

November 2022

High Committee for Corporate Governance Annual Report

HCGE
Haut Comité de Gouvernement d'Entreprise

Contents

Preface	4
PART 1 Activities 2022 OF THE HIGH COMMITTEE OF CORPORATE GOVERNANCE	6
1. Missions.....	7
2. Activities of the High Committee	8
2.1. Update of the Code application guide	8
2.2. Meetings and external contacts.....	11
2.3. Referrals and self-referrals.....	11
2.4. European Dialogue "Seven Chairs Group"	12
2.5. Reminder of the recommendations of the Code that are insufficiently applied	13
3. Main topics addressed by the High Committee	14
3.1. Sustainable governance and corporate and environmental responsibility	14
3.2. Selection of future directors	16
3.3. The compensation gap ratio	16
3.4. Scope of the legal director's duty of discretion	16
3.5. The independence of the founding directors of a special purpose acquisition company (SPAC)	18
4. Themes for consideration of the High Committee for the coming year	19
4.1. The presence of CSR criteria in variable compensation.....	19
4.2. Diversity on boards and other governing bodies.....	19
4.3. Relationships between companies and voting agencies.....	19

PREFACE

This ninth annual report of the High Committee on Corporate Governance covers the period from September 2021 to September 2022.

The High Committee monitors the implementation of the AFEP-MEDEF Code updated in January 2020 (hereinafter "the Code"), which must be applied as rigorously as possible. It verifies that companies referring to the Code comply with its letter and spirit, paying particular attention to the quality of the explanations provided under the "comply or explain" rule.

At a time when climate change is becoming a major concern because of the risks associated with it, the High Committee, attentive to making flexible law an effective instrument for responding to the issues involved, has made it a priority to follow up on the Code's recommendations relating to social and environmental responsibility.

The High Committee holds in the highest regard the monitoring of social and environmental risks by the Board's committees, particularly the Audit Committee.

The number of directors representing employees on boards of directors continues to grow. Although the proportion of companies with a director representing employees on the compensation committee has increased significantly, the High Committee is committed to continuing to promote this practice, which contributes to the proper functioning of the committee, and to dialog with companies that have not yet implemented it.

The High Committee has continued to monitor the application of the Code's recommendations by companies on the gender diversity of management bodies. The proportion of women on executive committees is increasing and the implementation of gender diversity objectives is making significant progress.

Executive compensation remains a subject of vigilance for the High Committee, which may take up any matter brought to its attention. It increases its exchanges with companies and maintains an active dialog with company managers and other players in the marketplace. Its examination focuses particularly on the high degree of precision on disclosed information, notably concerning the CSR criteria (and particularly the environmental criterion) of the variable part of the compensation and the perimeters retained for the ratios on compensation multiples.

In 2023, in interpreting the rules of the Code and monitoring their implementation, the High Committee will focus on promoting effective sustainable governance and will continue its work on the integration of CSR criteria, including at least one environmental criterion, in the variable compensation of senior executives, the gender mix of management bodies and diversity within boards.

Patricia Barbizet
Chairman of the High Committee for Corporate Governance

PART 1

**ACTIVITIES 2022
OF THE
HIGH COMMITTEE
OF CORPORATE GOVERNANCE**

1. Missions

According to Article 27.2 of the Afep-Medef Code, the High Committee is "*responsible for monitoring the application of the corporate governance code for listed companies that refer to it and ensures the effective application of the fundamental rule of corporate governance that is the "comply or explain" principle*".

The mission conferred by this article to the High Committee by the Code is twofold: to monitor its application and to propose to Afep and Medef any changes that it deems necessary. The monitoring mission appeared to be essential to ensure the proper application of the "apply or explain" principle. This is the particularity of the flexible law promoted by the High Committee in application of the Afep-Medef code. The idea is to encourage without constraint so that companies adopt virtuous practices that correspond to their needs and specificities. In this respect, good practices must be generalized beyond the mandatory standards that the law must enact for the protection of shareholders and other stakeholders. However, the diversity of companies' situations makes it impossible to consider that "*one size fits all*" in terms of governance. If the precepts of the Code are not respected, the quality of the explanations must fully justify the choices made by the companies. Without this, the behaviors of companies could not be understood and accepted by all those concerned by their activities.

In this respect, the High Committee makes the interpretations and recommendations required for the implementation of the Code. It can be referred to by the boards of directors or supervisory boards of companies referring to it, and it can also refer to itself in order to draw the attention of companies to points of the Code that they do not apply without sufficient explanation. It does so whenever a compliance deviation is brought to its attention, either by contacting management directly, or more formally by sending written and detailed requests to the Boards. More systematically, at the end of the "season" of publication of the universal registration documents and the holding of general meetings, the High Committee examines these documents and issues requests for explanation.

In addition, the publication of its annual report contributes to the achievement of the High Committee's missions. The statistics contained in the report provide a measure of the progress of good practices by large companies.

Similarly, the practice of "*name and shame*", which remains measured, has an incentive effect. In accordance with the High Committee's now established policy, it applies to companies that, despite its invitations, have persisted in deviating from the significant recommendations of the Code. In addition to companies that have not responded to a letter of self-referral from the High Committee, these are companies that, upon referral or self-referral by the High Committee, have neither followed the opinion of the High Committee rejecting 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 a 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, the thematic comments contribute to the consideration of the evolution of the normative framework in a constantly changing environment.

2. Activities of the High Committee

2.1. Update of the Code application guide

The High Committee has updated, successively in March 2022 and June 2022, the application guide of the Afep-Medef code updated in January 2020.

[An updated version of the Application Guide](#) is available on the High Committee website.

March 2022 update

The March 2022 update incorporates positions taken by the High Committee in its 2019, 2020 and 2021 annual reports on the following:

❖ The "*name and shame*" approach:

The application guide provides illustrations of the cases in which the opinion of the High Committee concerning a company's practices may be made public.

❖ The gender diversity policy:

The Code, updated in January 2020, recommends that "*on the proposal of the general management, the Board shall determine objectives for gender diversity within the management bodies. Senior management presents to the board the terms and conditions for implementing the objectives, with an action plan and the time horizon within which these actions will be carried out. The Executive Director reports annually to the Board on the results achieved.*" (§7.1). In addition, it specifies that "*the Board shall describe, in the corporate governance report, the gender diversity policy applied to the management bodies, as well as the objectives of this policy, the procedures for its implementation, the results obtained during the past financial year, including, where applicable, the reasons why the objectives were not achieved and the measures taken to remedy the situation*" (§7.2).

The guide update clarified that:

- the gender diversity objectives to be implemented by companies set a target 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);
- The action plans for the gender diversity of management bodies must be ambitious and quantified, and that the time frame in which the actions must be carried out must be justified. The implementation of the plans should be monitored and the results published, including the reasons why the targets were not met and the measures taken to remedy them.

The High Committee has monitored the implementation of these recommendations by the companies (see § 3.1 and 2nd part § 5.3).

❖ Review of the independence of directors and significant business relationships (§ 9.5.3):

The guide states that the report on the corporate governance 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. In case of absence of business relations, it must be mentioned in the said report.

❖ Board meetings without the presence of executive directors (§ 11.3):

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 participate in these meetings, with the exception of 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 management board of public limited companies with a management board and supervisory board).

It is up to each Board to define who attends these meetings. The Board will be composed of all its members, with the exception of the executive directors, when the evaluation of the performance of executive directors referred to in Article 25.1.1 of the Code is made.

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 Boards and depend on the current events and the specific functioning of each Board. The free expression of the participants must be guaranteed.

❖ The proportion of independent directors on the Appointments Committee and the Compensation Committee (§ 17.1 and § 18.1):

When the chairman of the compensation committee is independent, the presence of 50% independent directors instead of a majority is a relevant explanation for not applying the recommendation of the Code. It is then imperative to indicate the recommendation not applied, as well as the related explanations in the specific heading or table provided for by the code, it being specified that this derogation can only be temporary.

❖ Selection of future directors (§ 17.2.1):

In order to respond to the legitimate wishes of shareholders and stakeholders to have more complete information on the procedure for selecting directors, the High Committee invites companies to communicate on the process for selecting future directors by describing it in the internal regulations and by reporting each year on its practical application in the corporate governance report.

Further details are provided in § 3.2 below and in § 4.3 of the 2nd part of this report.

❖ Succession plans of executive directors (§ 17.2.2):

The corporate governance report must state whether the succession plan exists, whether it is regularly reviewed and whether it was reviewed during the last financial year (if not, the date of the last review).

❖ The presence of an employee director on the Compensation Committee (§ 18.1) :

The High Committee considers that the presence on the compensation committee of a director representing employee shareholders does not satisfy the recommendation.

❖ Non-competition clauses (§ 24.3 and 24.4) :

The possibility for the board to waive the implementation of the non-competition clause upon the departure of the executive, as well as the non-payment in case of retirement or

after the age of 65, should be included in the executive's compensation policy established each year.

❖ CSR criteria in the variable compensation of executive directors (§ 25.1.1 last paragraph)

In its new version, the guide provides that the determination of an executive's variable compensation must include at least one environmental criterion.

Additional information is provided in §3.1 of this report.

❖ Compensation of executive directors (§25.3.2 and §25.3.3) :

The guide specifies that in all situations, even in times of crisis (e.g. health crisis), the Code's rules on compensation must be applied. If, exceptionally, changes in compensation policies are made, they must be made in accordance with the recommendations of the Code. If companies are unable to comply with the recommendations of the Code, they must, in accordance with the "comply or explain" rule set out in § 27.1 of the Code, provide an explanation and indicate the deviations made and the related explanations in the specific heading or table provided for in that same paragraph.

❖ Stock options and performance shares (§ 25.3.3) :

The prohibition on hedging is often included in the award plans. However, this prohibition cannot replace a firm commitment by the executive not to engage in hedging.

❖ Exceptional compensation of executive directors (§ 25.3.4) :

Code Reminder: "*Only very special circumstances may give rise to exceptional compensation (for example, because of their importance to the company, the involvement they require and the difficulties they present). The payment of this compensation must be justified and the event leading to its payment must be explained.*"

Exceptional compensation may not be used to indirectly modify the criteria for variable compensation, which must be consistent with the strategy (§ 25.3.2).

Exceptional compensation is subject to particular scrutiny by the High Committee (see 2nd part § 9.4).

❖ Annual disclosure of ratios on compensation multiples (§ 26.2):

Code Reminder: "*This chapter (of the corporate governance report devoted to the compensation of corporate officers) also provides:*

- *information on the ratios used to measure the differences between the compensation of the company's executive officers and employees¹. Companies that have no or few employees in relation to the total workforce in France take into account a more significant scope² in relation to the payroll or workforce in France of the companies over which they have exclusive control within the meaning of Article L.233-16 II of the French Commercial Code.*"

It is up to companies 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

¹ Article L.225-37-3 of the French Commercial Code refers to the employees of the company preparing the corporate governance report.

² 80 % of the workforce in France can be considered as a significant perimeter.

is consistent over time.

In addition, the High Committee recommends that companies publish in their corporate governance report, beyond the ratio whose publication is only required by law, the calculation methodology used (elements taken into account in the numerator and denominator). To this end, it recommends that companies apply the guidelines published by Afep, in order to provide a common understanding of the compensation elements to be taken into account and thus facilitate comparisons.

Additional information is provided in section 3.3 of this report.

June 2022 update

The June 2022 update of the Application Guide includes, in § 20 Ethics of Directors, the position of the High Committee on the extent of the obligations of discretion and confidentiality to which the permanent representative of a legal entity director is bound in the performance of his duties. It also covers the case of communication of information between a director and the legal entity that proposed his or her appointment, in particular under a shareholders' agreement (see § 3.4).

2.2. Meetings and external contacts

The High Committee held 10 meetings between September 2021 and September 2022, following a planned schedule. In addition, an *ad hoc* meeting was held to deliberate on an urgent referral by a company. The participation rate of the members for the year was 87.78 %.

The High Committee has actively monitored the situation of certain companies and has maintained a constructive dialog with company executives to ensure that the Code's recommendations are properly applied.

While respecting the confidentiality obligations to which they are subject, the High Committee and the 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 heard by the Haut Comité Juridique de la Place Financière de Paris in the context of the preparation of its report on the scope of the legal director's duty of discretion.

In addition, the President and the Secretary General have been asked by the specialized press for interviews or clarifications, as well as to participate in seminars, juries or conferences on subjects such as the compensation of the directors.

2.3. Referrals and self-referrals

The High Committee intervenes both on its own initiative by self-referral and in response to consultations from companies.

Self-referrals

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

They are then linked to systematic mailings after the review of the universal registration documents and meeting brochures published by the companies to point out deviations from the Code or

inadequate information. This year, 17 companies were mailed (compared to 31 in 2021, 14 in 2020 and 33 in 2019). 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 cases, the companies involved have committed to fuller disclosure next year.

These requests are divided between governance issues and compensation issues. The recommendations that HCGE has identified as priorities in 2022 are presented in § 4.1 below.

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.

For the 2021 financial year, compliance with the Code's recommendations is constantly improving in major areas such as the presence of CSR criteria for determining the variable part of executive compensation, the number of women on the Executive Committee/Management Board, the independence of directors, including the lead directors, etc.

Certain recommendations (see § 3.5) remain insufficiently followed, even if progress has already been made in 2022, in particular with regard to the presence of an employee director as a member of the Compensation Committee.

The High Committee will continue to ensure that the recommendations are properly implemented.

Referral 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 starting conditions of a Chief Executive Officer (proposed modification of the non-competition clause);
- the extent of the corporate director's duty of discretion.

2.4. European Dialogue "Seven Chairs Group"

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 in November 2021. This informal forum provides an opportunity to exchange views on governance developments and to reflect on the conditions for more effective codes.

The work focused on:

- changes in the governance codes and the procedures for monitoring their implementation,
- the integration of ESG issues (Environmental, Social and Governance) issues within governance codes,
- gender diversity within the management bodies, the holding of general assemblies in 2021 and 2022 (face-to-face or virtual meetings),
- questions before and during the AGM, "say on climate" resolutions.

The next meeting will address European initiatives in sustainable governance and due diligence.

2.5. Reminder of the recommendations of the Code that are insufficiently applied

The High Committee notes that some of the recommendations of the Code remain insufficiently implemented:

- Compliance with the rules governing membership, in particular the proportion of independent members on the Board and its committees (9.3, 16.1, 17.1 and 18.1)
- Holding meetings without the presence of executive directors (§ 11.3)
- Procedure for the selection of directors (§ 17.2.1)
- Establishing a management succession plan (§ 17.2.2)
- Presence of an employee representative as a member of the Compensation Committee (§ 18.1)
- 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 (§ 24.3 and 24.4)
- Formal commitment by executives not to hedge long-term compensation plans (§ 25.3.3)
- Clarification of the proportion of options or performance shares allocated to executives (§ 26.2) For performance shares, the indication of the proportion of capital allocated to each executive director is reduced.
- Compensation ratio (§ 26.2 and details in the Afep guidelines).

Once again, the letter sent to the companies concerned has been followed up, since the implementation of these recommendations has progressed and continues to progress in 2022, which is not or only partially reflected in the statistics in the 2nd part of the report, as they relate to the 2021 financial year.

3. Main topics addressed by the High Committee

The self-referrals and referrals have given the High Committee the opportunity to examine in greater depth a number of issues for which it was necessary to resolve difficulties of interpretation or application of the AFEP-MEDEF Code.

In addition, the High Committee, as in previous years, has chosen to focus on certain themes independently of any referral or self-referral. The results of these analyses are reported below.

3.1. Sustainable governance and corporate and environmental responsibility

As mentioned in its previous reports, the High Committee is attentive to the discussions on sustainable governance and intends to defend the place of soft law, more particularly in terms of the composition and missions of governance bodies, but also in terms of the control of corporate practices.

Article 1 of the Code states that the Board "shall *promote the creation of long-term value by the company by taking into account the social and environmental challenges of its activities.* "

The High Committee recalls that taking environmental and social issues into account in determining the direction of a company's activity is one of the essential roles of boards, particularly at a time when climate change is becoming a major concern because of the risks associated with it.

In its review of the universal registration documents and meeting documentation, the High Committee examined the compliance of practices with the recommendations of the Code regarding social and environmental responsibility.

As such, the recommendations targeted as priorities for 2022 were:

- **Informing the Audit Committee about exposure to social and environmental risks**

The High Committee noted that several companies provided little or no information in their documentation on the presentation by management to the audit committee, during the review of the accounts, of exposure to social and environmental risks. There has been a significant decline in the application of this recommendation by companies. For fiscal year 2021, only 70 SBF 120 companies will apply this recommendation (compared to 98 in 2020), including 26 CAC 40 companies (compared to all CAC 40 companies in 2020). The High Committee has written to the companies concerned to improve the quality of information on this subject.

- **The presence of CSR criteria, including an environmental criterion, in the variable compensation of executives**

Code Reminder:

"The compensation of these executives (corporate officers) must be competitive, adapted to the strategy and context of the company and must be aimed at promoting the company's performance and competitiveness over the medium and long term by integrating one or more criteria related to social and environmental responsibility." (§ 25.1.1).

Since March 2022, the High Committee's application guide specifies that the determination of an executive's variable compensation must include at least one environmental criterion.

Companies are in the process of evolving and are integrating CSR criteria, including an environmental criterion, into the variable part of their executive directors' compensation and are providing detailed information on the level of achievement of each criterion.

Figures are presented in the second part of this report (§ 9.1).

The High Committee reiterates that it expects CSR criteria to be precisely defined, to be legible, relevant and to integrate the company's own corporate and environmental issues. 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.

It considers as good practices:

- the fact of favoring the presence of measurable CSR criteria (whether qualitative or quantitative);
- the presentation by the general management to the Board of the methodology used to measure the CSR criteria;
- the annual review by the Board of the trajectory set to achieve the CSR criteria.

- **The gender diversity policy**

The High Committee ensures the implementation of genuine policies to increase the number of women in management bodies as promoted by the Code. It verifies both the existence and the consistency.

It has clarified in its implementation guide and its 2020 and 2021 reports the concept of governing bodies and the expectations for reporting targets, implementation of plans, and results, including the reasons why targets were not met and the steps taken to address them.

The proportion of women in management bodies continues to rise, from 25.5% to 27.41% for the SBF 120 and from 23.6% to 26.08% for the CAC 40 at the end of the general meetings held in 2022.

There has been a significant change in the application of the recommendation to set targets for gender diversity in management bodies.

Ninety-seven companies in the SBF 120, or 94.17% of the companies in the sample, have now set gender diversity objectives (compared with 90.2% in 2020). Other figures are presented in the 2nd part of this report (§ 5.3).

The High Committee will continue to monitor the implementation of the Code's recommendations in this area, which concern a group scope (unlike the Rixain Act, which concerns French entities with more than 1,000 employees).

- **The presence of employees on the Compensation Committee**

Boards continue to include directors representing employees.

Although the proportion of companies with an employee director on the compensation committee has increased significantly compared with the previous year, the High Committee continues to promote this practice, which contributes to the proper functioning of the committee.

A few companies indicate that their employee directors do not wish to join the compensation committee or that they do not have the necessary skills. The High Committee has invited these companies to explain the benefits of their presence on the compensation committee to their employee directors and to develop training initiatives to help them acquire the necessary skills.

When companies have several committees in charge of compensation (for example, one in charge of the compensation policy for management bodies and employees, the other in charge of the compensation policy for executive directors and board members), the High Committee has had occasion to point out that the presence of an employee director is recommended in the committee in charge of the compensation of executive directors and board members.

3.2. Selection of future directors

With regard to the selection of new directors, article 17.2.1 of the Code states that the Appointments Committee " *is responsible for making proposals to the Board after examining in detail all the factors to be taken into account in its deliberations, in particular in view of the composition of and changes in the company's shareholder base, in order to achieve a balanced composition of the Board: representation of women and men, nationality, international experience, expertise, etc.* In particular, it organizes a procedure for selecting future independent directors and conducts its own studies of potential candidates before approaching them. *In particular, it organizes a procedure for selecting future independent directors and conducts its own studies of potential candidates before approaching them.* "

As of March 2022, the application guide provides insight into the interpretation of this recommendation made by the High Committee. It invites companies to communicate on the selection process of future directors by describing it in the internal regulations and by reporting each year on its practical application in the corporate governance report.

3.3. The compensation gap ratio

Since 2020, listed companies must publish, pursuant to Article L 22-10-9 of the French Commercial Code, a ratio allowing to measure the differences between the compensation of each executive director and that of the company's employees.

A calculation at the company level makes little sense when the company in question employs a small number of employees in relation to the Group's workforce in France. In this case, the Afep-Medef code recommends, in its article 26.2, the publication of a ratio taking into account a more representative perimeter in relation to the payroll or workforce in France of the companies 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.

In its 2021 report and implementation guide, 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.

In 2021, of the 103 companies concerned, 86 SBF 120 companies (including 28 CAC 40 companies) have chosen to publish information on a broader scope. However, 18 companies (including six CAC 40 companies) did not justify their choice of this scope by mentioning the percentage of the group's workforce in France that it represents. 7 companies (including 3 CAC 40 companies) did not justify the choice of using only a legal scope.

3.4. Scope of the legal director's duty of discretion

On the occasion of a referral by a company, the High Committee had the opportunity to clarify its previously developed position (page 13 of its 2020 Report) on the scope of the legal entity director's duty of discretion (page 15 of the June 2022 Application Guide). This position clarifies the conditions for the transmission of information by the permanent representative to the legal entity and aims to

ensure the preservation of the confidentiality obligation of the directors provided for by the Afep-Medef code.

Article 20 of the Code recommends that *"every director of a listed company is bound by the following obligations (excerpt): with regard to non-public information acquired in the course of his duties, the director is bound by a genuine obligation of confidentiality which goes beyond the simple obligation of discretion provided for by the law"*.

Article L.225-37 of the French Commercial Code provides that *"directors, as well as any person called to attend meetings of the Board of Directors, are required to maintain discretion with respect to information of a confidential nature and given as such by the Chairman of the Board of Directors"*. The AFEP-MEDEF Code also provides that, with respect to non-public information, directors are bound by a genuine obligation of confidentiality that goes beyond the simple obligation of discretion provided for by the law (§ 20).

Although the permanent representative, who plays a personal role on the board of directors, is at the same time a proxy of the shareholder, and as such wishes to pass on some of the information communicated to the directors in the context of the execution of his mandate, the obligation of discretion³ and confidentiality must be imposed on each director, without distinction. There is no reason to apply this obligation differently to the permanent representative of a legal entity insofar as the law is careful to specify that the permanent representative is *"subject to the same conditions and obligations and incurs the same civil and criminal liability as if he were a director in his own name, without prejudice to the joint and several liability of the legal entity he represents"* (article L.225-20 of the French Commercial Code).

Thus, in compliance with the regulations governing the communication and use of privileged information, it is up to each Board of Directors to specify the practical terms of the obligation of confidentiality expected of its members, in the Board's internal rules, as provided for in article 12.1 of the AFEP-MEDEF code.

In this respect, the High Committee considers that the details to be included in the internal rules of the Board of Directors with regard to confidentiality may, if the Board of Directors consents (this consent may be given on a case-by-case basis, in view of the circumstances and in particular of possible conflicts of interest):

- Provide for the possibility of communicating the information collected by the permanent representative to the legal entity that appointed him;
- To limit such communication to the purposes of fulfilling its mission as a director, in the interest of the Company;
- Limit the content to information strictly necessary for this purpose; and
- Authorize the communication of such information to the executive corporate officer of the legal entity director and allow the Company to make the communication to other persons within the legal entity director conditional upon the latter taking all necessary measures to ensure compliance with strict confidentiality, including limiting the number of persons within the legal entity director receiving such information, keeping a list of such persons and ensuring that such persons comply with the regulations governing the communication and

³ The obligation of discretion applies both to information communicated and to discussions within the Board of Directors, since the collegiality of decisions is binding on all.

use of privileged information and, where applicable, with the Company's stock market code of conduct.

The High Committee considers that the rules of procedure may also provide that the board of directors may apply the same principles, *mutatis mutandis*, to the communication of information between a director and the legal entity that proposed his or her appointment, in particular pursuant to a shareholders' agreement. In this case, it is recommended that the Board of Directors make the application of these principles conditional on the shareholder concerned entering into confidentiality undertakings governing this communication in accordance with the above-mentioned principles and on this communication taking place in compliance with the rules applicable to the communication and use of privileged information, and in particular with article 10.1 of the European Regulation on market abuse.

3.5. The independence of the founding directors of a special purpose acquisition company (SPAC)

In 2022, the High Committee was asked by the Autorité des marchés financiers (AMF) to consider the independence of the founding directors of a *special purpose acquisition* company (SPAC) which had chosen to refer to the Code.

The High Committee considers that the survival of the company's legal entity after the de-SPAC transaction in the form of a merger with the target company requires an assessment of the independence of the directors, both in terms of their situation after the de-SPAC transaction and in terms of their situation at the stage of SPAC, a listed entity that existed and was active prior to the merger with the target company.

The High Committee considers that, without establishing a solution of principle in this matter, the Code requires a specific assessment of the situation of each of the directors concerned with regard to the independence criteria mentioned in Article 9 in order to prevent the risk of conflicts of interest, in particular:

- not to have been an executive director of the company during the previous five years (§ 9.5.1);
- not be an investment banker, a commercial banker, or a significant advisor to the company or its group or for which the company or its group represents a significant part of the business (§ 9.5.3);
- not to receive variable compensation in cash or securities or any compensation linked to the company's performance (§ 9.6).

The High Committee recalls that the Code provides that a board of directors may consider that a director who does not meet the criteria set forth in §9.5 is nevertheless independent. The explanation of this position must then be relevant and detailed in view of the particular situation of the company and the director concerned and must be brought to the attention of the shareholders.

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

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

4.1. The presence of CSR criteria in variable compensation

The High Committee reaffirms its commitment to the development of a CSR policy and the importance of flexible law to promote virtuous practices for companies with regard to the integration of criteria related to social and environmental responsibility, including an environmental criterion, in the variable compensation of executives (see § 3.1).

4.2. Diversity on boards and other governing bodies

On the board

With regard to board members, the diversity policy is included in both the flexible law and the Commercial Code.

The AFEP-MEDEF Code recommends that each Board consider the desirable balance of its composition and that of the committees it sets up, particularly in terms of diversity (representation of women and men, nationalities, age, qualifications and professional experience) (§ 6.2). This paragraph echoes the provisions of Article L. 22-10-10 of the French Commercial Code, which require a description of the diversity policy applied to members of the Board of Directors with respect to these criteria.

French companies must mobilize to promote a culture of diversity and inclusion within their teams in compliance with and within the limits of French law regarding the processing of personal data.

The balance sought in the composition of the Board and its committees must contribute to the diversity of points of view and the quality of discussions for the proper performance of their respective missions. In this respect, the High Committee recalls that "*the determination of strategic orientations is the primary mission of the board of directors*" (§ 1.2). The selection of the profiles of the directors must respond to this mission.

Other governing bodies

As in recent years, the High Committee will continue to monitor the implementation of the Code's recommendations on gender diversity in management bodies (see § 3.1).

4.3. Relationships between companies and voting agencies

In 2023, the High Committee intends to conduct a review of the relationship between companies and voting agencies and the management of any resulting conflicts of interest and insists on the role of the chairman of the board or the lead director in relations with voting agencies.