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Case study on corporate governance disclosure in France
Report by the UNCTAD Secretariat

Executive summary

The nineteenth session of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR), which took place in Geneva from 25 to 27 September 2002, requested that field case studies be conducted in the area of transparency and disclosure requirements in corporate governance. Accordingly, five country case studies were conducted, focusing on major issues in implementing corporate governance disclosure requirements. The countries on which the case studies were conducted are Brazil, France, Kenya, the Russian Federation and the United States of America.

This report presents the findings of a case study on the status of corporate governance disclosure in France. It provides an overview of the French capital markets, the five main French corporate governance codes and/or reports, financial legislation, and compliance with global accounting standards. This is followed by a closer look at financial disclosure requirements, non-financial disclosures, annual general meetings, timing and means of disclosure, and best practices for compliance with corporate governance disclosure requirements. Transparency and disclosure requirements discussed at the nineteenth session of ISAR are used in this case study as a reference point.

The main objectives of the study are to draw lessons from the experience of France in promoting improved transparency and disclosure in the corporate sector, and to share the findings with member States that wish to strengthen transparency and disclosure in their respective markets.

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INTRODUCTORY BACKGROUND

1. The selection of France as a case study for European corporate disclosure issues can be justified for the following reasons: it is a country from the diversified European geographical, cultural, socio-political and economic landscape; interesting historical background; important asset management framework; high proportion of foreign equity investors; multinational stock market; corporate governance hallmarks; frequently updated corporate governance codes; regularly updated financial legislation; a large number of investment associations and investment clubs; compliance with global accounting standards, and significant disclosure improvements; and France is one of the countries that will adopt by 2005 the International Accounting Standards (IAS) for consolidated financial statements of listed companies.

Geographical, cultural, socio-political and economic backgrounds

2. France is positioned at the crossroads of major European cultural influences, between Northern Europe and the Mediterranean. It is also in close touch with both the German and the Flemish cultures and has benefited from the cultural impacts of the emigration mainly from Russia and Poland at the beginning of the twentieth century.

3. On the political-economic front, the major role played by France, for both the creation and the development of the European Union, is self-evident.

4. Moreover, France exerts its influence beyond Europe, for example in francophone Africa, in the Middle East, and in many other areas of the world.

Historical background

5. The Dutch East India Company – spurred on by the activities of the Hanseatic League in Germany, the Netherlands and Belgium – contributed as early as 1602 to the creation of the Amsterdam stock exchange. The English East India Company followed closely the establishment of the Dutch company.

6. The Compagnie Française des Indes, was founded only in 1664, half a century after the foundation of its Dutch and English counterparts.

7. In France, the first securities are reported to have been traded around 1709 at the Hôtel de Soissons. After John Law's bankruptcy, the first stock market started operating in 1720, moving to the Palais Brongniart in 1807. The latter is now used as a conference centre by Euronext-Paris, which relies exclusively on electronic trading and is based at 39 rue Cambon, Paris 8e.

Important asset management framework

8. France is reported to be the fourth asset management market in the world (for both equity and fixed income funds), totalling some EUR 1,5 trillion in December 2002. It is also the first mutual funds market in Europe, and the second in the world, with about EUR 850 billion, during the first quarter of 2003 (for both equity and fixed income assets).

9. The interest in equity investments is growing, as demonstrated by the fact that there

were 7 million individual French shareholders in 2002 (after a high of 8 million in 1920 and a low of 1.3 million in 1978). This number represents about 11.5 per cent of the French population, versus higher comparable figures for the United States (26 per cent), and the U.K. (22 per cent). In Germany, it is 8 per cent.

High proportion of foreign equity investors

10. While only about 11 per cent of the French stock exchange capitalization was owned by investors located outside France in 1986, that proportion is reported to have jumped to 36 per cent in 2001.

11. According to a Georgeson shareholder survey, – quoted in *Le Monde* of 6 June 2002, non-resident shareholders exceed the majority in several French companies, for example:

Foreign investors' majorities in France

TotalFinaElf	65.0%	Lafarge	58.5%	Suez	52.0%
Aventis	60.0%	Vinci	56.0%	Saint Gobain	51.0%

12. Moreover, foreign investors often tend to generate as much as 80 per cent of the French stock market transactions.

13. The main reasons for this relatively high proportion of foreign investors are the weak equity market participation of both French pension funds (which generally adopt the “pay as you go” approach, devoid of equity capital) and French individual investors, as well as the successful international promotional drive of the Paris Bourse/Euronext exchange over the past decade.

14. Most large-cap French companies take into consideration this important foreign shareholder factor by publishing their reports both in French and in English.

Multinational stock market

15. In 2003, the Euronext Stock Exchange is considered to be the leading European stock market consolidator, after the merger of the Paris Bourse with the Belgian, Dutch and Portuguese exchanges. Moreover, it relies on the Euroclear unified European securities trading settlement infrastructure covering France, Belgium, the Netherlands, Portugal, the United Kingdom and Ireland. Furthermore, the London-based Euronext.liffe derivatives exchange is in partnership with the Chicago Board of Trade and the Chicago Mercantile Exchange in the United States.

16. Euronext ranks first for trading volumes, and a close second to the London Stock Exchange, in terms of market capitalization and number of listed companies in Europe.

17. Euronext has developed two upgraded corporate segments: NextEconomy and NextPrime. To be admitted, companies must be continuously traded. They should also offer the following disclosure characteristics: bilingual reliance on English and one national

language (French, Dutch or Portuguese) in financial publications; annual report issued within three months; adoption of, or reconciliation with, IAS; corporate governance policy statement; publication of disclosure timetables; at least two analysts' meetings per annum; release of information to investors via the Internet; and publication of information on their shareholders.

18. Paris Bourse, chaired by Mr. Jean-François Théodore, enhanced its international positioning in 1995 with the creation of its International Advisory Board composed of leading global (non-French) investors and highly qualified international corporate governance experts. This Board is now a Euronext Board.

19. Moreover, the French financial market place has also been promoted for a decade by Paris Europlace, with over 200 institutional members. It organizes each year in July an International Financial Forum, which brings together some 1,500 financiers from all over the world.

French corporate governance hallmarks

20. France can be considered to be in the forefront of continental European corporate governance developments. Paris Bourse took, for instance, the initiative to invite the International Corporate Governance Network (ICGN) to hold in 1997 its Third Annual Conference in Paris, right after Washington DC and London. The successful outcome of this 1997 Conference prompted Euronext to invite the ICGN to hold its Ninth Conference in Amsterdam in 2003.

21. Another pioneering example of French corporate governance initiatives is provided by the first multinational quantitative corporate governance and shareholder value driven equity mutual fund ever launched in the world: the ABF Europe Valeur Actionnariale (Shareholder Value) index tilted mutual fund, which was launched in Paris in January 1998. This fund – managed by ABF Capital Management, with data computed by the French proxy voting advisory firm Proxinvest according to an algorithm developed by a Geneva-based firm – significantly over-performed its European Union benchmark for several years.

French corporate governance codes

Five French codes, or reports, have been published between 1995 and 2003:

- “The Board of Directors of Listed Companies in France”, published on 10 July 1995 by the AFEP – CNPF Committee,¹ chaired by Mr. Marc Viénot, Chairman at that time of the Société Générale Bank. This report is known in corporate governance circles as the “Viénot I Report”.
- “Recommendations on Corporate Governance”, published on 9 June 1998 by the AFG-ASFFI Commission,² chaired by Mr. Jean-Pierre Hellebuyck, Strategic Investment Manager of AXA in Paris. This report is known in corporate governance circles as the “Hellebuyck I Report”.

¹ AFEP: Association Française des Entreprises Privées
CNPF: Conseil National du Patronat Français

² AFG: Association Française de Gestion Financière
ASFFI: Association Française des Fonds et Sociétés d'Investissements

- “Report of the Committee on Corporate Governance”, published in July 1999 by the AFEP-MEDEF Committee,³ chaired by Mr. Marc Viénot, then Chairman of Paris EuroPlace. This Report is known in corporate governance circles as the “Viénot II Report”.
- “Recommendations on Corporate Governance”, updated edition of the 1998 AFG-ASFFI Commission chaired by Mr. Jean-Pierre Hellebuyck, published on 23 October 2001. This report is known in corporate governance circles as the “Hellebuyck II Report”.
- “Promoting Better Corporate Governance in Listed Companies”, published on 23 September 2002 by the AFEP/AGREF-MEDEF Committee,⁴ chaired by Mr. Daniel Bouton, Chairman of the Société Générale Bank.

22. A combined Code (Viénot I and II and Bouton) is scheduled to be published in 2003.

23. French companies strive to adopt the principles of the above five French codes or reports. They are often mentioned in corporate annual reports. The ICGN and / or the OECD International Corporate Governance Codes are also sometimes referred to.

Financial legislation

24. French financial legislation is periodically updated according to requirements.

25. The New Economic Regulations (Nouvelles Régulations Economiques – NRE) law was approved on 15 May 2001. It contains several clauses referring to corporate governance disclosure issues, which are largely inspired by both the Viénot I and II and the Hellebuyck I Codes (the Hellebuyck II and the Bouton Codes were not yet published then) – for example, reduction of the number of Board Directors from 24 to 18, disclosure of the remuneration of Chief Executives, social and environmental reporting, and identification of important shareholders.

26. Moreover, a new Financial Security Law (Loi de Sécurité Financière) was submitted for the approval of the French Parliament on 21 March 2003. It will create a new Financial Markets Authority (Autorité des Marchés Financiers – AMF) through a merger of the Stock Exchange Commission (Commission des Opérations de Bourse – COB) with the Financial Markets Council (Conseil des Marchés Financiers – CMF). The future Financial Markets Authority will carry out the activities of its parents, including the monitoring of auditing practices.

27. This new law will cover a wide range of issues, for example auditing (new Auditors’ Supervisory Board, regulation of auditing and auditors) and corporate governance disclosures.

28. For several decades now French companies have been compelled by law to update

³ AFEP: Association Française des Entreprises Privées

MEDEF: Mouvement des Entreprises de France, the new name of the CNPF

⁴ AFEP: Association Française des Entreprises Privées

AGREF: Association des Grandes Entreprises Françaises

MEDEF: Mouvement des Entreprises de France, the new name of the CNPF

their financial disclosures in the official BALO (Bulletin des Annonces Légales Obligatoires) publication. Listed companies must be audited by two auditors from two different audit firms performing their mission jointly.

29. Since 1993, the COB has published updated French laws and regulations in its financial “vade mecum”, which can be consulted on the web under “Transparence du marché”.

Large number of investment associations and clubs

30. France has a number of associations, which happen to be involved with corporate governance disclosure issues – for example, Association for the Defence of Minority Shareholders (Association Française pour la Défense des Actionnaires Minoritaires – ADAM), Association of French Pension Funds (Association Française des Fonds de Pension – AFPEN), National Association of French Shareholders (Association Nationale des Actionnaires Français – ANAF), French Association of Joint Stock Companies (Association Nationale des Sociétés par Actions – ANSA), Association of Small Minority Shareholders (Association des Petits Porteurs d’Actifs – APPAC), Association of Employee Shareholders (Association Volontaire des Actionnaires Salariés – AVAS), Council of Financial Communication Advisers (Cercle de Liaison des Informateurs Financiers en France – CLIFF), Federation of Employee Shareholders’ Association (Fédération des Associations d’Actionnaires Salariés et Anciens Salariés – FAS), Paris Europlace (see above), and French Financial Analysts Society (Société Française des Analystes Financiers – SFAF).

31. Moreover, France appears to have pioneered in Europe the development of “Shareholder Clubs” (Clubs d’Actionnaires). Several French companies have set up such clubs. They offer a wide range of benefits : privileged telecom access, shareholder letters, websites, training programmes, specific publications and company tours (plants, distribution centres, etc), as well as meetings, during which critical corporate issues can be debated informally.

Compliance with global accounting standards, and significant disclosure improvements

32. The leading US corporate governance advisory firm, Davis Global Advisors, has ranked countries according to whether they comply with the two predominant accounting standards in the world, IAS and Generally Accepted Accounting Principles (GAAP), either US or UK. According to the November 2002 Davis Global Advisors report, “Leading Corporate Governance Indicators” (released at a meeting of the International Advisory Board of Euronext), 33 per cent of the top 250 French companies relied on either IAS or GAAP, compared with 100 per cent in the United States, 90 per cent in the United Kingdom (based on UK GAAP equivalence), 71 per cent in Germany and 56 per cent in the Netherlands. Other countries ranked less than France, thus positioning the latter in the medium range.

33. The same pattern is reported in a Standard & Poor’s ranking, released in April 2003. British, French, and Dutch corporations rank best, after US companies, for global standards of corporate governance information disclosure. While European companies rank consistently high on disclosure in annual reports and on financial information, they tend to trail US companies in disclosing ownership information and investor rights.

34. According to Mr. Pierre-Henri Leroy, President of the French proxy voting firm

Proxinvest in Paris, French corporate disclosures have significantly improved since the publication of the Viénot I Report in 1995: for example, most annual reports are now forwarded to shareholders at least two weeks before Annual General Meetings; the background of Chief Executives, as well as their remuneration (including stock options), is now disclosed; the performance of Board Committees is increasingly reported; and the breakdown between auditing fees and advisory fees of auditors is communicated to shareholders.

The French accounting system and IAS

35. The French accounting system, which derives from the “double-entry” system described in 1494 by Friar Luca Bartolomeo Pacioli in Venice, is due to be impacted by the adoption of IAS for the consolidated accounts of stock exchange listed companies throughout the European Union by 2005, and perhaps ultimately for all European companies.

36. In 2003, French accounting principles are based on the Business Code (Code de Commerce); the rules of both the General Accounting Plan (Plan Comptable Général) and the Committee of Accounting Regulation (Comité de la Réglementation Comptable); the recommendations issued by the National Accounting Board (Conseil National de la Comptabilité); and the interpretations of the Urgent Issues Committee (Comité d’Urgence), as applied to consolidated financial statements.

37. The Institute of Public Accountants and Authorized Accountants (Ordre des Experts Comptables) issues recommendations to assist its members in the application of accounting legislation and regulations.

38. As previously stated, the new Financial Markets Authority (Autorités des Marchés Financiers – AMF) is scheduled to issue recommendations and opinions on auditing practices.

39. A comparative list of French accounting rules and IAS rules can be found in *inter alia*, the GAAP Series of “Surveys of National Accounting Rule in 53 Countries”. France is also one of the 59 countries surveyed in the study “GAAP Convergence 2002”.

40. Pending convergence issues between the French accounting system and IAS are discussed in the next section.

I. FINANCIAL DISCLOSURE

41. In 1988, the French Financial Analysts Society (Société Française des Analystes Financiers – SFAF) published its Code of Ethics. It was updated in 1992 in cooperation with the French Council of Financial Communication Advisers (Cercle de Liaison des Informateurs Financiers en France – CLIFF), and in 2002 in cooperation with the Financial Markets Council (Conseil des Marchés Financiers – CMF). These Codes highlight the need to ensure the equal treatment of all shareholders regarding the release of corporate information. They also prohibit the use of insider information for personal enrichment, and set up procedures to prevent conflicts of interests within the financial analysts profession.

42. The 1995 and 1999 Viénot I and II Reports were more focused on corporate governance than on financial disclosure. They emphasize the need for directors to be well

informed, to respect their duty of professional secrecy, and to refrain from trading on securities on the basis of insider information. They also emphasize the necessity to accelerate the publication of consolidated annual accounts.

43. The 1998 Hellebuyck I Report focused on the release of information via different means – for example, two reports, one in summary form and the other more complete; reports should also be communicated via electronic means in both French and English; and publication of executive compensation, including the method of calculation of stock options and severance pay, if any.

44. The 2001 NRE Law legalized several recommendations of the above Reports.

45. The 2001 Hellebuyck II Report updated its 1998 voting recommendations with a chapter on sustainable development, as well as on encouraging companies to consider separating the functions of Board Chair and of CEO, and releasing more information on executive remunerations.

46. The 2002 Bouton Report stresses the supremacy of substance over form, and enshrines the “true and fair view” principle. Annual reports should identify off-balance sheet commitments (in a note to financial statements). Market risks (exchange rates, credit, commodities, etc) should be clarified. In-house procedures to assess such risks should also be communicated, with sensitivity risk indicators and the method to evaluate the latter. Moreover, the Report states that updated ratings of financial agencies should be disclosed.

47. The Bouton Report also favours increased convergence between the US GAAP and the IAS/IFRS accounting systems. However, it considers that the IAS approach requires improvements, for example:

- It should attempt to reduce its excessive short-term focus.
- Fair value accounting should take into account holding periods and management processes, particularly for long-term assets and liabilities.
- It should better clarify and harmonize the information used. With the inflation in data requirements, standard-setters should focus on key items of greatest interest to users.
- It should clearly define the core principles concerned and the approach relied upon, avoiding overly detailed and complex rules.

48. In a nutshell, the Report hints that the IASB’s working procedures need to better take into consideration the views expressed by all economic players, and more particularly by issuers, investors and auditors.

49. An important IASB issue concerns the IAS 39 rule on derivatives. French bankers are reported to have joined the efforts of the European Banking Federation aimed at persuading the IASB to amend its proposed IAS 39 rule on derivatives, because of fears that these rules may threaten the widely used risk-management strategy known as macro hedging. Future negotiations will clarify how the IASB will manage to keep to its objective of reducing hidden derivative exposures on corporate balance sheets.

50. Meanwhile, according to the 3 June edition of the French daily *Le Monde*, the

European Union recommended that the application of both the IAS 32 and IAS 39 rules be suspended, for fear that the “fair market value” concept, which risks being promulgated by these rules, might stir up balance sheet volatility. According to the 23 June 2003 edition of *The Wall Street Journal Europe*, the IASB may tweak its proposed rules on derivatives. The July 2003 issue of the *World Accounting Report* states that the IASB had worked out arrangements with European banks and was in the process of finalizing the amendments to the two Standards.

51. While the advent of the IAS will represent significant progress, another major hurdle to overcome in the future will be harmonizing the US GAAP accounting rules with those of the IAS. In the past, several French companies reported huge discrepancies between the French accounting system and the US GAAP (e.g. France Télécom in 2001).

52. In any event, leading global pension funds, together with other institutional investors, have often expressed the view that a quick resolution of all dissension is required among all concerned parties, so as to allow investors to benefit from a single global accounting and reporting system. Such a global convergence would significantly facilitate the worldwide benchmarking of companies within their respective industrial sectors.

53. How are the French companies reacting to this avalanche of laws, codes and reports?

54. According to the Paris based Proxinvest, which monitors French companies, the latter strived to improve their financial disclosures during the 2001-2002 proxy seasons, for example:

- Lagardère, where a distinction is now made between: internal financial ratios (i.e. Net Operating Profit after Tax, at standard tax rates, related to the Cost of Capital), and external financial ratios (i.e.: Total Shareholder Returns).
- Accor, which computes its Economic Value Added-EVA© - ratio.
- Cap Gemini and Schneider, with operating results broken down by business segments and geographical areas.
- Total, where the 2005 forecasts of their Return on Average Capital Employed are broken down by business segments.
- Saint Gobain and Sodexo, where liabilities are accounted in great detail.

II. NON-FINANCIAL DISCLOSURE

A. Company objectives

55. None of the five French Reports requires that corporate objectives be communicated, as a result of which few French companies highlight their corporate objectives.

56. The Viénot I Report statement that corporate objectives should focus on “the company’s interest”, as opposed to shareholder value interests, stirred a row with certain Anglo-Saxon governance professionals. The debate has abated since 1995, owing to the emergence of corporate social responsibility concerns.

B. Ownership and shareholders' rights

57. The French Reports are silent on shareholder structure disclosure. This could be explained by the fact that the Conseil des Marchés Financiers (CMF) requires corporations to announce that the following thresholds of either the investor's share capital or voting rights have been crossed (downward or upward): 5 per cent, 10 per cent, 20 per cent, 33 per cent, 33.33 per cent, 50 per cent, 66.66 per cent. The 2001 NRE Law also requires that share ownership be disclosed by the securities custodians.

58. The Hellebuyck II Report highlights the "one share, one vote principle", and its disapproval of the practice of non-voting stocks.

59. Actually, the "one share, one vote" principle now tends to be widely implemented in France, with the exception of very few companies, which are shielded by voting right caps, for example: Vivendi Universal (2 per cent), Danone (6 per cent), Alcatel (8 per cent), Total (10 per cent), and Société Générale (15 per cent).

60. The widespread French practice of double voting rights, which reward the loyalty of holders who keep their shares beyond a certain allotted time, is criticized by the Hellebuyck Reports, which consider that this practice could lead to the abuse of expanding the control of a company by its minority shareholders. The Reports therefore recommend that the double voting rights procedure be abolished, except during the first five years of a company's initial public offering.

61. According to Proxinvest, several French companies released in 2002 more information than is required by the 2001 NRE Law, for example:

- Danone, Société Générale and Suez, which disclosed the names of shareholders exceeding 1 per cent of their share capital.
- When the 2002 Bouton Report encouraged several companies to provide a wide array of information on, among others, the composition of Corporate Boards, their charters and the biographies of their members, a number of companies complied, for example: Air Liquide, BNP Paribas, Renault, Schneider, Société Générale and Sodexo.
- The traditional opacity of French remuneration disclosures was particularly superseded at AXA, Club Méditerranée and Schneider, with disclosure standards detailing both the fixed and the variable remunerations (including stock options). EADS now provides a detailed calculation of the retirement benefits of the members of its Executive Committee.
- Significant progress was also achieved in 2002 regarding earlier release of Annual Reports, particularly at Air Liquide, Alcatel, Aventis, BNP Paribas, Bouygues, Danone, Klépierre, France Télécom, Michelin, Péchiney, Pinault-Printemps-Redoute, Rhodia, Valeo and Vivendi Universal.

C. Governance structures and policies

1. The structure, role and functions of the Board

62. The Viénot I Report emphasizes that the Board, regardless of how it is structured, must act as a collegial body representing all shareholders.

63. The Bouton Report recommends that the minimum proportion of independent Directors be set at half the number of Board members, particularly for companies with dispersed ownership.

64. One of the main issues, debated in France by the Viénot, Hellebuyck and Bouton Reports, concerns the separation of the Board Chair function from the Chief Executive function. Actually, France is similar to the United States, with both functions cumulated in about 20 per cent of the companies by the Chairman and CEO (Président Directeur Général-PDG).

65. The French Commercial Code allows French companies to choose between three choices:

- Joint PDG function, adopted by the majority of companies;
- Separation of the two functions;
- Adoption of the two-tier German model of a Supervisory Board (Conseil de Surveillance) and a Management Board (Directoire).

66. On the mission of the Board, the Viénot I Report states that “the Board defines the company’s strategy, appoints the corporate officers responsible for managing the company and implementing this strategy, oversees management, and ensures the quality of information provided to shareholders and to financial markets through the financial statements or at the time of very important operations”. This definition is now implemented in the French Commercial Code.

2. Board Committees

67. The Viénot, Hellebuyck and Bouton Reports stress the importance of the three key Board Committees:

- Remuneration Committee, which should set both the fixed and the variable portions of corporate officers’ remuneration;
- Nominating Committee, responsible for ensuring management nominations and succession plans;
- Audit Committee, empowered with increased responsibilities for checking critical corporate auditing issues.

68. The Bouton Report highlights the importance of these three key Committees, which should be composed exclusively of independent Directors, for both the Remuneration and the Nominating Committees, and with a two-thirds majority of independents for the Audit Committee. Their activities should be summarized in the Annual Report.

69. According to Proxinvest, while in 2002 74 per cent of the French companies members of the SBF 120 had both Remuneration and Audit Committees, only 11 per cent had a Nominating Committee, compared with 82 per cent in the United Kingdom for example.

D. Members of the Board and key executives

1. Duties and qualifications

70. Both the Viénot II and the Hellebuyck I Reports outline the first French Directors' Charter of Rights and Obligations:

- Directors should strive to be aware of the obligations entailed by their mission.
- They should personally own a significant number of the company's shares (e.g. worth one year of directors' fees).
- They must devote the necessary time and attention to their duties, and should not accept more than five directorships (this limitation was confirmed by the NRE 2001 Law).
- They must endeavour to attend all Board meetings.
- They must ensure that they are properly informed, by requesting additional information whenever required.
- They should consider themselves bound by a duty of professional secrecy.
- They should refrain from trading in the securities of companies, on the basis of their privileged insider information.

71. The Viénot II Report recommends limiting the terms of directorships to four years.

72. According to Proxinvest, these recommendations have already been adopted by most large cap French companies.

2. Evaluation mechanism

73. The Viénot Reports emphasize the need to assess Board performance.

74. The Bouton Report recommends an annual operational review, supplemented every three years by a formal review, with the possible contribution of an external consultant. Shareholders are to be informed in the Annual Report of the evaluations and, if applicable, of any steps taken as a result. The Report also recommends annual Board meetings without "in-house" Directors.

75. According to the Bouton Report, very few French Boards have implemented such an exhaustive evaluation procedure.

3. Directors' remuneration

76. In this section, the term "Director" means both Board Directors and Senior Corporate Executives.

77. In 1999, the Viénot II Report recommended the disclosure of the remuneration (including stock options) of top executive teams in Annual Reports, so as to allow shareholders to check whether it was tied to the performance of senior corporate management.

78. Later, when the MEDEF recommended such voluntary disclosures, several French Chief Executives obliged.

79. Since 2001, French law has issued the following stock option prescriptions:

- The Annual General Meeting has the exclusive power to authorize the granting of options.
- The exercise price of the options, based on stock prices at the time of granting, cannot be revised afterwards.
- The holding period of options, fixed by tax rules, is four years so as to restrict possible short-term management behaviours.
- Directors who are neither corporate officers nor employees are not entitled to stock options.
- Companies are prohibited from making loans to their executive managers or directors, either for options or for any other purpose.

80. Such provisions contribute to preventing many previous abuses.

81. The Bouton Report recommends the rejection of discounts when granting options to corporate officers and executives.

82. It also recommends that options be granted at set intervals in order to avoid opportunistic granting of options during an exceptional drop in stock prices. The policy defined by the Board of Directors should distinguish between corporate officers, executives and other grantees.

83. Moreover, the Bouton Report favours “purchase options” over “subscription options”. While the former may entail a cost for the company if recognized as an expense, the latter risk having a diluting effect for shareholders. Remuneration Committees should inform Boards for the reasons justifying the choice, and the consequences, of the adopted options system.

84. The issue of severance payments for cancellation of service contracts, in the event of a takeover for instance, is addressed by the Hellebuyck II Report, which considers that severance payments should be modulated according to corporate performance during each executive’s respective years of service.

85. The MEDEF Ethics Committee published in May 2003 a series of recommendations on corporate remuneration.

4. Succession planning

86. As in most other continental European countries, succession planning is not considered sufficiently developed in France.

87. According to both the Viénot I and II Reports, it is the responsibility of the Nominating Committee of the Board to appoint its Chairman, Board of Directors, Chief Executive Officer and other senior management officers.

88. The Bouton Report recommends that the selection process be published in the Annual Report.

5. Conflicts of interest

89. The Bouton Report states that “A Board Director is independent when he or she has no relationship of any kind whatsoever with the corporation, its Group, or the management of either, that is such as to colour his or her judgement”. It also lists independence criteria, including that the director should not be an employee or corporate officer of the company, its parent company or consolidated subsidiaries, and has not been one during the previous five years; the director is not (directly or indirectly) a customer, supplier, investment banker or commercial banker; the director does not have any close family ties with a corporate officer of the company; has not been an auditor of the company over the past five years; and the director has not been a director of the company for more than 12 years.

E. Material issues regarding employers and other stakeholders

90. The French system does not incline towards co-determination on the German model. French unions prefer to leave the power of decision with corporate management, while focusing on collective bargaining.

91. However, the French Corporate Committees (Comités d'Entreprise), on which the workforce and/or unions are represented, delegate one or two members – without voting rights – to Board meetings. Employee members with voting rights are considered if 3 per cent or more of the capital is held by employees. Under the 3 per cent ratio, this requirement is optional.

92. This formal framework can be supplemented by consultations with the workforce and/or unions on fundamental changes, such as structure, closures, expansion or diversification.

93. Moreover, several companies have instituted important employee shareholding programmes. According to the study published in the 19 November 1999, issue of *La Vie Financière*, the stake held by such programmes amounted to 5 per cent of the total capitalization of the Paris Bourse.

94. The French Federation of Employee Shareholders' Associations (Fédération des Associations d'Actionnaires Salariés et Anciens Salariés – FAS) has developed an Index of Employee Shareholders (Indice de l'Actionariat Salarié – IAS) of the companies in which 3 per cent or more of the capital is held by employees. In 1999, for example, the following 28 French companies had employee shareholder programmes owning 3 per cent or more of their capital:

Companies with high-employee shareholder ownership

	%		%		%
AGF	3.4	Elf Aquitaine	5.0	Schneider	3.5
Air France	11.4	Essilor International	17.9	SEB	3.8
BNP	3.2	France Télécom	3.6	SEITA	6.3
Boiron	3.2	Gascogne	5.5	SIDEL	7.2
Bouygues	6.0	Guerbet	5.7	Société Générale	8.6
Brioche Pasquier	7.3	Latécoère	5.7	Technip	3.0
Bull	5.4	Renault	3.2	Total	2.9
Castorama-Dubois	4.0	Rhône-Poulenc	3.8	Usinor	3.6
Crédit Lyonnais	5.0	SAGEM	27.0	Vivendi	3.0
Eiffage	23.0	Saint-Gobain	3.7		

F. Environmental and social stewardship

95. The 2001 NRE Law compels French companies to report the impact of major environmental and social issues on their activities, for example:

- Remuneration, including social charges;
- Dismissals, particularly those resulting from corporate restructurings;
- Water and energy consumption;
- Pollution concerns;
- Reliance on environmental and social certifications.

96. The Hellebuyck II Report stresses the importance of corporate long-term sustainable development principles.

97. According to Proxinvest, questions raised on both social and environmental issues are increasing at French Annual General Meetings. In 2002, they represented respectively 23 per cent and 5 per cent of all questions raised at the AGMs of CAC 40 listed French companies.

98. France is also one of the very few countries which created in 2002 a high-level State Secretariat in charge of sustainable development.

99. Moreover, following similar developments in other countries, about 50 social and environmental equity funds were developed in France between 2000 and 2003. These funds are based on the scoring systems of both French and foreign environmental and social corporate scoring firms.

G. Material foreseeable risk factors

100. The Bouton Report states that the members of the Audit Committee should examine material risks and off-balance-sheet commitments, interview the Chief Financial Officer and the head of the internal audit, and express their view on the organization of the audit department.

H. Independence of auditors

101. According to the Viénot II Report, the Audit Committee should clarify all possible risks of conflicts of interest between the “*stricto sensu*” auditing work and the consulting services provided by auditors.

102. According to the Bouton Report, “the statutory auditing should be carried out to the exclusion of all other work for the client company. The audit firm that has been retained should give up, for itself and for the network that it belongs to, any consulting work (e.g. legal, tax or information technology consulting) that it has provided directly or indirectly to the company it has been selected by, or to its Group”.

103. The dual auditorship – which may be a specific feature of French accounting – contributes to ensuring the independence of auditors.

104. The Bouton Report recommends that auditors be rotated every six years via tenders.

III. ANNUAL GENERAL MEETINGS

105. The Hellebuyck Reports recommend that the delay between the closing of a company’s annual accounts and the Annual General Meeting be limited to a maximum of four months.

106. The Reports also recommend that the period for calling the Annual General Meeting be extended beyond 15 days to up to one month, so that the documents can be delivered to the shareholders sufficiently in advance of the meeting. They also recommend the publication of two reports: an oversimplified one to be dispatched to all shareholders, and a more exhaustive one to be communicated to shareholders upon request.

107. The reliance on English as the second reporting language is spreading rapidly in France, as a result of the NextEconomy and NextPrime labels initiatives of Euronext.

108. The traditional French procedure of “blocking stocks” up to five days before Annual General Meetings was criticized by the Hellebuyck II Report, by Proxinvest and by many investor groups. The NRE Law strived to improve the “blocking system”, by authorizing shareholders to sell their stocks up to 3 p.m. on the day preceding the Annual General Meeting, provided that they release the information allowing the cancellation of their votes, should the latter be required.

109. Actually, in 2003, the main problem confronting international investors in France is Chapter V of the 2001 NRE Law, on the “Identification of Foreign Holders”. It sets up a secret identification process between foreign investors and Board Chairs. It also compels foreign holders to renew their “voting mandate”, with their original signature, for each Annual General Meeting. This NRE Law⁵ was criticized, among others, by Proxinvest and by Senator Philippe Marini, Rapporteur of the French Senate Finance Commission, as being much too complicated and discriminatory towards foreign holders, as well as granting excessive powers to Board Chairs for cancelling the voting rights of “non-adequately identified” investors.

⁵ Implementation Decree (Décret d’Application) 2002-803, 3 May 2002

110. Several solutions have been proposed by Proxinvest, and by various professional bodies and renowned experts, so as to avoid the problems created by this 2001 NRE Law identification process.

111. The French AFG-ASFF Association, Proxinvest and Professor Jaap Winter – Chairman of the European Commission’s High Level Group of Company Law Experts – have for instance recommended that the entire network of banks and other securities intermediaries be entitled to certify voting rights (as opposed to the corporate control of the 2001 NRE Law) on behalf of specific instructions, and/or valid powers of attorneys, from the ultimate account holders.

112. The “Identification of Foreign Holders” promulgated in the 2001 NRE Law is rather surprising in a country considered a pioneer in the continental European financial securities field. This contested foreign voting issue is likely to be resolved in the future, for the benefit of both foreign holders and the French financial market place.

IV. TIMING AND MEANS OF DISCLOSURE

113. Since 1987, the Commission des Opérations de Bourse (COB) has encouraged French companies to report in a Reference Document (Document de Référence) detailed financial information aimed at financial analysts and institutional investors. It should be released to the COB at least 50 days before the Annual General Meeting, while the Annual Report should be submitted to the COB 30 days before the AGM. About 350 French companies publish the Reference Documents.

V. BEST PRACTICES FOR COMPLIANCE WITH CORPORATE GOVERNANCE

114. Since the Viénot I Report, French listed companies state their compliance with one, or several, or the latest published French Code(s) in their Annual Reports.

VI. CONCLUSIONS

115. Institut Montaigne, the influential think tank founded by Mr. Claude Bébéar, Supervisory Board Chairman of AXA, concluded its March 2003 publication “Mieux Gouverner l’Entreprise” by stating that corporate governance regulations should be adapted to changing conditions.

116. The history of French corporate disclosure has so far demonstrated that the system is not cast in stone but has a resilient capacity for reform, confirmed by the impact of the proliferating French, European Union and other international laws, codes and reports, which evolve according to rapidly changing socio-political, legal, regulatory, economic, financial and environmental conditions.

117. Last but not least, most French corporate disclosure principles, practices and policies tend to be upheld by the initiatives of the European Commission in Brussels. The latter is for instance negotiating, on behalf of all EU members, exemptions from the US Sarbanes-Oxley Act.

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