impossible to take a “one size fits all” approach to governance. Furthermore, in the event of non-compliance with the precepts of the code, the quality of the explanations must fully justify the choices made by undertakings. Without this, corporate behaviour could not be understood and accepted by all those affected by their activities.

For this reason, the High Committee makes the interpretations and recommendations required in order to implement the Code. It may, on the one hand, be consulted by the boards of directors or supervisory boards of the corporations that refer to it and, on the other, investigate in order to draw the attention of corporations to the points of the Code that they have failed to apply without giving sufficient explanation. It does so whenever a non-compliance is brought to its attention, either by contacting the executive officers directly or, more formally, by sending boards detailed written requests. More systematically, at the end of the “season” when universal registration documents are published and shareholders’ meetings are held, the High Committee reviews these documents and requests explanations.

Furthermore, the publication of its annual report contributes to the performance of the High Committee’s tasks. The statistics it contains measure the rise in good practices among large undertakings.

Similarly, the “name and shame” practice, which remains moderate, has an incentive effect. In accordance with the High Committee’s now established policy, this applies to those corporations which, despite its calls, have persisted in deviating from significant recommendations of the Code. In addition to those that did not respond to a letter of investigation from the High Committee, these are companies that, upon consultation or investigation by the High Committee, neither followed the opinion of the High Committee dismissing the justifications provided by the company, nor indicated in their corporate governance report the opinion received from the High Committee and the reasons why they decided not to comply with it, nor made the commitment to rectify this situation. Depending on the situation, the High Committee makes its opinions public on its website or in its annual report.

Finally, thematic comments contribute to the debate on the development of the legal framework in an ever-changing environment.

2. Activities of the High Committee

2.1. *Reminder of the recommendations of the Code that are insufficiently applied*

In December 2020, the High Committee sent an email to all chairmen and correspondents of SBF 120 companies referring to the AFEP-MEDEF Code, inviting them to comply with certain recommendations that remain insufficiently complied with, either because the companies do not apply them or do not provide understandable, relevant, and detailed explanations, or because the communication made on the application of these recommendations is insufficient or non-existent. The letters addressed the following recommendations:

- Gender diversity policy on governing bodies (Article 7 of the Code and details in the HCGE 2020 report p.16)
- Compliance with the rules governing membership, in particular the proportion of independent members on the Board and its committees (Articles 9.3, 16.1, 17.1 and 18.1 of the Code)
- Meetings held without the presence of executive officers (Article 11.3 of the Code and details in the HCGE 2020 report p.10)
- Selection procedure for directors (Article 17.2.1 of the Code and details in the HCGE 2020 report p.17)
- Establishment of a succession planning for company officers (Article 17.2.2 of the Code and details in the HCGE 2020 report p.10)
- Presence of an employee representative as a member of the Compensation Committee (Article 18.1 of the Code)
- Possibility for the Board to waive the non-competition clause upon the departure of the executive and not to pay an indemnity in the event of retirement or beyond the age of 65 (Article 24.3; 24.4 of the Code)
- CSR criteria for determining the variable compensation of executives (Article 25.1.1 of the Code and details in the HCGE 2020 report p.17)
- Formal commitment by executives not to hedge long-term compensation plans (Article 25.3.3 of the Code and details in the HCGE 2020 report p.11)
- Clarification of the proportion of options or performance shares allocated to executives (Article 26.2 of the Code)
- Compensation ratio (Article 26.2 of the code, and details in the AFEP guidelines and the HCGE 2020 report p.17).

The letter was acted upon as the implementation of these recommendations has progressed and continues to progress in 2021, which is not or only partially reflected in the statistics in Part 2 of the report, which cover financial year 2020.

2.2. *Meetings and external contacts*

10 meetings of the High Committee were held between September 2020 and September 2021, following a planned schedule. In addition, 2 *ad hoc* meetings were held to deliberate on urgent consultations from companies. The participation rate of the members for the year was 98.8%.

The High Committee actively monitored the situation of certain companies and engaged in a close dialog with company executives to ensure the proper application of the Code's recommendations.

While respecting the confidentiality obligations to which they are subject, the High Committee and the French Financial Market Authority have exchanged informally on subjects of common interest, in the context of their respective interventions.

The High Committee is in contact with other governance actors. It was auditioned by the *Haut Comité Juridique de la Place Financière de Paris*, as part of the preparation of its report on the adaptation of corporate governance to times of crisis.

In addition, the Chair and the Secretary General have been asked by the specialised press for interviews or clarifications, as well as to participate in seminars, panels or conferences on subjects such as the functioning of boards, the role of directors or shareholder democracy.

2.3. Consultations and investigations

The High Committee intervenes both on its own initiative through investigations and in response to consultations from companies.

Investigations

The interventions of the High Committee on its own initiative are primarily related to one-off events (mainly when executives leave or are nominated to boards).

Secondly, they relate to systematically sending out letters after having reviewed the universal registration documents and booklets notifying meetings issued by the corporations to report deviations from the Code or insufficient information. This year, 31 companies were sent a letter (compared to 14 in 2020, 33 in 2019 and 23 in 2018), 12 of which were for the sole subject of the ratio on compensation multiples. Less formal contacts (telephone interviews, e-mails) also took place when the observed deficiencies were more akin to information deficiencies than to voluntary deviations that were not explained or incorrectly explained. In most of these cases, the companies involved have committed to fuller disclosure next year.

These requests are divided between governance issues and compensation matters.

◆ **Governance matters:** the application of the Code's provisions relating to the gender diversity policy in governing bodies, compliance with the rules governing the composition of boards and committees, in particular the proportion of independent members, and the presence of an employee director as a member of the Compensation Committee, were particularly examined.

With regard to the gender balance of governing bodies, the High Committee has reminded companies of the provisions of Article 7 of the Code and the resulting expectations (see 3.6).

With regard to the proportion of independent directors on boards and committees, the High Committee has pointed out that the composition of the shareholding does not justify significant differences between the proportions provided in the Code and those in force within the company.

➡ For the Compensation and Nomination Committees, it has been accepted that the presence of 50% independent director (instead of a majority) meets the recommendation of the Code when the Committee Chairman is independent.

With regard to the presence of an employee director as a member of the Compensation Committee, it noted that too many companies, although decreasing between 2020 and 2021, do not apply this recommendation (see 3.5).

◆ **Compensation matters:** in particular, the presence of an environmental criterion among the extra-financial criteria used to determine the variable compensation of the executive and the ratio on compensation multiples were examined.

This leads the High Committee to the following observations.

The presence of an environmental criterion among the extra-financial criteria is clearly improving between 2020 and 2021, even if the compensation policies are not always sufficiently detailed on CSR criteria in general and the environmental criterion in particular. Indeed, a simple reference to the application of a CSR policy, a reference to an internal CSR program or to general undefined issues are not sufficient.

⇒ The High Committee reiterates that it expects CSR criteria to be precisely defined, to be legible, relevant and to integrate the company's own issues. It considers as a good practice to prioritise quantitative criteria.

While the Committee notes that progress has been made in the disclosure of ratios on compensation multiples, there is still considerable room for improvement, particularly with regard to the percentage of the Group's workforce in France that it represents (see 3.7).

More generally, and despite the great heterogeneity of the universal registration documents of the SBF 120 companies, their systematic examination each year shows a constant progression in governance practices and the communication of which they are the subject.

For fiscal year 2020, compliance with the Code's recommendations has improved in major areas such as the inclusion of CSR criteria in the determination of the variable portion of executive compensation, the number of women on the Executive Committee/Management Board, the independence of lead directors, etc. However, certain recommendations (see 2.1) are not sufficiently followed up. The effect of the letter sent to companies in December 2020 inviting them to comply with these recommendations are not, to date, fully measurable. However, progress is already being made in the financial year 2021. The High Committee will ensure that the recommendations are implemented.

Consultations by companies

The High Committee has the opportunity to deliberate on consultations submitted to it on behalf of the Boards (by Presidents, Committee Chairs, Lead Directors or Corporate Secretaries) to obtain interpretations or recommendations in a given context.

These deliberations concerned:

- the existence of a permanent conflict of interest situation for directors;
- the notion of independence for former directors of a subsidiary;
- the concept of significant business relationships.

2.4. "Seven Chairs Group" European Dialogue

The annual meeting of the chairmen of the committees responsible for drafting or monitoring corporate governance codes in seven European countries (Belgium, France, Germany, Italy, the Netherlands, Sweden and the United Kingdom) is scheduled to take place at the end of the year. This informal forum allows views on developments in governance to be shared and conditions conducive

to the improved effectiveness of the codes to be discussed. The discussions were dominated by work on sustainable governance in Europe.

3. Main topics addressed by the High Committee

The investigations and consultations provided the High Committee with the opportunity to examine in greater depth several issues for which it was necessary to resolve difficulties of interpretation or application of the AFEP-MEDEF Code.

Furthermore, as in previous years, the High Committee opted to devote its deliberations to certain topics outside of any consultation or investigation. The results of these analyses are reported below.

3.1. Governance in the context of the health crisis

The High Committee monitored the 2021 shareholders' meetings of the SBF 120.

The health context led almost all companies, for a second consecutive year, to hold their meetings behind closed doors.

Based on the experience gained, companies have improved the practical arrangements for holding meetings. More than 80% of companies have opened remote voting before the meeting via Votaccess. The companies broadcast their meetings live and recorded, generally via the Internet. To encourage shareholder dialog, they have often made it possible for shareholders to ask questions before and during the meeting, and one company has offered remote and live electronic voting. Frequently, the presentations and debates during the meeting were longer and the virtual meeting was more similar in content to that of a meeting held in the presence of the shareholders. The health crisis and its impact on the company's business, its strategy and CSR issues were some of the themes most often put forward.

In contrast to these good practices, the High Committee noted that some companies provided limited pre- and post-meeting information online and that the proceedings and content of the meeting were brief.

For their part, the shareholders have been active. They asked more questions, and the average quorum, which is already over 70%, slightly increases.

New practices have emerged: in 3 companies, shareholders have tabled resolutions on climate strategy; in 2 companies, they have requested that items be included on the agenda.

The High Committee also examined the practical application of compensation policies.

More than 50% of CAC 40 Directors General have waived part of their compensation for financial year 2020.

While only a few companies have left the bonus schemes for 2020 unchanged, most have adjusted them, either by lowering targets in line with a revised budget, or by adding extra financial criteria related to health crisis management. Fewer than 10 companies have submitted these changes to a shareholder vote. The others, using the discretionary right granted to the Board or relying on "exceptional circumstances" within the meaning of the law, have generally described them in their report, without specifically having the shareholders re-vote to adjust the compensation policy voted in 2020.

The High Committee also noted that about 20% of CAC 40 companies have seen the arrival of a new executive, that while many CEOs left the top management, several retained the chairmanship and that a greater number of CEOs or chairmen of CAC 40 companies joined the board of other CAC 40 companies.

This news from the assemblies leads the High Committee to the following comments.

Danone shareholders have called on the directors to give their individual and public views on the future management of the group and have asked for an item to be included on the agenda of a meeting allowing each director to express his or her strategic vision for the group.

➡ The High Committee reiterates its commitment to the confidentiality of the Board's work and to the principle of collegiality, which preclude directors from taking any individual public position, as they are bound by the decisions of the Board.

The question of whether a CEO who hands over the general management can become a non-independent chairman of the board has been a source of debate in the press. Some people consider that the AFEP-MEDEF Code should prohibit this situation, in particular on the grounds that it constrains the successor and delays the transformation of groups.

➡ The High Committee considers that Boards are best placed to assess, on a case-by-case basis, what is the best governance for their company and to decide whether the former CEO can usefully accompany the transition.

The changes in 2021 to the compensation policies voted on by the meetings in 2020 raise first of all questions of application and interpretation of the legislation in force.

➡ The High Committee stresses that companies that modify their compensation policies must, in addition to complying with legal texts, apply or provide an explanation when they depart from the recommendations of Articles 25.3.2 or 25.3.3 of the Code.

In accordance with Article 25.3.2 of the Code, the criteria defined by the Board for determining annual variable compensation and the objectives to be achieved must be precise and pre-established. Pursuant to Article 25.3.3 of the Code, the Board may only modify the performance conditions of long-term executive compensation during the period under review in the event of exceptional circumstances and on condition that the modification of the performance conditions maintains the alignment of the interests of shareholders and beneficiaries.

3.2. Proven, general and lasting conflict of interest concerning directors

The High Committee had to give an opinion on the qualification and consequences of a conflict of interest concerning the directors of company A, employees of company B, shareholder, in the context of a transaction launched by company C, which was opposed by the managers of company A.

According to Article 20 of the AFEP-MEDEF Code, "the director must inform the Board of any situation involving a conflict of interest, even a potential conflict of interest, and must refrain from attending the debate and from taking part in the vote on the corresponding resolution". The same Article adds that "the director shall attend all meetings of the Board and of any committees to which he or she may belong".

➡ The High Committee has already had occasion to specify that a director who, due to a situation of general and lasting conflict of interest, is no longer able to simultaneously comply with the abstention

and attendance obligations mentioned in Article 20 is exposed to a serious breach of the rules of the AFEP-MEDEF Code and must draw the consequences by relinquishing his or her mandate (Annual Report 2019, p. 15).

In this case, the directors did not sit on the Board of A as permanent representatives of company B but in their personal capacity. However, the High Committee considered that the functions performed by the director within company B and the subordination link between them and their employer led to the conclusion that the existence of a conflict between the interests of company B and company A would necessarily place them in a conflict of interest situation.

It held that company B had an interest in the success of the structuring operation for company A that could place the directors in a conflict of interest situation.

It considered that the conflict of interest concerned the constituent elements of the transaction and the position of company A in this respect, the valuation of the transaction and, more generally, the consequences of this situation on the strategic decisions of company A. It concluded that, throughout the duration of the transaction, which was expected to be lengthy, the directors concerned could not receive information and should abstain from participating in the meetings of the board of company A dealing with all these subjects.

In view of these factors, it considered that, in accordance with the rules of the AFEP-MEDEF Code, there was a proven, general and lasting conflict of interest and that it was up to the various parties concerned to draw the necessary conclusions.

3.3. Independence of former subsidiary directors

The Nominations Committee asked the High Committee about the independence of several people who were being considered for appointment or reappointment to the Board of Essilor-Luxottica.

The question concerned the interpretation of Article 9.5.1 of the Code, which specifies that an independent director must not be or have been during the last five years:

- director of the parent company or of a company consolidated by the parent company;
- director of a company that the company consolidates.

During the past five years, the proposed director had been directors of Luxottica, now a wholly owned subsidiary of EssilorLuxottica, not only prior to the creation of EssilorLuxottica but also for less than a year after its creation.

The High Committee therefore noted that the former directors of Luxottica had been directors of a company consolidated by EssilorLuxottica during the last five years. It also pointed out that, as directors of EssilorLuxottica, they could be called upon to review decisions made while they were directors of Luxottica, which could influence their judgment.

These factors led the High Committee to consider that the proposed directors did not strictly meet the criteria set forth in Article 9.5.1 of the AFEP-MEDEF Code.

The High Committee has reminded the company of the procedure to be followed, pursuant to Articles 9.4 and 17.2.1 of the Code, to assess the independence of directors. It is the responsibility of the Nominating Committee to discuss this qualification, to make a factual analysis of the relationship between the parties in light of its knowledge and to make a proposal to the Board. It is then up to the Board to decide on the qualification and, on the basis of the "comply or explain" principle, if it considers that these directors are independent, to justify this qualification, which it brings to the attention of the shareholders.

In its universal registration document, EssilorLuxottica states that, "given the structure of the EssilorLuxottica Group, the fact that a director of the Company sits or has sat on the Board of Directors of one of its two operating subsidiaries, Essilor International or Luxottica, does not affect his or her independence. It also notes that, in order to qualify as independent, a director must not be, or have been over the past five years, "an employee, executive officer or director of a company belonging to the Group (other than a director of the Company, Essilor International or Luxottica Group).

The High Committee considers that these statements do not constitute explanations that meet the requirements of the Code.

3.4. Review of the independence of directors and significant business relationships

The High Committee had to examine the explanations on how a Board of Directors, on the advice of its Governance Committee, assesses the independence of its members with regard to the criteria defined by the AFEP-MEDEF Code and, more particularly, in the specific case of business ties between the director (or any related person or entity) and the company

In this case, the company had invested in numerous funds to support innovation, including some funds managed by companies run by directors of the company.

The High Committee noted that the independence of directors had been carefully analysed with regard to each of the criteria defined by the Code, and more particularly with regard to the criterion concerning the absence of significant business ties between the director and the company. After analysis, the quantitative and qualitative data mentioned by the company appeared to the High Committee to be such as to justify the Board of Directors of the company considering that there are no significant business ties between it and the directors within the meaning of the AFEP-MEDEF Code, and that it therefore retained the qualification of independent director.

➡ The High Committee stresses once again that it is up to each company to assess whether or not these links are significant and to present the criteria that it considers relevant according to its own characteristics and those of the relationship in question. The question must be examined on a case-by-case basis and the criteria used must be mentioned. This significant character is assessed from the point of view of the company and from the point of view of the director himself.

In addition, it recalls that the universal registration document must give a transparent account of the independence assessment procedure followed, specify the existing business relationships between the company and the director and explain the qualitative and quantitative data that led the Board of Directors to qualify the director as independent.

Finally, in the absence of business relations, it must be mentioned in the universal registration document.

3.5. Director representing employees on the Compensation Committee

Article 18.1 of the Code recommends that an employee director should be a member of the Compensation Committee.

Even if the presence of directors representing employees on this Committee is increasing, particularly in 2020/2021, this recommendation of the Code is not sufficiently followed.

The explanations put forward by the companies are diverse:

- As the Compensation and Nominations Committee deals with broader issues than compensation, an employee is not a member;
- The Secretary of the Board acts as Secretary of the Compensation Committee;
- The employee participates in the work of the Board and therefore has all the necessary information;
- The employee director sits on another committee;
- The director has expressed an interest in serving on another committee or has indicated a desire to serve on only one other committee;
- The company does not wish to increase the number of committee members;
- The internal regulations, which reflect the shareholder structure, do not at this stage provide for the nomination of an employee to the Compensation Committee;
- The Board is continuing its deliberations following the nomination of a second director representing employees;
- The employee has just been appointed to the Board and should be given a period of adaptation and training before being proposed for nomination to a committee;
- The presence of an employee on the Board is the result of a voluntary initiative by the company, which is therefore not bound by the provisions of the Code relating to the presence of employees on the Compensation Committee;
- The compensation policy of the Executive Chairmen is not legally a matter for the Board but for the General Partner.

Fewer than 10 companies give no explanation; among them, some have a director representing employee shareholders on the Compensation Committee.

The presence of a director representing employees on the Compensation Committee contributes to the proper functioning of the Committee.

The High Committee reminds that the Boards must be diligent in applying the recommendations of the Code and that it is their responsibility to implement them.

➡ As the method of nomination of the director representing employee shareholders and often his or her profile are different from that of the employee, his or her presence on the Compensation Committee does not satisfy the recommendation to appoint an employee director to the Compensation Committee.

When the tasks of the Compensation and Nominations Committee are carried out within the same committee, the recommendation can be complied with simply by organising the work of this committee, as is already the practice in several companies.

➡ Of the explanations noted, only the explanation related to the recent nomination of a director representing employees to the Board can justify the short delay in implementing the recommendation. The High Committee, in its guide to the application of the Code, specifies that this recommendation is applicable in the year in which the employee director(s) takes office. He notes that while some companies do not appoint the employee director immediately to give him or her time to better understand the company, others, conversely, consider that joining a committee immediately is a way of accelerating understanding of the company.

3.6. Women on the governing bodies

The High Committee continued its analysis of the establishment of objectives for female representation on the governing bodies. The progress made must be continued.

The proportion of women on executive committees among SBF 120 companies that refer to the Code has largely increased to 25.5% in May 2021 (22% in 2020 in May 2020). The review does not reveal any established trend in business sector terms: the proportion of women in this body does not depend on the corporation's business activity.

3.9% of SBF 120 companies do not have a woman on their Executive Committee (7.7% in 2020).

71.8% of the companies in the SBF 120 have set objectives for female representation in governing bodies or key positions; 45,9% specify that these bodies are the Executive Committee or the Management Board.

18.4% of SBF 120 companies have set targets for women in other positions (managers, senior executives) within the company or group.

Among the nine companies that have not set a target for the number of women on their Executive Committee or Management Committee, three have achieved a rate of over 45%.

The feminization objectives are part of action plans specifying one or more time frames in which achievements are expected. Only 4 companies did not specify a time horizon. By 2024-2025, the average proportion of women on Executive Committees or Management Committees will be 34,7%.

➡ The High Committee recalls on the corporations to ensure that the action plans for female representation on the governing bodies are ambitious and quantified, and that the time horizon within which the actions should be carried out is justified. The implementation of the plans must be monitored, and the results issued, including the reasons why the objectives might not have been achieved and the measures taken to remedy this.

The High Committee will make sure that the undertakings set objectives for female representation on the highest governing bodies and that a specific objective is determined for executive and/or management committees.

It invites companies to clearly identify, in their universal registration document, the governing body or bodies at the level of which objectives are set (executive committee, direction committee, other).

3.7. Compensation gap ratio

Since 2020, in accordance with Article L.225-37-3 of the Commercial Code, corporations must publish a ratio to measure the gaps between the compensation of each executive director and that of the corporation's employees.

A calculation at corporation level is meaningless if the corporation concerned does not have many employees compared with the group's overall workforce in France. It is for this reason that, in this case, the Code in its Article 26.2, recommends publishing a ratio taking into account a more representative perimeter in relation to the wage bill or the workforce in France of the corporations over which they have exclusive control within the meaning of Article L.233-16 II of the Commercial Code. According to the Code, "80% of the workforce in France can be considered as significant".

The High Committee in its 2020 report (page 17) as well as the guidelines on compensation multiples published by the AFEP in February 2021 have clarified the recommendation of the Code.

The High Committee notes that, for companies that report on an expanded ratio, it is difficult to assess the relevance of the scope used, as there is no clear indication of the scope of the entities taken into

account and the percentage of the group's workforce in France that it represents. It is also, for the same reasons, difficult to assess the relevance of an issuer publishing only the legal ratio.

⇒ The High Committee reminds companies of the need to clearly state the scope of the entity or entities taken into account, which means specifying the percentage of the group's workforce in France that it represents, explaining the reasons for the choice made and ensuring that the scope adopted is consistent over time.

The High Committee invites companies to apply these rules imperatively when publishing their next corporate governance report.

3.8. Meetings of Board members without the presence of executive directors

Article 11.3 of the Code recommends that "at least one meeting be held each year without the presence of executive directors".

The High Committee considers that these meetings are a powerful means of improving corporate governance. This recommendation is not always applied by companies because it is often misunderstood. Therefore, the High Committee is asked to make the following clarifications.

⇒ This recommendation applies to companies whose executive directors are members or, without being members, attend board meetings. For dual-format companies, the same rule applies when members of the Direction Board attend Supervisory Board meetings.

⇒ Only non-executive members of the Board may attend these meetings. The executive directors (Chairman and Chief Executive Officer, Chief Executive Officer and Deputy Chief Executive Officers of public limited companies with a Board of Directors, Chairman and members of the Board of Directors of public limited companies with a Board of Directors and a Supervisory Board) may not be present.

⇒ It is up to each Board to define who attends these meetings. It is specified that the presence of all the members of the Board, except for the executive directors, will be mandatory if the evaluation of the performance of the executive directors referred to in Article 25.1.1 of the Code is carried out at this meeting.

⇒ Companies choose how to organize these meetings: they may devote one or more dedicated sessions to them or organize them, for example, before or after a Board meeting.

⇒ The topics discussed at these meetings are freely defined by the Councils and depend on the current events and the specific functioning of each Council. The free expression of the participants must be guaranteed.

4. Themes of reflection of the High Committee for the coming year

In 2022, the High Committee will continue and expand its reflections and work on the following themes:

4.1. Sustainable governance

As mentioned in its previous reports, the High Committee is attentive to the deliberations on sustainable governance and uphold the position of soft law, with particular emphasis on the composition and tasks of the governing bodies as well as on the supervision of corporate practice.

4.2. Corporate social and environmental responsibility

While boards are called upon to take into account the social and environmental aspects of their activities and many corporations adopt a statutory or non-statutory purpose, the question is whether they are implemented and whether the level of achievement of the objectives set is verified. This is one of the essential roles of boards, which should report on this in their universal registration document. The High Committee will carefully monitor board practices.

4.3. Diversity of the governing bodies

In recent years, the High Committee carried out an analysis of the application of the Code's recommendation on gender diversity in governing bodies.

In 2022, it will continue to check the proper application of the recommendations introduced in the Code in January 2020, particularly at the highest management level.

The numbers for this recommendation are increasing slightly. For the SBF 120, 79 companies (compared to 75 companies in 2019) reported holding a meeting without the presence of executive directors, including 31 CAC 40 companies (as in 2019). We note that this meeting is in most cases provided for in the internal regulations, but there is no mention of its actual implementation (see part 1). The Board must adopt internal rules of procedure (§ 1.9 of the Code), in particular in order to examine and decide on strategic operations (§ 1.2).

¹ Pursuant to Articles L.225-37-4 and L.225-68 of the French Commercial Code, listed companies are required to publish a corporate governance statement in their corporate governance report. Except where the company does not refer to any corporate governance code, this statement must mention the code to which it voluntarily refers and indicate, where applicable, the provisions that have been disregarded and the reasons for doing so.

² The term "directors" is used here to include both members of the board of directors and members of the supervisory board.

³ Only one company, due to a derogatory status, has a board of directors of 21 members.

⁴ Within the meaning of Article L.233-3 of the French Commercial Code.

⁵ Or be directly or indirectly related to such persons.

⁶ Under French law, the term of office of Directors is set by the Articles of association and may not exceed six years.

⁷ Another specialized committee of the Board of Directors may perform this mission

⁸ This recommendation applies to the chairman and chief executive officer, the chief executive officer in companies with a board of directors, the chairman of the board of directors, the sole chief executive officer in companies with a board of directors and a supervisory board, and the managing directors in limited partnerships with shares.

⁹ With the exception of boards composed of no more than eight members, for which the difference between the number of directors of each gender may not exceed two.

¹⁰ The above limit does not apply to offices held by an executive director in subsidiaries and affiliates, held alone or in concert, of companies whose principal activity is to acquire and manage such affiliates.

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- ¹¹ Recommendation n°2012-02 "*Corporate governance and executive compensation of companies referring to the AFEP-MEDEF Code, Consolidated presentation of the recommendations contained in the AMF annual reports.*", 2.1.4 p.14.
- ¹² The term "*main executive officers*" used in this report covers the positions of Chairman and Chief Executive Officer, Chief Executive Officer of a "société anonyme" with a Board of Directors, Chairman of the Board of Directors, sole Chief Executive Officer of a "société anonyme" with a Board of Directors and a Supervisory Board, or Manager of a "société en commandite par actions".
- ¹⁴ October 2014 Progress Report, p.28.
- ¹⁵ §6 "*For the Chairman of the Board of Directors, the Chief Executive Officer and each Chief Operating Officer, the ratios between the level of compensation of each of these executives and, on the one hand, the average compensation on a full-time equivalent basis of the company's employees other than corporate officers, and on the other hand, the median compensation on a full-time equivalent basis of the company's employees other than corporate officers .*