



ICGN

International Corporate Governance Network

Secretariat to the AFEP/MEDEF Code
French Corporate Governance Code of Listed Companies
Paris
France

By email: contact@medef.fr

10 April 2018

To the Secretariat of the AFEP/MEDEF Code:

RE: ICGN Response to Proposed revisions to the corporate governance Code of listed companies

The International Corporate Governance Network (ICGN) is pleased to respond to the AFEP/MEDEF consultation on proposed revisions to the corporate governance code (Code) of listed companies in France.

Led by investors responsible for assets under management in excess of US\$34 trillion, ICGN is a leading authority on global standards of corporate governance and investor stewardship. Our membership is based in more than 45 countries and includes companies, advisors and other stakeholders. ICGN's mission is to promote high standards of professionalism in governance for investors and companies alike in their mutual pursuit of long-term value creation contributing to sustainable economies world-wide. Our policy positions are guided by the ICGN Global Governance Principles and the ICGN Global Stewardship Principles, both of which have been developed in consultation with ICGN Members and as part of a wider peer review.

ICGN's membership includes leading French asset owners and asset managers, and most of our non-French investor members will have investments in French public debt and equity. We regularly monitor governance developments in France and believe that in many areas French corporate governance has developed positively in recent years.

We have submitted this response electronically, but we present our response in this document and letter format so that our members and others interested in ICGN's perspective can have access to our comments.

Overarching comments on process

We welcome the public consultation on the Code, as this allows for a broad range of perspectives, including from investors and other stakeholders, both inside and outside of France. However, we find it a limitation that the Code is "owned" by corporate representative bodies, to the exclusion of investor representation. We believe that investors, as providers of risk capital to companies, and with important ownership rights, are a critical component of the corporate governance "ecosystem"

– and should be equal partners with companies as issuers of risk capital. In our view the balance of the Code would be improved if investors had a more direct role in its governance, direction, drafting and editing. At present the Code has the international reputation as being an “issuer’s code”, skewed more towards the interests of issuers than investors, which is unfortunate.

Value creation and corporate purpose (§1.4)

At a time when the government has launched a broad debate on the tasks of the company and on its corporate purpose, Afep and Medef wanted to highlight the theme of CSR in the corporate governance code of listed corporations due to the growing importance of non-financial issues in companies' strategies. Consequently, following the example of what appears in foreign codes, the role of the Board in improving the long-term value creation of the company is specified, taking into account the social, societal and environmental dimensions of its activities.

The Board may also propose to the general meeting of shareholders any statutory change to the corporate purpose that it deems appropriate. Given its importance, the paragraph relating to the tasks of the Board is placed at the beginning of the code.

ICGN Comment: We support the emphasis on sustainable value creation, and how material “non-financial” sustainability factors relating to social, societal and environmental performance should be taken into consideration by the Board in its oversight of the company. We also believe that it is important for companies to consider their corporate purpose and how that links to sustainable value creation. However we find ambiguous the statement in the revised Code that “proposes any statutory change to the corporate purpose that deems it appropriate”. We believe this requires clarification. In particular we would be cautious about an interpretation of corporate purpose to suggest that a company has an explicit social obligation that extends beyond its imperative to generate sustainable long-term value. We believe that the Board’s focus on ethical, social and environmental factors is critical to enable companies to achieve their commercial obligations in a sustainable way—however from the perspective of company purpose these factors should not be regarded as ends unto themselves.

Tasks of the Board and review of the opportunities and main risks (§1.6)

It is proposed to underline the necessity of a review of the opportunities and main risks by the Board of Directors. This risk review shall go hand in hand with closely monitoring the quality of the information delivered publicly.

ICGN Comment: We support this revision, and we believe that the Board’s risk management process should be broad in scope and consider social, ethical and environmental risks, in addition to more “traditional” financial, operational and legal risks.

Non-discrimination and diversity (§1.7)

It is proposed that the Board should carry out specific verifications regarding non-discrimination and diversity, ensuring that the executive officers implement a policy in these areas, notably with regard to the balanced representation of men and women on the leadership bodies beyond the Board of Directors.

ICGN Comment: We support a Board’s efforts to promote non-discrimination and

diversity of men and women on leadership bodies (including boards of directors and management executive committees. We believe that a policy on diversity can be a healthy way to bring about needed change. Such a policy should take into consideration the gender pay gap, or other potential distortions.

Lead Director (§3.2)

In the event of the combination of the offices of Chairman and Chief Executive Officer, it is indicated that the Board may appoint a Lead Director from among the independent directors.

ICGN Comment: We agree that a Lead Independent Director can serve a useful purpose when the positions of the Chairman and Chief Executive are combined. But we think the Code should further: on the one hand it could be more specific in calling for a Lead Independent Director for any company, and the Code could also discourage the combined CEO/Chairman role—and to call for separating these roles. This is a clear preference of most institutional investors, and is an example of how the Code with its current issuer orientation would benefit from a stronger investor voice.

The Board and communication with the shareholders (§4.2)

To respond to demand from institutional investors, it is proposed that shareholders' access to the Board of Directors on corporate governance matters should be entrusted to the Chairman of the Board of Directors or, if applicable, the Lead Director, the latter having to report to the Board on this task.

ICGN Comment: We think it is very positive for the Code to speak to communication between shareholders and the Board. Its importance is such that you may wish to establish board dialogue with shareholders as a principle of the Code. This is fundamental to the promotion of investor stewardship, which is addressed in the recent European Shareholder Rights Directive as well as in ICGN's Global Stewardship Principles. While we welcome this new language to the Code, we think it could go further. While a Chairman or Lead Director might certainly be relevant for investor dialogue, the process of engagement could potentially extend to other board directors as well, committee chairs for example. We would encourage you to broaden this language to include a wider range of directors that might be available to meet with investors.

Directors representing employees (§7.1)

To ensure the presence of directors representing employees precisely where the strategic decisions are made, it is proposed that they should be appointed within the company that applies the code. When several listed companies from the same group apply the provisions of the code, it is up to the Boards to determine the company or companies eligible for this recommendation.

ICGN Comment: We understand the legal requirements for employee representation on boards in France, and are comfortable with this proposal. It is important for all employee directors to ensure their allegiance is to the long-term success of the company, and not to the specific interests of the workforce.

Clarity and transparency of information (§10.1, §13.4)

To enhance transparency with regard to shareholders and to respond to demand from the French Market Authority and institutional investors, it is proposed that the annual report should mention the attendance level of each director at meetings of the Board and at Board committees.

Furthermore, to enable informed voting by shareholders when appointing a director, the company should state the reasons for proposing his or her appointment to the general meeting of shareholders.

ICGN Comment: We are supportive of this proposal, and believe this transparency is both useful for investors and a healthy discipline for boards and board members.

Conflicts of interest (§19)

It is proposed to strengthen the recommendations regarding ethical rules for directors by adding that, in the event of a conflict of interests, the director, who must already abstain from voting on the related resolution, should abstain from attending the debate.

ICGN Comment: This is a positive enhancement, and we think it is very important for Boards to ensure independent oversight of conflicts of interest, which can include related party transactions.

Executive officers' compensation (§24.1.1)

In order to take CSR considerations into account in determining executive compensation, § 24.1.1 is supplemented accordingly.

ICGN Comment: We believe it can be relevant for ESG/CSR considerations to be factored into executive compensation structures, as long as the specific ESG/CSR factors are material to company performance and sustainable value creation.

Composition and tasks of the High Committee on corporate governance (HCGE)

Consequently, notably to enable a better balance between men and women on the HCGE, it is proposed that from now on the executive officers may be appointed from among individuals who either hold or have held directorships within companies that refer to the code, without requiring them to have held executive office.

Furthermore, and to give greater prominence to the recommendations made in relation to matters addressed by or referred to it, the High Committee could propose amendments to the code in the light thereof.

ICGN Comment: In line with our initial comments about the “ownership” of this Code, it is not clear how strongly the investor voice is heard at the Haut Comité. Greater transparency on this would help to address our concerns about the Code’s balance and potential bias for company interests.

Procedure for revising the code

Since the code was revised in November 2016, the consultation procedure has been public.

It is proposed that this practice should be enshrined in the code.

ICGN Comment

We support this and repeat our point that the investor community should be more engaged with the Code's revisions process.

General observations

In conclusion, ICGN supports the efforts of AFEF/MEDEF to seek improvements in its corporate governance Code, and we hope that our feedback and comments are helpful in your deliberations. Should you wish to discuss our comments further, please contact me or George Dallas, ICGN's Policy Director, by email at george.dallas@icgn.org.

Yours faithfully,



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