

NOVEMBER 2024

REPORT

OF THE HIGH COMMITTEE
FOR CORPORATE
GOVERNANCE

HCGE

Haut Comité de Gouvernement d'Entreprise



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PREFACE

Since its creation in 2013, the High Committee for Corporate Governance has played a key role in the ongoing improvement of corporate governance in listed companies. While ensuring that the Afep-Medef Code (hereinafter referred to as "the Code") is rigorously applied, it makes sure that the companies that refer to it comply with its letter and spirit and pay particular attention to the quality of the explanations provided under the "comply or explain" rule. Over the years, the High Committee has become a benchmark for best practice in corporate governance.

This eleventh report looks back on a year full of new advances and confirms the process of continuous improvement in company practices, both in terms of content and form. It covers the period from September 2023 to September 2024.

In terms of corporate social responsibility (CSR), progress is continuing and taking shape. Companies have implemented the Code's new recommendations and strengthened the missions of their Boards of Directors. More and more companies are presenting their climate change strategy to shareholders at general meetings. Lastly, gender diversity within management bodies continues to improve and is the subject of objectives that have been communicated and monitored.

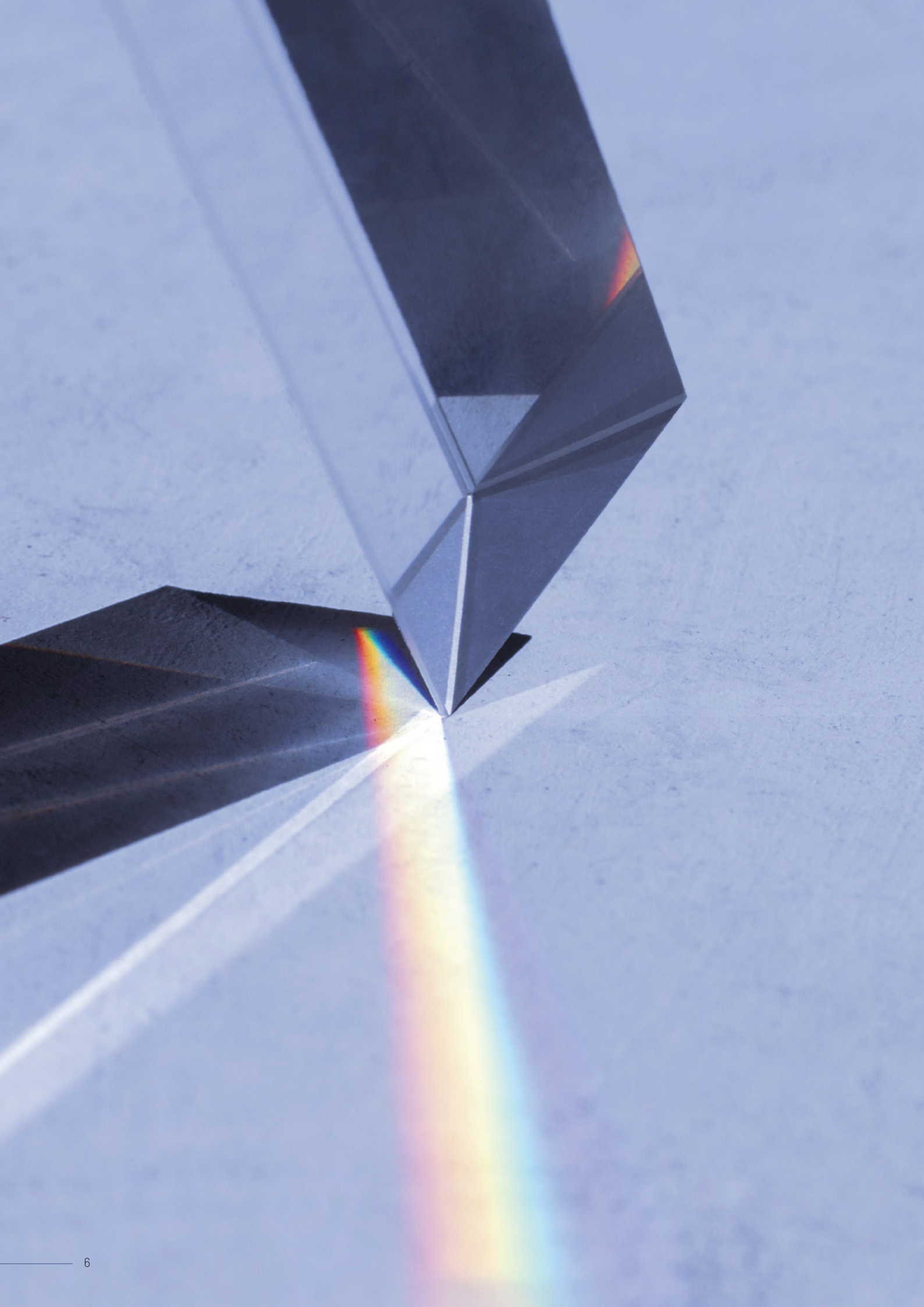
The High Committee remains particularly attentive to developments in this area, as well as to the explanations of companies that deviate from the Code's recommendations, especially with regard to the independence of Directors, Board executive sessions, the presence of an employee Director on the Compensation Committee, or executive compensation and succession plans.

In an increasingly complex general environment, combining geopolitical and economic challenges, societal changes, a multiplicity of risks, and higher interweaving between economic players and civil society, companies need to be agile, ready to seize new strategic opportunities and deal with potential crises. More specifically, the opportunities and new operational and reputational risks associated with artificial intelligence and cybersecurity must be at the heart of the Boards' concerns, whose ultimate responsibility remains to be the "guardians of the temple" of sustainable corporate value creation. With this in mind, the High Committee calls on companies to ensure that their Directors are well-informed about these crucial issues and to step up their training in these areas.

In 2025, the High Committee will continue to anchor its action on the promotion of sustainable and responsible governance, which is key to long-term competitiveness.

Thierry de La Tour d'Artaise

Chairman of the High Committee for Corporate Governance



PART 1

2024 ACTIVITIES

OF THE HIGH COMMITTEE
FOR CORPORATE
GOVERNANCE

1. Missions

According to Article 28.2 of the Afep-Medef Code (hereinafter "the Code"), the High Committee is "responsible for monitoring the application of the corporate governance Code for listed companies that refer to it and for ensuring the effective application of the fundamental rule of corporate governance that is the "comply or explain" principle¹".

The mission conferred by this article of the Code to the High Committee 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 soft law promoted by the High Committee in application of the Afep-Medef code. The idea is to encourage companies to 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, 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 detailed 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.

Furthermore, 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 cases, 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.

¹ *"The explanation to be provided when a recommendation has not been applied must be comprehensible, relevant and detailed. It must be substantiated and adapted to the company's particular situation and must convincingly indicate why this specific aspect justifies an exemption. It must state the alternative measures that have been taken, if applicable, and must describe the actions that allow the company to comply with the aims of the relevant provision of the code" §28.1 of the Code.*

2. Activities of the High Committee

2.1. Updating the Application Guide

On 13 March 2024, the High Committee updated its Application Guide of the Afep-Medef Corporate Governance code. The updated version² is available on its website.

The updated guide includes the positions taken by the High Committee on CSR and Board evaluation in its 2022 and 2023 Reports.

The Board of Directors and social and environmental responsibility (§5 of the Code)

Reminder of the Code:

"5.1 At the proposal of the Executive Management, the Board of Directors shall establish multi-annual strategic guidelines on social and environmental responsibility.

5.2 The Executive Management shall submit to the Board of Directors the measures implementing this strategy, with an action plan and the time frames within which these actions will be carried out. The executive management shall inform the Board of the results that were reached on a yearly basis.

5.3 On climate-related issues, this strategy is accompanied by precise objectives defined for different time frames. The Board shall review annually the results achieved and the relevance, if any, of adapting the action plan or changing the objectives in the light of, inter alia, the evolution of the company's strategy, technologies, shareholder expectations and the economic capacity to implement them.

5.4 The climate change strategy referred to in §5.3 and the main actions undertaken to this end shall be presented to the general shareholders' meeting at least every three years, or in the event of a significant change in the strategy."

The guide has been amended to specify that the Afep-Medef code does not require a "Say on Climate" resolution to be submitted to shareholders. It does, however, require a presentation to shareholders of the company's climate change strategy and the main actions taken.

² <https://hcge.fr/guide-dapplication-du-code-afep-medef-mise-a-jour-2/>

However, companies are free to include an item (without a vote) on the agenda of the General Meeting regarding their climate change strategy, or even to submit a climate resolution to a consultative vote of their shareholders. The decision on how to present the information to shareholders, as recommended by the Code, should be left to each company, depending on its own situation and the responses it intends to give to shareholders' expectations in the light of the dialogue it has maintained with them, particularly in the run-up to the General Meeting.

Assessment of Directors' effective contribution to the work of the Board (§ 11.2): individual interviews to be held

Reminder of the Code:

"The evaluation [of the Board] has three objectives:

- to assess the way in which the Board operates;*
- to check that the important issues are suitably prepared and discussed;*
- to measure the actual contribution of each director to the Board's work."*

The Application Guide has been supplemented to recommend that the assessment of the effective contribution of each Director should be accompanied by individual interviews at least every three years.

The CSR Committee (§16)

Reminder of the Code:

"[...] in addition to the tasks assigned to the audit committee by law, it is recommended that the compensation, the appointments of directors and company officers, and issues relating to social and environmental responsibility should be the subject of preparatory work by a specialised committee of the Board of Directors."

The Code recommends that CSR issues should be the subject of preparatory work by a specialised Committee of the Board of Directors.

The guide specifies that it may be a dedicated committee or a committee with responsibilities other than CSR. Companies should clearly define the tasks of the committee(s) in charge of CSR and specify how they relate to those of other committees that may also prepare CSR matters.

CSR criteria in the variable compensation of Company Officers (§26.1.1 last paragraph)

Reminder of the Code:

“The compensation of these Directors must be competitive, adapted to the company's strategy and context and must aim, in particular, to improve its performance and competitiveness over the medium and long term, notably by incorporating one or more criteria related to social and environmental responsibility, of which at least one criterion related to the climate objectives of the company. These criteria, which are clearly defined, must reflect the most significant social and environmental issues for the company. Quantitative criteria should be given priority.”

The guide has been updated to specify that the High Committee expects CSR criteria to be precisely defined, readable and relevant, and to include the company's specific social and environmental issues. A mere reference to the application of the CSR policy, to an internal CSR program or to undefined general issues are not sufficient.

The High Committee considers the following to be good practices:

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

For examples of CSR criteria, see §3.2 below.

2.2. Meetings and external contacts

The High Committee held ten meetings between September 2023 and September 2024, according to a predefined schedule. In addition, one *ad hoc* meeting was held to deliberate on an urgent consultation from a company. The members' participation rate for the year was 82%.

The High Committee actively monitored the situation of certain companies and engaged in a close dialogue with their 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 Financial Market Authority (AMF) have informally discussed topics of common interest in the context of their respective interventions.

The High Committee periodically meets with representatives of the public authorities to present its missions, as well as the

due diligence carried out, and thereby defend the relevance of soft law in terms of governance.

The High Committee regularly communicates with other market players and participates in marketplace discussions. This year, it took part in the working group on shareholder dialogue, chaired by Michel Prada under the aegis of Paris Europlace. As a result of this work, a guide to shareholder dialogue was published in June 2024.

The High Committee also talked with investors and proxy advisors to better understand their expectations in terms of governance and transparency of executive compensation.

2.3. Consultations and investigations

The High Committee intervenes both on its own initiative, by investigation, 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). As in previous years, several interventions took place for one-off events.

The High Committee systematically sent letters following the review of the 2023 universal registration documents and 2024 AGM notice brochures published by companies, to notify deviations from the Code lacking a detailed and relevant explanation, or shortfalls in the information provided. This year, 24 companies received notifications by post (compared to 21 in 2023, 17 in 2022 and 31 in 2021).

More informal contacts (telephone conversations, e-mails) also took place, when the observed deficiencies seemed more linked to missing information than to voluntary unexplained or incorrectly explained deviations. In most cases the companies involved have committed to fuller disclosure next year. The High Committee will ensure compliance with the commitments made by these companies.

More generally, and despite the wide variety of universal registration documents issued by SBF 120 companies, the annual review of these documents reveals a steady improvement in corporate governance practices and disclosure transparency.

For the 2023 financial year, compliance with the Code's recommendations is improving in major areas, although progress is still expected on certain recommendations (see section 3.5).

Consultations by companies

On three occasions, the High Committee has had the opportunity to deliberate on consultations submitted on behalf of Boards (by Chairs, Committee Chairs, Lead

Directors or Corporate Secretaries) to obtain interpretations or recommendations in a given context.

These deliberations focused in particular on the independence of a Director who has served for more than 12 years and that of a member who had held a position in a consolidated company. On these two issues, the High Committee continues to pay close attention to the explanations provided by companies. Only exceptional or temporary situations may be considered relevant for the application of the "comply or explain" rule.

2.4. European Chairs' Group dialogue

The High Committee drives the European dialogue with the chairs of the committees responsible for drafting or monitoring corporate governance codes in several European countries (Belgium, France, Germany, Italy, the Netherlands, Sweden and the United Kingdom). In 2024, this dialogue was extended to include Spain, which joined the *Chairs' Group* (formerly known as the "Seven Chairs Group").

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.

A meeting was held in April 2024. The meeting agenda included:

- the latest developments in national governance codes and, where applicable, in the codes' application guides,
- sustainable governance,
- cybersecurity,
- relations with CSR rating agencies and data providers.

With regard to the organisation of the *Chairs' Group*, the members agreed to introduce a rotating presidency and to increase the frequency of meetings to strengthen dialogue between the bodies responsible for monitoring codes in different countries.

The High Committee discussed the development of common CSR guidelines with its counterparts. Given the need to maintain European companies' competitiveness, several countries expressed their reluctance to impose new corporate governance recommendations on companies, as they considered implementing the CSRD is a major challenge.

Discussions on this issue will continue within the *Chairs Group* and in the context of intensified exchanges between counterparts.

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

The High Committee notes that some of the Code's recommendations remain insufficiently applied. These are:

- mention in the corporate governance report of the qualitative and/or quantitative criteria used by the Board to assess whether the relationship between a Director and the company or its group is material (§10.5),

- the effective staggered Board (§15.2),
- the presence of a employee Director on the Compensation Committee (§19.1),
- for stock options and performance shares, an indication of the share allocated to each company officer (§26.2 and §27.2).

Nevertheless, the High Committee notes that significant progress has been made. The actions taken by the High Committee and the letters sent to the concerned companies are being followed up and are leading to steady progress in the implementation of the recommendations, as shown by the statistics in Part 2 of the report.

3. Main topics addressed by the High Committee

Investigations and consultations gave the High Committee the opportunity to examine in greater depth a number of issues relating to difficulties in interpreting or applying the Afep-Medef code.

In addition, the High Committee, independently of any consultation and investigations, has selected several topics for discussion. The results of these analyses are reported below.

3.1. Sustainable governance and social and environmental responsibility

THE DISTRIBUTION OF RESPONSIBILITIES IN TERMS OF SOCIAL AND ENVIRONMENTAL RESPONSIBILITY

The Board of Directors and social and environmental responsibility (§5)

The Code provides that:

- At the proposal of the executive management, the Board of Directors shall establish multi-annual strategic guidelines on social and environmental responsibility.
- The executive management shall submit to the Board of Directors the measures implementing this strategy, with an action plan and the time frames within which these actions will be carried out. The executive management shall inform the Board of the results that were reached on a yearly basis.
- On climate-related issues, this strategy is accompanied by precise objectives defined for different time frames. The Board shall review annually the results achieved.
- The relevance, if any, of adapting the action plan or changing the objectives in the light of, inter alia, the evolution of the company's strategy, technologies, shareholder expectations and the economic capacity to implement them.
- The climate change strategy referred to in § 5.3 and the main actions undertaken to this end shall be presented to the general shareholders' meeting at least every three years, or in the event of a significant change in the strategy.

The High Committee notes that SBF 120 companies apply these recommendations of the Code .

The presentation of their climate change strategy by SBF 120 companies is now a widespread and recurring practice. The High Committee ensures that all companies implement this recommendation of the Code at least every three years.

Out of the 100 companies in the panel that refer to the Afep-Medef code, 74 presented their climate change strategy or an update on its implementation at their 2024 Annual General

Meeting (AGM)³. Among these, 9 included an item on their AGM agenda and 5 consulted their shareholders on their climate change strategy ("Say on climate").

The High Committee has noted a practice whereby a Director or censor is specifically responsible for CSR or climate issues.

The High Committee believes that the appointment of these advisors or experts should not lead to removing responsibility in these matters from the other Directors, since the Board has a collective accountability.

In its 2023 Report (p.16 and 17), the High Committee commented on the training and skills expected of Directors in the area of CSR.

Board committees (§16)

The Code recommends that a specialised committee of the Board of Directors prepares the work on CSR issues.

The High Committee notes that SBF 120 companies vary in their practices in this area.

They entrust the preparation of CSR issues either to:

- a dedicated CSR committee,
- a CSR committee combined with other responsibilities, or
- several committees, each of which prepares specific aspects (e.g. CSR criteria in executive compensation are the responsibility of the Compensation Committee, the definition and monitoring of gender diversity targets falls within the competence of the Nominations Committee, and the review of CSR risks comes under the remit of the Audit Committee).

For the High Committee, this may be a dedicated committee or one or more committees with responsibilities other than CSR. Boards are best placed to assess the most appropriate governance for their company and to decide on the allocation of responsibilities between committees on these matters.

According to the Code, the Audit Committee's review of the financial statements "must be accompanied by a management presentation describing the company's exposure to risks, including those of a social and environmental nature [...]" (§17.2).

³ For the record, 85 of the companies in the sample had already presented their climate strategy at their Annual General Meeting in 2023.

In 2023, 90% of SBF 120 companies and 97.14% of CAC 40 companies applied this recommendation.

If a company chooses not to apply this recommendation and to entrust/assign the review of CSR risks to a committee other than the Audit Committee, the High Committee believes that the designated committee should discuss with the Audit Committee the identified risks and the risk management mechanisms.

With the implementation of the CSRD (*Corporate Sustainability Reporting Directive*), the legal remit⁴ of the Audit Committee have been extended to include the process of preparing sustainability disclosures.

Where necessary, the Audit Committee makes recommendations to ensure the integrity of these processes.

It should be noted that the French law provides that the tasks related to sustainability information may be carried out by a specialised committee separate from the Audit Committee.

Given the flexibility offered by the law and the Code, companies should clearly define the CSR responsibilities assigned to one or more committees and specify how they relate to those of the other committees.

For example, the committee(s) accountable for CSR issues may be given the following responsibilities:

- examining the CSR strategy and action plan, including the company's commitments in this area, monitoring their implementation and making any relevant proposals,
- reviewing commitments regarding investments and the trajectory set to achieve CSR objectives,
- exploring non-financial opportunities and risks, in particular environmental, social and societal issues,
- reviewing the sustainability report, including in particular non-financial performance criteria; monitoring the assessment of double materiality to be carried out in accordance with the requirements of the CSRD,
- helping to set up the non-financial targets for the annual and/or long-term variable compensation of executive directors, in line with the CSR strategy; reviewing and contributing to determine the target achievement rate,

⁴ French Ordinance no. 2023-1142 of 6 December 2023 on the publication and certification of sustainability information and the environmental, social and corporate governance obligations of commercial companies and French Decree no. 2023-1394 implementing the above-mentioned ordinance. These provisions came into force on 1 January 2024.

- examining the Code of Ethics, the organisation as well as the rules and procedures in place; any breaches of the Code of Ethics and the action plans implemented as a result,
- analysing how the program proposed by the company (i) contribute to the objectives of reducing its environmental footprint and to actions in favour of climate and biodiversity; (ii) contribute to more efficient and responsible use of natural resources and (iii) facilitate circular economy,
- reviewing the company's commitments in terms of diversity and inclusion, and well-being in the workplace,
- monitoring anti-corruption program and the compliance/vigilance plan,
- making a recommendation to the Board of Directors on the statutory auditors to certify sustainability information to be proposed for appointment by the General Meeting...

THE GENDER DIVERSITY POLICY

As early as 2018, the Code recommended the implementation of a diversity policy aiming at a balanced representation of women and men in executive bodies. The introduction of gender diversity targets in the Code in 2020 has led to significant progress within Executive Committees.

Almost all the companies in the SBF 120 have set gender diversity targets (see Part 2, section 5.3 below). Whether in the SBF 120 or the CAC 40, the proportion of women on companies' Executive Committees has been increasing every year. Between 2020 and 2023, it rose from 22% to 30% for both indexes.

The High Committee's Application Guide specifies that "the notion of governing bodies refers to Executive Committees, Management Committees and, more broadly, senior management. It is up to each Board to determine the appropriate perimeter. This scope includes at least the Executive or Management Committee or any similar committee.

Companies set percentage targets for the gender diversity of the highest governing bodies, and establish a target for Executive and/or Management Committees. These objectives are set within a time frame to achieve them and must consider the current composition of the governing bodies and the human resources available to the company, in particular in terms of moving talent to higher hierarchical levels.

Companies clearly identify, in their universal registration document, the governing body or bodies at the level of which objectives are set (Executive Committee, Management Committee, other).

The action plans to improve gender diversity of governing bodies must be ambitious and quantified, and the time frame in which the actions must be carried out must be justified. The implementation of the plans must be monitored and the

results published, including the reasons why the targets were not met and the measures taken to correct this. [...]".

The High Committee reiterates that specific objectives must be set for the Executive Committee or the Management Committee.

The High Committee continues to promote gender diversity on the management boards of companies with a Management Board and a Supervisory Board.

The High Committee will pursue its work to monitor companies' implementation of the recommendations of the Code in this area.

THE PRESENCE OF EMPLOYEES ON THE COMPENSATION COMMITTEE

The proportion of companies with an employee Director on the Compensation Committee⁵ continues to increase, from 77.9% in 2022 to 88.9% in 2023 for SBF 120 companies and from 79.4% to 85.3% for CAC 40 companies.

The High Committee recalls the importance of this recommendation, the implementation of which contributes to the proper functioning of the Board (2022 Report, Part 1, §3.1.).

The explanations given by companies in case of deviation relate to the corporate form of the company, a history of strong employee shareholding with specific governance structures, a temporary derogation linked to a new term of office for an employee Director, etc. The High Committee is continuing its dialogue with the concerned companies and is pursuing its action to ensure that this recommendation is effectively implemented.

⁵ Among the companies subject to the legal obligation to appoint employee Directors.

3.2. Inclusion of CSR criteria, including climate change-related, in the variable compensation of Company Officers

Section 26.1.1 of the Code, revised in December 2022, recommends that the compensation of Company Officers "must aim, in particular, to improve its performance and competitiveness over the medium and long term, notably by incorporating one or more criteria related to social and environmental responsibility, of which at least one criterion related to the climate objectives of the company. These criteria, which are clearly defined, must reflect the most significant social and environmental issues for the company. Quantitative criteria should be given priority".

The High Committee's Application Guide specifies the procedures for implementing this recommendation and identifies good practices (see §2.1 below).

The High Committee notes that in 2023, all companies that awarded annual variable compensation to their executives included one CSR criteria or more.

88.7% of SBF 120 companies have included a climate change-related criterion, either in the annual variable compensation of their Executives or in long-term compensation (multi-year variable compensation, stock options or performance shares).

In particular, CSR objectives can be linked to the Paris Agreement and target greenhouse gas (GHG) reductions, energy efficiency, biodiversity, water use, circular economy, gender diversity, health and safety at work, diversity and inclusion, compliance, ethics and governance.

Examples include:

- on environmental issues: targets for eliminating single-use plastics, halting deforestation and the conversion of natural ecosystems within operations and supply chains, targets for preserving wildlife habitat areas, rate of direct-source renewable energy, targets for self-generated renewable energy, rate of sustainable raw materials in products, targets for recycled or reused waste;
- specifically, on climate issues: targets to reduce greenhouse gas emissions, specifying the scope and the time frame; obtaining the SBTi label and achieving level A- for the Carbon Disclosure Plan for all the group's businesses;
- on social issues: targets relating to safety and well-being at work, employee share ownership, gender diversity in management bodies, employee training on discrimination, employee commitment and equal pay.

These examples are not prescriptive. They are merely illustrative. Each company must define the relevant criteria on a case-by-case basis in line with its strategy.

CSR criteria are subject to the same recommendations in the Code as other Company Officers' compensation criteria. The High Committee reminds that companies should disclose in their annual reports the rules governing the grant of compensation, with an indication of the criteria used to determine it: qualitative and quantifiable criteria (subject to the confidentiality of certain elements). In particular, the report should indicate how the criteria have been applied in relation to what had been planned for the financial year and whether personal objectives have been met.

Part 2 of this Report presents examples of good practices.

3.3. Performance share plans

The High Committee would like to raise again the Code's recommendations on performance share plans.

Section 26.3.3 of the Code states that:

"The aim of the long-term compensation mechanisms is not only to encourage Directors to adopt a long-term approach but also to secure their loyalty and harmonise their own interests with the corporate interest and the interests of shareholders.

[...]

These plans, the award of which must be proportionate to the annual fixed and variable compensation components, must provide for demanding performance conditions to be fulfilled over a period of several consecutive years. These conditions may be performance conditions that are internal to the company or relative conditions, that is to say linked to the performances of other corporations, a reference sector, etc. If chosen as a criterion, the share price may be assessed on a relative basis (comparison with similar companies or indexes). Whenever possible and relevant, these internal and relative performance conditions should be combined.

[...]

Company Officers who are beneficiaries of stock options and/or performance shares must make a formal commitment not to engage in any hedging transactions in respect of their own risks with regard to options, shares resulting from the exercise of options or performance shares, and to respect this commitment until the end of the share retention period determined by the Board of Directors."

The High Committee reminds companies that:

- Share allocations must be proportionate to the fixed and variable annual compensation,
- The performance conditions must be demanding and cover several consecutive years (a single year of performance does not satisfy the Code's recommendation),
- These conditions may be performance conditions that are internal to the company or relative conditions, that is to say linked to the performances of other corporations, a reference sector, etc. If chosen as a criterion, the share price may be assessed on a relative basis (comparison with similar companies or indexes),
- The Company Officers to whom the allocation is made must formally commit not to hedge the risk associated with the performance shares until the end of the holding period set by the Board of Directors.

According to § 27.2 of the Code:

"According to Section 27.2 of the Code, the report on corporate governance must include a chapter, prepared with the support of the compensation committee, devoted to informing shareholders of the compensation received by Company Officers. This chapter must contain a detailed presentation of the policy determining the compensation of the Company Officers, in particular 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[...]"

The performance conditions set by the Board for the acquisition of performance shares must be disclosed in the annual reports in accordance with the High Committee's Application Guide. The reports shall indicate the weighting of the performance criteria on which the performance shares are based and how the criteria have been applied compared with what had been planned for the financial year (subject to the confidentiality of certain information).

3.4. Cybersecurity

Companies operate in a global digital ecosystem and are faced with an ever-increasing number of cyber risks. These arise from human error, negligence, rampant social engineering and malicious intent. Cyber-attacks exploit corporate vulnerabilities and failures as the main vector for intrusion and compromise. They are increasingly numerous, sophisticated and multifaceted (theft of confidential data, encryption of files, industrial espionage, identity theft, fraud and embezzlement, disruption of operations through attacks on infrastructure or within the value chain, etc.), with heavy impacts that can lead to business failure.

As a result, cybercrime is one of the major risks on the corporate risk map, and implementing a robust cybersecurity policy has become crucial.

The Executive Management submits to the Board of Directors the procedures for implementing this policy, which may include in particular:

- the organisation put in place by senior management to prevent cyber-attacks and to respond appropriately in the event of an incident (crisis plan, recovery plan, assignment identification of respective responsibilities),
- the measures implemented and the investments planned and their financial coverage,
- the development of systems in line with new technologies,
- the coverage and insurability of cyber risks,
- a regular review of identified attacks and corrective action plans.

The Board of Directors may draw on the work of a specialist Board committee in this area (e.g. the Audit and/or Risk Committee) and seek the advice of internal or external cyber security experts.

Here again, the High Committee does not necessarily recommend the identification of a "cyber lead" Director who alone would have the necessary skills within the Board. Against this backdrop of heightened risk, the High Committee urges companies to strengthen the training for all Directors in this area.

3.5. Artificial intelligence

While the French Artificial Intelligence Commission's Report published on 13 March 2024 starts from the observation that France and Europe are clearly lagging in terms of artificial intelligence (AI), it highlights the fact that European companies are positioned across the entire AI value chain, and that the French artificial intelligence ecosystem is exceptionally dynamic.

Artificial intelligence, in its various forms, is a new technological revolution that can generate both value and harm for companies (commercial, reputation, security, governance, ethics, etc.) and their stakeholders.

It is essential that companies address these issues and understand their full scope and complexity, within a regulatory framework that is still evolving.

The general management needs to have the best possible overview of all aspects of AI deployment within the company, in order to manage and minimise risks, and to keep abreast of innovations.

The Board of Directors must be kept regularly informed of the challenges and opportunities, and ensure that AI is integrated into the company's strategy in accordance with the principles of governance, ethics and security. The High Committee calls on companies to step up training for Directors in this area.

The High Committee will continue its work on this issue in 2025.

3.6. Relations between companies and CSR data providers

The growing interest in recent years in responsible investment, which combines economic performance with respect to the environment and social responsibility, is based increasingly systematically on non-financial ratings.

The absence of a standardised international, European and national regulatory framework for non-financial ratings leads to a lack of convergence and comparability between ratings. Companies may find it difficult to engage in a dialogue with CSR data providers, to understand their methodology and the management of controversies due to a lack of transparency, to gain recognition for the specific features of their sector of activity, to prevent conflicts of interest, etc.

Since 2024, non-financial rating agencies have been approved and supervised by the European Securities and Markets Authority (ESMA). The introduction of the Regulation on transparency and integrity of ESG rating activities is intended to improve transparency regarding the methodologies and sources used by the agencies and make the ratings more reliable and more comparable for investors and companies. At the same time, the CSRD will help increase the standardisation of data from companies.

To avoid the risk of conflicts of interest, the European Regulation requires that certain activities should be provided by separate legal entities. Some of these activities could, however, be offered within the same legal entity if the providers have sufficient measures and procedures in place to ensure that each activity is carried out independently and to avoid creating potential risks of conflicts of interest in the decision-making process for its rating activities. This exemption should not apply to credit rating activities, audit activities or consultancies (including the development of sustainability strategies and sustainability risk or impact management strategies).

The High Committee will monitor the implementation of measures to prevent conflicts of interest.

3.7. Studies carried out by the High Committee

THE PRESENCE OF NON-VOTING DIRECTORS ON BOARDS ("CENSORS")

A study carried out by the High Committee on the presence of non-voting Directors on the Boards of SBF 120 companies reveals a wide variety of situations.

The High Committee encourages companies to provide information on the terms of their appointment, their role and their duties within the Board.

IMPLEMENTATION OF THE CODE BY CONTROLLED FAMILY COMPANIES

The High Committee conducted a study on the application of the Code's recommendations on corporate governance by controlled family-owned companies⁶. The sample consists of 26 companies part of the SBF 120 index.

The study covered the 2022 financial year and revealed relatively few divergences compared with the SBF 120. Controlled family companies comply with the Code to a degree that is relatively comparable to the SBF 120, except in

certain areas identified in the study. The High Committee will continue its dialogue with the companies concerned to invite them to provide precise and relevant explanations in cases of non-application of the Code's recommendations.

Choice of management mode

Controlled family companies have chosen the following corporate forms:

- 42.3%: public limited companies with a Board of Directors and separation of functions (compared to 55.7% for SBF 120 companies),
- 34.6%: public limited companies with a Board of Directors and unicity of functions (compared to 30.7% for SBF 120 companies),
- 7.7%: companies with management and supervisory boards (compared to 9.6% for SBF 120 companies),
- 15.4%: limited partnership with share capital (compared to 3.8% for SBF 120 companies).

As a result, more of them opt for the unicity of functions and the form of limited partnership with share capital versus companies with dispersed capital (for capital-related reasons, family roots and control, succession issues, etc.).

Presence of a lead Director

It should be highlighted that only 18.7% of family-owned companies with unicity of functions have appointed a lead Director (compared to 71.9% for the sample as a whole). All the lead Directors are qualified as independent.

Independence of Board members

All family-owned companies state that they comply with the independence criteria. However, fewer family-owned companies specify the criteria used to determine whether business ties are material (57.7% vs. 71.1% for SBF 120 companies).

Regarding the independence criteria set out in the Code, the criteria most rejected by the family-owned companies were the absence of cross-directorships and a term of office of less than 12 years.

Presence of employee Directors

80.8% of family-owned companies have employee representatives on their Board.

Due to their shareholding structure, family-owned companies seem to find it more difficult than other companies to apply the recommendation concerning the presence of an employee Director on the Compensation committee (57.1% compared to 77.9% for the SBF 120 as a whole).

⁶ Within the meaning of Article L. 233-3 C. COM.

Recommendations least followed

The recommendations least followed by family-owned companies in 2022 were as follows:

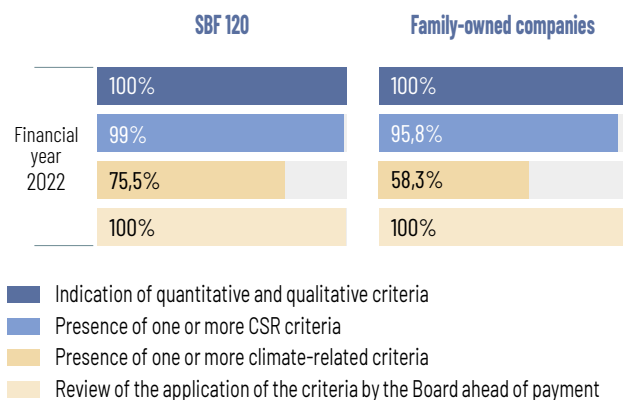
- Implementing a process for effective staggered Board,
- evaluation of the effective individual contribution of Directors,
- presence of an employee Director in the Compensation Committee,
- inclusion of a climate criterion in Executives' compensation.

Proportion of independent members on Committees

In family-owned companies, the recommendations relating to the proportion of independent members on committees are slightly less respected than for the panel as a whole: proportion of 2/3 independent members on the Audit Committee (80.8% compared to 91.3% for SBF 120 companies); majority of independent members on the Compensation Committee (76.9% compared to 90.4%); majority of independent members on the Nomination Committee (66.7% compared to 85.3%), if there is a committee separate from the Compensation Committee.

CSR criteria in executive compensation

Presence of CSR criteria, including climate-related, in variable annual compensation and/or variable long-term compensation (variable multi-year compensation, stock options or performance shares)



In 2022, 95.8% of family-owned companies included one or more CSR criteria in their executive compensation. The presence of one or more climate-related criteria should increase significantly with the implementation of the Code's new specific recommendation on this topic.

They are more in line with the recommendations on severance pay than other companies:

- 100% provide for a 2-year cap of fixed and variable compensation (compared to 93.5% for SBF 120 companies) - the percentages are similar for non-competition indemnities,
- 100% provide performance conditions over at least 2 financial years for termination payments (compared to 89%).

As regards the pay gap ratio, fewer family-owned companies publish information on a broader scope, in accordance with the Code, which recommends taking into account a representative scope versus total payroll or workforce in France (76.9% compared with 86.5%).

Although listed family-owned companies have specific characteristics and challenges, most of them now comply with all the recommendations. They are also increasingly committed to developing the principles of good governance, in particular to meet the expectations of investors, whose investment decisions increasingly include a governance pillar.

IMPLEMENTATION OF THE CODE BY LIMITED PARTNERSHIPS

The High Committee examined the main adaptations made by the listed limited partnerships with share capital ("*société en commandite par actions*" - SCA) included in the SBF120 index when they apply the recommendations of the Afep-Medef code or decide to depart from them. Due to the legal characteristics of the SCA, the Afep-Medef code states that "[the recommendations] have, for the most part, been written with reference to public limited companies with a Board of directors. Public limited companies with a management Board and a supervisory Board, as well as limited partnerships with shares, should therefore make the necessary adaptations".

For the record, a limited partnership with shares is a joint-stock company with 2 categories of partners:

(i) the general partner or partners ("*commandités*"), who are indefinitely and jointly and severally liable for the company's debts, and whose status is comparable to that of partners in a general partnership (SNC); and

(ii) the limited partners ("*commanditaires*"), who have the same prerogatives as the shareholders of a public limited company.

The general partners control the appointment of the managers ("*gérants*"), who are in principle appointed by the General Meeting of limited partners with the consent of the general partners or, if the Articles of association so provide, by the general partners alone. The Articles of association of SCAs often provide that the managers may only be removed from office by a unanimous decision of the general partners.

In addition, the limited partners appoint (at an ordinary General Meeting) a Supervisory Board, which, by law, has a permanent management control role with the same powers as the statutory auditors. It should be noted that (i) general partners may not be members of the Supervisory Board and (ii) limited partners are prohibited from interfering in

management, otherwise they are "jointly and severally liable with the general partners for the debts and commitments of the company arising from prohibited acts".

The specific nature of the corporate bodies of the SCA and their legal powers distinguish them from the corporate bodies of a corporation ("*société anonyme*"), whether it has a monistic or dual governance structure.

Main "incompatibilities" and adjustments

a) The main areas of "incompatibility" with the recommendations of the Afep-Medef code identified by these listed SCAs concern:

- the status of the manager,
- the compensation of the manager, which is in principle the responsibility of the general partner(s),
- the collegiality of the decision-making body, and the role of the Supervisory Board in defining strategic orientations and approving the most important decisions, taking into account the respective roles of the managers and the Supervisory Board,
- the role of the Nominations Committee and the Compensation Committee, taking into account the role of the general partner(s) in the appointment, compensation and dismissal of the manager, as well as in the establishment of a succession plan,

b) The main adaptations noted and presented by certain companies as intended to apply the spirit of the Code's recommendations are as follows:

- The collegial nature of the decision-making body and the role of the Supervisory Board in defining strategic orientations and approving the most important decisions:
 - the main change is to extend the Supervisory Board's role under the by-laws, giving it the power to issue a formal opinion or, as the case may be, to be consulted on certain strategic or important decisions,
 - it may be stipulated that the manager presents to the supervisory Board the CSR guidelines that he has determined and whose results he has examined,
- The status of the manager:
 - the appointment or dismissal of the manager is sometimes subject to a reasoned opinion or the agreement of the Supervisory Board,
- Manager's compensation:
 - the Supervisory Board is sometimes called upon to give an opinion on the compensation policy of the non-general partner manager(s),

- The role of the Nominations Committee and the Compensation Committee, taking into account the role of the general partner(s) in the appointment, compensation and dismissal of the manager, as well as in the establishment of a succession plan:
 - in certain cases, the Committee is given the power to propose a compensation policy for the manager to the general partner or the Supervisory Board, or to analyse the proposed performance criteria for the compensation of the managers,
 - SCAs specify that the succession plan is the responsibility of the general partner(s) but it may be provided that the plan is "reviewed" by the Supervisory Board to ensure that it at least exists.

The High Committee recognises that the ways in which the recommendations of the Code are adapted depend on the structure of each SCA, its business, the role of the managers and other specific factors, and that it therefore does not seem possible to establish a single reference framework for adapting the recommendations of the Afep-Medef code. The High Committee invites limited partnerships with share capital to seek appropriate ways to adapt these recommendations and to provide detailed explanations.

The High Committee will continue to examine deviations from the Code by limited partnerships with share capital, and to assess the relevance of the explanations provided.

4. Topics for discussion by the High Committee in the coming year

In 2025, the High Committee will continue and expand its work on the following topics:

4.1. Artificial intelligence

The High Committee will continue its work (see §3.5. below) on artificial intelligence and the issues it raises for Boards of Directors. Future discussions within the *Chairs' Group* will enable the High Committee to compare its approach with that of its European counterparts.

4.2. Governance as a tool for crisis prevention and management

On the basis of recent cases, the High Committee will consider how implementation of the Code can prevent companies from failing. In this context, certain recommendations may be of particular relevance, such as the introduction by companies of rigorous processes for identifying strategic risks and opportunities, the selection of Executives and Board members, the independence of Board members in accordance with the recommendations of the Code, the evaluation of senior management, the Board and its committees, and succession planning.

4.3. Relations between companies and proxy advisors

In 2025, the High Committee will monitor developments in the voting policies of proxy advisors and their implementation. Given the growing influence of proxy advisors on the outcome of votes cast at general meetings of listed European companies, it will continue to discuss this issue with its counterparts in the Chairs Group, particularly with regard to recommendations on multiple voting rights (including double voting rights under French law).

4.4. Linking governance and CSR policy

The High Committee will monitor the implementation of the Code's recommendations on CSR policy and their translation into corporate governance. This is currently a testing ground for companies, and practices in this area are likely to evolve significantly in the coming years.

These topics are not exhaustive, and the High Committee's work program may change over the year.



HCGE

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