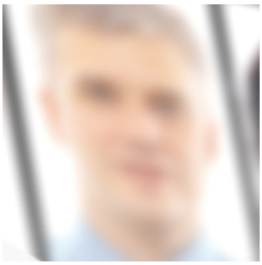
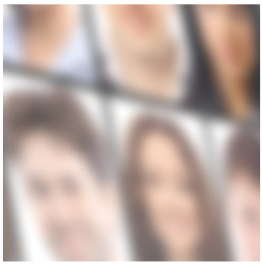
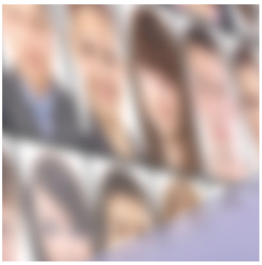

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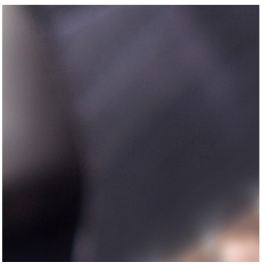
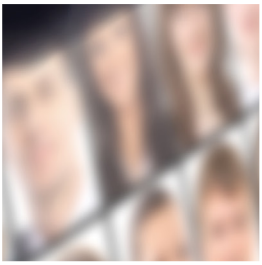
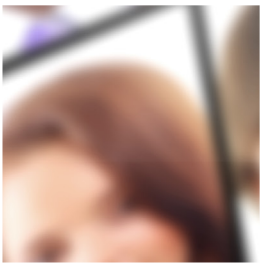
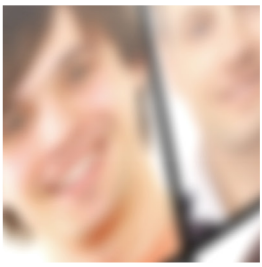
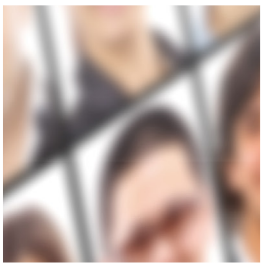
Corporate gouvernance and performance




Amélie Rafael

May 2013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CORPORATE GOVERNANCE AND PERFORMANCE

Opinion of the Economic, Social and Environmental Council

submitted by
Mrs. Amélie Rafael, rapporteur

on behalf of
section for economic activities

Question referred to the Economic, Social and Environmental Council by a decision of its office dated 14 February 2012 applying Article 3 of the Ordonance no 58-1360 from 29 December 1958 amended, concerning the organic law relating to Economic, Social and Environmental Council. The office entrusted the section of European and International Affairs the preparation of an opinion on *Corporate Governance and Performance* . Section of economic activity, chaired by Jean-Louis Schilansky, appointed Mrs. Amélie Rafael as rapporteur.

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CORPORATE GOVERNANCE AND PERFORMANCE

Summary of the Opinion[1]

In the face of the economic, social and environmental upheavals, the company is subject to conflicting injunctions and must redefine its role within society and its responsibilities to the stakeholders it has an influence on: managers, employees, shareholders and the many actors and partners as well as its environment and the community as a whole.

The ESEC intends to show in this opinion that the global performance of the Company has to rely on governance able to deal with the sometimes conflicting interests of its stakeholders to propose a shared strategic vision, in particular establish lasting trust between the management of the company, its employees and its shareholders.

Towards a new concept of the company

A statistical approach of companies in France

Statistics allow to better analyze the economic fabric based on entrepreneurial criteria and no longer solely based on the legal units, distinguishing between companies according to their decisional independence.

As an illustration:

- more than 95% of businesses are micro-companies and more than 99% of them are independent;
- groups employ 64% of employees and generate 70% of the added value;
- 28% of French mid size companies are under the control of a foreign group.

Half of the companies have a "legal entity", the most widespread being the SARL. The other half acts under the "physical entity" of the entrepreneur.

➘ **The ESEC regrets that systematic and regular data are not available regarding the capital structure of the companies.**

A definition of the company

Companies differ by their size, activity and legal structure. Their realities are even more diverse depending on their positioning and dominance in the productive value chain. The company is an organized community that aims to sustain and develop new capabilities.

1 **The entire draft opinion was adopted by public vote with 144 votes in favour, 11 votes against and 17 abstentions** (see the result of the vote in the annex).

- **The ESEC proposes to define a corporate law that recognises the company's mission of collective creation, the management authority given to the entrepreneur and new rules of solidarity among its stakeholders and the modalities of employee participation in the development of its strategy.**

- **The company should be taught in all its diversity in all school and university curricula.**

The contribution of stakeholders to company performance

Employees: from information to participation as a performance lever

Placing trust at the heart of management

- **Keeping all the elements of the collective undertaking well informed is a prerequisite to their commitment.**

- **In any event, trust management requires ensuring the consistency between speech and actions. Ultimately, it calls for the involvement of everybody, in the development of the project of the company.**

Developing participatory practices mobilizing various human resources at work.

- **These practices are particularly suited to the battle of innovation. Training plans should henceforth provide training in the management and development of the business strategy.**

Incentives and involvement: Competitiveness tools

- **Incentives and involvement should retain their original design, in particular by restoring blocking rights.**

- **A thorough examination should be undertaken to give all employees access to these features regardless of company size.**

The environment of the company: constraints and opportunities

The Principal/subcontractors relationship

- **This relationship must be improved to achieve "co-contracting" and the development of efficient industrial and services clusters and take into account the added value of each level of subcontracting.**

The relationship with customers and suppliers

- **Regulatory measures should supervise certain practices (e.g. transparency of pricing).**

- **Corporate strategy requires long term relationships with customers as with suppliers and should result in the establishment of indicators to monitor the effectiveness of the progresses made.**

The company and territories: a win-win relationship

- **The ESEC recommends supporting territorial cooperation initiatives as well as innovative forms of collective entrepreneurship involving multiple stakeholders in their governance.**

Control of the company capital: A condition of its long term performance

The level of funding as well as the typology of shareholders is crucial to the performance of the company.

Financing needs and tools

We generally agree to denounce certain investment strategies, often decided to meet expectations of very short term high returns.

Some financial investors can adopt an attitude that leads them to seek a long term return on investment.

- **Il faut renforcer les outils de financement en fonds propres capables d'accompagner les entreprises sur le long terme sans déséquilibrer leur gouvernance.**

Employee shareholding

Employee shareholding is a stability and long-term financing tool for the company. It can help enhance employee motivation and create common interests between them and the shareholders.

However, it is risky especially in case of difficulties leading to the cessation of activity of the company, the employees losing both their jobs and their savings.

- **Employee shareholding should continue to be encouraged, particularly in SMEs by:**
  - encouraging the development of employee shareholding plans in certain equity financings of territorial or BPI funds;
  - access to financing of these territorial funds for SMEs which opted for the COCP structure;
  - a new hybrid legal and fiscal framework: the employees' holding cooperative.

The functioning of decision-making bodies

Overview

Decision-making bodies are very different depending on the legal status of companies. Listed companies (less than a thousand for about 3 million companies in France) can practice voluntary compliance governance codes following the principle *comply or explain*.

The role of administrators

The composition of director's boards and supervisory boards must be open to more diverse professional and human competences.

The independence of administrators is a guarantee for the equal treatment of the company's different stakeholders.

Employee representation

While their presence is provided for, their place on the boards, in France (0.4% of the seats), does not seem to be on the level of the stakes.

- **The ESEC finds that the proposals of the "Gallois" report and the "employment securing" law constitute a step in the strengthening of this representation. However, an assessment will have to be made before the device is eventually expanded to a larger number of companies and / or employees.**

- **It recommends that employees taking part in administration be given adequate training to fulfil their role.**

The specificities of SMEs and executives

- **Supporting SME executives is crucial. It is based on two elements, training and formalization:**

  - informing and training of the executive in leadership, management, innovation, international trade, etc.;
  - formalization of the strategy, governance and stakeholder relationships, for example by setting up practical tools tailored to SME/VSE based on the CSR framework;
  - formalization of employee relationships (information, SRB, participation or benefit agreements);
  - formalization by a legal structure tailored to the strategic plan.

Opinion

Introduction

Globalization and financialisation of the economy have drastically changed the traditional structure of production facilities. The current crisis has highlighted the strong interdependence of economies. The economic system has become so complex that it is unpredictable and therefore hardly governable.

Moreover, the evolution of demographics and unemployment rush our country in search of a difficult balance where a shrinking fraction of the population is active and must, through its work, produce the added value necessary to fund the national economy.

Meanwhile, society is becoming increasingly aware of the impact of its activities on the environment and realizing that transformations in the ecosystems already have an impact on it.

The company is at the heart of these discussions, often faced with contradictory injunctions, pointed to as both the cause and the solution for the ills of society.

But what is a company? Is it possible to provide a unique definition for it while it covers very different realities?

What is a successful company? Can we continue to assess company performance according to financial criteria alone while we give it a social responsibility?

Finally, how to ensure that the company will actually play its part in the betterment of society if its strategic plan is at odds with the interests of the latter, that is to say if societal interests are not taken into account by its governance?

Thus, from an understanding that could be described as private, the role of the company would tend to shift towards a public sphere, since any decision has effects on other parts of the company. This is especially noticeable for large or even global companies, but remains true for any business.

Every company is indeed tied to its stakeholders, from the more obvious to the more subtle - employees, shareholders, customers, suppliers, territory, neighbourhood, the natural environment, etc. - and must choose between competing interests that may be contradictory.

With this opinion, the ESEC intends to show that the global performance of the company has to rely on governance capable of dealing with the sometimes conflicting interests of its stakeholders to propose a shared strategic vision, in particular establish lasting trust between company management, its employees and its shareholders.

Chapter I
Towards a new concept of the company

A statistical approach of companies in France

Economic criteria

The statistical presentation of the panorama of French companies has evolved significantly with Decree No. 2008-1354 of 18th December 2008 made under section 51 of the law on the modernization of the economy.

Companies are now identified using economic criteria. The aim is to distinguish entities that have a real freedom of action from those held by groups who, because of this, have little to no independence.

As such a group of companies is now considered in French statistics as a single company, regardless of its size and the number of legal units that compose it.

The text also reclassifies them into four new categories based on criteria of size, headcount but also turnover and balance sheet total to "*account for the reality of commercial, financial or holding companies that play a major economic role through their turnover or through the assets they hold despite having very few employees*" [i]:

- **Micro-enterprises** (MIC) that employ fewer than 10 people and have a maximum turnover or balance sheet total of € 2 million;
- **Small and medium enterprises (SMEs)** that employ fewer than 250 people and have an annual turnover below € 50 million or a maximum balance sheet total of € 43 million;
- **the mid-size companies** (ETI), that employ less than 5 000 people and have a turnover not exceeding € 1.5 billion, or a balance sheet total of € 2 billion or less;
- **Large companies** (GE) those that are not classified in any of the other categories.

These new conventions underscore, as shown in the table below, that the French productive fabric is relatively concentrated [ii]: if the few 200 large companies represent only a fraction of the total number of firms (against 95% for micro-enterprises), they employ more than 30% of the workforce (versus less than 20% for micro-enterprises).

These new conventions also show the weight of the groups in the French economy: representing less than 2% of the companies, they employ 64% of the workforce (50% in French groups and 14% in foreign groups). Note should be taken, specifically, of the significance of companies under the control of foreign groups amongst ETI: they account for 28% of the total number of these companies and 33% of their headcount. In addition, all groups (excluding the financial sector) contribute to 70% of the value added.

Table 1:
The distribution of French companies by categories in 2009

	ICM	PME	ETI	GE	Total
Number of enterprises	2,555,003	131,253	4,576	217	2,691,049
(% of total)	94.94	4.88	0.17	0.01	100.00
Independent businesses	2,545,918	100,900	490	ND	2,647,308
French groups	7,324	25,781	2,806	148	36,059
Foreign groups	1,761	4,572	1,280	69	7,682
Number of employees	2,377,504	3,529,842	2,877,952	3,986,077	12,771,375
(% of total)	18.62	27.64	22.53	31.21	100.00
Independent businesses	2,336,584	2,077,727	166,842	ND	4,581,153
French groups	33,463	1,232,986	1,763,368	3,395,746	6,425,563
Foreign groups	7,457	219,129	947,742	590,331	1,764,659

Scope: companies as defined by decree 2008-1354, including financial and insurance activities, whose main activity is not related to agriculture nor public administrations. Only companies with a positive turnover in 2009 were selected. Auto-entrepreneurs are not included in this account. Number of employees in full-time equivalent.

Foreign group: By international convention, the nationality of a group must be the country where its decision making centre is found. Most of the time, it coincides with the headquarters. When a company owns more than 50% of the vote in general meetings of another company, it is considered to have control of it.

Source: INSEE, Esane and Lifi 2009.

In terms of sectors of activity, the now prominent position held by **services** is not questioned (79% of companies and 63% of employees). Micro-enterprises and SMEs play an important role in it (eg. in accommodation and restaurants), but large companies are not left out (particularly in the finance and insurance sectors).

Firms with less than 250 employees (SMEs and MIC) are also well established in the **construction** field (14% of companies and 11% of employees).

As for the **industry** (7% of companies and 26% of employees), it is an activity dominated by companies with more than 250 employees and especially by ETIs (that represent, by themselves, nearly a third of the employees in manufacturing). This sector's share has been strengthened by the new statistical methods to the extent that they reintegrate into its perimeter subsidiaries performing support (headquarters, financial, research) or commercial functions, previously falling in the tertiary sector.

Legal criteria

French companies may adopt different legal structuring and are divided almost exactly into two halves (see table below):

- those who maintain the physical entity of the entrepreneur - the company, its assets (at least partly), its debts, its responsibility are merged with the entrepreneur's;
- the others who adopt a moral entity that distinguishes them from the entrepreneur. These companies must then choose a legal form of commercial company, among which the Limited Liability Company (SARL) is by far the most prevalent form in all sectors. As for the limited company (SA), it applies to approximately 50,000 entities, representing a small proportion of the whole, but often the largest of them.

Table 2: The distribution of French companies by activity and their legal form in 2011

(in number of companies)

	Companies with physical entity	Companies using moral entity				Total
		SARL	SA	Others	Total	
Industry	93,068	107,309	8,244	34,994	150,547	243,615
Construction	229,336	223,040	3,330	20,247	246,617	475,953
Services	1,439,040	1,045,981	36,682	270,240	1,352,903	2,791,943
O/w:						
Commerce (1)	458,360	512,151	13,522	75,318	600,991	1,059,351
Information and communication	39,719	62,323	2,964	11,557	76,844	116,563
Finance and insurance	22,193	59,039	7,151	40,941	106,231	128,424
Real estate activities	53,561	80,082	3,659	36,683	120,424	173,985
Other services	865,207	332,386	9,286	106,741	448,413	1,313,620
Total	1,761,444	1,376,330	48,156	325,581	1,750,067	3,511,511

(1) Wholesale and retail trade, transport, accommodation and food services.

Scope: enterprises defined as "legal units" engaged in an activity within the merchant productive system (computerized directory of businesses and institutions - SIREN), excluding agriculture.

Associations identified in this directory (under "Other companies which have adopted a legal entity") when employing salaried personnel, exercise activities involving a payment of VAT and corporate tax or if they wish to receive public grants.

Source: INSEE.

Finally, it should be noted that a significant part of French firms has adopted one of the statutes of the social economy (voluntary, mutual, cooperative or foundation). Indeed, the socio-economic importance of the Social and Solidarity Economy (SSE) is very significant, between 7 and 10% of GDP according to sources: thus 38 million people are protected by a mutual fund adhering to the National Federation of the French mutuality (FNMF) 21,000 cooperative businesses employ nearly one million employees and, with over 1.8 million employees, associations represent 85% of employment generated by the SSE.

The capital structure of companies

The Bank of France realised several years ago (see Bulletin de la Banque de France n°55, July 1998), an analysis from a pool of more than 280,000 companies for which the shareholding structure is known, far beyond those 680 companies listed on the markets. It confirmed the highly concentrated nature of the shareholding in France, the importance of family-oriented capital and small proportion of shares held by financial institutions.

Thus, for the entire pool, the largest shareholder of each company holds an average of 66% of the capital, this share being 52% for the 680 companies listed and only 27% for the companies listed on CAC 40.

The breakdown of capital by investors' categories shows that the family-oriented capital (that is to say, held by individuals) represents more than 50% overall (and 12% for listed companies) over the non-financial companies (30% overall and 14% for listed companies) because of cross-shareholdings. Next come the holding companies (9%) and financial institutions - banks and insurance companies - (3%). Approximately 8% of the shareholders remain unidentified.

This observation of the degree of ownership concentration is increased while the share of each category of investors is reported only in the companies where it occurs: for example, the category of "physical entities" has nearly 80% of companies it owns. As for the banks, they are only present in 2 out of 10 companies, but hold about 60% of the capital. Similarly, when the State is still present, it holds, in this case and on average more than 55% of the company capital.

Overall, this study found that more than 73% of all companies are controlled more than 50% by a single shareholder (37% by another company and 35% by an individual).

➘ **The ESEC regrets that a recent study showing systematic and precise distribution and evolution of the share of firms in France is not available. It recommends regular monitoring of indicators on the capital structure of companies.**

A definition of the company

Subject of an extensive literature, the company is not legally defined so that some authors believe that it is an "*irritating concept because it is both elusive and essential*"[iii].

However, the presence, action, decisions, and the future of the company naturally affect its internal components, but also affect it more broadly upon many actors or economic, social, environmental and broader community partners.

The absence of a legal definition of the term "enterprise" often leads to confusion with the "company" - which, as we shall see later, is perfectly legally defined.

However, enterprise received some economic definitions.

At the European level, it was not until a 1991 judgment of the Court of Justice of the communities for a functional and broad definition of the concept of enterprise, based on the criterion of economic activity. The "Höfner and Elsner" of the 23 April 1991 judgment specifies that " … *in the context of competition law ... the concept of enterprise encompasses*

every entity engaged in an economic activity, regardless of the legal status and the financing of that entity."

The European regulation of 15 March 1993 (EEC 696/93) made for statistical purposes, as defined, gives the company: "*the smallest combination of legal units (legal or natural persons) that is an organizational unit production of goods and services with a degree of autonomy in decision making, especially for the allocation of its current resources. An enterprise carries out one or more activities at one or more locations. An enterprise may be a sole legal unit.*"

In summary for the purposes of this regulation, the enterprise is characterized by:

- the performance of real economic activity;
- production of goods or commercial services;
- decision-making autonomy.

The productive action in this regulation "*results from a combination of means (equipment, labour, manufacturing processes, information network and products) that lead to the formation of specific goods or services. An activity is characterized by an input of products (goods or services), a production process and products generated*".

The European definition has been adopted in France, particularly in the application of the Act of 4 August 2008 on the modernisation of economic texts. Thus, the Decree 2008-1354 of 18 December 2008 resumed, in Article 1, the EU definition.

We will add that the legislature evokes the enterprise - regardless of its legal status - for example, in competition rights, or its tax law.

To be about right, the enterprise must choose its own legal form. It will "exist" either as physical or legal person, within a company, as legal support for the enterprise, and as a "means" to bring equity to pursue the purpose of the enterprise.

Therefore, the selected forms are numerous:

- individual enterprise: the entrepreneur and the enterprise are one and the same person, however, since the creation in 2010 of the individual entrepreneur with limited liability (EIRL) status, it is possible to distinguish the owner's possessions from those assigned for enterprise's activities;
- the corporate form, used to create a "legal person", totally distinct from the capital providers. Under the Civil Code (Article 1832) "*a company is formed by two or more persons who agree by contract to assign to a joint venture property or industry to share the profit or advantage of the economy that may result.*" Company can also be created by one person.

The types of companies are numerous:

- Single-member limited liability company -(EURL)- or single-member LLC -SARL-
- Limited Liability Company (SARL);
- Limited Company (SA);
- French Simplified Joint Stock Company (SAS) or Single-member Simplified Joint Stock Company (SASU);
- General partnership (SNC);
- Limited partnership (SCS) or Limited partnership by shares (SCA);
- Professional partnership (SCP) and Liberal professional partnership (SEL);
- Companies "*sui generis*": although this case is singular, they relate explicitly to agricultural cooperatives (Article L 521-1 of the Rural Code and marine fisheries).

These companies may opt for dual governance with an Executive Board and Supervisory Board. Moreover, the doctrine considers that cooperatives can be established only under the provision of the law of 10 September 1947 embodying the Statute of cooperation: this is also the case of local branches of Credit Agricole.

The SA or SARL may adopt the cooperative form of Cooperative Production Company (SCOP).

Both of these forms (SA or SARL) are the only ones that can use a board of directors or the formula of the Director/Supervisory board.

The SA consists of at least seven people, representing at least € 37.000, and is managed:

- by a president and an executive director and a board of at least three people (up to 18) appointed by the shareholders (called monistic formula);
- or by a management board (two to five directors, shareholders or not) and a supervisory board - non executive organ - including three to eighteen members appointed by the shareholders (so-called dual form).

For their part, SARLs (LLCs) whose capital is divided between at least two partners are run by one or several managers, associated or not.

It was said earlier that there was confusion between the concepts of enterprise and company. It is not without consequences in this sense that, as J.P. Robé, points out "*company takes into account by its inner mechanisms only the interests of its members while the enterprise also involves those of employees, suppliers, consumers, the environment (natural), the general public, and of the State, particularly in the international framework*."

If the term enterprise is more than common today to designate a unit of production, it is of relatively recent historical usage. The word "enterprise" is of French origin, while the Anglo-Saxons favour terms like company, *firm* or *corporation*. This word derived from the French word "entreprendre" (undertake), that appeared mid-fifteenth century, meaning "taking into one's own hands". At the end of the fifteenth century, it donned the more actual sense, of "taking a risk, challenging, to dare a goal."

In its modern sense, we can locate the advent at the turn of the nineteenth and twentieth century. The use of the word appears at the same time as large enterprises are created on both sides of the Atlantic.

This term overlaps and tends to supplant those of "société" (firm) (cf. shareholders) or "compagnie (company)", which refers to the legal structure whereas "enterprise" evokes much more physical and tangible reality of collective work: employers and employees.

Meanwhile, separate from the undertaker or the owner, the term "chef d'entreprise" (CEO) in the sense of "management" appears. Ensuring the management of the company, custodian of the authority of its management, "combining the factors of production," according to A. Marshall, he may be distinct from the owner / shareholder. After Blanche Segrestin, during her hearing before the section) for example, the notion of "CEO" appears in France for the first time with the law of 1898 on occupational accidents.

Nowadays CEOs have very different profiles. How to generalise under one same term, the leader of a multinational group, the founder or the new family business, the architect and creator of a *start-up*, the industrialist, the merchant and financial, those who are oriented to international and those who target the local economy?

As the statistical overview above demonstrates, companies differ by their size, activity and legal structure. Their realities are even more heterogeneous in their positioning and dominance in the production value chain: some are "outsourcers", others subcontractors, some are independent, while others are part of a group such as a subsidiary or parent company, more or less distant from the decision-making centre. However, a good understanding of what is the enterprise today requires first a good understanding of its diversity, thus a good education. Thus, in an opinion devoted to *Youth employment* in September 2012, the ESEC has stressed that all information and awareness taken by economic and social actors to promote entrepreneurship initiatives should be encouraged and supported. In addition, the ESEC has desired in the notice *Do things differently: the not for profit and voluntary economy* from January 2013, a better consideration of the ESS in schools and educational pathways for young people to be aware of both entrepreneurship and the values of the ESS, while stressing that "*beyond existing specific training, the social economy should be fully integrated into the economy or management programs in high schools (technical, general and agricultural) and in higher education and research*".

- **The ESEC therefore recommends that the diversity of Enterprise - size, governance, legal structures, and economic weight - is systematically promoted in all school and university curricula so that the reality of the enterprise is no longer so systematically reduced to the image of big enterprise into a limited company.**

For our assembly beyond its diversity, the enterprise relies on the internal relations between the three main actors (providers of capital - that is to say, the shareholders - executives, employees) and is a community organized work force whose goal is to develop new capabilities (B. Segrestin) and cannot be reduced to an accumulation of contracts (commercial, labour, company etc.)

- **The ESEC proposes that we rethink enterprise, its material reality and its concept and to make an effort to define a true law for the enterprise, as there is one for companies. It would at the very least put corporate law in the services under the responsibility of the enterprise in all its diversity and be more innovative to meet new entrepreneurial creations adapted to contemporary challenges.**

That law should identify, for the company, new rules of solidarity among stakeholders, its mission of collective creation, management authority entrusted to the CEO and terms of employee participation in the development of its strategy.

Chapter II
The contribution of the stakeholders to the company performance

According to Mr. Augustin de Romanet, interviewed by the section, good governance must not neglect any of the four main factors: customers, owners, employees and the business environment. According to him, "*modes of corporate governance may have, by their conformation, a tendency to focus on either the owners or the customers, or the employees, but, it must be said, rarely the environment. If any of these factors are neglected, we notice that the long-term implications are extremely negative*".

Moreover, as pointed out by Mrs Agnes Lemarchand, director of Areva interviewed by the section, more and more CEOs consider the need to balance social and economic performance, taking into account the contribution of all other stakeholders - not only primarily, the employees but also customers, suppliers, subcontractors, consumers, local communities, the natural environment ... - and promoting a partnership approach.

The enterprise is indeed in an environment that consists of many players qualified as *stakeholders*. The traditional conception that enterprise would be accountable only to its shareholders now seems outdated. Many enterprises recognise their social and environmental responsibility; for them, the Corporate Social Responsibility (CSR) is recognized as a business contribution to sustainable development issues. For enterprises, the approach is to take into account the social and environmental impacts of their business to adopt the best practices and contribute to the betterment of society and the protection of the environment.

In France, beyond voluntary approaches for implementing CSR, the Enforcement Decree of the "Grenelle 2" law enacted April 26, 2012 extended the requirement to include social, environmental and societal in the annual Report of the Board of Directors or Management, to all enterprises whose total assets or turnover exceeds € 100 million and with more than 500 permanent workers employed on average during the year. It establishes the list of information required and specifies the verification conditions by an independent body accredited.

More than a virtuous process leading the enterprise to worry about its impact on the environment, the issue of CSR is to enable a new definition of business performance, the overall performance, which is not assessed on financial criteria only.

In addition, taking into account expectations, constraints and stakeholder contributions in developing the business strategy are conditions of its overall performance over the long term.

Employees: from information to participation as a performance lever

The role and position of the employees must be understood specifically as they are the actors in daily production - goods or services - of the enterprise.

In its opinion from October 2011 *Competitiveness : A new model for development*, our assembly considered that a closer involvement of employees in governance, in all its forms, would have an impact whose benefits and risks on economic and social performance should be measured.

During her hearing, Mrs. Salima Benhamou, author of a report by the Centre for Strategic Analysis on "*Improve corporate governance and employee participation*" indicated the identification of three forms of employee participation:

- information and consultation (without replacing the capacity of Institutions of employee representation (IRP) to represent collectively the interests of employees);
- employee participation in decision-making;
- different financial schemes for participation in business results.

Installing confidence in the heart of management

Companies are subject to a number of obligations in terms of information of employees

Although this opinion is not intended to describe the powers of employee representative bodies, one cannot ignore the legal and regulatory requirements relating to information contained in the Labour Code. The employer has a general duty to inform and consult the works council (CE) on the economic and financial situation of the company. The content of this information is accurately predicted. This is the one intended to shareholders and partners, in the annual report to the Board etc... Members of the CE can also search for all the information they may find useful even outside the enterprise (article L-2325-11 of the Labour Code).

Finally, the right to information is sometimes accompanied by an obligation of confidentiality and secrecy for its members. Finally, the right to information is sometimes accompanied by an obligation of confidentiality and secrecy for its members. The secret is mentioned for information on manufacturing processes, the discretion when the information is confidential and of course if it is not made "public" in or outside of the enterprise.

➘ **For the ESEC, even beyond these legal and regulatory constraints, good information for all components of the group that represents the company is a condition of the commitment of the various stakeholders, including employees, and contributes to the overall performance of the company.**

The ESEC welcomes the creation of a qualitative database for information on the functioning of the company, allowing regular, clear and honest information and avoid certain obstacles in decision making. This basis can help the establishment of a debate between the employer and staff representatives on the strategic options and their likely impacts in terms of evolution of activity, impacted trades, required skills, the employment, the use of outsourcing, the interim, temporary contracts or new partnerships.

Moreover, if the purpose is the same, the forms should be adapted to the size of the company. Thus, the direct involvement of employees is often more natural, or should be, in a VSE due to a closer working relationship between the entrepreneur and its employees. However, its optimal application requires that the CEO is accompanied in management and work organization. Consular networks and professional organizations have an important role to take in terms of CSR applied to smaller structures role. Discussions have also been initiated in this regard under the Ministry of Sustainable Development.

Beyond that, it is important to foster and practice a climate of trust which constitutes an essential factor in performance.

Many researchers talk about the beneficial contribution of management by the trust. Returns are expected and economists evoke "a reduction in transaction costs", i.e. a simplification of relationships between the company and its environment.

In any event, managerial practices at all levels of the hierarchy require coherence between words and deeds, the association by cooperation of all in the work organization, the development of the company project, conditions of trust recognized as essential to the performance.

Thus during his hearing, Mr. Georges Jobard, CEO of the company CLEXTRAL stressed that the specificity of corporate governance was not based solely on a legal status but also on a state of mind, based on speech, vision and values, seeking to create on a daily basis, with perseverance and creativity, confidence in the collective ability to produce under good conditions and meet the changing needs of customers.

The quality of management allows for the commitment and motivation of employees. The conditions for its success are based on a smooth flow of information, an ongoing dialogue that can be controversial but allows for taking into account the shared realities, respect for the quality of work that satisfies the worker and the client and gives meaning to the work. Such art of governance also helps to stimulate creativity, a source of wealth for the company and general motivation.

The first goal of governance is to learn to cooperate by giving full importance to the dialogue. The concertation may achieve the accession and that is an extremely important point.

Management's ability to identify promising future perspectives, particularly for employment, is also a determining factor for confidence.

Develop participatory practices

Participatory practices affect all company stakeholders and mobilize various human resources at work. Employees are no longer limited to implementation of the decision, but can also participate at their level in its development. These practices don't have to be only financial: from the performance bonus for the first ones, to the search for better communication within the group for the second, to the "down streaming" of information on the exchange on projects.

Participatory practices contribute fully to business performance, especially in areas such as work organization and technical innovation.

They thus contribute to a new form of management in which the decision is not "thought" by one, but results from an "interaction" between different actors involved in it as exposed by Mrs. Laurence Hézard from concrete examples. They help promote the accession to the project and facilitate leading change, including organizational change. Participatory practices have the advantage of uniting the collective work on a project. They find their fullest expression in certain forms of businesses (those of the social economy in particular), so the SCOP is the most complete legal form of employee participation. This status helps to generate a strong sense of belonging, listening particularly the employees who in return show a strong interest for the economic dimension of the business (particularly in investment), as pointed out Jacques de Heere, CEO of SCOP Acome, when interviewed by the section.

- **For ESEC, participatory practices are particularly suitable to the battle of innovation that French companies have to fight in an open world.**

They are, in fact, call - in the order of improvements or major qualitative leaps or breaks - to the collective work as to the imagination of each individual employee at all levels.

Thus, some argue, as does Mr. Armand Hatchuel professor at Mines Paris Tech (Le Monde, July 3, 2012) *"a radically new approach to sharing the information with employees or with more involved suppliers. It is no more a question of revealing to them later, for social reasons, the strategy already adopted by the company, because this process inhibits the creative abilities of employees and promotes a dangerous conformity. Rather it is important to be clear about collective issues from which innovative strategies can be developed"*.

However, the establishment of a trust will be possible only under certain conditions:

- They are, in fact, call - in the order of improvements or major qualitative leaps or breaks - to the collective work as to the imagination of each individual employee at all levels.
- However, the establishment of a trust will be possible only under certain conditions:

- **Our Assembly therefore recommends that companies should henceforth provide training in the management and development of business strategies, which should be available to all. Naturally, the staff representatives should be trained first in functioning and business challenges, the content of such training should integrate the diversity of possible approaches.**

- Teamwork, dialogue and cooperation have been undermined by management methods favouring competition between employees, bonuses for individualized

performance etc the recognition of a collective performance is another aspect of management that creates the conditions for cooperation between people. In this regard, it would be desirable that the teaching emphasis, from an early age, on teamwork, for example by setting a system of collective notation. Several educational systems, especially in Scandinavia, have certain advantages in terms of confidence and cooperation between people.

➘ **The ESEC recommends that job evaluation practices take into consideration the collective dimension of the performance. In this sense, ESEC also recommends to conduct an examination within the French education system, to emphasize the collective work.**

The incentives and participation, competitiveness tools

The following ordinances are the legal basis of the incentives and participation: January 7, 1959 for the incentive, 17 August 1967 for participation "*in the benefits of business expansion*".

These devices should not be confused with the salary and a fortiori with its trends nor impair the recognition of qualifications. However, they were consistently modified and complicated by the law, sometimes tending to forget their goal of sharing the value added of the company over the long term, to turn them into a labour compensation variable. Moreover, these devices do not affect small businesses, except by special agreement in SCOP.

➘ **The ESEC recommends that these features should keep their original intent, notably by restoring the blocking of participation.**

It would be interesting to conduct a thorough examination with social partners to ensure that employees of TPE-SMEs can benefit more widely and that legal means are given to all companies in the perspective of generalization.

According to the above mentioned CASE study, the effectiveness of different devices varies. We will repeat here only a part of conclusions of this work to note, however, that: "*business savings plans (PEE) and employee share ownership positively influence the behaviour of employees, while the incentive used in isolation, does not produce significant effects. Furthermore, some devices (EPE, etc.) appear to enhance the effectiveness of other forms of participation, including social dialogue and employee participation in major decision-making bodies. However, these "financial" incentives are weaker than other forms of non-monetary incentives such as participation in decision-making, in terms of the organization of work (including greater autonomy of employees). Despite the proliferation of new communication devices (especially under the impetus of ICT) aimed at stimulating employee participation, direct social interaction and informal communication between employees and management are more effective in building confidence in the hierarchical relationships and beyond the social performance. Finally, the combination of good practices, financial and non-financial participation is especially efficient in terms of the economic profitability and competitiveness of businesses.*"

The authors of the study also noted that "*associating employees with results must be a part of a participatory culture extended, in particular, through research of effective combinations of participatory mechanisms and adapted to each company*."

The ESEC was fully reflected in the position of CASE according to which rather than trying to prioritize one or the other of these forms of information, consultation and participation whose limits are sometimes tenuous, it should encourage a "*productive complementarities*" between them. Very sensitive progress in the climate within the company and motivation of different actors should promote a virtuous circle and the feeling of belonging to a community of interest, serving the overall performance of the company.

The environment of the company: constraints and opportunities

The company operates in an environment that includes many "external" actors who are all stakeholders in its activities, interacting with it: customers, suppliers, consumers, local associations, etc... The relations with these various actors are a source of constraints and opportunities.

The involvement of other stakeholders in corporate governance constitutes their acceptance of other purposes than just financial return objectives, particularly in terms of sustainable jobs, preservation of know-how, maintaining a local momentum, quality of the environment, etc...

The ESEC believes that taking into account their interests in the company project contributes to the long term development.

The interweaving of stakeholders in the activities of the enterprise: genuine strategic stakes

The relationship contractors / subcontractors

In its opinion on the competitiveness, the ESEC stressed that "*intercompany relationships are also at the heart of competitiveness. In this regard, our Assembly has long advocated for seeking a new balance between contractors and main subcontractors, but also the secondary contractors who must be able, thanks to long enough contracts, to be assured of a medium-term visibility of their activity*."

The ESEC, beyond its recommendations for good practices, urges government to overhaul industrial policy whose objectives should enable the emergence of a functioning structured and supportive industry. As the ESEC has already recommended in its opinion "*The car industry: how can we meet the challenges of a successful transition?*, a reflection on the quality of customer / supplier relationships should result in the promotion of a policy of co-contracting and a more balanced sharing of risk taking instead of traditional outsourcing. A major reform is now imperative to preserve the inter-relationships that are at the heart of our country's competitiveness.

According to the 2010 report of the inter-industrial relations and its subcontracting mediator, Mr. Volot, industrial subcontracting concerns some 32,000 companies and 565,000 employees with a turnover of 77 billion Euros (2007).

There are several types of subcontracts and probably relationships between companies in this regard.

Relationships are naturally different for different scenarios considered. Establishing a certain "hierarchy" between contractors and subcontractors differentiates these providers, which are responsible for the product they provide to a customer as opposed to outsourcing, which is the responsibility of the giver of orders.

According to the "Volot" report, the relationships between the various parties have continued to deteriorate in our country in recent years. Beyond legislation, probably to be revised, the new mindset is to seek and build. As noted by the mediator for subcontracting, "*it is necessary to re-humanise the buyer-seller relationship ... It is more interesting, and certainly smarter [we underlined] that a giver of orders and the subcontractor study together all the possible productivity gains and to share them equitably, rather than the giver of orders pressuring subcontractor for his own benefit even with a smaller margin*."

The ESEC supports the proposals for developing best practices to allow improvement of relationships between these companies, as discussed in the mediator's report:

- sensitize the major contractor's enterprises at the highest level (Board of Directors and senior management) to the public interest in developing good relationships with their subcontractors;
- reflect this guidance in the procurement policy. In particular, the evaluation of these services should not be based solely on the criterion of price;
- encourage them to establish written contracts, structured and for a sufficiently long period in which the rights and obligations of the parties are balanced and clearly defined;
- sensitize all stakeholders to issues of intellectual property and the need for provisions in this regard in the contracts.

➘ **The ESEC extends these recommendations to public clients and supports the development of provisions, including social and environmental, in tenders issued by public authorities in the spirit of the Small Business Act.**

➘ **More generally, our Assembly considers that the essential development of real industrial sectors and efficient services in the long term implies taking into account the added value of each level of subcontracting.**

➘ **A reflection on the quality of customer / supplier relationships should result in the promotion of a policy of co-contracting and a more balanced sharing of risk taking instead of traditional outsourcing. A major reform is now imperative to preserve the inter-relationships that are at the heart of our country's competitiveness.**

The relationship with customers and suppliers

SUnder the patronage of customers coexist different "types" of customers: professional or not.

The concept of "managing customer relationships" develops. After the *Customer relationship management* (CRM), the RCMP considers the client as an object of study and action and the main source of income for the company.

However, it appears that this relationship may be producing much more information for the company when a part of product innovation, organization and concept, emanates from an ongoing and personalized relationship. It is strength of German enterprises to base a large part of their innovation upon what can only be called "the client resource", that is to say, upon a careful listening of their client's requests and translation of that request into a suitable offer.

The ESEC recognizes the relevance of mutually constructive relationship between the company and its stakeholders as a factor of economic, social and environmental performance in the territories.

It emphasizes the issue of payment delays, vital for many SMEs, VSEs, and regrets that the legislative and regulatory provisions are often not respected.

- **Regulatory measures should supervise certain practices, particularly transparency of pricing.**

- **The ESEC also encourages the promotion of "CSR polices" at the heart of corporate strategy. This strategy requires long-term relationships with customers as with suppliers and should result in the establishment of indicators to monitor the effectiveness of real progress.**

Enterprises and territories: for a win-win relationship

The company is increasingly integral part of its territory, including major economic as well as technological developments affecting its development. The company is also interacting with the natural environment of its production units. Companies are a key factor in wealth and attractiveness of a territory.

The research of ESEC surrounding the concept of local economy and SSE showed that agriculture, crafts, small and medium capitalistic companies or independent professions constitute economic activities tied to territories as well as the various activities of the SSE. Indeed, as partnerships, companies in the ESS cannot be separated from a territorial base, which does not prevent them from being able to grow beyond, including foreign markets.

Conversely, the deindustrialization of some areas is devastating in terms of economic structure, job destruction and loss of expertise. Territories are impacted by a vision of the European Commission mainly guided by a policy of internal competition, to the detriment of European industrial strategy to promote employment and growth, as Jean-Louis Beffa regretted during his hearing.

Beyond the link between research, education and business, today, many initiatives intended to link all actors in a given territory. For example, the Business Club grouping large and small companies at the agglomerations level develop and represent real networks interlocking economic world and the community. Dialogue and joint actions are the fruits of

these initiatives, some of which explicitly intended to link the deployment of business within the territorial sustainable development policies.

Similarly, the experience of employment area committees involving local elected officials, business leaders, employee representatives as well as the voluntary sector and the social economy shows that - in accordance with their vocation - these structures can contribute to the promotion and development of employment by the organizing and leading of dialogue and concentration on a given territory.

Meanwhile, as noted by the ESEC opinion on competitiveness, *"the strategic role the global competitiveness policy must be confirmed; links with regional development must be consolidated."*

In addition, players in the social and solidarity economy launched in 2011 experiments, called Territorial Clusters for Economic Cooperation (TCEP), to engage local stakeholders in "*strategies of cooperation and mutual solidarity to develop economic and sustainable projects"*.

Professional organizations and consular chambers also participate in the deployment of these initiatives over the territories.

In addition, models of multi-company governance allow you to associate companies and their territories: that is the case of some cooperative forms. In France, the Social enterprise (CICS), active in various sectors, are private companies which share governance between actors whose aims may be very different: employees, beneficiaries (clients, users,), funders, public authorities, other companies or local associations, etc... These partnerships, a little over 300 of them in France to date, base their governance on a collective project resulting from the convergence of interests of the various stakeholders. In addition, the purpose included in the statutes of these enterprises is twofold, both economic and of "public interest."

Abroad, such multi-company enterprises have developed in Italy (social cooperatives) and Quebec (solidarity cooperatives), primarily to collectively respond to social needs. In France, it is interesting to note that the collective interest of CICS is independent of the nature of its activity, but lies in the very fact of its shared governance between at least three categories of partners (with mandatory inclusion of employees and beneficiaries).

- **This is why ESEC recommends supporting territorial cooperation initiatives as well as innovative forms of collective entrepreneurship involving multiple stakeholders in their governance, in line with the principles of corporate social responsibility.**

Chapter III
Control of the company capital: A condition for its performance over the long term

The underfunding of French enterprises is often evoked, especially when compared with their foreign counterparts and competitors (German and British).

The underfunding occurs when the amount of company own funds, corresponding to the capital provided during the creation of the company, capital increases and profits not distributed the form of dividend is too low to ensure development through investment or to allow a company to resist in times of crisis.

In fact, a company can pursue a development project over the long term only if it has, on the one hand, the ability to finance it and, on the other hand, if the objectives of its capital providers are compatible with the rate and payback period of the project.

Thus both the level of funding and the typology of shareholders are crucial levers to the performance of the company.

Financing needs and tools

According to Mr. Jean-Louis Beffa, "*shareholders have become increasingly short-termist and invest following macro-economic choices. Sometimes offensive, sometimes defensive, sometimes cyclical, etc. They hold the shares for about 18 months. They show a total lack of affectio societatis, the intimate understanding of corporate functioning*".

Very broadly, the jurisprudence of the AMF considers this situation through:

- acceptance or promotion, leverage buy-out - which is over-compensation of the capital often incompatible with a strategy of business development - favoured by the tax system and that one may wonder if it is truly a contribution to the real economy;
- the shares of hedge funds;
- crawling control actions - de facto takeover of a company, without paying the real price;
- Hostile Takeover Bids (OPA).

In reality the situation of equity financing is mixed depending on the size and nature of business. It must be stressed that the economic weight of large companies as financial markets is such that their evolution and their fluctuations also impact the SMEs-VSEs and ETI.

The dominant model of SMEs, even the largest ones, is family ownership, both in Europe (60% of European companies of all sizes are family owned) and in France, where it is estimated that 8 or 9 out of 10 companies, employing up to 500 employees, are within this model.

The first objective of this shareholding is to sustain the company and its brand, particularly in order to ensure the best transmission.

According to a *Family Business Survey (Price Waterhouse Cooper* (PWC) 2011), he culture of these companies is more "entrepreneurial and financial" and conducive to strategic long-term vision; "*financing capacity and cash is always preferred, the distribution of short-term dividends is now rarely an issue for shareholders*".

Investments of such companies are managed very carefully and, reports one PWC study "*to finance them, they (family businesses) rely primarily on cash flow before turning to financial institutions and very rarely to public support*".

It is interesting to note that according to their leaders, family businesses, by their nature, have weathered the crisis better (this observation is verified both in France and abroad) would it be only by their capacity to make a quick decision and cohesion between all levels of the organisation - managers and employees. Last but not the least, "*the absence (or nearly) of shareholder pressure in terms of remuneration and short-term payment of dividends allowed to concentrate resources on the management of the economic and financial crisis*".

Associations, foundations, mutuals and cooperatives have their own funds protected by their principle of indivisible reserves, which beyond their democratic governance "one person - one vote", promote the development strategies over the long-term and fully play their role as a buffer against the crisis. Thus, in the opinion adopted in January 2013 *Do things differently: the not for profit and voluntary sectors, ESEC underlined that "cooperatives have shown their resilience to crisis: their turnover increased by 5.1% since 2009 and the shareholder base of the first hundred cooperatives increased from 22 to 24 million since 2008. This dynamic concerns sectors as diverse as retail merchants' cooperatives, craft cooperatives, including CICS particularly in the sector of renewable energy, etc... At the end of 2011 there were 2046 Cooperatives and participatory societies, (1910 SCOP and 136 CICS) with more than 42,200 employees. Since 2001 their number had increased by 542 units (36%) and their employees of nearly 8,700 (26%)".*

Finally, the situation of "large listed companies" is characterised by an average capital ratio of 32.5% (June 2012), a slight increase compared to previous years. In another line of thought, it should be noted that the market value of these large groups approached increasingly the level of own funds, "*growth prospects of the groups being downgraded by investors*" according to a study by the Bank of France from October 2012.

Without giving way to the systematization or falling into caricature, we see that the share of the largest firms is more dispersed and in parallel we are seeing, in recent years, the arrival of "sovereign" fund holding shares increasingly important in the capital of these large groups. It is rather worrying, the share of non-residents tend to grow in France and achieved, for example, more than 43% of the capital of French CAC 40 companies (end of 2011).

This form of ownership would operate in a financial sense in the short term rapid optimisation of investments with the sole purpose of maximising returns. Both logics are therefore opposing on the importance to be given to the temporal horizon.

According to the Bank of France, supported by the ISP, if the financial structure of ETI, for example, appears relatively healthy with a capital ratio close to 40% on average, capital requirements for unlisted ETI are important, in the order of € 24 billion against € 2 billion for the ETI listed, € 8 billion for large companies and € 3 billion for SMEs.

Some financial investors - like "patients" funds - can adopt an attitude that leads them to seek a return on investment over the long term. Some of initiation or development funds,

investment vehicles over the long term or *private equity* long-term investment to support SMEs or ETI.

Among the "virtuous initiatives" [iv] we recall FSI, OSEO, CDC and France Investissement partnerships.

With the prospect of a better control of corporate capital, the combination of many stakeholders, sometimes rooted in the same territory, is associated with some stability. From the time the activity of the company is of particular interest for each of the stakeholders associated financially with the project, possibly other than profit maximization, we can consider these stakeholders to be a long-term investors. Thus, the social economy has some beautiful examples of committed investors, through instruments such citizen finance (Garrigue, Habitat&Humanisme/EHD...). In 2012, the French solidarity savings totalled outstanding EUR 3.55 billion intended for investments of high social and environmental value[v].

In addition, there is the development of Socially Responsible Investment funds (SRI), which are "to integrate extra-financial criteria in investment decisions and portfolio management" and that according to the statistics available from AFG, represented June 30, 2012, € 13.1 billion, an increase of 33% year on year. Nearly 23% of outstanding employee savings (excluding employee share) are now invested in SRI funds. Investments in mutual fund solidarity (FCPE) continues to grow (43% per year).

However, while in France the individual shareholding is less developed than in comparable countries, the entry into force of prudential measures of financial regulation in our country (Basel III, *Solvency II*) led to greater caution of some major investors (banks, insurance) and risk thus strongly to dry out already scarce resources of investment funds.

Moreover, as noted by Mr. de Romanet, "*opening the capital to third parties by business leaders is highly valued in France because the entrepreneur wants to stay alone on his grounds*" more so as, unlike many investments held by *Landesbank* in Germany, France does not really have a very developed regional equity.

- **For ESEC, the performance of French companies depends on our ability to develop tools for equity financing, adapted to each business situation, but having in common the ability to support business development over the long term without upsetting their governance.**

- **Thus ESEC proposes to encourage individual long-term ownership by an adjustment to the taxation basis.**

- **It also proposes to develop from territorial funds, especially in the context of the BPI:**
  - **various investment vehicles in equity without voting rights, in particular for SMEs and VSEs:**
  - **participating bonds in certain strategic sectors.**

Ownership: powerful but risky financing tool

The various modalities

The significant development of employee ownership in France is linked on the one hand, the privatisations since 1986 and, on the other hand, the rise of employee savings schemes. According to sources, 3 to 4 million employees now have a stake in the company in which they work.

Apart from the direct acquisition on the market, individually, securities of their company (as those of any other listed company), and employees can become shareholders mainly under the following conditions:

- during a **privatisation** - total or partial - Law No. 86-912 of 6 August 1986 (as amended by Act No. 93-923 of 19 July 1993) stating that 10% of the shares sold by State should be reserved primarily for employees and former employees (provided that they warrant an employment contract for a period of at least 5 years) of the company and its subsidiaries.
- special conditions accompanying these operations (acquisition ceiling for each employee, transfer ban for a certain period in exchange for a discount on the price or the opportunity to receive free shares, payment terms). Such shares may also be assigned to a company savings plan (PEE, see below.)
- the employees' shareholdings devices that are one of the vectors of **employee savings under the PEE** (which, however, are not necessarily reserved for the company's shares). Blocked in principle for at least five years subject to certain possibilities of early release (marriage and PACS, acquisition-expansion of the principal residence, indebtedness ...), these plans have opportunities for company contribution and benefits tax. The money comes from voluntary contributions from employees: subscriptions during Offers reserved for employees (ORS) with a discount on the price of shares, voluntary payments topped or not by the businesses, free shares allocations to all employees (see below). PEE can also be powered by the amounts received under the incentive and participation.

In addition, the shareholders' meeting may decide on:

- **increases of capital reserved** for employees (subject to conditions of service);
- plans of **allocation of free shares** that have been particularly encouraged by the law n ° 2006-1770 of 30 December 2006 authorizing the ability to place these shares in the PEE (these alloctions should not be confused with granting of stock options or purchase of stock, stock options giving the right to purchase future shares of the company at a fixed price at the start).

Not all shares of its company, as held by an employee, are automatically listed under "employee shareholding": Since 2001, Commercial Law (article L.225-102) imposes upon these companies a report which "annually *gives an account of the state of the employee shareholding in the share capital on the last day of the fiscal year. It also establishes the proportion of capital that represents the shares held by the employees of the company and the employees of the companies which are connected to it*" within the structure of the PEE, the Corporate Mutual Funds (FCPE) and at the end of privatisations (at least for these last ones during non transferable periods). Shares and stocks held individually are thus disregarded (except

with regard to the shares held by the paid administrators or employees, representatives of the CCE, serving as board members, which must be declared), those of SCOP or securities acquired by the employees within the framework of an operation of Repurchase of a company by its employees (RES).

A very French particularity

Large listed companies are at the forefront today. By the end of July 2012, their employees owned, on average, 4.3% of the capital of the CAC 40; three groups even exhibited a level equal to or greater than 10% - Bouygues (23%), Safran (16%) and Vinci (10%) - and five others a rate equal or greater than 5% (AXA, BNP Paribas, Essilor, Saint-Gobain, Société Générale).

At the initiative of the French Federation of associations of employee or former employee shareholders (FAS), a market index was even created on the basis of two criterion related to the employee shareholding (i.e., companies of the SBF 250 in which over 3% of the capital is held by at least 25% of employees). Around mid-March 2013, this Euronext FAS IAS index consisted of 32 companies including, in addition to those mentioned above, Total, Schneider Electric, Vivendi and even EADS, each one weighing at least 5% of the aggregate.

In total, *European Federation of Employee Share Ownership* (EFES) which measures a "*rate of democratisation of paid shareholding*" as being the share of the paid shareholders (and former employees) across the company employees achieves a rate of 57% in the 40 more important French companies by the end of the year 2012.

The comparison carried out at European level on approximately 2,500 major companies from 29 countries on the continent, points to the rate of 51% for France (340 surveyed enterprises) ahead of the United Kingdom (34%) and well ahead of Germany (20%), with a European average of 30%. This result - which emphasises a real French specificity in this area - is corroborated by the presence of 32 French companies among the top 100 European companies for capitalisation, owned by their employees. Here too, the United Kingdom (24 companies) appears in second place, the following places being occupied by Germany and Switzerland (8 companies each one).

However, as the FEAS in its last economic survey of the employee shareholding in Europe has noted, "*for the first time since the financial crisis, the number of employee shareholders ceased growing in 2012. (…) Employee's share in the capital of the European enterprises is still growing since the beginning of the financial crisis. However, new differentiation appeared between enterprise managers and ordinary employees. The share of ordinary employees has been steadily declining since 2009. On the other hand, the managers increased their share in enterprise capitals. Therefore, the average capitalisation within the hands of each of the 8,845 executive managers of the large European enterprises in 2012 reached 9.1 million Euros, compared to an average of 11,500 Euros held by each of the 9.6 million ordinary employee shareholders.*"

The available data is much less precise concerning **SMEs and on a larger scale, non-listed companies**. Indeed, it is necessary to take into account both corporate portfolio management companies having approved FCPE of paid shareholdings of unlisted companies by the AMF and the direct holding of shares by the employees as well, particularly within the context of the PEE. A number of approximately 500 companies is sometimes suggested.

It is, of course, in **the particular case of the co-operative production Companies** (SCOP) that the double attribute of employee and associate is pushed further with the implementation of a democratic logic based on the principle (one person = one vote). In the SCOP, in particular, employees are mandatorily the majority shareholders (and if all employees are not, all are intended to become) and, on the other hand, the division of the profit is provided by status between participation and incentive (all employees), dividends (employees associated by remuneration of their capital contribution) and assignment of company reserves. Calculation of the "democratisation rate " mentioned above for the whole of the 71 large SCOP (those employing at least 100 employees: Acome, Chèque déjeuner...) provides the result of 63%.

One can compare these data to the statistics available on **the PEE** (taking precaution to recall that these are not necessarily invested in the shares of the enterprise where their holder works). Consequently, in 2010, 42% of employees in all enterprises employing 10 persons or more of the non-agricultural commercial sector were titular of a PEE; 1.3 billion Euros were poured by the companies in respect of the contribution, this amount representing the equivalent of 1.6% of the total payroll of the beneficiaries. This same year, by taking into account the contribution of the employees themselves, the total net payments on a PEE reached 7.8 billion Euros, more than 2/3 of this amount coming from the participation or the incentive (source: *Dares Analyses* N°55, September 2012).

It is finally particularly interesting to point out the existence of the **Shareholding worker cooperative (CTA) in Quebec**. It is a legal entity consisting of employees who collectively become owners of a part of their enterprise. The CTA itself is the shareholder and not the individuals; one of its representatives serves at the board of directors (after having been appointed by the general assembly of the CTA). This system enjoys significant tax benefits. This formula seems well-suited to strengthening the capital in small or medium-sized companies of sectors with high benefit whose personnel is deeply involved in their development. Another target of its promoters, the "entrepreneurial succession," whenever an important shareholder departs into retirement. In 2011 there were 75 CTAs in Quebec, primarily as minority investors in family SMEs.

What impact on the company and the employee?

The employee profit sharing in the capital of their company involves considerable risks:

- the first risk is the development of this type of income at the expense of a dynamic wage policy. Due to social contributions exemptions (which hamper the financing of social protection in addition) and a privileged taxation, the enterprise would achieve substantial savings compared to identical sums paid in wages but without any guarantee of one year continuity from one year to another for the employees concerned;
- the risk of diluting employee shareholders during capital increase ;
- in publicly listed companies, the financialisation of the economy helping, the stock exchange does not really translate the value of the companies and its excessive volatility removes any connection with the efforts carried out and the intrinsic performance of the company, which harms as well the hope of regular valuation of the stocks as the bond between shareholding and motivation;

– in unlisted companies, employees may face difficulties in getting out of their company capital due to the low liquidity of the shares in such companies;
– finally, in the event of difficulties leading to major restructuring or to the discontinuance of the business of their company, the employee-shareholders are subjected to a double penalty by losing both their employment and their savings.

Employee shareholding would however enable "*the creation of a community of interest between the employees, the management and the shareholders*" (Mrs. Agnès Lemarchand, a hearing in front of the section of economic activities, 3 May 2012). Mr. Augustin de Romanet therefore considers that employee shareholders are directly interested, from the moment they know that a portion of the savings made by a more sophisticated organisation of work is theirs: "it does not require a genius to observe that a company in which employees are associates works better".

In the particular case of SCOP, "*having a very levelled distribution in terms of power related to the vote requires de facto the leaders to listen better and to request from the personnel an enhanced participation in the life of the enterprise, to share the decision making process and to seek personnel adhesion*" (Mr. Jacques de Heere).

By nature, employees who are shareholders of the enterprises that employ them constitute an element of loyalty, beyond even funds lock-up periods (PEE) or prohibition of transfer (privatisations). Promoting the development of employee shareholding makes it possible to address the pursuit of a degree of capital stability, at least partly.

For listed companies, their role could be concretely observed in opposing hostile OPA as in the case of Société Générale (against the BNP raid in 1999) or Eiffage, the public works group (vis-a-vis the attempt of the Spanish group Sacyren 2007). Abroad, examples include the Volvo cases (against Renault) or Gucci (against LVMH).

Besides its weight in the voting rights - which would not suffice to serve by itself as a deterrent in most cases - the mobilisation of employee shareholders could then be seen as indicative of the state of mind of the more general personnel welded by a certain corporate culture (which does not, however, prevent friction with their own direction).

In non-listed companies, investors positively perceive the existence of an employee shareholder.

Management of the portion of the capital of the enterprise owned by its employees can be performed collectively via the presence of associations or clubs of the employee shareholders. Ms. Salima Benhamou wishes thus an incentive to the creation of such structures that enhance the effectiveness of employee shareholding.

Finally, the participation of the personnel in the capital of the enterprises could be reflected in the presence of administrators representing the employees shareholders in decision-making bodies (see *infra*).

- **For ESEC, employee share ownership is a means of stability and long-term financing for the company which can increase the motivation of the employees, provided that the rate of "democratisation" is high and that it is associated with other means of participation.**

- **The ESEC therefore proposes that employee shareholders should therefore continue to be encouraged, particularly in SMEs by:**
  - **encouraging the development of employee shareholding plans in certain financings of territorial or BPi funds with personal funds;**
  - **access to financing of these territorial or BPI funds for SMEs which opted for SCOP structure under the same conditions as other non-cooperative SMEs;**
  - **a new legal framework and fiscal hybrid: the employees' holding cooperative, would allow them collectively to become shareholders in their companies, like the employee shareholder cooperatives (ESC) in Quebec, limiting the risks for employees involved in the cooperative shareholder at the time of change of the value of their shares and illiquidity.**

Chapter IV: The function of decision-making bodies

One commonly distinguishes between three decision-making bodies in the enterprise: the management, members of the board of directors or the supervisory boards and the shareholders.

The theoretical considerations, the work of international institutions, the instruments implemented at the national level - the various enterprise governance codes developed in recent years, for example, naturally distinguish the situation of companies according to whether they are "listed" or not and sometimes according to their size.

Structurally however, less than 1,000 companies are listed out of an approximate 2.7 million companies in our country; among those, the situation is much diversified between "international" enterprises widely open to world economy and others more focused on a local market. Some have a family character, others do not. Nevertheless, as the European Commission points out in its green book published in 2011 and relative to the framework of enterprise governance in the Union, "*proper enterprise governance can also import to the shareholders of unlisted companies*".

It is then advisable to classify the approach according to this situational diversity and not to want "*to adapt a theoretical situation to all the corporate cases*" as Professor P.Y. points out. Gomez[vi].

Overview

Listed companies

These are the companies that have been subject to the greatest number of works, theoretical and not. The first governance codes were written about them.

In France, the AFEP-MEDEF code dated 2008, revised in 2010, resulting from various reports released since 1995, was developed by reference to the listed companies. It should be noted that codes with rather constraining nature were adopted in other countries: The United Kingdom (*U.K. Corporate Governance Code*) regularly updated by the council of British financial *reporting*; Germany, with the governance code, the result of the work of the Cromme commission, at the time president of the board of trustees at Thyssen Krupp, set up by the federal ministry of justice, published in February 2002 and recently updated in May 2012.

One cannot summarize the whole of the provisions from the AFEP-MEDEF code in a few lines. Firstly, it lists the duties and functions of the board of directors, particularly in the area of corporate strategy; its composition and therefore the "balance" to provide "*in particular in the representation of women and men and the diversity of necessary competences*"*; the representation of "specific" categories* in particular employees and employee shareholders; the place of the independent administrators; various committees implemented; remunerations

of the administrators as executive directors and the methods of payment of various severance pays, "top-hat pension plans" and "stock options"; and information required to the shareholders on remunerations.

The application of this code is optional. However, under the Commercial law, when a company refers to an enterprise governance code, it must be stated at the time of the annual reports which provisions were rejected and the reasons for which they were (article L 225-37). This is the application of the Anglo-Saxon standard "comply or explain" (*comply or explain*).

The AFEP-MEDEF code appeared impractical to mid-size enterprises facing governance problems different from those of the very large companies (pertaining to stock market index "SBF 250").

Therefore, a specific governance code was published in December 2009 by the trade association of small and medium-sized listed companies *MiddleNext*. Based on expert work (PY Gomez), this code defines rather precisely the relationship between the various "authorities" in the company: the "executive" authority (the director), the supervisory authority (boards of directors or supervisory boards) and the traditionally "sovereign" authority (the shareholders).

The code covers the same topics as that dealing with large companies and particularly interesting specific issues as well, such as: the expertise of the director, risks of his isolation, his compensation, the problems related to his succession but also the average resources available to the administrators in order to perform their missions; concerning the shareholders, it tackles their real authority, the guarantees of the interests of the minority shareholders as well as the importance of fostering a shareholder management over time.

Unlisted companies

The situation of non-listed companies is naturally less substantially defined. According to the European Commission, "certain aspects of enterprise governance is already covered by provisions of corporate law applicable to private companies" (Green paper).

A recent information report from Law Committee of the National Assembly relating to the transparency of the governance of large enterprises (February 2013) refers to the situation of the non-listed companies whose influence on the national economy can be large. It agrees to suggest that these enterprises themselves establish such codes of governance. These conclusions tend to meet those of the European Commission questioning the possible opportunity to take measures at the level of the Union in regards to the governance of unlisted companies and to concentrate on measures that promote the drafting and the application of voluntary codes for these enterprises. At this stage, it seems difficult indeed to advocate the implementation of a single and unavoidably abstract framework to encompass extremely diversified situations.

Three characteristics distinguish enterprise governance in social and interdependent economy from those in capitalist societies. Firstly, these enterprises are governed by shareholders or members. Secondly, decision-making meets the democratic principle "one person, one vote," which underlies the culture of debate, the respect of the opposite opinions and search for consensus. Lastly, the governance of ESS bodies makes it possible to reconcile the achievement of economic activity and the pursuit of an objective with social value.

The role of administrators

In addition, the role and position of the members of the boards of directors and the supervisory boards are subject to various remarks, interrogations and suggestions.

The boards of directors have a vital role to play in the smooth running of the enterprise, since they are intended to determine the direction corporate activity takes.

Their composition must be appropriate and must boast a broad skills set in order to benefit from the widest possible expertise. All the codes agree on this point. Professional diversity thus proves particularly valuable, even decisive in the selection of the members of the boards of directors. However, according to the European Commission's green paper, the practice of choosing complementary profiles during the selection of the members who will integrate these authorities is not the most common method.

Diversity of origin is also crucial particularly in enterprises with an obvious international orientation. Is that to say it is respected? According to the latest study dated 2012 by the Cabinet *Ernst&Young* which presented a panorama of French listed companies' corporate governance practices, the proportion of foreign administrators totals 23% in CAC 40 companies and 15.4% in SBF 120 companies.

Similarly, the representation of women on the boards of directors is a critical issue. At the European level, the Commission cautioned that the percentage of women serving in the decision-making bodies of listed companies in the Union was 12% on average.

The AFEP-MEDEF Code holds an appreciable improvement to increasing the proportion of women in the boards of directors. Its purpose is to achieve a percentage of at least 20% of women within three years and 40% within a period of six years after the publication of the recommendation or the admission of the company stock to trading on a regulated market.

In 2012, the proportion of women on the boards of directors of listed companies reached nearly 22% (SBF 120) and 25.2% in CAC 40 companies.

It should be pointed out that a law of 27 January 2011 regarding the balanced representation of women and men within the boards of directors and the supervisory boards and equal professional opportunity, fixed 2017 as a "deadline" for listed private companies or those meeting certain criteria (size, sales turnover or balance sheet) as well as public companies to attain a percentage of 40% women in these instances.

Even though the developments are encouraging, the fact remains that women still occupy too few high-responsibility executive positions in these enterprises and are also quite the minority in executive committees.

➘ The role of director in all its dimensions (sex, origin, professional skills) should also include the obligation of independence and a limit on the number of directorships.

The independence is a guarantee in the equal treatment of different stakeholders of the company, including minority shareholders, while the role of directors is gaining complexity and importance.

In this regard, the AFEP-MEDEF code provides a clear definition of the independent director who must not maintain "*any relationship of any nature whatsoever with the enterprise, its organisation or its management that may compromise the exercise of his judgment*" and the code continues: "*It is necessary to have a significant proportion of independent directors who not only meet market expectations, but also are likely to enhance the quality of deliberations*".

The proportion of independent directors should be set to half in enterprises with a dispersed share ownership and no controlling shareholders. In controlled companies, the proportion should be at least a third.

In 2011, percentages were respected in three quarters of controlled "SBF 120" companies, in 57% of controlled CAC 40 companies and respectively 76 and 79% of the not-controlled companies of the SBF 120 and the CAC 40, again for 2011.

Does the independent director go hand in hand with the independence of the directors? This is an important issue whereas the freedom of judgment and the freedom of all external pressures and conflicts of interests are involved in the service of an economic and work collective.

In this regard, administrators' obligations stated by Professor Gomez (op.cit.) strongly show by evidence the value and the necessity of such an independence of the mind, since it is a question of verifying the absence of dysfunction in the directors' performance of their functions, of participating fully in the governance of the enterprise and of being accountable to the shareholders.

This authority, which cannot be a "business executive", aims to secure "*that the decision-making latitude of the "leaders" takes place without drifts that could threaten the sustainability of the enterprise*" and PY Gomez concludes that the freedom of judgement of the administrators will be better guaranteed (beyond personal attitudes) if their level of remuneration meets the effectiveness of their presence; that it ensures the duration of the mandate that will avoid both the too firm "addiction" and the effects of experience and that a clarification of the reasons behind the revocation of the mandate will be required at the time of the general assembly of the shareholders.

➘ **For the CESE, this freedom and this competence should not result in turning the function of administrator into a "profession".**

Employee representation

Employee participation in the boards of trustees and administration is briefly mentioned in the 2004 OCDE "Principles of enterprise governance" and in the European Commission's green paper.

- Their presence is required by law on the boards of directors of certain enterprises in France on several grounds. Be reminded that the so-called "monistic" structure (board of directors appointing the general manager) is the structure primarily adopted in France by limited liability companies:
- maintained provisions of the law dated 26 July 1983 regarding the democratisation of the public sector;
- the French Commercial Code;
- Art. L. 225-27: if the articles so provide, the possibility of holding election of directors representing employees;
- Art. L. 225-23: if employees hold more than 3% of the capital needed to organize the appointment of directors representing employee shareholders (candidates designated among these employee shareholders and election by the general assembly).

In many Union countries (17 out of 27), the presence of employees on various boards is required. It is rather general in Scandinavian countries and Germany, in particular where a minority or equal participation is planned in the case of "co-determination". It is also planned as part of the "European company" (cf. directive of 8 October 2001) which has shown a very slow diffusion. In Germany, a country where enterprises have mostly adopted the dual system (management board-supervisory board, which is a nonexecutive body), the paid administrators account for 7.1% of the whole. In this country, an economic commission is implemented within the Supervisory Board and its leadership is always assigned to an employee.

In France, the role of employees in the board of administration is extremely limited. The latest study by Ernst&Young shows that only 0.4% of employee administrators are serving on these boards.

This percentage does not appear to meet the challenges if one considers that the involvement of the working collective in the life of an enterprise is an important lever to performance. Thus, the above-mentioned report of the Legislative Committee of the National Assembly stressed that "*like the investment of long term shareholders, the labour of employees represents a sustainable engagement at the service of the enterprise through which they appear as craftsmen of its prosperity and its durability*". As such, one may consider that, taking as much risk as the shareholders, "*they deserve to obtain a higher position within the governing bodies of their enterprise*".

A larger presence of employee representatives within these bodies would display the plurality of perspectives when it comes to business strategy, and beyond the "information feedback" on the social climate, it would also guarantee an attentive ear to developments faced by the enterprise. We will follow Mr. J.L. Interviewed by the section, Mrs. Alanche and Pesnel (respectively former employee director of Renault and employee group administrator of "La Poste") also confirmed this observation.

Mr. Louis Gallois[vii] submitted a report to the Prime Minister on 5 November 2012, proposing the introduction into the boards of directors or supervisory boards of enterprises with more than 5,000 employees at least 4 representatives of employees, without exceeding one-third of the members, with voting rights, including the board committees. This proposal is a significant element of a developing movement. All one has to do is to refer to the report written in January 2013 by J.L. MM. Beffa and C. Clerc under the evocative title *The chances of French style co-determination*[viii] or to the conclusions of the national assembly's legislation committee.

The law of 14 May 2013, for transposition of the inter-professional national Agreement (ANI) of 11 January 2013 known as "employment protection" provides in article 9:

« Art. Carl Linnaeus 225 27 1. - I. - In enterprises which employ, at the end of two consecutive financial years, at least five thousand permanent employees in the company and its subsidiary companies, direct or indirect, whose registered office is fixed on French territory, or at least ten thousand permanent employees in the company and its subsidiary companies, direct or indirect, whose registered office is fixed on French territory and abroad, and who have the obligation to set up an enterprise committee pursuant to the article L. 2322 1 of the labour Code, it is stipulated in the statutes that the board of directors includes, in addition to the administrators of which the number and the mode of designation are given in the articles L. 225 17 and L. 225 18 of the present code, administrators representing the employees.

"A company is not subjected to the obligation provided with the first subparagraph of the present I when it is the subsidiary company, direct or indirect, of a company itself subjected to this obligation.

"II. - The number of the administrators representing the employees is at least equal to two in companies of which the number of administrators mentioned in the articles L. 225 17 and L. 225 18 is higher than twelve and at least one if it is equal to or lower than twelve.

"The administrators representing the employees are not taken into account for the determination of the minimum number and the maximum number administrators mentioned in the article

Carl Linnaeus 225 17, nor for the application of the first subparagraph of the article L. 225 18 1.

The drafting of an identical article concerns enterprises with a board of trustees.

- **The ESEC notes that the agreement of 11 January 2013 and the law provide a more limited arrival of paid administrators than that proposed**

- **by Mr. Louis Gallois. However, a balance must be drawn before the device is eventually expanded to a larger number of companies and / or employees.**

- **The ESEC recommends that the employee administrators receive a suitable training to be able to fulfil their role.**

- **Finally, the ESEC regrets that, in highly internationalised enterprises, only French employees can be voters and elected officials.**

The specifics of the governance of SMEs and VSEs

The selection of the governance structure depends on several criteria: size of the enterprise, industry, type of activity, appearance on the international scene, shareholding profile, etc. Therefore, it appears relevant to leave the alternative open so that enterprises can choose an organisational model which enables them to satisfy their needs as well as possible, to improve their image and to increase their competitiveness.

Unlisted small- and medium-sized enterprises constitute the bulk of the economy. However, the term governance is often used primarily for large groups and the issues raised correspond rather badly to the actual operation of SMEs and VSEs, especially the ones whose capital is predominantly familial and in which the leader is usually the main or even sole shareholder.

In terms of governance, the main feature of these enterprises - whose sectors of intervention, size and operating modes are yet highly diverse - is a shift in priorities to be given to different stakeholders or a different kind of connection between them:

- relationships with other shareholders - where available - are less significant or assume less formal and more personal aspects, whether conflicts within the family or with any other leaders;
- relationships with the various financials- be it the banker, the inter-enterprise credit or, more recently, the contributors of capital such as the Investment Strategic

Funds (FSI) - may have to take precedence over a more traditional relationship with a shareholding as "*the leaders of SMEs display a particular reserve to open their capital with outside investors for fear of losing their independence*" [ix];

- the excessively unbalanced relations of subcontracting in our country for the benefit of outsourcers - together with a cascading relationship that defers the adjustments on the lower ranks without leaving them room for manoeuvre - relate primarily to SMEs. For their sustainability, they should be able, through sufficiently long contracts, to be assured of a medium-term visibility in a spirit of "co-contracting" between partners, which certainly are not equal but do share some responsibility and should better share achieved results [x];
- relationships with employees in "human scale" organisations often take on a straightforward and informal character.

Thus, the SME manager is too often condemned to isolation due to the lack of time and support and does not always have the necessary detachment to steadily analyze the positioning of his enterprise and market development together with its risks and opportunities.

This is particularly significant when the leader must organize his succession. Thus, many thousands of SMEs cease their activity every year from a lack of sound preparation for the transfer or transmission of such enterprises, with immediate consequences on employment and the loss of expertise.

The current economic climate has resulted in a particular wait-and-see attitude in recent years from both vendors (a fall in the value of enterprises) and buyers (unsteady sustainability of markets). However, choosing the wrong successor or even the complete lack of preparation of the transferors at this sensitive time in their lives and that of their enterprises could also weigh heavily on a significant number of cases.

Similarly, the isolation of the SME manager too often leads to reduced anticipation of economic difficulties limiting the possibilities of overcoming the crisis.

VSEs and SMEs are and should continue to be supported throughout their course by consular chambers, professional organisations, investors such as Oséo, BPI, mutual guarantee organisations and all specialized networks (Entreprendre network, *Business Angels*, venture capital, Cigales or even local initiative platforms).

This support should take various forms depending on the kinds of VSEs and SMEs involved but can be summarized in two key levers: training and formalisation:

- information and training of leaders is just as significant as the executives and all the employees, not just on a technical level but also, and possibly most importantly, in regards to management, human resources (developing his ability to work in teams, for example), innovation, international trade...to give the leader throughout his career the tools that enable him to anticipate and grow his enterprise;
- the support for formalizing his approach, his relationships with his stakeholders and in particular his employees, and of his governance, enabling the leader to remain sustainably out of his isolation. This formalisation of the approach can effectively go through tools as part of an RSE type strategy suitable for SMEs, such as professional organisations and consular chambers have developed, which helps to clarify the situation of the enterprise and to prepare and share a strategy with the stakeholders;

- formalisation, depending on the size of the enterprise, of the relationships with employees is also essential: information, implementation of IRPs, enterprise agreements (participation, sharing), employee shareholding plan...This formalisation outside all periods of crisis for the company (of succession or economic) contributes in establishing a climate of trust to better anticipate potential difficulties or developments and enhances team motivation and therefore corporate performance;
- finally, formalisation also requires the selection of a legal structure or the functioning of the governance bodies, at the creation of the enterprise or during an evolution phase (arrival of new investors, business combination...). The structure of the limited liability company (SA) may seem better suited to large enterprises, even to ETI more than to SMEs but other statutes are naturally possible: SARL, SNC, SAS. They must therefore be examined and selected not only from the obvious legitimate point of view, the personal circumstances of the leaders (more or less limited liability on their personal property, social security), but also in terms of modes of governance that each authorizes or needs.
- If needed, the arrival of independent administrators or the creation of strategic or scientific boards can bring an external and fresh perspective on the enterprise and its strategy, provided of course that the leaders play the game by supplying all useful information.
- In parallel, in family enterprises, the installation of a "family charter" and/or a "family board" in order to formalize the relationships between the company and the different members of the family can appear very useful in the event of crisis in "corporate governance" and conflicts that can put the life of the company at risk quickly in small structures.

Conclusion

In the context of a need for competitiveness in the broader sense, the economic, social and environmental challenges make it more imperative than ever that a network of successful companies be developed.

This performance should henceforth be understood initially as the ability to meet on the long-term, the interests of all internal stakeholders motivated to participate in entrepreneurial projects over time, and mobilized to provide capital, expertise and labour needed for success.

To ensure this balanced arbitration, it is necessary to secure at the same time many fundamentals:

- association of its stakeholders in the daily operation of the enterprise: leaders, employees, shareholders;
- adequate capitalisation of the enterprise and consistent with its objectives, favouring long-term investment;
- the organisation decision-making bodies (governance in the strict sense) diverse and open to a range of skills, formalized and taking into account the size of the enterprises.

These three levers relate in particular to employees, a key constituency of the enterprise.

Naturally employees should be involved "daily" through information, training, participative management practices, and sharing of the results. They also should be able, according to different terms, to be involved in the capitalisation (employee shareholding) and decision-making (participation in decision-making bodies).

The performance of the enterprise should equally be understood as its ability to develop its relationships with external stakeholders: improve its connection with its territory - which may be more or less extensive; consider demands and aspirations, sometimes contradictory, but having their legitimacy; establish sustainable partnerships with suppliers and subcontractors; integrate environmental responsibility; and finally maintain or regain the trust of customers and consumers.

The global performance of the enterprise depends, ultimately, on its ability to create a community of interest, and thus activate these levers simultaneously for all the stakeholders and primarily for employees.

Declaration by the Groups

Agriculture Group

The agriculture group share a perspective chosen for conducting this opinion. It became obvious to us, gradually with the progress of work and hearings, that governance was a key point for the success of an enterprise and that governance should not be construed in a restricted manner. One must go beyond the relationships between employees and leaders, customers and suppliers and take into account the economic and social circumstances to consolidate enterprise performance.

These matters also occur in agricultural holdings. Due to the small size of our enterprises, these matters focus on one and the same person. The farm manager must be able to manage at the same time production, human resources, management, accounting, relationships with suppliers and the different economic and social operators of his sector.

Most farmers also have very strong contacts with the agricultural cooperatives, which are significant economic structures. We have all experienced the challenges and the benefits of the participation of the co-operators to their tool. Good governance is maintaining permanent balance of which one must always consider the fragility to ensure the stability.

Two points have particularly drawn our attention in this opinion. They relate mostly to the agriculture sector.

The first relates to education. As the opinion recommends, it is essential to improve the teaching of economics in France. Within the agricultural sector, our students need to be acquainted with the various types of agricultural holdings. However, they are not expected to know the different economic players that revolve around their business, and who will become key partners. Here and there, some local initiatives can be observed such as the events organized in 2012, on the International Year of Cooperatives or the "Forums installations" regularly organized by the Young Farmers to explain the stakes and the context of any installation in agriculture.

These initiatives are not sufficient, teaching business should be mandatory, in all its diversity, throughout the school and university curricula. It is vital that the different players acquire enterprise spirit and be aware of the environment within which they will evolve.

The second point relates to territories. The agriculture group agrees entirely with this proposal to support initiatives of territorial cooperation. In the agro alimentary and agro industry sectors, competitiveness poles make it possible to bring together all the players in a chain, from production to consumption; subsequently, these players can develop cooperation projects with innovation and research partners.

This momentum stimulates a territory, strengthens its attractiveness and visibility, creates new wealth and new jobs and sustains a territorial anchorage. For farm operators, territorial anchorage is an essential aspect and these initiatives must be supported absolutely.

The group of agriculture voted in favour of the opinion.

Craft Industry Group

The craft industry group shares this opinion's philosophy, which contributes to a new vision of the enterprise.

By highlighting the role that its internal players hold (management bodies and employees) as well as the part of those that constitute its environment, customers, suppliers, contractors and territorial partners, the opinion shows that the enterprise is a community of interest, and it is necessary to take it into account.

Good articulation of expectations, constraints and contributions of all these stakeholders, in fact, is the base of its strategy and governance modalities that determine its performance.

Whether such challenges are shared by all enterprises, taking them into account may vary depending on their size, their structuring, their positioning in the sector, or even their economic weight.

In this respect, the governance of VSEs and SMEs encompasses particular realities that the opinion was able to highlight.

Quite often, this enterprise owner does not have neither human nor financial resources, nor the time needed to examine his strategy and evolve according to the risks and opportunities of the market. Hence, the importance of his support by means of relevant and practical tools.

Professional organisations and chambers play an essential role in informing and forming, in organisational, managerial and commercial matters. In the context of day-to-day management just as in a development project, the support of these structures facilitates the adaptation of a commercial tool to customer expectations or market developments, to assist in the establishment of an export strategy or to anticipate a business transition.

On the association of employees to VSE projects or their organisation, it is generally informal and is expressed in the professional vicinity between the enterprise owner and his staff. However, in the absence of concrete initiatives, their motivation and engagement may ultimately be hindered.

Here again, the part of professional organisations in bringing awareness and the tools built by the branches, are fundamental to fostering a more participative management through, in particular, the training policies and incentive mechanisms, participation and employee savings schemes.

The craft industry group supports the intention of the opinion to benefit a larger number of employees of these devices. This implies, however, that their methods are adapted to the variety of enterprises and that the VSEs can rely on negotiated agreements in their occupational field.

In addition, among the opinion's suggestions, the craft industry group makes a point of addressing the one that recommends the approach of the enterprise in all its diversity, as well as on the level of its statistical processing, as in school and university teaching.

Besides contributing to knowledge of the reality in our entrepreneurial fabric, it would be an efficient method of improving the inclusion of VSEs and SMEs in legislation and regulation.

The craft industry group also supports the intention to upgrade the quality and balance of relationships between contractors and subcontractors; such an evolution is in fact essential to restoring competitiveness within our industry.

The craft industry group has voted for this opinion and endorses its global guidelines.

CFDT Trade Union Group

Debating enterprise governance means evoking sites (board of directors, executive committee, employee representative bodies and others) and players, those who should be associated with information and strategic enterprise decisions.

According to the CFDT Trade Union Group, sites of governance must be actual instances of confrontation where the interests of all are discussed and not just those of stakeholders. When short-term financial interest alone is privileged, the very future of the enterprise is at stake. The debate must make it possible to associate:

- the necessity of investment for the future of the enterprise;
- the interests of employees who give their daily labour contribution as well as quite frequently a significant personal commitment to work;
- social responsibility of the enterprise in its environment;
- the interests of the capital providers.

A correct confrontation requires transparency of the given information on all levels to ensure that each one fulfils his responsibilities knowingly and can assume them.

The CFDT Trade Union Group is convinced that enterprise performance is linked to its governance model. The players cannot only be the leaders and providers of capital. Strategic errors are usually the result of decisions which are taken within the inner circle, and which ignore the viewpoints of other stakeholders.

Employee involvement in the development of methods of organizing work as well as in the orientation of the long-term strategy and governance is a vital factor of competitiveness. This conviction was confirmed by the majority of the auditioned people. In this context, the training of stakeholders so that they are capable of becoming actual governance players is required and this opinion addresses this concern. If players present daily in the enterprise should be the first target, involve external stakeholders: subcontractors, customers, suppliers, regional players, is an asset to the enterprise performance.

Opening sites of governance to all the players concerned with the future of the company helps to build a lasting trust between employees, management, capital providers and the environment. Such a governance model encourages innovation in performance, production, and managerial practices as well as creating the background for a shared strategic vision, a guarantee of performance and competitiveness for the enterprise. If this orientation comes differently in large companies or in an SME, even in a VSE, this philosophy of stakeholder participation is a guarantee of success. The various proposals in the opinion point in this direction, which has delighted the CFDT Trade Union Group.

Today, capital stability and mastery in the long term are required and employee shareholding may contribute but it cannot be the sole lever for participation. However, the representation of employees on the board of directors, recommended by the Gallois report and the January national inter-professional agreement, recently included in the legislation,

is a significant step towards shared governance. Employee representatives on the board of directors, outside of the CAC 40 enterprises, are just 3% of the administrators.

Following the example of the Gallois report and to influence effectively, the CFDT Trade Union Group is favourable to an increase in their number. Whether the opinion is not quite as ambitious, its recommendations go in this direction.

The CFDT Trade Union Group regrets that the issue of executive remuneration has not been addressed.

However, the CFDT Trade Union Group considers that this opinion provides opportunities to rethink the enterprise and its management, associating employees and all stakeholders in the governance and to create the social conditions for the performance and competitiveness of enterprises to overcome the current crises.

The CFDT voted in favour of this opinion.

CFE-CGC Trade Union Group

The CFE-CGC Trade Union Group has always considered that the interests of the enterprise and those of employees converged. This is the very foundation of syndicalism and social dialogue as conceived by the CFE-CGC Trade Union Group. The latter lies in all the "confrontation" schemes between the interests of employers and those of employees. In this field, the competence and legitimacy of trade union organisations no longer needs to be demonstrated: Organisation of work, safety (CHSCT), vocational training, etc.

In the current context, we must consider the social dialogue as a determining factor in the performance both at national and European level.

For this, we have a kind of society whose legal existence is subject to the participation of employees in management bodies. This is European society.

Virtually nonexistent, it must be noted that it is not growing. One fundamental reason lies behind that: the participation of employees is still regarded as an obstacle, even by the French companies. The CFE-CGC Trade Union Group would have preferred the opinion to emphasize an efficient implementation of this kind of society to make it preponderant in the future.

With the lasting crisis, the concept of "management by trust" has become significant. While it appears to us unavoidable as a lever of performance, it can be achieved in no case by decree. To achieve it, several conditions are necessary and the sharing of information is a minimum. It must be reflected at every level of the structure, from the local to the top. A code of conduct can only reinforce what the national legal systems provide. Nevertheless, it would be appropriate to apply the already existing current legislation.

Note that in France, for example, one in two businesses with more than 50 employees have no work council, 2/3 of companies that meet the criteria have no European work committee.

The CFE-CGC Trade Union Group promotes the direct participation of employees in the governing bodies of the enterprises. We are confident that the employee director, who now has a vote identical to other members is the "voice from within", useful for good governance and an improved mutual understanding of regulating mechanisms.

However, we must strengthen the role of "employee representative bodies" (IRP) especially as to what information should be communicated to them. These representatives must be informed as early as possible in the development of strategies, to include their detailed knowledge of teams and the "social climate."

For the CFE-CGC Trade Union Group, it is essential that we respect the different levels of business interests: labour, unions, and administrators. Those are keys for understanding and thus performance.

Lastly, the CFE-CGC Trade Union Group is satisfied that its proposal for reflection on the quality of customer/supplier relationships has been retained. We wish to promote a risk sharing policy, as has been developed in some industrial sectors, for companies to act as co-contractors instead of traditional outsourcing. In this sense, a major reform is now imperative to preserve the inter-company relationships that we believe are at the heart of our country's competitiveness.

The CFE-CGC has voted on this announcement, hoping that it does not remain a mere letter of intent.

CFTC Trade Union Group

At a moment when factories are closing at high speed in our country, with industry in a particularly critical situation leading to a massive destruction of employments, it is vital to address the functioning of enterprise is governance and performance. This opinion accurately demonstrates the heterogeneity of companies (from VSEs to multinationals), all sharing a single purpose: to create a collective mechanism of goods or services for the benefit of society. This ability to innovate, manufacture and sell goods or services in a competitive and sometimes harsh world is a truly human endeavour; its success requires committed people and special conditions that have not been brought together at the moment.

The CFTC Trade Union Group endorses most of the recommendations of the opinion, though it places more emphasis on an urgent need for a change of course, condemning the evils of an economy increasingly focused on finance and demanding higher employee participation in corporate governance.

We will focus our attention on these two issues.

In 2012, SMEs and ETI have not only experienced serious difficulties in obtaining bank loans, but their sources of equity financing have dried up. Private equity funds have covered less than 50% of needs.

Yet those enterprises are the ones creating most of the jobs. A channelling of savings into investment in unlisted companies has become necessary and urgent.

The dictatorship of short-term profitability must stop, and capital must take its place as a way to support growth and development.

Must France be resigned to give up all markets that do not show double-digit profits?

The men and women in a company must be, in turn, more closely associated with projects at all levels of their community: from worker to foreman, from salesperson to store manager, from employee to executive, each has something useful to contribute to the development of a strategy.

Though the CFTC Trade Union Group has always declared itself in favour of profit sharing through bonuses and incentives (provided that the use of such devices is not abused by allowing the removal of financial laws upholding the wage policy), it also requires a strong presence by salaried administrators at far higher numbers than those recommended by the Gallois report. Having been trained in complex management issues in order to fulfil their mission efficiently, these administrators will endeavour to include employee ideas in proposals.

Only collective intelligence can now meet global challenges. Men and women are not "resources;" they are corporate wealth.

The CFTC voted in favour of the opinion.

CGT Trade Union Group

The CGT Trade Union Group agrees with the ambitious message of this opinion: to build the social, economic and environmental efficiency of the company through long term entrepreneurial efforts, with a respectful collective mobilization of all its stakeholders, including employees, ensuring balanced relations between the company, suppliers and the community.

These objectives lead to a reflection on corporate design. We support an innovative vision of a corporation legally establishing collective creation as its essential mission, of new standards of solidarity between all stakeholders, and norms of employee participation in the development of its strategy.

The challenge of democratization of the corporation and the exercise of corporate social responsibility (CSR), including the geographical dimension, is a major element of its performance.

We retain the need to promote a policy of co-contracting and risk sharing instead of the traditional sub-contracting.

We would have wished to go beyond a call for major reform preserving inter-firm relationships, proposing concrete incentive schemes and monitoring their implementation.

Concerning CSR, we approve of the development of indicators to assess progress, though we regret that the CSR annual report did not extend to all companies, thereby establishing governance in line with the interests of stakeholders inside and outside the company.

However, we regret the many remaining shortcomings in the announcement. It was foolhardy to forget the issue of public enterprises. A significant weakness is the lack of any mention of banks, one of the major players in corporate governance. SMEs difficulties in accessing bank credit are one of the causes of economic stagnation.

Moreover, the collective commitment of employees is mainly established through share ownership and profit-sharing. But the gap between their strong professional interest and low involvement in the company is not discussed. There are recommendations in support of fighting against insecurity, large-scale hardship in the workplace (even among skilled workers), and the recognition of qualifications.

The discussion regarding the necessary involvement of employees in the development of business strategies concludes tentatively, referring to an *ex report and to the limited participation of trade unions on the board*.

A company's sustainable overall performance cannot exist without another level of recognition and therefore collective mobilization of workers.

In conclusion, despite our reservations about the shortcomings of the announcement, because we share the new vision of the company and the break with the logic of an exclusively financial focus, the CGT Trade Union Group has voted on the issue.

CGT-FO Trade Union Group

The issue of governance was identified by our Board upon issuance of its opinion on competitiveness as one of the elements on which our assembly should continue its work.

It is a difficult and highly divisive subject.

It is difficult because the great diversity among businesses allows for only very general recommendations. For what is there in common, in terms of governance, between a small business and a multinational, publicly traded company?

In a strongly divisive manner, even when limited by these general considerations, this issue addresses the central role of power within the corporation, including the role to be played by employees and their representatives. The opinion discussed here clearly favours of a number of options.

To the extent that some of them are in line with the recent national agreement on competitiveness, with which we disagree, the arguments raised by the FO Trade Union Group will not be surprising.

Thus, the FO group challenges the details of the announcement welcoming the creation of a qualitative database containing information about corporate operations, intended to "avoid certain blockages in decision-making." Indeed, in reality this database leads to reduction of rights of company boards of directors and their representatives in terms of consultation and possible appeal.

Similarly, the presence of employees in the boardrooms is not a solution to these issues of governance.

The FO group is not impressed by the lure of co-management nor the corresponding joint responsibility for corporate decisions. In addition, no suggested action accompanies this mandate and there is no provision to account for employees. The FO group is in favour of a report on social climate provided to shareholders and developed by staff representatives.

The FO group can no more endorse the recommendations encouraging the strengthening of employee share ownership, which may come at the expense of wages and would cause even more employees to suffer the uncertainties of financial markets. For the FO group, strengthening confidence in business starts with a better recognition of employees through salary revalorisation, career development and improved working conditions.

Lastly, the FO Trade Union Group reaffirms its disagreement with such abuses based on trendy business practices and the appearance of principles of Anglo-Saxon law, called the soft law, in French labour laws. These new principles are not a source of rights, as they impose no constraints on the employer. This applies to the promotion of Corporate Social Responsibility, the famous CSR, which is often put forward despite its mediocre concrete results. Indeed, one might say the same for two major issues in this period of crisis: the various provisions of existing charters and the lack of regulation of subcontracting, which also fail to produce the expected effects.

The FO Trade Union Group voted against an opinion that opposes too many of the positions we defend.

Cooperation Group

Our country has a diverse network of companies, with multiple modes of governance: from VSEs and SMEs to large firms, and even community businesses ranging from agriculture to handicrafts. All contribute to the creation of wealth in our country in a context that is complicated at the moment. We must develop a sense of entrepreneurship, knowledge and inquiry about the companies in all their diversity.

Like any human society, the business is a place of self-fulfilment, cross-fertilization and collective creation. We are completely in the approach of the company in its global dimension, which is built on the relationships between management, employees and providers of capital. Legally, the corporation remains misidentified, and we support the idea of developing a business law recognizing the mission of collective creation.

For partnerships based on people rather than capital, the collective dimension is fundamental to the functioning of our economy's social enterprises, including cooperatives. In these organizations, governance is based on shared democratic responsibility for strategic decision-making among associated farmers, artisans and other contractors, customers or clients, and employees.

Employees are an integral part of a company. Putting these values at the heart of business operations through a process of confidence is a key factor of competitiveness, as the company must constantly adapt, innovate, and expand into new markets. To address these challenges, information, training and employee participation are essential assets. National Interprofessional Agreement of 11 January 2013 is part of this process. Many corporations, including SCOP, are particularly innovative, in terms of governance and using participatory practices to mobilize their staff and make decisions in accordance with their collective projects.

In the same vein, the opinion emphasizes corporations' need to integrate the broad interests of all stakeholders in their activities, though they may be quite heterogeneous. This comes into play in the context of sustainable development of the company's territory and environment, its suppliers and subcontractors, and its customers and consumers. To do this, we believe we should support innovative forms of collective entrepreneurship.

Finally, as to the question of funding issues, the opinion highlights the importance of controlling the capital to support a long-term strategy, taking the example of non-shareable resources in cooperative enterprises. We believe that it is especially necessary to strengthen employee ownership, because it leads to community-oriented companies and, more importantly, an increase in local jobs. While some regions are in the process of deindustrialization, disappearing knowledge and rising unemployment are major risks for our country.

Work and discussion in our group were particularly rich and constructive. This opinion provides opportunities for significant progress. In continuation of the opinion adopted by the EESC on competitiveness, corporate governance can contribute to the overall performance of our economy and our country.

The Cooperation Group voted in favour of this opinion.

Enterprise Group

Features necessary to operate a business are part of its strategy, management and accountability. These features intend to reconcile all stakeholders: employees, customers, suppliers, shareholders, the legal environment and the social environment in its broadest sense.

This is what motivates us every day in an increasingly complex world.

We also thank Amélie Rafaël for providing the rich and centred statement that linking performance and governance affects all stakeholders in our business. The work conducted in this group and the surrounding atmosphere will encourage high-quality exchanges.

We all agree, quality performance must be accompanied by good governance.

Currently, the French system of corporate governance is based on a combination of laws or regulations and recommendations, which have been capable of promoting better corporate governance, taking into account the need to offer flexibility and adaptability to French companies operating in a global context.

The recommendations of the AFEP/MEDEF which have been applied by almost all companies in the SBF 120 are, with rare exceptions, particularly well respected by them. Gradually, this code determines rules of behaviour that contribute to the improved functioning of the listed companies.

For such a purpose, this code, a source of good practices initiated by business leaders themselves, has opened channels such as parity or employee representation on boards of directors.

As mentioned in the opinion, features found in many corporations can involve all stakeholders in the company.

We are, of course, in favour of anything that allows a better understanding of the mechanisms of the company, the process of value creation, motivation, and social cohesion.

Unfortunately, the unstable nature of the legislation very often makes it counter-productive. For example, the social package created in 2008 increased from 2 to 20% between 2009 and 2013, thus diminishing participation and sharing!

More than ever, companies need consistency and readability. The new laws, PLF and PLFSS especially, issue contradicting instructions at regular intervals, blocking the effectiveness and proper functioning of our economy. Corporations, above all, need legislative and regulatory stability.

For SMEs, perhaps even more than for other companies facing global competition and the current recession, they cannot submit to new regulations or requirements that would add to their operating costs and thus affect their performance.

Normative and administrative overhead are choking our businesses, especially smaller ones. A performance requires simplification!

Concerning governance issues raised in the announcement, they are intimately related to the size or activity sector of the company. Large companies will quite naturally respond to the recommendations of the AFEP/MEDEF. In SMEs, the entrepreneur is in close proximity to employees, and the relationship between employee efforts and the business performance is a given in the vast majority of cases.

But whatever the size of a business, its management is predominately the concern of the women and men who keep it running on a daily basis. In doing this, the majority of employees involved in the initiatives taken, choices to be made, and innovations undertaken, are dependent above all on management and on a business' harmonious functionality, including the economic, social, environmental and societal aspects.

The group of businesses voted in favour of this opinion.

Environment and nature Group

The environment and nature group finds it particularly relevant that the ESEC has taken up the issues of governance and corporate performance, and we thank those who have addressed these issues. We wish to emphasize: This opinion takes a step forward on the objectives, responsibilities and involvement of directors, shareholders and employees in reaction to the increasingly financially focused economy.

It shows:

- that the governance of a corporation cannot be limited to only the involvement of shareholders and management;
- that the performance of a corporation is measured far beyond its ability to generate profits in the short term;
- finally, if it is assumed that employees contribute fully to the performance of the corporation ... their involvement in the governance marks an important development.

The consideration of these internal stakeholders is an important step, and a significant first step towards a change in corporate governance and performance.

However, the challenges of the 21st century require a drive for global performance. For global performance, we value the contribution of business to the challenges of sustainable development in the long term and thus to the public interest.

As such, the environment and nature group considers that the announcement has significant shortcomings:

- external stakeholders are misidentified and too integrated into the proposed changes in performance and governance;
- CSR is often restricted to relations between customers and suppliers. The logic of an exclusively economic cycle obscures environmental facts, which are essential contributors to the creation of corporate value.

We believe, on one hand, that the long term and therefore the environment should be at the heart of governance and, on the other, that the environmental performance should be measured and analyzed in addition to the economic and social performance of a corporation. It can no longer be optional.

Because of these limitations, the environment and natural group abstained.

Mutual Societies Group

The opinion extends the discussions, initiated in the economic activities group, of a concept of competitiveness extending beyond mere economic performance. It seeks to define the effects of corporate governance on performance - whether economic or social - and to suggest ways forward.

If it is exercised to varying degrees and in different ways, according to corporate diversity, democratic governance is at the heart of social and economic solidarity. It remains one of its essential characteristics, alongside solidarity among members and non-divisibility of collective ownership. For its governance and its wide scope, the ESS contributes to social cohesion, which is recognized as a factor of competitiveness by providing social welfare services and developing civic initiatives.

Mutuals, associations, foundations and cooperatives are essentially organizations where - following the principles of tolerance and mutual support - free speech is encouraged, and where conflicting views are heard and respected.

Representatives of mutuals are elected by members according to the mainstay of democratic functioning: "one person, one vote." Thus, members are both customers (individually) and employers (collectively), and the mutual movement in this context can empower people and enable every member to act in his own best interest. It is also for this reason that the innovative capacity of mutuals best meets the needs of its members, articulating economic performance and solidarity.

Members of an association are the sole owners and decision makers since they meet together in the general assembly to decide on the definition of the project which they then entrust to internally chosen managers. The method of election follows democratic logic since the leaders are elected by all. Therefore, everyone is involved, at his own level of responsibility and involvement, in decision making and resulting developments.

As defined by the law, "a foundation designates the act by which one or more persons or entities determines the irrevocable assignment of property, rights or resources to make a work of general interest with goal not resulting in profit." A foundation has no members because it only manages private funds. However, this management is carried out by the founders, lawful members, and co-opted members, in a fully democratic manner in strict application of the goals set.

The importance that mutuals, associations and foundations accord to the governance lead us to share a number of analyses and proposals found in the opinion. We are therefore convinced that a better integration of employees in governance is likely to increase the overall performance of any business. This is especially facilitated by a good flow of information between participants, which contributes to their ability to participate in strategic development. In this context, we support the proposal to provide staff training, resulting in an increase in skills and knowledge of basic business management.

We also support a management style that favours teams in collaboration and support, to create synergies rather than opposition, antagonism, or dissension. Thus, the recognition of the collective performance and an appreciation for training are able to create the conditions for cooperation between people, defuse conflicts in advance and avoid certain blockages in decision making.

We support the local cooperation initiatives and various innovative forms of collective entrepreneurship integrating multiple stakeholders in governance, such as the regional economic cooperation clusters launched in 2011, which aimed to engage local stakeholders in the ESS' "strategies of cooperation and mutual solidarity to develop sustainable economic projects."

Finally, we believe, as stated in the opinion, that "corporate performance should also be defined as the ability to improve relations with external stakeholders" especially focusing on environmental issues and claims from consumer associations.

We respect the spirit of the opinion and are grateful to the author. The mutual group endorses its proposals and has issued a favourable vote.

Student Bodies and Youth Movements Group

The ESEC's current projects, whether the prevention of psychosocial risks, the issues of corporate governance or future opinion research on CSR, lead our reflection on the role and place of business in society.

It seems to us that this succession of opinions is a product of the historical evolution of business, and is intriguingly in line with early critics of the scientific organization of labour. To wit, in the 1930s, Elton Mayo observed that corporate productivity also served the interests of the employees and the business climate. In the 1950s, Abraham Maslow showed that employees were not only motivated by their salary, as Taylor thought, but that they also need security, esteem and fulfilment. Moreover, the opinion emphasizes that participation in decisions may have a stronger impact than financial participation.

Though these ideas are not new, the view puts forward an interesting paradigm shift... It appears, in fact, that beyond improving corporate productivity, employee participation would also allow for employee voices and account for any loss of connection between corporations and financers, allowing relocation of the capital, a return to stable shareholder activity, and therefore a long-term strategy. This would result in corporations that are less susceptible to crises or market demands, a change in direction that our group truly hopes for.

Nevertheless, one cannot help feeling a certain discrepancy between a yearning for greater employee involvement in corporate governance and a seemingly opposed labour market, a gap that the opinion itself mentions. Indeed, boards of directors call for employee participation, their involvement in corporate success, and their voice to be a heard in the process of restructuring, but in reality, workers and business seem less integrated. Short term contracts are increasingly common, as well as the use of external contractors, consultants or pseudo self-employed entrepreneurs, not to mention the increasing relocation of production.

The opinion assumes that employee participation in corporate governance will impact its performance. Among the factors affecting corporate functioning, the opinion cites the importance of trust, which we find quite significant. In this regard, however, the text is hesitant concerning transparency.

Thus, because the opinion focuses on important issues and adheres to a philosophy we endorse, we find that the recommendations, while being quite fair, reflect a hard-fought compromise that offers a starting point for grander ambitions for our labour market.

The Student Bodies and Youth Movements Group voted in favour of the opinion.

Overseas Group

In the current crisis, a general lack of knowledge about the corporate world has lead to misunderstanding and misconceptions of its role, even though it is the only source of wealth creation. However, improving corporate performance and governance is a major issue, since this will allow business to focus more on the interests of customers, shareholders, employees and corporate culture.

Regarding performance, it is a real source of competitiveness. Overseas, this issue is an essential part of the creation of a model of development specifically developed for our territories, which can rely on companies to create value and growth. Indeed, they have already proved themselves to be dynamic and in possession of strong advantages.

However, these small companies - which, in terms of number of employees, are nearly two times smaller than those found in France, and which face strong competition from neighbouring states - operate in a difficult environment. Compared to mainland France, they have greater difficulties.

These elements refer to the problem of corporate under-capitalization, which was correctly stated in the opinion. Remember, moreover, that opening the capital to third parties finds little favour in our country. Again, the ability to raise funds and fund long-term projects is a real problem in the overseas territories. In this context, VSE's/SME's must especially be supported throughout their development by investors such as OSEO, ADF, BPI, and deposit guarantors.

Regarding governance, which is an important focus of the opinion, association and employee participation should be encouraged because they allow for a better organization of work and because they promote technical innovation.

The Group adopted this opinion.

Qualified Individuals Group

Mrs. de Kerviler: "The opinion statement on governance complements the opinion on competitiveness and seems well balanced with regard to relations between the three 'internal' corporate stakeholders: executives, employees and shareholders. It offers participatory development practices in order to increase overall business performance. Thus, through these participatory practices (I quote from page 22 of the opinion statement): "*Employees are no longer limited implementation of the decision, but can also participate at their level in its development.* "

I will first address the importance of employee participation in decision-making.

The opinion statement states that "sharing" and "participation" are tools of competitiveness.

It urges a return to the blocking of participation out of respect for the original intent of this plan, which was long-term corporate financing. Likewise, it suggests the encouragement of employee share ownership, a tool of stability and also of long-term financing. I also acknowledge the educational value of this plan because it encourages employees to read balance sheets and income statements.

Now, moving on to participation in decision-making.

The opinion statement cites the Gallois report's proposals and the "job security" law regarding employee participation in companies employing at least 5,000 employees.

It notes that the law imposes a less significant influx of employee directors than the Gallois report, since it provides for a minimum of two seats rather than four on boards with more than twelve members.

It suggests that an assessment be carried out before any expansion of this law's provisions.

I want to emphasize that comparing the situation in Germany and that of France has a significant bias in this particular situation. Indeed, in Germany, a majority of companies have both a supervisory board and a management board, which is not the case in France. However, membership on a supervisory board and membership on a board of directors are not comparable.

To conclude, I would like to cite another opinion statement, authored by MarieJosée Kotlicki, which complements the published opinion on competitiveness quite well. The following reference will clarify the concept of sector: *Rebuilding sectors through new industry / service relationships.*

With these three opinions, the EESC has made a significant contribution to the debate about the competitiveness of France, and I am delighted about this.

Of course I will vote in favour of this opinion. "

Mr. Obadiah: "First, I wish to thank you, the rapporteur, for the quality of your work and for your willingness to consider divergent opinions that are expressed in the section.

While I acknowledge the inherent difficulties, given the varying parties involved in the debate, I do not deny that I would have liked bolder and more ambitious draft opinion.

Indeed, corporate governance is one of the most important questions in our economy and society. It is not only a theoretical question. It raises practical questions that affect the lives of the vast majority of our citizens and challenge us through the reality.

How can we accept, for example, that the fate of the French steel industry depends on the willingness of a family of London billionaires to absorb debts contracted during speculative buying in the global mining industry? Who can believe that two major national corporations, one in the area of hospitality and the other in supermarkets, were ordered to sell off their real estate funds by financial shareholders whose only concern was to maximize the dividends? And this, against the will of managers summarily sacked after twelve or eighteen months in office! How can we not lament the fact that local communities lack both the financial tools to mobilise bank loans for SME's and a strong local or regional system of job-creating investment?

This handful of examples illustrates the urgent need to truly support the concept of corporate social responsibility in the fight against the domination of short-term financial profitability. They show the limits of self-regulation.

From these brief highlights,

- I think we must prioritize the need for new employee intervention powers over management and the organization;
- I also think that we should extend our recommendations regarding employee participation on boards of directors. This is legitimate when the corporation is seen as a human community serving the needs of society and individuals, rather

than a mere creator of capital, a theme that has been addressed in the opinion statement. These expanded powers are efficient forces pushing for the use of a wider range of management criteria and the strengthening of long-term planning;

– concerning the relationships between communities and corporations, we should insist that state aid be conditional on the social and environmental situation. We should also promote the creation of regional funds to mobilise bank credit through interest rate subsidy packages, which also would be conditional on the objectives of social and community development and on the preservation of the local ecosystem.

That being said, even if I find our proposals insufficient, I will vote for the opinion statement in order to encourage the positive developments therein."

Liberal Professions Group

In this era of internationalisation of capital and financial globalisation, we must strive to avoid a rupture between companies, employees and shareholders.

We believe, like the author of the opinion statement, that overall corporate performance is dependent upon a system of governance capable of incorporating the interests of all parties in a shared strategic vision. To do so, management decisions must be based on trust, and long term corporate interest must be the primary consideration. Are human capital and financial capital not the two major factors in corporate performance?

Today, regretfully, shareholder governance tends to over-focus on financial profitability and shareholder value. Shareholders often show a complete lack of *affectio societatis*, a spirit of cooperation] and even tend to lack an intimate understanding of corporate functioning.

This poses a triple threat for the corporation: a focus on the short term, an individualization of goals, and an "impatience" for innovation. However, long term gains, and risks as well, are inherently tied to research and development efforts.

SMEs/VSEs are the heart of this country's economy. In situations where capital is predominantly held by the family and where relationships with employees are direct and informal, the term governance barely applies.

Regardless of the size of the company, we believe that economic performance depends on the ability to create a community of interest. Economic performance is also inseparable from social performance.

The opinion calls for the incentives and participation, real competitiveness tools. They are essential contributors to performance. They cannot be reduced to a simple division of the fruits of labour. It is primarily a state of mind and a culture. A corporation cannot hope to survive without the support of its employees through profit sharing, incentive programs, and employee ownership of capital, all of which contribute to the same goal: effectiveness.

This is a win-win strategy, but it is more widespread in large corporations than in small businesses.

However, considerable progress has been made, through the establishment of various programs, including corporate savings plans and profit sharing for SME's with fewer than 250 employees through the creation of inter-firm savings plans, which facilitate dissemination of employee savings (ES) in VSEs.

In our case, initiated by UNAPL, the ES-PL plan was established in professional firms employing at least one employee (part-time or full-time). It includes a company savings plan (PEE) with a 5-year maturity and a communal retirement savings plan (PERCOs) that funds retirement through returns on investment. The employer contributions are paid by the company in addition to each participant's personal contribution.

Though the motivation is individual, the trust is mutual and the returns are collective. Convinced that good governance can only rely on the sharing of a common ambition, the Liberal Professions Group voted in favour of the opinion.

UNAF Group

The financial crisis led companies to rethink the notion of performance and forced them to strive for more than just financial success. This shift opens new modes of action for corporate stakeholders, whether shareholders, employees, customers-suppliers, or consumers. The UNAF Group appreciates that the opinion articulates this perspective, though it regrets to see that it still fails to bring all the stakeholders together as much as it could. The involvement of citizens and consumers should be better taken into account. Transparency and high quality information are necessary for family participation; mutual trust and a shared vision of the future cannot be rebuilt without these prerequisites. This exchange should not be confused with the social dialogue.

CREDOC's 2011 "consumption" survey brings up some interesting points. For corporations and international organizations, the consumer is a stakeholder who should be informed and protected. Most consumers have heard about CSR or ethical business practices. They associate CSR with the idea of corporate responsibility for environmental protection. However, in the minds of consumers, CSR especially stands for the idea of corporate responsibility towards the people they employ: a company can or should be classified as responsible when it provides its employees with good working conditions and pay, and also when it establishes a stable employment, avoiding layoffs and outsourcing.

The notion of a win-win relationship, in which the local economy is supported and corporations hold good standing in the local community, is of particular importance. The UNAF Group emphasises that the needs of families are best provided for by the local economy. The local economy invests in "caring activities" to support community members and fulfil their needs. The "face-to-face" economy motivates local communities and nourishes local living conditions. It facilitates entrance to the workplace.

The opinion, when it refers to the means of decision-making, helpfully encourages good governance of corporations active in the social and communal economy. The democratic principle of "one person, one vote" allows for an open debate and balanced decision-making based on the input of various stakeholders' perspectives. This type of governance is best able to reconcile economic and social needs. It is possible to conduct economic activities while still striving to be of use to society.

The UNAF Group adopted this opinion.

UNSA Group

The opinion devotes an entire section to a long discussion of the definition of business and the structural characteristics of the French system of capital (based on a 15-year-old survey) while neglecting this essential issue:

- What are the main components of "good governance" in the context of French companies?
- What impact does the quality of corporate governance have on performance?
- Is there a causal relationship between governance practices and corporate performance?

The opinion overlooks the relativistic measurement of performance inherent to an increasingly financially focused economy. By justifiably accounting for various "stakeholders," the opinion takes a broader, though still insufficient, view of governance. However, the opinion has partially or totally ignored several dimensions inherent to this approach, including the role of trade unions and that of the government. Therefore, for the UNSA Group, the implementation of Corporate Social Responsibility (CSR) hinges on the consideration and management of the long-term economic, environmental, and societal impact of corporate activities. With respect for commitments to sustainable development, the implementation of CSR aims to create a favourable environment for future generations. To reconcile these issues, corporations cannot act alone. Prioritizing sustainable development requires the involvement of all entities acting as "stakeholders." These constitute the business environment, including other production units, which are often small scale.

In short, governance must extend to "stakeholders" such as social, economic, and trade partners, entrepreneurs, shareholders, employees, etc... It cannot ignore the local authorities and the state, which, in UNSA's opinion, must continue to uphold constitutional rules in order to ensure the vitality of democracy.

Different aspects of the evolution of corporate governance are also discussed, including a management model deserving special mention in view of recent developments: the mutual-interest, cooperative corporation. It is regrettable that the conclusions put forward (in particular the independence accorded to purely financial interests) receive little discussion. On the other hand, many recent trends make it difficult to accept the importance the rapporteur places on "performance," especially the composition of boards of directors.

Though we agree that good governance is based on information sharing and trust, UNSA stresses that trust cannot be imposed, but must be built upon meaningful social dialogue. Regarding information sharing, the unique database set up by ANI on 11 January should allow employee representatives to develop this dialogue.

The UNSA finds that the opinion largely avoids the issue at hand and doesn't provide enough recent evidence to ensure the relevance. UNSA abstained.

Voting

Vote on the entire draft opinion presented by Amélie Rafael, rapporteur

Number of votes	172
Votes in favour	144
Votes against	11
Abstaining	17

The ESEC adopted the opinion.

Votes in favour: 144

Agriculture Group	Mr. Bailhache, Mrs. Bernard, Bocquet, Bonneau, Mr. Clergue, Mrs. Dutoit, Mrs. Giroud, Gremillet, Mrs. Henry, Mrs. Lemétayer, Pelhate, Pinta, Mmes Serres, Sinay, Mr. Vasseur.
Craft Industry Group	Mrs. Amoros, Mrs. Bressy, Crouzet, Miss Foucher, Gaultier, Mrs. Le Lann, Liébus, Mrs. Sassano.
Associations Group	Mrs. Arnoult-Brill, Mrs. Charhon, da Costa, Leclercq, Mrs. Prado, Mr. Roirant.
CFDT TRADE UNION GROUP	Mr. Blanc, Mrs. Boutrand, Briand, Mr. Duchemin, Mrs. Hénon, Mr. Honoré, Mrs. Houbairi, Mrs. Le Clézio, Malterre, Mrs. Nathan, Mr. Nau, Mrs. Pichenot..
CFE-CGC TRADE UNION GROUP	Mr. Artero, Mrs. Couturier, Mrs. Delage, Dos Santos, Lamy, Mrs. Weber..
CFTC TRADE UNION GROUP	Mr. Coquillion, Mme Courtoux, Mrs. Ibal, Louis.
CGT GROUP	Mrs. Crosemarie, Cru-Montblanc, Mr. Delmas, Mrs. Doneddu, Dumas, Mr. Durand, Mrs. Geng, Hacquemand, Kotlicki, Mrs. Mansouri-Guilani, Marie, Michel, Prada, Rozet, teskouk, Mrs. Vagner.
Cooperation Group	Mrs. de L'Estoile, Mr. Lenancker, Mrs. Rafael, Roudil, Mr. Verdier..
Entreprise Group	Mr. Bailly, Mrs. Castera, Duhamel, Duprez, Frisch, Ingelaere, Mrs. Lebrun, Lejeune, Mariotti, Mrs. Prévot-Madère, Mrs. Roger-Vasselin, Roubaud, Schilansky, Mrs. Tissot-Colle, Vilain..
Mutual Societies Group	Mrs. Andreck, Beaudet, Davant, Mrs. Vion.
Student bodies and youth movements Group	Mrs. Dulin, Prévost..
Overseas Group	Mrs. Galenon, Grignon, Janky, Omarjee, Osénat, Paul, Mrs. Romouli Zouhair, Tjibaou..

Qualified parties Group	Mrs. Ballaloud, Mr. Baudin, Mrs. Brunet, Mr. Corne, Mrs. Dussaussois, Mr. Etienne, Mrs. Flessel-Colovic, Mrs. Fremont, Gall, Geveaux, Mrs. Gibault, Grard, Graz, Mr. Guirkinger, Mrs. Hezard, Mr. Jouzel, Mrs. de Kerviler, Mrs. Kirsch, Le Bris, Mrs. Levaux, Mrs. Lucas, Martin, Mrs. de Menthon, Meyer, Mr. Obadia, Mrs. Ricard, Mrs. Richard, Terzian, Urieta.
Liberal professions Group	Mrs. Capdeville, Gordon-Krief, Noël, Mrs. Riquier-Sauvage.

UNAF GROUP	*Mrs. Basset, Mrs. Damien, Farriol, Feretti, Fondard, Joyeux, Mrs. Koné, L'Hour, Therry, Mr. de Viguerie.*

They voted against: 11

CGT-FO TRADE UNION GROUP	Mr. Bernus, Mrs. Boutaric, Mr. Chorin, Mrs. Fauvel, Mrs. Hotte, Lardy, Mrs. Medeuf-Andrieu, Mrs. Nedzynski, Peres, Porte, Veyrier.

Abstaining: 17

Environment and nature Group	Mrs. Beall, Bougrain Dubourg, Mrs. de Bethencourt, Denier-Pasquier, Ducroux, Mrs. Genest, Genty, Mrs. de Thiersant, Laplante, Mesquida, Vincent-Sweet, Mr. Virlouvet..
Qualified parties Group	Mr. Aschieri, Mrs. Brishoual, Mr. Khalfa.
UNSA GROUP	Mrs. Dupuis, Mr. Grosset-Brauer.

Annexes

Annex N° 1: composition of the section for Economic Activities

✓ **President:** Jean-Louis Schilansky

✓ **Vice-Presidents:** Isabelle de Kerviler and André Leclercq

Agriculture Group

✓ Daniel GREMILLET

✓ Dominique BARRAU

Craft Industry Group

✓ Jean-Pierre CROUZET

Associations Group

✓ André LECLERCQ

CFDT TRADE UNION GROUP

✓ Monique BOUTRAND

✓ François HONORÉ

✓ Yves LEGRAIN

CFE-CGC TRADE UNION GROUP

✓ Gabriel ARTERO

CFTC TRADE UNION GROUP

✓ Agnès COURTOUX

CGT GROUP

✓ Maryse DUMAS

✓ Marie-José KOTLICKI

CGT-FO TRADE UNION GROUP

✓ Jacky CHORIN

✓ Andrée THOMAS

Cooperation Group

✓ Amélie RAFAEL

Enterprise Group

✓ Patrick BAILLY

✓ Françoise FRISCH

✓ Renée INGELAERE

✓ Gontran LEJEUNE

✓ Jean-Louis SCHILANSKY

Environment and nature Group

✓ Anne de BÉTHENCOURT

✓ Pénélope VINCENT-SWEET

Mutual Societies Group

✓ Jean-Pierre DAVANT

Overseas Group

✓ Patrick GALENON

Qualified parties Group

✓ Jean FREMONT

✓ Laurence HEZARD

✓ Isabelle KERVILER (DE)

✓ Alain OBADIA

UNAF GROUP

✓ Aminata KONÉ

✓ Paul VIGUERIE (DE)

Associated parties

✓ François AILLERET

✓ Brigitte FARGEVIEILLE

✓ Sonia HAMOUDI

✓ Patrick JOHNSON

✓ Agnès LEMARCHAND

✓ Bernard LEPIDI

✓ Sylvie PRADELLE

✓ Denis SEGRESTIN

Annex 2: List of interviewed persons

In order to inform itself further on the issues, the section heard the views of:

✓ **Mrs. Salima Benhamou**
economist at the Centre for Strategic Analysis;

✓ **Mrs. Blanche Segrestin**
Professor at the Ecole des Mines in Paris;

✓ **Mrs. Agnès Lemarchand**
Areva administrator, associated party, member of the section;

✓ **Mr. Michel Pesnel**
employee director of La Poste;

✓ **Mr. Pierre Alanche**
former employee director at Renault;

✓ **Mr. Georges Jobard**
CEO at Clextral Groupe;

✓ **Mr. Jacques de Heere**
CEO at Acome;

✓ **Mr. Jean-Louis Beffa**
Honorary President and administrator at Saint-Gobain;

✓ **Mr. Augustin de Romanet**
former CEO of the Caisse des Depots et Consignations;

✓ **Mr. Frédéric Agenet**
Director for Social relations EADS

✓ **Mrs. Laurence Hézard**
CEO of GrDF, member of ESEC;

✓ **Mr. Denis Segrestin**
university professor, associated personality, member of the section;

✓ **Mrs. Sophie de Menthon**
president of the Ethis mouvement, member of the ESEC.

The rapporteur and all the members of the Section of economic activity are very grateful to all these individuals for their contribution to the work.

Annex N° 3: List of bibliographic references

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Annex 4: Table of Acronyms

ANI	National Interprofessional Agreement
CAS	Centre d'analyse stratégique (Centre for Strategic Analysis)
CE	Works Council
CDI	Contrat à durée indéterminée (Permanent contract)
CRM	*Customer relationship management*
ESS	Economie sociale et solidaire (Social and Solidarity Economy)
EURL	Entreprise unipersonnelle à responsabilité limitée (Single-member limited liability company)
ETI	Entreprises de taille intermédiaire (Medium sized enterprises)
EFES	*European federation of employee share ownership*
FNMF	Fédération nationale de la mutualité française (National Federation of French Mutuality)
GE	Grandes entreprises (Large Enterprises)
IRP	Institutions représentatives du personnel (Employee representative bodies)
ISR	Investissements socialement responsables (Socially responsible investment)
MIC	Microentreprises (Microenterprises)
OPA	Offre publique d'achat (Takeover Bid)
PME	Petites et moyennes entreprises ([SMEs} Small and medium-sized enterprises)
PEE	Plans d'épargne entreprises (Company Saving plans)
PTCE	Pôles territoriaux de coopération économique (Territorial centers for economic cooperation)
PWC	*Price Waterhouse Coopers*
CSR	Corporate Social Responsibility
SA	Société anonyme (Limited company)
SARL	Société anonyme à responsabilité limitée ([LLC] Limited Liability Company)
SCP	Société civile professionnelle (Professional civil law partnership)
SCOP	Société coopérative de production (Production cooperative company)
SEL	Société d'exercice libéral (Liberal profesion company)
SCS	Société en commandite simple (Standard Limited partnership)
SNC	Société en nom collectif (General partnership)
SAS	Société par actions simplifiée (Private limited company)
SCIC	Société coopérative d'intérêt collectif (Cooperative community-oriented enterprise)

Annex 5: note of the opinion

[i] *Quatre nouvelles catégories d'entreprises - Une meilleure vision du tissu productif,* INSEE Première n°1321, November 2010.

[ii] cf. INSEE Première n°1399, March 2012.

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[ix] cf. *Panorama de l'évolution des PME depuis 10 ans*, CGPME-KPMG, June 2012.

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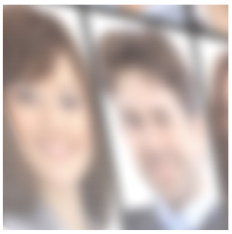
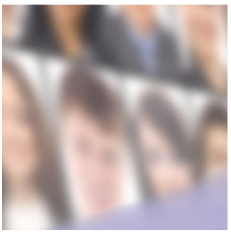

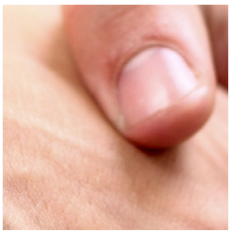


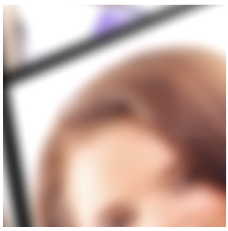
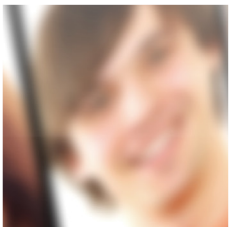
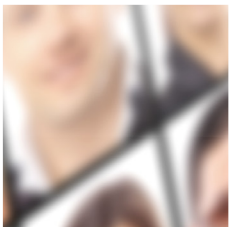
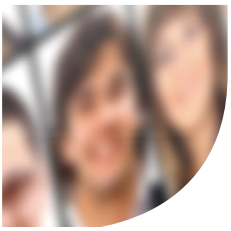

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