October 2016

High Committee for Corporate Governance

Annual Report 2016

HCGE

Haut Comité de Gouvernement d'Entreprise

This document is an unofficial English translation of Part One of the 2016 annual report of the Haut Comité de Gouvernement d'Entreprise *(High Committee for Corporate Governance), a body set up by French business associations AFEP and MEDEF to monitor the implementation of the AFEP-MEDEF Corporate Governance Code for Listed Companies. It does not include Part Two of the original report, which is a detailed analysis based on the monitoring of the annual reports/reference documents of SBF 120 index companies.*

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PREFACE

This is the third annual report published by the High Committee for Corporate Governance since it was formed in 2013.

The statistical information in the second part of this report[1], which records the implementation of some 100 recommendations of the Afep-Medef code, shows that there has been a continuous improvement in compliance with the Code. Beyond the formal aspects of such compliance, this undeniably reflects an improvement of governance practices, which contributes to the attractiveness of France as a financial centre.

The High Committee's recommendations, whether in response to consultations or on its own initiative, are widely followed. They often relate to governance issues as such, and not only to remuneration issues although the latter attract more general attention. The High Committee's therefore plays a decisive part in the enhancement of an efficient professional regulation, and in particular the implementation of the "comply or explain" rule. Any steps taken to weaken that rule would be a backward move in the adaptation of French companies to the global economy.

The revised version of the Afep-Medef code, which will be released shortly after this report and to which the High Committee has contributed, will be an important new step in the improvement of companies' governance practices.

Denis Ranque

Chairman of the High Committee for Corporate Governance

[1] Not included in this English translation. Cross-references to that part of the French original version have however been kept.

Introduction

This report covers the period from September 2015 to August 2016. It follows on from the first two reports issued by the High Committee, which were published in October 2014 and October 2015.

It may be recalled that the High Committee, which was set up in 2013, consists of a panel of four experts who either hold or have held executive positions in international groups (including the Chairman) as well as three other qualified individuals who represent the investors and/or have been chosen for their expertise in the legal or corporate governance fields. These individuals are appointed for a period of three years, which may be renewed once based on a mechanism of staggered terms of office. The first renewals will therefore take place by the end of 2016, some of them for periods shorter than that of the initial term of office.

According to § 25.2 of the November 2015 version of the Afep-Medef code, the High Committee is responsible for monitoring the application of the principles set out in this Code. To this end, it may, on the one hand, be approached by the boards of directors or supervisory boards of the companies that are covered by this Code with regard to any provisions it contains or any interpretation thereof, and, on the other, it may choose to consider issues at its own initiative in order to draw the attention of boards to recommendations of the Code that companies fail to apply without giving sufficient explanation. It also has the task of "*proposing amendments to the code in the light of changing practices, including at the international level, the recommendations or areas of consideration addressed by the AMF or also the demands of investors*".

The information contained in this Report comes primarily from a systematic review of the registration documents [*documents de référence*] published by the companies that reference the Afep-Medef code and are listed in the SBF 120 index, which is addressed in the 2nd section [*not included in this translation*]. The High Committee also examined, although in a less detailed fashion, the annual reports of companies not included in the SBF 120 index: at the start of 2016, it reviewed the 2014 annual reports of those listed in the CAC All Tradable index with a market capitalisation of more than €250 million, approximately half of which (i.e. 46 companies) refer to the Afep-Medef code.

This year, the High Committee once again observed a continuous improvement in corporate compliance with the principles and good practices set out in the Code, reflected not only by the statistics resulting from a provision-by-provision analysis as described in section 2 of this Report but also by the fact that its own recommendations have to a large extent been followed.

In its document "*Etude comparée : les codes de gouvernement d'entreprise dans 10 pays européens*" [Comparative study: codes of corporate governance in 10 European countries] published on 30 March 2016, the Autorité des Marchés Financiers [AMF, the French financial markets authority] emphasized the originality of the nature of the drafting of the Afep-Medef code entrusted, as provided for by law, to "organisations that represent the companies"[2]. Since the major revision undertaken in June 2013, the professional associations responsible for updating the Code took the initiative of consulting the various stakeholders regarding the draft revisions and decided, for the purposes of the present revision, to launch a public consultation on a dedicated Internet site over the period from May to the end of July 2016. A summary of the responses received will be published in the autumn under the auspices of Mr. Bertrand Fages, professor at the University of Paris I in parallel with the revised Code. It should be pointed out that the associations remain responsible for editorial decisions, an arrangement that has the advantage of ensuring that the stipulations of the Code are better tailored to good corporate functioning. The role of the High Committee, which consists of a majority of directors or former directors of international groups, follows the same approach.

[2] Art. L.225-37 para. 7 and L.225-68 para. 7 of the Commercial Code.

1. Activities of the High Committee in 2015-2016

1.1. Meetings and external contacts

The High Committee met ten times between September 2014 and August 2015, with an attendance level among its members of 89 %. Between these meetings, e-mail exchanges and telephone conferences were organised as required, in particular in order to prepare urgent opinion statements.

At one of its meetings, the High Committee met with specialist consultants who explained to it the practices relating to succession planning and self-evaluations on the part of boards. This made it possible, in particular, to refer to the provision of the Code stating that the annual evaluation undertaken by boards of directors must, among other things, aim to "*measure the actual contribution of each director to the board's work through his or her competence and involvement in its deliberations*" (§ 10.2). In France, it is still the case that only a few companies include an evaluation of individual contributions in their appraisal processes. However, they nevertheless consider that far from impairing the cohesiveness of the board, this practice is useful not only in guiding the work of the appointments committee but also for the directors themselves.

The Chairman visited the chair of the British Financial Reporting Council and attended a meeting of the chairpersons of the committees responsible for supervising the codes of corporate governance in Germany, Great Britain, Italy and the Netherlands. The secretary general held a number of informal meetings with company secretaries or legal directors of companies that refer to the Afep-Medef code, took part in various conferences and seminars dedicated to governance-related questions, presented the High Committee and its work to the Belgian "Corporate Governance Commission", and was heard by a member of the French parliament regarding the draft legal reforms concerning directors' remuneration.

While respecting the confidentiality of their activities involving companies, the High Committee and AMF maintained their informal contacts to ensure the consistency of their respective positions.

1.2. Requests from companies

The High Committee received a number of requests for interpretation of the Afep-Medef code, either formally from boards of directors or supervisory boards, or informally via its secretary general or through the AFEP and MEDEF Legal Departments.

In particular, these questions related to:

- the results of an earlier consultation by the High Committee relating to exceptional remuneration;
- the qualification of the independence of directors who also exercise functions in an affiliate or subsidiary of the company (see the High Committee's position on this issue in its 2015 Activity Report, p. 17);
- the possibility of entrusting to a lead director the task of communicating with shareholders in the board's name (the High Committee considers that this is possible provided that the principles of French law are respected, namely that the directors can only jointly adopt an external position and that only the Chief Executive Officer or the management board can make commitments on the part of the company);

- the conditions under which a defined benefit pension plan can be replaced by a defined contribution pension plan;
- the concept of "executive or internal" director in the practice of meetings of non-executive directors (see § 3.3 below);
- the conditions applicable to the number of offices held by executives whose principal function is that of director of a holding company (see Guide to the application of the Afep-Medef code, December 2015, p. 6).
- the High Committee has also received letters from shareholders involved in disputes relating to issues of governance, pointing out areas in which their companies fail to comply with the Code. The High Committee is clearly unable to intervene in such disagreements. It confirms that it can give opinions on the interpretation of the Code only in response to requests received from boards of directors or supervisory boards (either directly or via external consultants with an identified mandate so to do). It nevertheless retains the possibility of deciding to deliberate at its own initiative if the discrepancies indicated in this way appear to be particularly serious and characteristic of the company in question.

1.3. Initiatives undertaken by the High Committee

During the year, the High Committee addressed at its own initiative letters to the chairpersons of various companies, in particular:

- on the occasion of the publication of information on the award of remuneration to executive directors;
- in order to point out discrepancies from the Code, or a failure to supply adequate information, to companies not belonging to the SBF 120 index but nevertheless making reference to the Afep-Medef code (see § 4.1 below);
- following the publication of annual reports/registration documents, to some forty companies listed in the SBF 120 in order to point out discrepancies from the Code or inadequate explanations for such discrepancies or to draw their attention to points that it considers important.

The recommendations set out in these letters are almost invariably adopted by the companies to which they are addressed. These companies are also increasingly referring to the opinions received from the High Committee in the explanations they give for certain aspects of governance in their registration documents.

Furthermore, in December 2015, the High Committee revised and extended its Guide to the application of the Afep-Medef code. The revisions related in particular to the sections relating to the justification for the choice of a mode of governance, the remuneration of non-executive chairpersons, the transfer of significant assets, the determination of variable remuneration through the application of predefined performance criteria, long-term incentive remuneration, extraordinary remuneration, the remuneration of managers of partnerships limited by shares [*gérants de sociétés en commandite par actions*], signing bonuses and non-competition agreements.

1.4. Rules for external communications by the High Committee

The High Committee points out that its responses to requests from companies as well as the opinions expressed at its own initiative, in particular following the systematic examination of annual reports, are addressed to the board (or committee) chairpersons on a confidential basis. As it has stated on a number of occasions, it considers this confidentiality to be a necessary condition for the effective performance of its preventive role.

Nevertheless, in certain exceptional cases, the High Committee may issue communications regarding its interventions. Such communications, however, do not relate to the detailed content of its opinions. In all events, the companies that receive opinions from the High Committee are of course free to disclose them, in particular when they wish to indicate that the decisions taken by their boards comply with these opinions.

Finally, it should be remembered that in accordance with § 25.2 of the Code, "*if a company decides not to follow the recommendations of the High Committee, it must mention in its annual report/registration document the latter's opinion and the reasons why it has decided not to act on its recommendations*". The High Committee has indicated on a number of occasions that it reserves the right to communicate in cases where no such information is provided by the company in question. Even though almost all the individual recommendations issued by the High Committee are complied with, a certain number of cases have arisen in which its comments of the previous year were not taken into account in the registration documents for 2015. These cases have been indicated to the chairpersons of the companies in question together with a reminder that if they do not formally undertake to comply, or to supply an appropriate explanation, then the High Committee will be obliged to indicate their names in its own annual report. Most of these companies have undertaken to modify their future publications accordingly.

1.5. Review of the Afep-Medef code

As recalled above, one of the functions of the High Committee is to suggest amendments to the Afep-Medef code. Nevertheless, the drafting of the Code remains the responsibility of the two professional associations: AFEP and MEDEF. The initial intention was to undertake a complete review in 2016, that is to say three years after the publication of the 2013 version which, in particular, introduced the concept of shareholder consultation regarding the remuneration of executive directors (*say on pay*) and established the High Committee itself. However, the current legislative and regulatory situation has made necessary an immediate review of two specific points. This resulted in the adoption in November 2015 of an "intermediate" version in order, on the one hand, to introduce the principle of consulting the shareholders' meeting in the event of transfers relating to half or more of the company's assets (in conformity with the conclusions of the AMF group entrusted to consider significant asset sales and acquisitions in May 2015), and, on the other, to ensure the consistency of the Code with the provisions of the law of 6 August 2015 (“Macron Act”) concerning supplementary pensions.

In view of the full review planned for 2016, the High Committee addressed a letter containing its proposals to AFEP and MEDEF in February of this year. These proposals were the result of its deliberations undertaken over two years of experience and reported in its 2014 and 2015 activity reports, an analysis of the "areas for consideration" [“*pistes de réflexion*”] proposed by the AMF in its annual reports on corporate governance and directors' remuneration and a comparison with the main European codes of corporate governance. Among the subjects examined by the High Committee, it considered that two in particular justified a revision of the text of the Code, namely the status of non-

executive chairpersons and the variable, multi-year remuneration of executive directors. A number of other points were also addressed, with regard to which the High Committee took the opportunity to consider to what extent the text of the Code was conducive to the pursued aims. Most of these points were included in the version drawn up by the two associations and submitted for public consultation.

In effect, in May 2016, AFEP and MEDEF submitted a new draft Code for public consultation on a dedicated Internet site. In particular, this draft strengthened the provisions regarding remuneration. The High Committee again contributed to this consultation by presenting its observations on this draft version.

2. Main topics addressed by the High Committee in its responses to requests of interpretations and self-referrals in 2015-2016

2.1. *Proportion of women on boards of directors and supervisory boards*

In 2010, the Afep-Medef code stated that: "*with regard to the representation of men and women, the objective is that each Board shall reach and maintain a percentage of at least 20% of women within a period of three years and at least 40% of women within a period of six years* ". This latter proportion should therefore be achieved at the end of the shareholders' meeting 2016.

The Parliament has addressed this question and the same male/female parity quotas on boards of directors and supervisory boards were established by the law of 27 January 2011 (Copé-Zimmermann Act) with an enforcement date postponed to 2017. The field of application of the law went well beyond listed companies covered by the Afep-Medef code, as it initially related to all companies employing more than 500 employees and with a balance sheet total or turnover of over 50 million euros. The threshold corresponding to the number of employees was subsequently reduced to 250 employees.

The change in the composition of the boards of companies making reference to the Afep-Medef code is satisfactory overall since the average proportion of women is 39.1 % in the case of the SBF 120 companies and 42.6 % for the CAC 40 companies analysed in this report (see § 3.5, p. 38, 2nd section) following the annual general meeting of 2016[3]. However, these are simply average values that cover different individual situations and it has been observed that 47 companies listed on the SBF 120 (including 9 in the CAC 40) have not achieved the percentage required by the Code. More than half of these companies indicated in their 2015 registration document that they would strive to achieve this level in 2017. The High Committee has therefore written to those that have given no such indication, stressing that it is essential to respect this quota next year. Despite this, the boards of directors and supervisory boards of French companies already have a level of female representation higher than that of the other European countries (with the exception of Norway).

[3] At the date of this report, the two annual general meetings of SBF 120 companies scheduled later than 30 September had not been taken into account.

2.2. Succession planning for executive directors

One of the most important topics focused on by the High Committee during its analysis of the registration documents is succession planning for executive directors. In effect, § 17.2.2 of the Code states that "*the appointments or nominations committee (or an ad-hoc committee) should design a plan for replacement of executive directors in order to be able to submit to the Board solutions for replacement in particular in the event of an unforeseeable vacancy*. *This is one of the committee's most important tasks even though such a task may, if necessary, be entrusted to an ad hoc committee by the board*".

The registration documents do not always take account of this approach (see § 4.3, p. 56, 2nd section). Such documents generally indicate that the appointments committee has focused on the change in the composition of the board itself, as is indeed prompted in particular by the provisions on female representation and the introduction of directors representing employees.

In contrast, as far as the succession of executive directors is concerned, this question is frequently not dealt with. Many companies indicate that this is one of the tasks of the appointments or nominations committee but do not mention it in their report of the work undertaken by these committees.

While acknowledging that this is a delicate matter, the High Committee considers that it is very important that companies prepare not only for the untimely departure or loss of the principal director but also for "foreseeable" departures, in particular due to age limitations. It is desirable that this should be done systematically as of the start of the director's term of office and should be reviewed subsequently, thus avoiding inquiries concerning the reason why the board should choose to address this question at some given point during the director's term of office. It is also important to inform shareholders that this step has indeed been undertaken, without it being necessary, of course, for the results to be published.

3. Compliance with the recommendations issued by the High Committee in 2014 and 2015

It is no surprise that some of the recommendations issued by the High Committee to individual companies and comments entered in its annual reports for 2014 and 2015 are more easily implemented than others. It is therefore useful here to look again at some of these points (in addition to those relating to remuneration, which are dealt with in § 4 below).

3.1. Proportions of independent directors on boards and committees

The High Committee had already noted that the proportions of independent directors stipulated by the Code for committees (2/3 of the audit committee, majority on remuneration and nominations committees) seems to be slightly more difficult to adhere to than the proportions on the board itself (see 2014 Activity report, p. 12). This tendency persists (see 2nd section, § 3.2 p. 29, § 4.1 p. 49, § 4.2 p. 53 and § 4.3 p. 56), due undoubtedly to the difficulty in ensuring the availability of directors with the appropriate expertise. In addition, the High Committee has indicated in the past that it would prefer the proportions to be not quite satisfied rather than for the criteria of independence to be distorted (for example by removing the requirement for 12 years of presence on the board), and that it would consider that 60 % of independent members on the audit committee and 50 % on the other two committees would not constitute a serious infringement.

Without exception, all companies that do not respect these proportions indicate this and present a justification, often based on the requirement to make room for large shareholders. The High Committee has already had cause to intimate that the presence of a major shareholder is not sufficient to explain the discrepancy since, on the contrary, this adds to the importance of independent directors for the supervisory functions to which the committees contribute (see 2014 Activity report, p. 12). Companies must not therefore slacken in their efforts to achieve the required proportions, in particular when renewing directors' terms of office.

3.2. Criteria for the evaluation of "significant business relationships" when assessing the independence of directors

In 2015 (see 2015 Activity report, p. 16), the High Committee stressed the importance of specifying, in the registration document, the criteria defined by the board of directors or supervisory board for assessing the significant or other nature of the relationships that board members who may be considered independent may have with the company. Due to the many different situations that may arise, it is, in effect, not desirable for the Code to set out quantitative criteria. This point, which is also of concern to the AMF, is still not respected in all cases, since 33% of the companies in the SBF 120 do not mention it (see 2nd section, § 3.3 p. 35). It is frequent for significant business relationships to be simply cited in a list of the criteria present in the Afep-Medef code, or even for the board's obligation to define and explain these criteria to be recalled but without any explanation of the criteria being presented. By contrast, some companies provide details of the way the board has examined the individual situations of the directors in question, which may constitute a way of providing a satisfactory explanation. It nevertheless remains a subject where there is still significant scope for progress.

3.3. Practice of meetings without the presence of the executive directors

In its 2015 Activity report (p. 11), the High Committee drew the attention of companies to § 10.4 of the Code which recommends that "*the non-executive directors should meet periodically without the presence of the executive or 'in-house' directors*". It emphasized the importance of this good governance practice which, in its opinion, should not be limited to an assessment of the performance of the executive directors. There are still a relatively large number of companies that do not mention or do not implement this practice (see 2nd section, § 3.11, p. 47). It is also frequent for the registration document to indicate that the board's own internal regulations provide for this possibility or that organising such meetings is one of the prerogatives of the lead director, but without mentioning whether any such meetings have actually been held.

The High Committee has been asked whether directors representing employees may or may not take part in these meetings. It holds that it is the responsibility of each board to define the rules regulating this point depending on the way these meetings are organised and the subjects they address. The boards can also choose to organise meetings of independent directors only.

Even though it is not explicitly set out in the Code, the High Committee considers it to be useful to apply this practice to companies with a management board and supervisory board, that is to say to convene meetings of the latter in the absence of the management board (see 2015 Activity report, p. 11). Similarly, it considers that this practice is not in itself incompatible with the status of partnerships limited by shares [*sociétés en commandite par actions*], indeed some of these companies have no difficulty implementing it.

3.4. Participation of an employee director on the remuneration committee

In its 2015 Activity report (p. 10), the High Committee confirmed that the provision of the Code (§ 18.1) "advising" that a director who represents employees be a member of the remunerations committee should, in the same way as the other recommendations, be subject to the "comply or explain" rule. It further noted that only some of the companies belonging to the SBF 120 index were subject to the obligation to arrange for the designation of one or more employee directors by virtue of the law of 14 June 2013. Although the law of 17 August 2015 ("Rebsamen Act") extended the scope of this obligation, the transitory period before it takes effect is such that it will not become fully applicable until 2017 or 2018 depending on the number of employees in the company (or even later in the case of certain companies having a subsidiary that is subject to the initial version of the law). A record of the number of companies complying with that provision of the Code (see 2nd section, § 4.2 p. 53) is therefore only of limited significance.

In the meantime, companies with boards comprising one or more employee directors who have not, however, been appointed as members of the corresponding remunerations committee (20 companies on the SBF 120, 7 of which belong to the CAC 40) generally provide an explanation for this state of affairs, in most cases indicating that this step is planned for a future date. Only a small number do not mention this question at all and the High Committee intends to address them in a subsequent financial year once the presence of employee directors has become more widespread.

4. Questions relating to remuneration

4.1. Advisory resolutions passed at general meetings

For the great majority of the companies in the sample studied in this report, that is to say those belonging to the SBF 120 index, the application of the *say on pay* rule introduced in version 2013 of the Code (§ 24.3) has not given rise to any special comments. All of them have complied with this obligation, and almost all of them (88 %) have made use of the table recommended in the Guide issued by the High Committee. The others have referred, with sufficient precision in the view of the High Committee, to relatively detailed information entered in the registration document. As indicated in previous years, the use of the table presented in the Guide is in no way compulsory. However, thanks to its standardised presentation, it facilitates appreciation by shareholders and investors.

By contrast, in its examination of the companies that reference the Afep-Medef code but do not belong to the SBF 120 index (see Introduction p. 7 above), it has identified a number of cases in which the provision of the Code relating to *say on pay* has been ignored. Some of these companies justify this by pointing out that the remuneration is paid by the reference or majority shareholder on the basis of a related party transaction [*convention réglementée*] and therefore that the general meeting has an opportunity to give its opinion on this remuneration. The High Committee has already presented its position concerning remunerations based on service contracts (2014 annual report, p. 18, 2015 annual report, p. 19): these are not contrary to the Code but demand a higher level of transparency. It is, however, necessary to observe that the information presented in the reports annexed to the resolutions approving such related party transactions do not always provide the level of detail required in order for shareholders to assure themselves that the mode of remuneration is aligned with the company's strategic objectives, as *say on pay* resolutions, in the form in which they are generally practised, attempt to do. Indeed, it is frequent for the agreement to cover the services of several

directors or for the performance criteria to relate to the activities of the parent company but not to those of the listed subsidiary that references the Afep-Medef code.

The same examination revealed three partnerships limited by shares [*sociétés en commandite par actions*] that do not implement the *say on pay* procedure, whereas all those belonging to the SBF 120 do so. The High Committee has already indicated that, in its opinion, the fact that management remuneration is fixed in the company's articles of association (generally in the form of a percentage of the company's profits), and therefore adopted in an extraordinary general meeting, is not a reason for foregoing this procedure (2014 annual report, p. 20). In effect, it can be seen, on the one hand, that the provisions of the articles are often old and, on the other, that partnerships limited by shares implement methods for aligning remuneration with performance that are more similar to those practised in public limited companies. Of the three companies in question, two justified their position through the fact that the remuneration is paid by a parent company, thus leading to the comments set out above. In the third, which has adopted an original approach, management remuneration is set with binding effect by the Ordinary General Meeting every three years (and not by the articles adopted by the Extraordinary General Meeting for an indefinite period). This constitutes an acceptable solution.

The average level of approval of the advisory resolutions at the 2016 general meetings of the companies listed on the SBF 120 was 88.9 %, compared with 87.6% in 2015 and 91.4% in 2014; this calls for no special comments. More significant is the number of companies that obtained a relatively low "score". Observers consider that a level lower than 70 %, and for some a level lower than 80%, should be a source of concern for the board. It can be seen that 15 companies in the sample obtained fewer than 75% of votes in favour of this resolution with regard to the principal executive officer in 2016, compared to 20 in 2015. This improvement undoubtedly reflects the greater attention paid to detailing the information on the method of calculating the remuneration and the level to which the performance criteria are achieved.

However, the most significant development in 2016 was the rejection by two annual general meetings of *say on pay* resolutions relating to the remuneration of the respective companies' Chief Executive Officers. The first of these, which has been the subject of considerable comment, concerns Renault where the resolution was rejected by 54.12%. The Afep-Medef code states that *"when the ordinary shareholders' meeting issues a negative opinion, the Board, acting on the advice of the compensation committee, must discuss this matter at another meeting and immediately publish on the company's website a notice detailing how it intends to deal with the opinion expressed by the shareholders at the General Meeting*" (§ 24.3). The High Committee sent a letter to the company's board reminding it that the spirit of the Code and the principles of shareholder democracy demand that, following consultation with the main shareholders in order to better understand their expectations, it should make meaningful changes to its mode of remuneration. This opinion unfortunately was leaked to the press. The board of directors then proceeded to conduct the recommended consultation and adopted a decision modifying the mode of remuneration, published on 27 July 2016, which responded only partially to the High Committee's observations. After a number of communications with the company, it reminded it of the rule set out in the Afep-Medef code, "*if a company decides not to follow the recommendations of the High Committee, it must mention in its annual report/registration document the latter's opinion and the reasons why it has decided not to act on its recommendations*".

The second case relates to Alstom, where an advisory resolution was rejected by 62.1%. This related in particular to an exceptional item of remuneration paid to a former Chief Executive Officer on the occasion of a strategic operation after which the person in question left the company. It is noteworthy that, after seeking the High Committee's opinion, the board of directors had set this remuneration in the light of this opinion and presented it in the advisory resolution submitted to the ordinary general meeting of 2015, which approved it by 87.2%. The board of directors then indicated that it would meet for deliberations "within a reasonable time" after analysing the shareholders' expectations. The High Committee restates the position it adopted on this occasion: it is desirable that the award of exceptional remuneration associated with an operation that also results in the departure of the director in question should not diverge from the rules of the Code regarding severance payments (see 2015 Activity report 2015, p. 21).

4.2. Sub-limit for the award of share options or performance shares to executive directors

§ 24.2 of the Code recommends indicating in the annual report or registration document "*the fraction of the capital represented by the share options or performance shares awarded to each of the executive directors*". In addition to this reporting obligation, § 23.2.4 specifies that the resolutions proposed to the general meeting concerning the issue of options or performance shares should include a "*sub-ceiling for awards to executive directors*" (see 2015 Activity report, p. 19). Some companies prefer to submit the resolutions for awards to employees, on the one hand, and to executive directors, on the other, to separate votes and this approach allows the shareholders greater flexibility. Only a small number of companies do not respect the recommendations of the Code (see 2nd section, § 8.3 p. 74 and § 8.4 p.78) and the High Committee has contacted them to remind them of this.

4.3. Degree of achievement of performance determining variable remuneration

In its 2014 (p. 17) and 2015 (p. 19) annual reports, the High Committee emphasized the importance of the recommendation set out in § 24.2 of the Code, according to which, when the variable part of the remuneration is paid, it is appropriate to indicate "*how [the criteria] have been applied in the light of the intentions stated during the financial year and whether the personal targets have been achieved*". Shareholders, or some among them, want to be informed on this matter and the absence of such information may explain some of the negative votes in response to advisory resolutions relating to remuneration.

Some companies point to reasons of confidentiality for not applying this provision and, furthermore, the Code states that companies should not *"jeopardise the confidentiality that may be justified for certain elements involved in determining this variable remuneration*". Nevertheless, it can be observed that other companies that operate in equally competitive markets provide their shareholders with relatively detailed information on this point. Some examples of good practices can be found in the 2nd section of the present report (§ 8.2 p. 67).

4.4. Severance and non-competition payments

Some companies indicate that their boards prefer to conclude a non-competition agreement with their executive directors rather than offering them a severance payment (see 2nd section, § 8.5 p. 82). This approach should not have the sole aim of avoiding the restriction imposed by the Code, which limits severance payments only to cases of "departure associated with a change of control or strategy" (§ 23.2.5) and the legal obligation to make them conditional upon performance conditions. It must correspond to the real need to protect the company. The High Committee wishes to point out once again that the board must "carefully weigh up the real risk to the company and the actual harm suffered by the individual in question" and allow itself the opportunity to decide on the application or non-application of the agreement at the time of departure of the director (see 2015 Activity report, p. 22). Under no circumstances should the non-competition agreement exceed the ceiling of two years of fixed and variable annual remuneration.

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