



# Corporate Governance Code

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## FOREWORD

Since its publication in 2009, companies of all sizes, listed or unlisted, and all kinds of organisations, both for-profit and not-for-profit, have referred to the Middledenext Corporate Governance Code because it provides simple and coherent principles to support their corporate governance practices. While this continues to be true for listed companies, the trend has nevertheless been declining for the past 15 years.

A vibrant and embodied governance should carry a project adjusted to the reality of each company to help them be efficient and competitive. This is all the more important and challenging in a context where sometimes, the temptation to comply takes precedence over dealing with situations intelligently. In order to avoid a “ticking the box” and compliance approach of governance, and take a responsible approach, we should ensure to issue clear, understandable, intangible principle-based rules that would provide the necessary flexibility to get fair and effective practices

This Code has been updated to reflect as faithfully as possible the feedback of companies and the broad range of expertise from practitioners and experts (investors, financial analysts, board members, rating agencies, auditors, lawyers, consultants...) who contributed through some 30 meetings attended by more than a hundred stakeholders and experts from our business ecosystem. We also worked with the Financial Markets Authority (Autorité des Marchés Financiers -AMF) and public authorities on revising this document.

Corporate Social Responsibility (CSR) was already an integral part of the Code when it was updated in 2016. At that time, we recommended to companies to adapt the implementation of this responsibility according to their size and business sector and to create a dedicated CSR committee. This suggestion becomes a strong recommendation of the present Code. As companies currently play a more important role than ever and are considered as “political actors”, it is legitimate that their managers be held more accountable. Companies must now demonstrate that CSR is embedded in their strategy.

Governance is therefore more commonly integrated into rating systems as a key factor that determines an organisation’s access to financing and inclusion in listings for customers. This criterion is also crucial in gaining support from employees and meeting the expectations of new generations who question business leaders on the company’s long-term project, vision and values as well as the viability of its business model and wealth distribution policies.

While climate change issues heavily impacted the European and French regulatory framework, resulting in a turbulent, demanding and shifting context; board members’ training becomes an ethical commitment. It is now necessary for them to enhance their skills in order to be able to fulfil their fiduciary duties.

The 2021 version of this Code clarifies or reinforces existing recommendations, in particular by formalising a procedure for disclosing conflicts of interest, rules of conduct, analysis of minority shareholder votes, details on the principles that guide the structure and amount of compensation paid to corporate executive officers.

The Code proposes three new recommendations:

- establishment of a CSR committee;
- necessity for board members to undertake regular trainings;
- fairness and respect for gender balance at each level of the company

We express our utmost gratitude to all those who contributed with generosity, availability and rigorous approach and helped enrich our debates and ground them in their first-hand experiences.

Caroline Weber  
General Manager

# Preamble

## 1 - Political and regulatory environment

Faced with a formalism that struggles to achieve its purpose, faced with the search for an illusory exhaustiveness of situations that never or very rarely arise, the Code remains faithful to its founding principles. It remains committed to promoting confidence and individual accountability. It reaffirms its conviction that governance must be adapted to specific characteristics and needs of each company so that it can plan ahead, question medium- and long-term challenges, support major strategic decisions, prepare for succession planning, and improve decision-making processes.

To be relevant, this process requires an uncompromising focus on identifying the need or issue at play. Ensuring the company's long-term sustainability is at the heart of the system that seeks to imagine and develop the fairest and best-adapted governance tools to address necessary demands and the demanding necessities of the business world.

More than ever, we agree with the principle of abandoning the headlong pursuit of a formalistic approach focused on not always relevant disciplinary measures, and let the spirit of governance prevail over the letter.

We will never entirely prevent some rare dysfunctions, but it must be severely sanctioned.

## 2 - Strength and sustainability of the Middlednext Code

### a) A wealth of information provided by databases and analysis

The amendment work has been supported by numerous academic studies, companies' reports, statistical analysis based on research by Middlednext Research Institute, and its partners. In 2010, this covered tens of thousands of pieces of information. The data is consolidated in the indigenous database for medium-sized companies, managed by le DoTank<sup>1</sup>, for use in research and studies in the field of governance, CSR and financing.

### b) A collaborative methodology for updating the Code

This updated version is based on the feedback provided by hundreds of companies who have chosen to refer to this code, as well as continuous exchanges with experts and representatives of different stakeholders: investors, financial analysts, rating agencies, board members, auditors, lawyers, consultants, etc. Each of them was invited to participate and to act alternately as witness and/or stakeholder in the Code revision. The Code was also amended in collaboration with the Autorité des Marchés Financiers (AMF) and public authorities.

This work was the product of thirty meetings gathering more than one hundred people.

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<sup>1</sup> LeDoTank produces expertise on the reality of mid caps, contributes to the development of practices and provides tools adapted to the needs of small and mid cap companies

### 3 – The Middelnext Code underlying assumptions

**a) Corporate Social Responsibility (CSR) has always been deeply embedded in the Code: governance and business ethics are the basis for a company sustainability**

Exemplary conduct is a core focus of the Middelnext Code. Further emphasis on CSR can only reinforce this need, as congruence is vital to the success of a CSR approach to drive economic performance.

Middelnext has always considered that social and environmental issues are part of strategy. Most companies have been closely monitoring the impacts resulting from their activities for a long time. With the emergence of standards and laws relating to CSR, these factors are more formally integrated into the companies management and in the development of their strategies.

Companies are now expected to communicate better in demonstrating that CSR is a core focus of their strategy: relevance, materiality, completeness and accuracy are now the key principles of expected approaches.

Each company must adapt the implementation of its CSR approach to its size and sector. In 2016, Middelnext recommended that companies create a dedicated CSR committee, or failing that, indicate which Board member would be specifically assigned to monitor it. Given the importance of this approach, this is now a formal recommendation.

**b) Strategy commits the company over the long-term**

Strategy is corporate governance foremost responsibility. Understanding who controls the strategy is an endless source of controversy among different authorities, but also among stakeholders of corporate governance. For that reason, the Code has focused on clarifying this question.

There is no doubt that all stakeholders in corporate governance contribute in some way to the strategy. In contrast, they do not intervene either to the same extent or at the same time. Developing and implementing a strategy does not entail the same level of responsibility or expertise needed to select a strategic option and oversee its results during its implementation.

This clarification implies a clear separation between management and supervisory powers summarised in the following table:

	Role in the strategic approach devolved to the "manager"	The critical role of "Board members" in promoting a strategic approach
DEVELOPMENT	<b>X</b>	
DECIDING THE STRATEGY		<b>X</b>
IMPLEMENTING	<b>X</b>	
MONITORING RESULTS		<b>X</b>

### c) The corporate governance system must be adapted

Depending on the shareholder structure, its outlook, stakeholder expectations and the economic and social context, the managers and Board design the governance organisation to optimise the company economic project and promote its long-term sustainability.

The underlying principles on which many codes of "good governance" are based – a diluted shareholder base that requires that the shareholders' interests be defended by the Board of Directors – concern only a small number of companies.

For the large majority of companies, questions of governance are focused more on achieving the right balance between:

- **Entrepreneurial freedom** of action for managers who are also, in most cases, controlling shareholders and, as such, bear the main risk in the event of poor management;
- **Protecting minority shareholders** whose interests might be adversely affected by certain management decisions;
- **Company long-term sustainability**, when the loneliness or succession of the controlling shareholder-manager raise questions impacting not only the human dimension but also the viability of organisations over time;
- **Accountability to the entire ecosystem**, first, to its employees as well as all other stakeholders.

It is understood that,

- the board of directors, or the supervisory board, regardless of its composition, is a collegiate body which collectively represents all the shareholders and is mandated to take into account the company's "corporate interest" under all circumstances.

- reasonable governance requires a sufficient number of rules to ensure corporate governance practices are fair, effective and capable of addressing issues faced by companies, whereby the latter have a responsibility to ensure implementation of those principles in an intelligent and understandable way to all stakeholders, through a "comply or explain" approach<sup>2</sup>.

### d) Explaining is complying

Explaining its divergence from a recommendation illustrates this "practical intelligence" that is the premise of reasonable governance. It is important to emphasize that the choice between these two options (comply or explain) does not involve any value judgement about the quality of the governance implemented in the company: a good explanation will bear the same value as the strict compliance with Code recommendations. In other words, providing detailed and relevant explanations, is equivalent to complying.

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<sup>2</sup> Article L22-10-10-4 of the French Commercial Code (Code de Commerce) provides that "when a company refers voluntarily to a code of corporate governance drawn up by organizations representing companies, the report specified in this article shall also set out the provisions that have been ruled out and the reason for this decision".



## 4 - Code structure and underlying analysis

This Code has an educational purpose. This means that it is not limited to issuing a series of recommendations. It will hopefully be useful for all the different players of governance.

### a) Presentation of the three powers involved in corporate governance<sup>3</sup>

The points to be watched and recommendations are presented successively in three chapters dealing with the key powers of governance:

- ▶ “sovereign power” expressed notably at the general meeting of shareholders: “the shareholders”;
- ▶ “supervisory power”, setting direction and oversight - the supervisory board, the board of directors or equivalent bodies - : “the Board members”;
- ▶ “executive power”: “the managers”.

The interaction of these three powers (sovereign, executive and supervisory) defines how the company is governed. Achieving the right balance in these interactions helps legitimize, make and assume decisions, in particular of a strategic nature with enduring consequences for the company. It also strengthens the trust of stakeholders in those who govern the company and in the company itself.

For this Code, we have chosen to present the three powers in the following order: first, the “sovereign” power which establishes the legitimacy of the two others, and for that reason, it cannot be neglected or ignored without calling into question the very nature of the company. With this respect, the “sovereign” power is the power of “last resort” – followed by “supervisory” power and finally “executive” power.

This Code draws upon two types of proposals: points to be watched and recommendations.

### b) Points to be watched<sup>3</sup>

These are the main questions to address to ensure the effective functioning of governance, without necessarily providing direct answers. Given the diversity of companies’ profiles, those “points to be watched” cannot result in uniform answers.

The purpose of these points is to invite the Board of Directors to address their specific issues, without requiring them to provide detailed responses on the raised issues. Companies adopting this Code are asked to indicate, in the report on corporate governance<sup>4</sup>, that the board of directors (or supervisory board) has considered the issues presented in the section on “Points to be watched”. The emphasis is given in this way to a pedagogical and responsible approach.

### c) Recommendations.

These are rules to be complied with by those companies adopting this Code. In this case, the report on corporate governance must clearly indicate how they apply them and if not, why not, on a “comply or explain” basis.

The “comply or explain” approach provides the necessary flexibility for adapting to the specific characteristics of each company. However, ensuring that the “explanations” provided are relevant is a decisive priority in terms of credibility: this means ensuring that all stakeholders understand the consequences of any departures from a specific recommendation. Companies must invoke concrete arguments making it possible to describe the specific characteristics of the company’s governance. This requires intelligence and reflexivity in the application of principles that by nature are particularly stringent, with the necessary degree of flexibility. This also represents a factor of internal efficiency: the alignment

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<sup>3</sup> See the 2015 edition of the Guidelines for reasonable corporate governance, coordinated under the authority of Professor Pierre-Yves Gomez, Director of the French Institute for Corporate Governance (IFGE) at the EMLYON Business School – Website: [www.ifge-online.org](http://www.ifge-online.org)

<sup>4</sup> Articles L. 225-37 and L. 225-68 of the French commercial code require the board of directors and supervisory board to present at the general meeting a corporate governance report along with the management report.

between the company's discourse and practice guarantees integrity and exemplary conduct in the practice of governance. Addressing this expectation provides a way to avoid the pitfalls of excessive regulation, fostering the spirit of entrepreneurship and reducing the risk of conflicts of interest.

## **5 – Audience: Companies for which this Code was designed**

This amended version is aimed at providing a Code to all companies who are interested and judge it suitable. It applies in particular to publicly traded controlled companies regardless of their size as well as both controlled and non-controlled (widely-held) small and mid caps.

For companies with a sizeable family ownership component which represent most of the companies referring to the Code, the main members of the three powers: "executive", "supervisory", "sovereign» potentially have family ties. This may constitute an additional opportunity for corporate governance ("natural" leadership for the head of the family shareholding group, facilitated dialogue between the different corporate bodies, communities of interest, reciprocal trust, etc.), but it can also generate particular difficulties, calling for skills to manage them over the long term: complicated personal relationships, necessary management transition from one generation to the next, interference from the private sphere; the role of spouses, etc. This means that there is a need to reflect on the governance within the family beyond the sole corporate governance.

This Code addresses:

- companies that publish a corporate governance report in application of Articles L. 225-37 or L. 225-68 of the French Commercial Code.  
They may use this Code to fulfil their legal obligation to make voluntary reference "to a corporate governance code drawn up by the representative organisations for companies".
- unlisted companies, companies subject or not to the procedure for drafting a corporate governance report that may refer to the points to be watched.

## ***In brief***

This Code retains the solid foundations of governance as presented and practised by adopting companies. As such, it stands out from most texts on “good governance” by identifying points to be watched and encouraging companies not merely to report on their compliance with a certain number of general rules, but to actively consider their corporate governance practices.

A company adopting this Code is accordingly expected to adhere to its recommendations, except, in those cases where exceptions are duly justified, but also to exercise vigilance on the quality of their governance. This makes it possible to assure investors, stakeholders and public authorities that the company pays genuine attention to the issue of governance.

This inquiry-based process enables companies to apply an approach of continuous improvement. One way to achieve this goal is regular self-assessments by the company's governance bodies, adjusted to its situation and challenges.

In this way, by constantly focusing on promoting trust and its corollaries of loyalty and legitimacy, and by giving priority to greater responsibility to companies in evaluating their governance, on one hand, and on a framework of clear rules, on the other, this Code makes a considerable contribution to ensuring reasonable governance for companies.

This Code, methodologically built in a manner that supplements laws and regulations, is based on a long-term approach and, as such, is not designed to be revised, if need be, more frequently than every four to five years.

# TEXT OF THE CODE

## 1- Sovereign power

### Points to be watched

Points to be watched are not recommendations.

**Context:** *Many companies are characterised by the existence of sizeable large-block lead "shareholders". This encourages a link between sovereignty over the company and involvement in ensuring its continuity. And while this is the very basis of corporate governance, it raises the risk that minority shareholders' interests could be prejudiced when the executive power and the lead shareholder are too closely aligned.*

*Reasonable governance calls for the genuine exercise of "sovereign" power by all "shareholders" particularly during general meetings.*

The purpose of this Code is not to issue recommendations for "shareholders". Nevertheless, there are **six points to be watched that merit particular attention by the Board of Directors:**

#### **1. Does "shareholder's" exemplary conduct contribute to strengthening trust?**

Regardless of the form of "ownership structure", the function of the "shareholder" is essential for ensuring confidence in the company. It embodies responsibility regarding the continuity of the company and grounds its project over the long-term. Its legitimacy is based on its commitment to actually exercise its power based on a long-term perspective.

The different "shareholders" participate in a common project based on mutual recognition.

#### **2. Are "shareholders" clearly informed of the major foreseeable risks that could threaten the sustainability of the company?**

Independently of the statutory disclosure obligations about risks, the system of governance must permit "shareholders" to obtain clear information about major and foreseeable risks. This includes those inherent to the company and those which could jeopardise its sustainability: risks associated with strategic choices and risks linked to malfunctions in the governance system itself.

#### **3. Do "shareholders" really choose "Board members"?**

The point to be watched consists in determining whether the "shareholders" are genuinely placed in a position to exercise their power to appoint "Board members" by making informed choices.

#### **4. Do "shareholders" take part in the votes?**

Depending on the various forms of companies and shareholding structures, attention should be paid to the various concrete voting practices to encourage voting by shareholders.

As the shareholders' meeting is the only time of the year when all powers are gathered with an opportunity to exchange, "shareholders" are encouraged to participate in these meetings even when their vote is not decisive.

### **5. Is there a risk of harming the rights of minority "shareholders"?**

This involves avoiding any practices that might lead to the interests of minority shareholders being harmed, notably on related-party transactions.

In this respect, the importance of information provided to "shareholders" on these transactions is emphasised (even when covered by a regulated agreement).

### **6. Is the development of "share ownership" properly managed over time?**

Reasonable governance must include thorough knowledge of the company's "share ownership" and effective management of its structure over time.

The "shareholders", particularly family shareholders, must be aware of the issues and anticipate the consequences of their investment decisions (purchasing, donation, selling, division, etc.) on the company's future in order to ensure consistency with the common project.

Companies adopting this Code are asked to pay attention to these six points, which, in accordance with recommendation No. 22, must be reviewed on a regular basis.

Expectations towards companies are long-term oriented. In the same way, shareholders who think they can influence governance choices must also adopt a long-term view. Otherwise, shareholder activism – which should be praised as a driving force for change – would be reduced to merely a speculative, short-term game, very far from a sustainable approach.

Any shareholder who criticises and destabilises a governance system would only be legitimate if the company's sustainability is not compromised, and if its responsibility falls with a transparent and long-term rationale.

While it is understandable that companies should be required to be as transparent as possible, it is not right for some shareholders to behave in an openly opaque manner (e.g. when short selling or in securities lending).

The Middelnext Code advocates exemplary conduct of any individual or organisation that exercises one of the three powers. *"The good man is the one who does not advocate what should be done until he has done what he advocates" Confucius.*

## 2. "Supervisory" power

### Points to be watched

These points to be watched are not recommendations.

"Supervisory" power is exercised by the board of directors in companies with a board of directors, or by the supervisory board in companies with an executive board and a supervisory board.

According to law, in companies with a board of directors, in addition to this supervisory role, the board of directors is the place of decision-making and control and sets the directions for the activity of the company.

The Board of Directors is a collegiate body, which collectively represents all "shareholders" and is bound by the obligation to take into account the corporate interest<sup>5</sup> of the company at all times.

**Context:** *Most companies have large-block lead "shareholders" and/or a "manager" wielding preponderant influence, especially when it is the founder of the company. Emphasis should therefore be placed on the fact that the lead "shareholders" are likely to be the first to suffer from any poor management. However, some management decisions can harm the interests of minority "shareholders", and "Board members" must therefore ensure that the right balance is found between the different powers. Their role therefore consists essentially in ensuring that there are no abuses and that the excessively close link between executive power and reference shareholders does not have a negative effect on the quality of governance or on strategic decisions, or that the "manager" does not manage the company without taking into account "shareholders' "interests when capital is diluted.*

### Seven points to watch for «supervisory" power

#### 1. Does "Board member"<sup>6</sup> fulfil his or her mission within the strategic process?

Any confusion is detrimental to the responsibility of each player : the "manager" on one hand and the "Board member" on the other hand; With respect to strategy, it is essential that the respective roles of each<sup>7</sup> party are clearly defined for the four phases of a strategic process: proposal, selection, implementation and oversight.

The "manager" is responsible for developing, proposing and then implementing the strategy. The Board member's first responsibility is selecting among the possible scenarios the best option for the company's project, its sustainability and its sustainable performance. He or she then ensures that the implementation of the strategy by the executive power is in line with the assigned objectives. Any material change in the strategic priorities is again explained in a general meeting.

#### 2. Does the exemplary conduct of the "Board member" strengthen trust?

As the "shareholder" and the "manager", the "Board member" also has the obligation to be exemplary in order to generate trust within and on behalf of the company. The way the "director" exercises his or her mission sends a powerful signal about the quality of governance.

This implies a genuine engagement and availability to fulfil one's duties with the necessary diligence and commitment.

The law and/or the articles of association provide for a collegial decision-making process. Each "Board member" contributes through a fair exchange of opinions whereby decisions are made after considering all points of view.

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<sup>5</sup> Article 1833 of the French Civil Code states that a company must be managed in its own corporate interest by taking into consideration social and environmental issues related to its business operations.

<sup>6</sup> Or Strategy Committee member for unlisted companies

<sup>7</sup> This is particularly the case when the "manager" is also a "director".

Any conflicts of interest that could lead a "Board member" to bias his or her evaluation of decisions must be identified and disclosed. The role of the chair<sup>8</sup> is to ensure to stakeholders that such conflicts of interest do not exist, or if they do, that the persons involved have either abstained from voting or left the room to avoid any influence on the decision-making process.

### ***3. Does "supervisory" power overlap with executive power?***

The company can suffer as much from inappropriate interference in executive functions as from an absence of supervision.

Attention should be paid to a clear definition of the roles of the "manager", the Board and its members in particular when Board committees exist.

For example, when the functions of chair and executive officer are separated, it is imperative to respect a clear delimitation of their respective roles.

### ***4. Does the "Board member" effectively exercise his or her duty of care?***

In the spirit of reasonable governance, the duty of care implies that each "Board member" ensures in a collegial manner that interests of all "shareholders" are considered and respected. He or she must also ensure the capacity of the executive to manage the company in a sustainable manner. Board practices should allow the expression and respect of diverging opinions<sup>9</sup> before decisions are made on a collegial basis.

Identifying and handling in a reasonable manner conflicts of interest is essential to the trust of internal and external stakeholders towards "supervisory" bodies.

In this respect, among the "Board members", each independent member must be particularly vigilant on this issue.

### ***5. Does the "Board member" have the material resources to fulfil his or her mission?***

Disclosure of necessary information to prepare board meetings is essential to contribute to understanding the addressed topics and to exercise judgement. The "Board member" may participate in this process by also requesting information from the chair and/or the manager. It is preferable to provide "Board members" at their appointment with sufficient information and/or induction training on the activities and the organisation of the company<sup>10</sup>.

### ***6. Does each "Board member" have the right skills?***

The panel of "Board members" must have sufficiently diversified abilities, profiles and skills to assess those of the "managers", and be able to ensure that the company strategy is relevant to its corporate interest, and take into account social and environmental issues related to its business operations. The presence of a "Board member" representing employees can contribute to this area.

In a turbulent and uncertain environment, maintaining or reinforcing skills becomes an ethical requirement for each board member. Regular training of "Board members" helps them better analyse the issues involved in the decisions being made, express their viewpoints and therefore exercise their fiduciary responsibility.

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<sup>8</sup> Or, if it exists, this is the role of the independent "Board member" tasked with ensuring that governance procedures are respected

<sup>9</sup> When there exists a manifest disagreement regarding a decision taken on a majority basis, the position and the name of the dissenting minority must be recorded in the minutes, when the latter so requests.

<sup>10</sup> This may include information/instructions about governance and changes in the legislative and regulatory environment and soft law.

**7. Can the working conditions of the “Board member” create bias and affect the independence of his or her judgement?**

The ability to exercise independent judgement depends notably on the conditions for fulfilling his or her mandate.

- level of compensation: if too low, it can discourage the involvement of the Board member, and if too high, it can make the Board member dependent on the company;
- term of office: if too short, it can restrict the beneficial effects of experience, and if too long, it can reduce the quality of supervision.

Furthermore, it is advised to stagger the renewal of terms of office of "Board members"

Companies adopting this Code are asked to pay special attention to these seven points of vigilance which, in accordance with recommendation No. 22, must be reviewed on a regular basis.
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## Correspondence table of recommendations

The Middelnext Code now has 22 recommendations, versus 19 in the 2016 version. This update has made several changes to the wording of the recommendations:

- 8 recommendations are unchanged or updated;
- 5 recommendations are more specific;
- 6 recommendations are strengthened ;
- 3 recommendations are new, covering:
  - the need for Board members to take regular training (R 5),
  - the creation of a CSR committee (R 8),
  - fairness and respect for the gender balance at each level of the company(R 15).

The numbering system for recommendations was updated.

You will find below the correspondence table.

No. in the 2016 Code	Unchanged or updated recommendations	More specific recommendations	Strengthened recommendations	New recommendations	No. in the 2021 Code
R 1			X		R 1
R 2			X		R 2
R 3	X				R 3
R 4	X				R 4
				X	R 5
R 5	X				R 6
R 6			X		R 7
				X	R 8
R 7		X			R 9
R 8		X			R 10
R 9	X				R 11
R 10	X				R 12
R 11		X			R 13
R 12			X		R 14
				X	R 15
R 13			X		R 16
R 14	X				R 17
R 15	X				R 18
R 16		X			R 19
R 17	X				R 20
R 18		X			R 21
R 19			X		R 22

## Middlenext recommendations

### R 1: Ethical conduct of “Board members”

**Context:** A “Board member”<sup>11</sup> is mandated by all shareholders and must act in the company’s corporate interest and take into consideration social and environmental issues of its business operations in all circumstances<sup>12</sup>.

*“Board members” are not always aware of governance systems and their resulting responsibilities. This is particularly true of largely family-owned companies in which “Board members” representing the family or families are not always properly informed of their duties. The aim is to foster common “professional ethics” for all “Board members”.*

#### Recommendation

Each “Board member” should comply with the following rules of ethical conduct:

- the demand for exemplary conduct, entails at all times, a behaviour reflecting consistency between words and acts, a guarantee of credibility and trust;
- when accepting the mandate, each “Board member” is informed of resulting obligations and notably those relating to legal rules related to holding several mandates concurrently;
- at the beginning of the mandate, he or she signs the Board rules of procedure that defines, inter alia, the minimum number of shares each Board member must hold, under the provisions of the company’s articles of association.
- during the mandate, each “Board member” must inform the board of any potential (customer, supplier, competitor, consultant, etc.) or proven conflicts of interest (other appointments) concerning them.
- in the event of any conflict of interest, and depending on its nature, the “Board member” in question shall abstain from voting or taking part in the proceedings, and, in extreme circumstances, will resign;
- each “Board member” should comply with applicable legal and regulatory requirements on transactions disclosure and the close period during which they are prohibited from trading company shares;
- each “Board member” should have good attendance records and take part in meetings of the Board and committees on which they sit;
- each “Board member” ensures that they have obtained all necessary information sufficiently in advance on the subjects to be addressed in meetings;
- each “Board member” complies with a real duty of confidentiality when dealing with third parties, which is more restrictive than the simple duty of discretion required by law; Board members formally pledge to honour this duty by signing the Board’s rules of procedure;
- each “Board member” attends the annual general meetings.

When the “Board member” holds a position as a “manager”, he or she should not accept more than two other mandates as “Board members” in listed companies, including in foreign companies or companies outside their group.

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<sup>11</sup> Whether when appointed or reappointed

<sup>12</sup> Article 1833 of the French Civil Code states that a company “*must be managed in its own corporate interest by taking into consideration social and environmental issues related to its business operations*”.

## R 2: Conflicts of interest

**Context:** *In compliance with French regulations on related-party transactions, the Board exercises an essential role in dealing with **both potential and actual** conflicts of interest at all levels of the group.*

*In this respect, the Board and its specialised committees must also be aware of the risks of conflicts of interest, particularly in choosing service providers selected by management bodies in preparing for strategic decisions: consultants, rating agencies, banks, legal and accounting experts, etc.<sup>13</sup>.*

### Recommendation

It is recommended that The Board ensure that all internal procedures are implemented to disclose and manage conflicts of interest. It should undertake all reasonable investigations to assess the appropriate measures to be taken (clear description of reasons, removal of any individuals involved from the room, etc.) to ensure that the decision taken is consistent with the company's interest.

"Board members" pledge to report, before each Board meeting depending on the agenda, any conflicts of interest they may have and to refrain from taking part in the deliberations and voting on any issue the conflict of interest involves.

Subject to changes in legal provisions, the Board should implement an annual procedure to disclose and monitor conflicts of interest.

The chair is the primary "guardian" in managing conflicts of interest and, more specifically, those relating to him or her personally.

For related party transactions, depending on the configuration and amounts involved, the Board determines the merits of referring to an independent opinion.

For statutory auditors, apart from statements<sup>14</sup> and services provided to comply with laws and regulations<sup>15</sup>, companies are recommended to enlist a firm other than its statutory auditor for services other than standard reviews of their financial statements.

All these diligences are disclosed in the corporate governance report.

## R 3: Board Composition - Independent directors

**Context:** *The existence of a strong controlling shareholders block may result in its representatives monopolising the number of seats, and, in this way, give greater weight to strategic visions or representations of the situation that might prove to be wrong. It is therefore preferable that Boards open up to external expertise, who can provide a different perspective on board decisions: the integration of independent "Board members" is therefore crucial<sup>16</sup>.*

*On an indicative basis, in a board of a significant size, the ratio of independent "Board members" should be at least one third for a controlled company and close to 50% for a company with diluted capital.*

### Recommendation

it is recommended that the board include at least two "independent board members".

There are five criteria upon which we can assume board members' independence, which is characterised by the absence of any significant financial, family or personal relationship likely to affect their independence of judgement:

- they must not have held an employee or executive position within the company or a company in the group over the last five years
- they must not have had any material business relationship with the company or its group over the last two years (as a client, supplier, competitor, service provider, creditor, banker, etc.);

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<sup>13</sup> Templates for Board rules of procedure are available, on request, to all Middenext members

<sup>14</sup> Statements prepared as part of the due diligence directly linked to the work performed in the role as statutory auditor, statements required by contracts: statement on financial ratios, statement on expenditure for certain grants, statement on revenue, for example for government-backed loans, etc.

<sup>15</sup> Services provided by the entity's statutory auditor pursuant to national provisions which expressly and exclusively entrust the performance of such services to the entity's statutory auditor, and services which are expressly and exclusively entrusted to the entity's statutory auditor under European Union law which directly affect national law.

<sup>16</sup>The possibility of creating the function of lead director is left to the appreciation of the Board based on its needs and operating practices.

- they must not be a reference shareholder of the company or hold a significant percentage of voting rights;
- they must not have a close relationship or close family ties with a corporate officer or a reference shareholder;
- they must not have been an auditor of the company in the course of the previous six years.

Independence is also a state of mind, showing above all that a person is capable of exercising complete freedom of judgement and knowing, when necessary, to express an opposing opinion or relinquish his or her functions.

Independence represents a way of looking at and addressing one's own responsibilities. As such, it is a matter of personal ethics and fairness towards the company and the other "Board members".

For these reasons, it is the Board's responsibility to examine the situation of its members on a case by case basis in the light of the criteria listed above. The status of independence is assessed at the "Board member's" first appointment and each year thereafter when the chair's report is written and approved.

On condition that it justifies its position, the Board may consider one of its members to be independent even if he or she does not fulfil all these criteria. Conversely, it may also consider that one of its members who fulfil all these criteria is not independent.

To provide a better understanding of the composition of Boards and committees, we recommend a presentation according to the table provided as a sample on page 44.

#### **R 4: "Board member" information**

**Context:** *The information provided to "Board members" is crucial to the proper functioning of the Board. "Board members" must be in possession of all information necessary to perform their mission. This information must be concise, relevant and comprehensive. This information must be made available sufficiently in advance, based on the amount of time required by directors for its analysis. Given the wide variety of practical situations, it seems reasonable that "Board members" themselves assume responsibility for this issue.*

##### **Recommendation**

it is recommended that the company provide "Board members" with all necessary information sufficiently in advance between Board meetings.

It is recommended that the rules of procedure of the Board provide practical guidelines for providing this information within reasonable time limits.

It is also recommended that "Board members" determine if information provided to them is sufficient, and require, when necessary, any additional information they might consider useful.

#### **R 5: "Board member" training**

##### **New recommendation**

**Context:** *The growing amount and the complexity of regulation that apply to companies require a regular monitoring and update of knowledge and skills by executives and board members.*

*It falls upon the responsibility of the company to propose training sessions to executive and non-executive board members on business activities and environment of the company.*

##### **Recommendation**

It is recommended that the Board provide for a three-year training plan (e.g. equal to four to six days of training per "Board member" over the period) adapted to the company's specific situation and environment, to both executive and non-executive "Board members". The plan should take into account expertise gained through experience.

Each year the Board should assess the progress of the training plan and disclose it in the corporate governance report.

## R 6: organisation of Board and committee meetings

**Context:** *The size of the company, that of the Boards, current issues and major events affecting the life of the company are all decisive factors in determining the right balance.*

*"Board members" role is not limited to attending board meetings, since there must naturally be many exchanges with the management team between each meeting.*

*In companies, especially controlled companies, "Board members" including independent "Board members" should have opportunities for exchange on a regular basis, both formally and informally, outside the presence of the "executive"<sup>17</sup>.*

**Recommendation** It is recommended that frequency and duration of meetings enable an in-depth review of addressed topics. This also implies to prepare for meetings in advance.

Whenever possible, in order to achieve efficiency, the Board prefers physical attendance. If not possible, use of videoconferencing is preferred over conference calls.

This frequency is at the discretion of the company, depending on its size and specific features, but a minimum of four annual Board meetings is recommended.

Minutes shall be taken of each Board meeting summarising the debates.

In contrast, setting a fixed number of meetings for special committees is not relevant and, left to the discretion of the company. The company reports the frequency of committees' meetings

The corporate governance report must indicate the number of annual Board meetings, attendance by "Board members" and indicate, as applicable, if "Board members" have the opportunity to discuss outside the presence of the executive".

## R 7: Establishment of committees:

**Context:** *The varying situations of companies and sizes of their boards require a very realistic approach with respect to the number and efficiency of committees. Pragmatism suggests that companies be provided with the greatest flexibility.*

*In order to be effective, the establishment and removal of committees and their functioning are left to the appreciation of the Boards according to their needs.*

*The multiplication of committees for purely procedural reasons without real practical purpose should be avoided. The spirit of governance is based on a collegial approach to Board decision-making and not on the juxtaposition of specialised subgroups of experts.*

### Recommendation

it is recommended that each Board decide whether to establish specialized ad hoc committees (compensation, nomination...) that would be tailored to its needs<sup>18</sup>, depending on its size, needs and current issues<sup>19</sup>.

Under all circumstances, the Board remains the decision-making body.

It is important that the function of chair for specialised committees be entrusted to independent "Board members", except in exceptional, duly justified cases.

Concerning the establishment of an audit committee, the Board decides, in accordance with applicable laws, whether to set up an audit committee or to exercise this function itself under the conditions laid down by laws or regulation.

If it meets as an audit committee, at least one of the Board's independent members should have specific expertise in financial, accounting or statutory auditing.

If the Board decides to set up an appointments and/or remuneration committee, it should not include any executive corporate officer and should be chaired by an independent member.

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<sup>17</sup> Executive session

<sup>18</sup> Refer to the summary table on the make-up of Board and committees

<sup>19</sup> Refer to the summary table on the make-up of Board and committees

## **R 8: Establishment of a specialised committee on Corporate Social Responsibility (CSR)**

### **New recommendation**

#### **Context:**

*Companies are increasingly being asked by their stakeholders to formalize the actions they have taken to protect their environment and create sustainable value. The Paris Agreement, the first legally binding international treaty on climate change and the European Council's endorsement of the objective to achieve a climate-neutral EU by 2050 are driving companies to radically change the way they operate so that Corporate Social Responsibility (CSR) may be even more at the core of all strategic decisions.*

#### **Recommendation**

It is recommended that each Board establish a specialised CSR committee<sup>20</sup>.

Depending on the topics, this committee works with other specialist committees.

Moreover, the Board is asked to consider how value is shared and, more specifically, on the balance between compensation of employees, rewarding risk taken by shareholders, and necessary investments to ensure the company sustainability.

The CSR Committee is chaired by an independent member. The committee may seek outside guidance from qualified experts, as needed.

## **R 9 Establishment of Rules of Procedure for the Board<sup>21</sup>**

**Context:** *In practice, the overlap of the three powers is frequent: executive, supervisory and sovereign powers (i.e. the managers, the board and "shareholders") due to the presence of reference shareholders who often hold a majority stake. It is therefore preferable to define what is expected of "Board member" as clearly as possible in a Board charter or rules of procedure drafted to reflect the company's specific situation.*

#### **Recommendation**

It is recommended to establish rules of procedure including at least the nine following items:

- role of the Board and any operations that are subject to prior authorization by the Board, if applicable;
- composition of the Board;
- independence criteria applicable to directors;
- definition of the role of specialised committees that may be established;
- board members' duties (ethics, loyalty, non-competition, disclosure and monitoring of conflicts of interest and duty to abstain, confidentiality etc.);
- board functioning (frequency, convening, disclosure of information to directors, self-evaluation, use of videoconferencing and telecommunications facilities) and, when specialised committees exist, a description of their roles;
- protection provided to directors and officers: directors and officers liability insurance (D&O LI);
- compensation rules for "Board members";
- succession planning information of the "executive" and key people;

It is also recommended that rules of procedure or substantial excerpts be published on the company website and, if applicable, reported in the governance report.

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<sup>20</sup> Or meet as a CSR committee, depending on the size

<sup>21</sup> Templates for rules of procedure are available, on request, to all Middenext members

### **R 10: Selection of each “Board member”**

**Context:** *Regardless of the difficulty in finding independent “Board members”, it is important that “shareholders” be able to make a truly informed choice on the appointment of each “Board member”.*

#### **Recommendation**

it is recommended that sufficient information on biography, in particular the list of mandates, experience and skills brought by each, “Board member” be made available on the company website, prior to general meeting voting on the appointment or renewal of director’s mandate.

This information is included in the corporate governance report or in the report presenting the resolutions submitted to the general meeting.

### **R 11: Tenure of “Board members”**

**Context:** *In practice, the integration of independent “Board members” remains complex. It is better to avoid tenures that are too long and might affect the independence of the member but also tenures, which are too short and might discourage their involvement in the company.*

#### **Recommendation**

It is recommended that the Board ensure that the statutory tenure is adapted to the company's specific situation, within the limits set by law.

It is recommended that renewal of “Board members” be staggered.

The tenures are clearly mentioned in the corporate governance report.

### **R 12: Compensation of “Board members” for their mandate**

**Context:** *Given the role and responsibilities of “Board members”, the level of compensation must take into account their professionalism and involvement.*

*“Board members” compensation (formally, the director’s attendance fees) covers, in one hand the performance of their mission, including periods between Board meetings and on the other hand attendance and effective contribution to the Board.*

#### **Recommendation**

it is recommended that “Board members” receive minimum compensation for their duties, especially independent “Board members”. Their compensation<sup>22</sup> is determined by the Board on the basis of attendance record of “Board members” and the time they dedicate to the function, including, their participation in committees, when applicable.

### **R 13: Establishment of Board evaluation:**

**Context:** *A formal external evaluation is not essential, even though it may prove useful as a means of providing fresh insight into board practices. Self-evaluation of the Board and its ability to evaluate the relevance of its work on an annual basis is preferred<sup>23</sup>.*

#### **Recommendation**

It is recommended that once a year, the Board's chair ask the directors to provide input on Board and

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<sup>22</sup> The global amount of which is determined by the general meeting.

<sup>23</sup> See Middlednext Guide: *Autoévaluation du fonctionnement du conseil d’administration ou du conseil de surveillance (Guide on the self-assessment of the functioning of the board of directors or supervisory board)*

committees practices, if applicable and on the preparation of their work. This discussion is recorded in the meeting's minutes.

The Board has the option of seeking guidance from third parties.

The chair indicates if board evaluation was undertaken in the corporate governance report.

#### **R 14: Relations with shareholders**

**Context:** *The Board ensures that conditions for dialogue exist between "managers", "Board members" and "shareholders", for example, by organising the general meeting in a way that makes it materially accessible to all.*

*Following the general meeting, the Board reviews the results of the votes.*

#### **Recommendation**

Beyond legal requirements, the Board pays particular attention to negative votes by analysing, among other things, how the majority of minority shareholders voted. The Board wonders whether it would be appropriate to change, in view of the next General Assembly, what may have led to negative votes and on the possibility of a communication on this subject.

The corporate governance report indicates whether this review has taken place.

It is recommended that opportunities be provided outside general meetings for exchanges with significant shareholders in order to create conditions for meaningful dialogue.

Prior to the general meeting, the "executive"<sup>24</sup> makes sure to meet with significant shareholders who are willing to, while ensuring that shareholders have equal access to information.

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<sup>24</sup> or the person responsible for financial communication.



## 3- Executive power

### Points to be watched

Points to be watched are not recommendations.

**Context:** *Most companies have large reference "shareholders" and/or a manager with significant influence. The entrepreneurial know-how of "managers", in particular when he is the founder of the company, is decisive to the value of the company, either because the executive represents directly the shareholders, or because he/she embodies the know-how of the company in the eyes of investors. The qualities of the manager and the team surrounding him represent a key asset in the life of companies. Therefore, it is also important to pay attention to risks incurred by the personalization of the function for the company.*

#### Five points to watch concerning the executive function

##### **1. Does the exemplary conduct of the "manager" contribute to strengthening trust?**

The "executive" embodies the company. The "manager" is at the forefront of the stakeholders' perception of the company, and by extension, their trust. For that reason, the "manager" exemplary conduct is a factor in the determination of reasonable governance. This exemplary conduct provides the basis for pride in belonging, loyalty and a sense of responsibility.

To prevent a devastating Pinocchio effect, exemplary conduct refers to the consistency between the message conveyed to stakeholders and the requirements self-imposed by the "manager" embodied in the exercise of his or her functions. In the same way, congruence – i.e. consistency between what the manager communicates to the outside world and actual internal management practice – is essential.

##### **2. 1. Does the "manager" have the right skills?**

This point to watch helps assess if the skills and experience of the "executive" and his or her immediate team are adapted to the environment in which the company operates at the time the strategy is defined or implemented

Without necessarily being an expert in all areas, one of the roles of the "manager" is to ensure that useful expertise and skills are available to prepare and monitor the strategy with a view to the company sustainability. With this in mind, the CSR competence of the entire management team becomes essential.

##### **3. Is the "executive" too lonely?**

This point to be watched is to determine whether there are formal venues (generally meetings of the Board of directors or the executive committee) or informal venues that enable the manager to share and discuss his decisions in an objective and serious way.

It is also recommended that the executive power be vested in a "management team" rather than a single "manager" and that the Board has opportunities to meet and exchange with the "management team".

For major decisions, it is critical that any opinion contrary to that of the "manager" be expressed.

A company should ensure that there is no discrimination and that diversity is represented. The management team should reflect this diversity.

#### **4. Could the personal interests of the "manager" be detrimental to the company?**

There are two dimensions to this question: conflicts of interest and the level of compensation.

- Many situations can reveal both communities of interest as well as conflicts of interest for example when the "manager" is also a significant shareholder. However it is not so much the conflict of interest itself, that is sometimes inevitable, that calls for vigilance, but rather how it is managed.
- Could the compensation of the "manager" influence his or her judgement and, in so doing, interfere with the exercise of their mission?

The method and level of compensation must accordingly be coherent and provide incentives without distancing the "manager" from an accurate vision of reality as experienced by stakeholders of the company.

It is also recommended that the compensation structure lead to preferences for strategies that are consistent with the company's long-term interests. If compensation includes a variable component, it should at least be based on one non-financial indicator.

#### **5. Are there arrangements for the succession of the "manager"?**

Given the far-reaching role of the "manager", it is only natural that governance bodies address the issue of succession planning on a regular and formal basis, and reflect on the means to be implemented in the event the "manager" becomes partially or completely unable to fulfil his or her duties.

Companies adopting this Code are encouraged to pay attention to these five points of vigilance which, in accordance with recommendation No. 22, must be reviewed on a regular basis.

## Middlenext recommendations

The "managers" may be, according to the cases, the chair, the chief executive officer or deputy chief executive officer in public limited companies (*sociétés anonymes*) with a board of directors, the chair and members of the management board in public limited companies with a management board and a supervisory board, or the manager in partnerships limited by shares (*société en commandite par actions*).

### R 15: Company fairness and diversity policy

#### (New recommendation)

**Context:** *A company should ensure there is no discrimination and that diversity is represented in terms of gender, age, disability, professional qualification, experience etc.*

*The Board should question the appropriate gender balance, not only in management bodies but also at each level of the company.*

*Men and women are not equally represented in some business sectors. The gender policy should be assessed accordingly in this context.*

#### Recommendation

It is recommended that beyond legal requirements, and according to the business environment, the Board verify that a policy aimed at gender balance and fairness is implemented at each level of the company.

The Board should describe in the corporate governance report the policy implemented and the outcomes achieved during the reporting period.

### R 16: Definition and transparency of the compensation of corporate officers

**Context:** *In practice<sup>25</sup> the compensation of corporate officers, who are in most cases significant shareholders or founders of the company, are rarely excessive. Rather than focusing on the level of compensation, it is more important to evaluate how the compensation structure is designed, the clarity of the rules defining it and the necessary transparency with respect to "shareholders" through the company's financial disclosure.*

*With respect to say on pay consultations of "shareholders" in general assembly, as long as this is not required by law, the Board is free to proceed as it deems it appropriate.*

#### Recommendation

It is recommended that the Board of Directors of each company determine the compensation levels and arrangements for its managers and the disclosures<sup>26</sup> on the subject, in accordance with the law and regulations.

#### a) Seven principles used as a basis to determine management compensation and compensation arrangements:

- **Comprehensiveness:** each company is free to determine the components of compensation paid to corporate officers. This compensation must be disclosed in full to the shareholders: fixed components, variable performance-related component<sup>27</sup> (bonuses), stock options, bonus shares, compensation related to the mandate as a "Board member", exceptional compensation, retirement conditions, specific benefits...

For variable compensation, measuring the achievement of performance targets takes into account quantitative criteria – financial and extra-financial – and qualitative criteria.

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<sup>25</sup> "Middlenext overview of 2019 compensation"

<sup>26</sup> Tables on "management" compensation are provided in the annex

<sup>27</sup> If applicable. In practice, many managers do not receive any variable compensation.

Read company reports that refer to the Middlenext Corporate Governance Code: [www.middlenext.com](http://www.middlenext.com)

- **Balance** between the compensation components: each component must be justified and in the company's overall interest.
- **Benchmark**: this compensation must be assessed, whenever possible, in relation to the company's industry and market, and be proportionate to the company's situation, while paying attention to any inflationary effects.
- **Consistency**: the executive officer's (*dirigeant mandataire social*) compensation must be determined consistently with that of the company's other managers and employees.
- **Understandability**: the rules must be simple and transparent. The performance criteria used for the variable components of compensation or, where applicable, awards of options or bonus shares must be related to the company's performance, be aligned with the company's objectives and be demanding, explainable, and sustainable. They must include details, without compromising the confidentiality that may be warranted for certain items.
- **Proportionality**: the mix between compensation and stock options and bonus share awards must be balanced and take into account the company's overall interest, as well as market practices and managers' performances.
- **Transparency**: under French law, companies whose shares are admitted for trading on a regulated market must disclose all components of compensation paid to corporate officers in the corporate governance report. The weighting of different criteria applied to variable compensation is disclosed to shareholders.

#### b) Pay ratio<sup>28</sup>

French law requires listed companies on a regulated market to disclose a pay ratio that compares executive compensation<sup>29</sup> with the average and median compensation of company employees.

Whatever the listing market, and beyond legal requirements, companies should also disclose another equity ratio that compares compensation with the French legal minimum wage<sup>30 31</sup>, an independent reference value and fixed denominator for all companies.

Each company is encouraged to disclose, voluntarily, the amount of the lowest salary, if it is higher than the minimum wage.

### R 17: Succession planning for "managers"

**Context:** *The concern for the company sustainability requires that the succession of the current executive officer be considered and that all or part of the board reflects on it.*

#### Recommendation

It is recommended that succession planning be a regular item on the agendas of the Board and a specialised committee meeting, in order to ensure that it is addressed and monitored on an annual basis.

According to situations, including in the case of succession planning in family-owned companies, a change in the governance structure might be appropriate. This would involve shifting from a one-tier to a two-tier structure, and vice versa, reviewing the distribution of functions between the chair and the chief executive officer,<sup>32</sup>

<sup>28</sup> Article L. 22-10-9 of the French commercial code

<sup>29</sup> chair of the board of directors, chief executive officer and each corporate officer

<sup>30</sup> SMIC (*Salaire minimum interprofessionnel de croissance*)

<sup>31</sup> Ratio calculation: amount of total compensation as the numerator and the legal minimum wage for the reporting period as the denominator

<sup>32</sup> And explaining the reasons in the corporate governance report.

## **R 18: Combination of employment contracts and corporate mandate:**

**Context:** *In practice<sup>33</sup>, the compensation of "managers" for companies referring to the Middlenext code remains modest in relation to the risks incurred and the level of their responsibilities.*

*Moreover, attracting or retaining talented staff, often requires making sure that "managers" receive the same benefits they would under employment contracts. For that reason, it is important that each company decide what best fits its reality.*

### **Recommendation**

It is recommended that in accordance with regulation, the Board of directors assess whether or not to authorise managers to have employment contracts when they serve a corporate mandate as chair, chief executive officer or deputy chief executive officer (public limited companies with a Board of directors), chair of the management board (public limited companies with a management board and a supervisory board), or managing partner (partnerships limited by shares). The corporate governance report explains the rationales in detail.

## **R 19: Severance pay**

**Context:** *In practice<sup>34</sup>, severance pay other than those provided for, under the terms of employment contracts are rare and, in any case, limited in their amounts. Those payments should be consistent with the company's compensation policy.*

### **Recommendation**

It is recommended that if severance pay is provided for under conditions compliant with legal regulation, its maximum amount after including any severance payments falling under an employment contract or a non-compete agreement, should not exceed two years of (fixed and performance-related) compensation, except in cases where the compensation of the "manager" is clearly below the market median (as in start-ups, for example).

It is also recommended to exclude any severance pay related to a mandate or to an executive holding a mandate if he resigns or leaves the company to undertake new functions or change responsibilities within the company. Any artificial inflation of the compensation should be avoided prior to departure.

## **R 20: Supplementary pension schemes**

**Context:** *Few companies<sup>35</sup> have established supplementary pension schemes for their "managers". For that reason, it was not deemed necessary to limit them. Supplementary pension schemes may be provided for "managers" as long as they are transparent and reasonable.*

### **Recommendation**

In addition to applying the authorisation procedures provided by law, it is recommended that the company indicate in its report on corporate governance any defined-benefit additional retirement schemes it has set up for its managers and provide justification for them, for transparency purpose.

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<sup>33</sup> See the "Rapports sur les entreprises faisant référence au code de gouvernance Middlenext" available on the website: [www.Middlenext.com](http://www.Middlenext.com)

<sup>34</sup> See the "Rapports sur les entreprises faisant référence au code de gouvernance MiddleNext, " available at the website : [www.Middlenext.com](http://www.Middlenext.com)

<sup>35</sup> See the "Rapports sur les entreprises faisant référence au code de gouvernance Middlenext" available at the website: [www.Middlenext.com](http://www.Middlenext.com)

## **R 21: Stock options and allocation of free shares**

**Context:** *Allocation of stock options and/or free shares are often necessary to attract key skills and high quality "managers". The company's policy in this area must be adapted to its situation and be part of a sustainable global approach taking into account the company's overall interests, market practices and manager performance. It is important to define clear performance rules and not to concentrate allocation of stock options and/or free shares among "managers", given that performance is always the result of a collective effort.*

### **Recommendation**

#### Allocation conditions:

It is recommended to not excessively concentrate allocation of stock options /or free shares among managers it is also recommended to not award stock options and/or free shares to managers and corporate officers on the occasion of their departure.

#### Exercise and vesting conditions:

It is recommended that the exercise of all or part of the stock options or the vesting of all or part of the free shares awarded to managers be subject to relevant performance conditions reflecting the company's medium and long-term interests assessed over a period of at least three years.

## **R 22: Review of the points to be watched**

**Context:** *The principles of corporate governance are developed both through the points of attention/vigilance and recommendations. In this way, they are inseparable and the interaction between the two ensures the consistency and stability for the entire Code. For that reason, all the points to be watched should be reviewed by the Board.*

### **Recommendation**

By adopting this Code, the Board commits to consider the points to be watched and review them on a regular basis.  
Companies provide all the necessary information on the points to be watched defined by this Code.

## Compensation tables

Middlenext recommends that companies referring to this Code adopt the following presentation in the form of tables. These tables must be included in a specific chapter of the corporate governance report devoted to “managers” compensation and adapted to the characteristics of each company. Publication of these tables does not however exempt the company from indicating if it has adopted the Middlenext Code recommendations numbers 12, 16, 18, 19, 20 and 21 on compensation.

Any item not included in these tables is considered not applicable.

Based on application of the principle of transparency, a detailed and exhaustive presentation must be provided for all more complex compensation systems. To describe them properly, please refer to the 11 tables recommended by the AMF: Guide for preparing universal registration documents.

<b>Table 1</b>	<b>Summary of compensation paid to each corporate officer (dirigeant mandataire social)<sup>36</sup></b>				
	Executive officer name and position <sup>37</sup>	<b>Financial year N-1</b>		<b>Financial year N</b>	
		<i>Amounts granted</i>	<i>Amounts paid</i>	<i>Amounts granted</i>	<i>Amounts paid</i>
Fixed compensation <sup>38</sup>					
Annual variable performance-based compensation <sup>39</sup>					
Compensation in respect of the mandate as Board member					

<sup>36</sup> Refers to all components of compensation granted for the reporting period or paid during the reporting period to corporate officers by the Company and by companies controlled by the Company in which the term of office is held, as defined in Article L233-16 of the French commercial code.

Add a line for each type of additional compensation: exceptional compensation, multi-year variable compensation, etc.

<sup>37</sup> Parties concerned: chair, chief executive officer or deputy chief executive officer in public limited companies (*sociétés anonymes*) with a board of directors, members of the management board of public limited companies with a management board and a supervisory board, or the managing partners of partnerships limited by shares (*société en commandite par actions*).

<sup>38</sup> Gross base compensation before tax

<sup>39</sup> Indicate the criteria used to calculate these performance-based components.

Stock options <sup>40</sup>				
Allocation of free shares <sup>39</sup>				
Benefits in-kind <sup>41</sup>				
<b>TOTAL</b>				

<b>Table 2</b>	<b>Compensation received by non-executive directors in respect of the mandate as Board member (and other compensation)</b>			
Name of the non-executive director	<b>Amounts granted in the financial year N-1</b>	<b>Amounts paid in the financial year N-1</b>	<b>Amounts granted in the financial year N</b>	<b>Amounts paid in the financial year N</b>
Compensation in respect of the mandate as "Board member"				
Other compensation <sup>42</sup>				
<b>TOTAL</b>				

<b>Table 3</b>	<b>Other indemnities or benefits granted to executive corporate officers</b>							
Corporate executive officers	<b>Employment contract<sup>43</sup></b>		<b>Supplemental pension scheme<sup>44</sup></b>		<b>Non-compete payments</b>		<b>Severance Pay</b>	
	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
Name								
Function								
Start date of mandate								
Expiry date of mandate								
Name								
Function								
Start date of mandate								
Expiry date of mandate								
Name								
Function								
Start date of mandate								
Expiry date of mandate								

<sup>40</sup> Refers to stock options and free shares granted in the reporting period. For further information, refer to tables 4 and 6 in the AMF guide.

<sup>41</sup> Describe these benefits in kind (car, housing, etc.)

<sup>42</sup> if applicable

<sup>43</sup> When an employment contract is maintained (including when maintained but suspended), provide a detailed explanation for the reasons (cf. R15).

Concerning solely the: chair, chair-chief executive officer or chief executive officer in public limited companies (*sociétés anonymes*) with a board of directors, chair of the management board of public limited companies with a management board and a supervisory board, or the managing partners of partnerships limited by shares (*société en commandite par actions*).

<sup>44</sup> In the case of pension obligations or annuity benefits, provide details of the arrangements for determining these obligations, the estimated annuity payments and associated costs.





## Composition of the Board of Directors or Supervisory Board and board committees<sup>45</sup>

Complete the first four columns and add additional columns for each committee when they exist. For example: audit, CSR, compensation, appointments, strategy, etc.

In the absence of committees, indicate if the Board exercises such missions itself.

Indicate if a “Board member” in particular oversees certain issues when a committee does not exist.

### Example of a completed table

Last name, first name, title or function of “Board members”	Independent “Board member” <sup>46</sup> Specify (yes/no)	Year of first appointment	Expiry of the mandate	Committee A Specify (Member/ chair)	Committee B Specify (Member/ chair)	Committee E Specify (Member/ chair)	Experience and expertise
Anne Lamarthe chair	No	2010	2022				
Etienne Chabert Board Member	No	2019	2025	Member	Member		
Gaston Favreau Board Member	Yes	2012	2024	chair		Member	
Christine Laborde Board Member	No	2013	2025		Member	Member	
Aude Richard Board Member	Yes	2018	2024	Member	chair		
Florence Rorpach Board Member	Yes	2011	2023			chair	

<sup>45</sup> On the creation and membership of committees, refer to R 6, R 7 and R 8 of the Middenext code

<sup>46</sup> Independent board director: for the criteria of independence, refer to R 3 of the MiddleNext Code

## To help you

In addition to this Code, Middlednext provides its members with regularly updated standard templates, documents, overviews and benchmarks covering various areas:

- Governance
- Choice of stock market
- Organisation of websites
- Compensation
- Audit
- Anti-corruption
- Market abuse
- CSR

### A –Selecting a stock exchange

- A1 – Cahier Middlednext No. 12: *Comment choisir son marché de cotation ? Synthèse des éléments distinctifs significatifs* (How to choose your stock exchange – Summary of significant distinctive factors)
- A2 – Detailed supplement to Cahier Middlednext No. 12: *Comment choisir son marché de cotation ? Synthèse des éléments distinctifs significatifs* (How to choose your stock exchange – Summary of significant distinctive factors)
- A3 – *Modèle de présentation de proposition de changement de marché de cotation pour direction générale/conseil d'administration* (Template for presenting a proposal to change stock exchanges to general management/board of directors)

### B – Organisation of websites

- B1 – Cahier Middlednext No. 12: *Sociétés cotées: comment organiser l'information sur votre site Internet ?* (Listed companies: How to organise information on your website)
- B2 – Detailed supplement to Cahier Middlednext No. 11: *Sociétés cotées: comment organiser l'information sur votre site Internet?* (Listed companies: How to organise information on your website)

### C – Governance

- C2 – *Modèle de Règlement intérieur du Conseil d'administration* (Template for Board of Directors Rules of Procedure)
- C3 – *Modèle de Règlement intérieur du Conseil de surveillance* (Template for Supervisory Board Rules of Procedure)
- C4 – *Modèle de charte de comité d'audit* (Template for Audit committee charters)
- C5 – *Modèle de rapport de comité d'audit* (Template for Audit committee reports)
- C6 – *Modèles d'ordres du jour des comités d'audit* (Templates for Audit committee meeting agendas) (see D5 and E12)
- C7 – *Questionnaire d'autoévaluation du conseil et des comités* (Self-assessment questionnaire for the board and committees) – in French and English
- C8 – *Guide de mise en œuvre du Code Middlednext : Comment rédiger le rapport sur le gouvernement d'entreprise ?* (Middlednext Code Implementation Guide: How to write a corporate governance report)
- C9 – *Résolutions types Say on Pay* (Say on Pay resolutions)
- C10 – *Note de Proxinvest pour aider les entreprises moyennes à présenter leur politique de rémunération* (Proxinvest note to help mid caps present their compensation policy)
- C11 – *Politiques de vote Proxinvest* (Proxinvest voting policies)
- C12 – *Politiques de vote AFG* (AFG voting policies)
- C14 – Cahier Middlednext No. 13: *Autoévaluation du fonctionnement du conseil d'administration ou du conseil de surveillance* (Guide on the self-assessment of the functioning of the board of directors or supervisory board)
- C15 – *Panorama des rémunérations 2019* (2019 Compensation overview)

## D – Audit

- D1 – *Guide Afep, Ansa, Medef, Middlednext : Guide sur la réforme de l’audit légal* (Afep, Ansa, Medef, Middlednext Guide: Guide on statutory audit reforms)
- D2 – *Guide Afep, Ansa, CNCC, Medef, Middlednext : Services autres que la certification des comptes* (Afep, Ansa, CNCC, Medef, Middlednext Guide: Services other than certifying financial statements): *Guide d’application à l’attention des comités d’audit, des conseils d’administration et de surveillance et des commissaires aux comptes* (Application guide for audit committees, boards of directors, supervisory boards, and statutory auditors)
- D3 – *Guide d’élaboration du cahier des charges pour la nomination des commissaires aux comptes* (Guide for drawing up specifications for the appointment of statutory auditors)
- D4 – *Exemple rédigé d’appel d’offres pour la nomination des commissaires aux comptes* (Written example of a call for tender for the appointment of statutory auditors)
- D5 – *Modèles d’ordres du jour des comités d’audit* (Templates for Audit committee meeting agendas) (see C6 and E12)
- D6 – *Modèle de rapport de comité d’audit* (Template for Audit committee reports) (see C5)
- D7 – *Questionnaire H3C pour les comités d’audit* (H3C questionnaire for audit committees)
- D8 – *Modèle de charte de comité d’audit* (Template for charte de comité d’audit) (see C4)

## E – Anti-corruption

- E1 – *Code de conduite anti-corruption Middlednext* (Middlednext anti-corruption code of conduct) available in 23 languages:
  - Six languages free of charge: Dutch, English, German, Italian, Portuguese and Spanish;
  - Additional cost for each of the following translations: Arabic, Croatian, Czech, Greek, Hebrew, Hungarian, Japanese, Korean, Malay, Mandarin, Polish, Romanian, Russian, Serbian, Thai and Turkish
- E2 – *Un guide détaillé qui recense les tâches à accomplir afin de répondre aux obligations légales* (Detailed guide covering tasks required to meet legal obligations)
- E3 – *Des modèles d’éditoriaux du Président – pour ETI et pour grands groupes* (Editorial templates for CEOs of mid caps and large corporations)
- E4 – *Une méthodologie de cartographie des risques anti-corruption* (Methodology for mapping anti-corruption risks)
- E5 – *Un questionnaire de due diligence des tiers* (Due diligence questionnaire for third parties) – French, English and Spanish
- E6 – *Des modèles de clauses contractuelles* (Templates for contractual clauses)
- E7 – *Une trame de politique cadeaux* (Gift policy template)
- E8 – *Un modèle de charte de comité éthique en français et en anglais* (Template for ethics committee charters in French and English)
- E9 – *Modèle de déploiement du dispositif d’alerte interne* (Template for the deployment of the whistleblowing system)
- E10 – *Scénarios de traitement des questions et des alertes – destiné au comité éthique* (Scenarios for handling questions and alerts – for the ethics committee)
- E11 – *Une note d’information pour les salariés non à risque* (Information note for employees not at risk)
- E12 – *Modèles d’ordres du jour des comités d’audit* (Templates for Audit committee meeting agendas) (see C6 and D5)
- E13 – *Foire aux questions (FAQ) pour la formation des collaborateurs* (FAQ on employee training)  
Available in six languages: Dutch, English, German, Italian, Portuguese, Spanish
- E14 – *Questionnaire AFA en cas de contrôle en français, disponible en anglais et en espagnol* (AFA questionnaire in the event of an audit, available in French, English and Spanish)
- E15 – *Un fichier des documents à prévoir en cas de contrôle par l’AFA* (List of required documents in the event of an AFA audit) – in French
- E16 – *Questionnaire d’autoévaluation AFA* (AFA self-assessment questionnaire) – available in French and English
- E17 – *Guide pratique AFA – La fonction conformité* (AFA Practical Guide – the compliance function)
- E18 – *Liste des lots AFA « prestations d’expertises » et des cabinets retenus* (List of AFA assessment services work packages and selected firms)
- E19 – *Mooc de formation AFA à destination des agents publics* (AFA MOOC for government employees)
- E20 – *Tableau de suivi des coûts anticorruption* (Anti-corruption expense table)

- E21 – *E. learning « Faire des affaires sans corruption »* (“Avoiding the risks of corruption when doing business” e-learning)  
Available in 12 languages (additional cost): Czech, Dutch, English, German, Hungarian, Italian, Mandarin, Polish, Portuguese, Romanian, Russian and Spanish.
- E22 – *Recommandations de l’AFA parues au journal officiel* (AFA recommendations published in the Official Journal)
- E23 – *Guide d’aide à la réalisation d’une enquête interne* (Help guide for conducting an internal survey)

## **F – Market abuse**

- F1 – *Guide sur la prévention des délits d’initiés dans lequel vous trouverez des modèles de charte boursière et de courriers types à adresser aux salariés, aux dirigeants, aux mandataires sociaux, aux tiers, etc.* (Insider trading prevention guide, including templates for stock market charters and standard letters to employees, senior executives, corporate officers, third parties, etc.)
- F2 – *Modèles de déclaration de différé de publication d’information privilégiée : 10 modèles* (Templates for deferred declaration of privileged information: 10 templates)
- F3 – *Charte de déontologie boursière* (Stock market ethics charter)
- F4 – *Cahier Middledenext No. 6: Gestion de l’information privilégiée et prévention des manquements d’initiés* (Managing inside information and preventing insider misconduct)

## **G – CSR**

- *Cahier Middledenext No 5: L’investissement Socialement Responsable et le Développement durable pour les valeurs moyennes* (SRI and sustainable development for mid caps)
- G2 – *Baromètre RSE – Synthèse 2018 des rapports RSE – Cahier 1* (CSR Barometer – 2018 Summary of CSR reports – Cahier 1)
- G3 – *Baromètre RSE – Analyse détaillée 2018 des indicateurs RSE et des ODD – Cahier 2* (CSR Barometer – 2018 in-depth analysis of CSR indicators and SDGs – Cahier 2)
- G4 – *Paysage de pratiques 2019 : Modèle d’affaires* (2019 Overview of practices: Business models)
- G5 – *Paysage de pratiques 2019 : Parties prenantes* (2019 Overview of practices: Stakeholders)
- G6 – *Paysage de pratiques 2019 : Matrice de matérialité* (2019 Overview of practices: Materiality matrix)

These documents are regularly updated and supplemented. Please contact us for any further information.

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## Existing Middlednext cahiers still in application

- **Cahier No. 2:** Jun. 2009

*Référentiel pour une gouvernance raisonnable des entreprises* - (Guidelines for Reasonable Corporate Governance for French Companies)

- **Cahier No. 5:** Mar. 2011

*L'investissement Socialement Responsable et le Développement durable pour les valeurs moyennes - Passeport pour les fonds ISR* -(SRI and sustainable development for mid caps - Passport for SRI funds)

- **Cahier No. 6:** Dec. 2011

*Gestion de l'information privilégiée et prévention des manquements d'initiés* (Managing inside information and preventing insider misconduct)

- **Cahiers No. 11** and its "Detailed guide" supplement

- September 2018

*Sociétés cotées : comment organiser l'information sur votre site Internet ?* (Listed companies: How to organise information on your website)

- **Cahiers No. 12** and its supplement "Detailed guide"

- November 2018

*Comment choisir son marché de cotation ?* (How to choose your stock exchange)

- **Cahier No. 13:** October 2020

*Autoévaluation du fonctionnement du conseil d'administration ou du conseil de surveillance* (Guide on the self-assessment of the functioning of the board of directors, supervisory board and committees)

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See the website: [www.middlednext.com](http://www.middlednext.com)



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English translation of the original French language version of the *Code de gouvernement d'entreprise*  
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