

**2<sup>nd</sup> International Conference  
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**Legal and Economics Aspects of Corporate Governance  
Market Transparency and Disclosure  
In Private and Public Companies**

by

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## Legal and Economics Aspects of Corporate Governance

### ■ **Board efficiency:**

- At the heart of a good corporate governance
- Between 1995 (1<sup>st</sup> edition of the AFEP/ MEDEF Code) and 2013 (6<sup>th</sup> edition to come): dramatic changes due to:
  - the introduction of a percentage of independent directors,
  - the increase in number and length of board meetings,
  - the rise in attendance's rate
  - the creation and development of the committees (audit, nomination, remuneration)
  - the evaluation of board's efficiency ...

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## Legal and Economics Aspects of Corporate Governance

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### **Board efficiency : a focus on board diversity and employee participation**

- ◆ **Board diversity**: more directors from abroad, with different backgrounds, more women as directors
- ◆ **Gender diversity**:
  - 2010**: AFEP/ MEDEF recommendation to listed companies
    - 20 p. cent of women by 2013
    - 40 p. cent of women by 2016

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## Legal and Economics Aspects of Corporate Governance

### **Board efficiency : a focus on board diversity and employee participation**

#### ♦ **Gender diversity :**

##### **2011: Law on gender diversity**

- scope: all listed companies and some private companies meeting some criteria
- calendar: 20 p. cent by 2014, 40 p. cent by 2017
- sanctions:
  - cancellation of any illegal appointment
  - suspension of any payment of fees to directors

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### **Board efficiency : a focus on board diversity and employee participation**

#### ♦ **Gender diversity :**

**2013:** After 2012 GM:

- 25,2 p. cent in CAC 40 Index listed companies
- 21,1 p. cent in SBF 120 Index listed companies
- After 2013 GM: up to 40 p. cent for some companies

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## Legal and Economics Aspects of Corporate Governance

### **Board efficiency : a focus on board diversity and employee participation**

#### ◆ **Gender diversity :**

**By 2017:** between 800 and 900 positions to be filled by women ;  
government proposal to enlarge the scope to smaller private  
companies

#### **European proposal for a directive:**

MEDEF supportive of the objective but critical vis-à-vis some  
provisions

- too intrusive into the internal recruitment process,
- impracticable for executive directors

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## Legal and Economics Aspects of Corporate Governance

### Board efficiency: employee participation

- ◆ A new law to come into force soon

#### **The existing provisions:**

- work council representatives: compulsory above 50 employees, with consultative voice
- employee directors: an obligation for state-owned companies and former ones, an option for others
- employee shareholder directors: an obligation if 3 p. cent or more of the capital of the company is held by employee shareholder

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## **Legal and Economics Aspects of Corporate Governance**

### **Board efficiency: employee participation**

#### **Generalization of employees on boards of some companies (...)**

- A campaign commitment by Mr Hollande: 2012
- A provision of the Growth, Competitiveness and Employment Pact (decision 33), Nov 2012
- A provision (art. 13) of the historical agreement of the 11<sup>th</sup> January 2013 concluded between trade unions and employer organisations:
  - participation of employees as directors with voting rights,
  - in mother companies of groups with 10.000 employees or more worldwide or 5.000 employees or more in France (exclusion of subsidiaries)



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## **Legal and Economics Aspects of Corporate Governance**

### **Board efficiency: employee participation**

#### **Generalization of employees on boards of some companies (...)**

- one employee on boards of directors of 12 directors or less,
- two employees on boards of 12 directors or more,
- elected or designated through proceedings defined by the articles of association,
- same rights and duties as other directors,
- representation to be introduced within a period of 26 months as from the passing of the bill

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## Legal and Economics Aspects of Corporate Governance

### **Board efficiency: employee participation**

#### **The implementation bill**

- Definitive in the following weeks, it is only a question of procedure
- scope of application and number of employee directors: in line with the social agreement
- with an exclusion of mother companies which have less than 50 employees,
- different ways of election or designation: choice between 4 ways:
  - direct election by employees of French companies (candidates proposed by trade unions)
  - designation by the group work council, the central work council or the work council,
  - designation by the most representative trade union,
  - designation by the European work council for one of the two directors, or the council of the European company.

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## Legal and Economics Aspects of Corporate Governance

### **Board efficiency: employees participation**

#### ➤ **Critics :**

- Lack of flexibility: too great a role to trade unions,
- Refusal to take into consideration the existence of employee shareholder directors when there are some and the international dimension of groups of companies

#### ➤ **Status:**

Protected employees – not ordinary directors

**The main challenge for companies:** a good training for those new directors