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# SOME RECOMMENDATIONS ON ESG CRITERIA TO PRIORITIZE IN THE EXECUTIVE DIRECTORS' COMPENSATION POLICY

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WORKING PAPER 2404  
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## Abstract

The inclusion of ESG (environmental, social, and governance) criteria in executive remuneration policies is now well-established, yet it remains uneven across companies and often applied too discretionarily. The choice among various criteria is not always the most relevant to the business and can sometimes be “easy” to achieve, ensuring the additional remuneration is awarded. Defining a set of standard ESG criteria applicable to all companies is a challenge. On this point, we find the conclusions developed by Dell’Erba and Ferrarini (2024).

It is thus pertinent to develop a personalised approach, tailored to the specificities of each economic entity and its non-financial challenges. We propose, therefore, to promote a philosophy of extra-financial performance in executive remuneration, guided by a set of principles to direct remuneration committees in the selection, evaluation, and measurement of ESG criteria.

In this perspective, it is essential to place ESG criteria within the context of their deployment to justify executive remuneration policies. Integrating ESG criteria into remuneration packages should be seen as a legitimate objective, equivalent to financial criteria. By encouraging executives to aim for extra-financial performance, the goal is to align the objectives of sustainable value creation with those of executive remuneration.

Research shows a positive correlation between ESG scores and the adoption of remuneration policies based on sustainable performance. Companies with strong ESG profiles are more likely to adopt such policies. However, it remains crucial to demonstrate that linking executive remuneration to ESG criteria effectively contributes to overall extra-financial performance. Furthermore, the European directive on corporate sustainability reporting (CSRD) now imposes a normative framework aimed at encouraging companies to disclose information on the non-financial impacts of their activities, which should progressively clarify matters. Such a harmonised framework at the European level represents a step forward towards greater transparency and accountability of companies regarding ESG criteria. Companies would do well to adopt this framework as quickly as possible, even if it seems complex.

## Key words

Executive compensation, compensation policy, value sharing, Say on Pay, ESG criteria, environmental, social, governance, extra-financial performance, agency theory, SBF 120, FTSE EuroFirst 300, diversity and inclusion, CO2 emissions reduction, corporate governance, stakeholder engagement, sustainable value creation.

## Résumé FR

L'inclusion des critères ESG (environnementaux, sociaux et de gouvernance) dans les politiques de rémunération des dirigeants est une pratique désormais ancrée, mais elle demeure encore inégale selon les entreprises, intervenant encore de manière trop discrétionnaire. Le choix entre divers critères n'est pas toujours le plus pertinent eu égard à l'activité, et peut s'avérer parfois "facile" à atteindre, garantissant le versement de la rémunération supplémentaire. Définir un ensemble de critères ESG normatifs applicables à toutes les entreprises est une gageure. Sur ce point, nous retrouvons les conclusions développées par Dell'Erba et Ferrarini (2024). Il est donc pertinent de développer une approche personnalisée, adaptée aux spécificités de chaque entité économique et à ses enjeux extra-financiers. Nous proposons dès lors de promouvoir une philosophie de la performance extra-financière dans la rémunération des dirigeants, guidée par un ensemble de principes pour orienter les comités de rémunération dans le choix, l'évaluation et la mesure des critères ESG. Dans cette perspective, il est essentiel de replacer les critères ESG dans le contexte de leur déploiement pour justifier la politique de rémunération des dirigeants. L'intégration des critères ESG dans les packages de rémunération doit être perçue comme un objectif légitime, de niveau équivalent aux critères financiers. En encourageant les dirigeants à viser une performance extra-financière, il s'agit d'aligner les objectifs de création de valeur durable avec ceux de la rémunération des dirigeants.

Les recherches montrent une corrélation positive entre les scores ESG et l'adoption de politiques de rémunération basées sur la performance durable. Les entreprises ayant de bons profils ESG sont plus enclines à adopter de telles politiques. Cependant, il reste crucial de démontrer que l'indexation de la rémunération des dirigeants sur des critères ESG contribue effectivement à une performance extra-financière globale. Par ailleurs, la directive européenne sur les rapports de durabilité des entreprises (CSRD) impose désormais un cadre normatif visant à encourager les entreprises à publier des informations sur les impacts extra-financiers de leurs activités qui devrait permettre de clarifier progressivement les choses. Un tel cadre harmonisé à l'échelle européenne représente un pas en avant vers une plus grande transparence et responsabilisation des entreprises en matière de critères ESG qui feraient bien de s'approprier celui-ci le plus rapidement possible même si cela paraît complexe.

### Mots clés

Rémunération des dirigeants mandataires sociaux (DMS), politique de rémunération, partage de la valeur, Say on Pay, critères ESG, environnement, social, gouvernance, performance extra-financière, théorie de l'agence, SBF 120, diversité et inclusion, réduction des émissions de CO<sub>2</sub>, gouvernance d'entreprise, engagement des parties prenantes, création de valeur durable.

# Introduction

In an initial study conducted almost concurrently by the co-authors and published as **WORKING PAPER 2431: THE STATE OF ESG CRITERIA IN THE EXECUTIVE DIRECTORS' COMPENSATION POLICY**<sup>1</sup>, an analysis was made of the integration of ESG (Environmental, Social, Governance) criteria in the compensation policies of executive directors (ED) of the CAC 40 companies. The work, carried out as part of the EXEC ESSEC Women Board Ready ESSEC 2023 program, focused on responses to written questions during Annual General Meetings, obtained from CAC 40 listed groups and used partially by the Forum for Responsible Investment (FIR).

The compensation of ED has evolved to include ESG objectives, aiming to encourage a serious consideration of these criteria in the strategy of large groups. The inclusion of ESG criteria in compensation packages is now a widespread practice, but the weighting and nature of the criteria used vary significantly. The conducted study has highlighted substantial inequality in the importance of ESG criteria, the types of ESG criteria, and significant differences in terms of clarity, precision, and consistency with the company's overall strategy.

To be fair to the companies, determining a set of criteria, indicators, and objectives remains challenging. The CSRD directive should serve as a progressive tool, leading us to produce this second research with several recommendations.

Our hypothesis is that, given the inability to define a normative ESG framework applicable to all companies across all sectors, it would be advisable to attempt to develop a more individualized approach, tailored to the specificities of each economic entity and the extra-financial issues that concern it. This means developing a "philosophy of extra-financial performance in ED compensation" by promoting a set of principles to guide compensation committees in their choice, evaluation, and measurement of ESG criteria (1), especially given the favorable context of normative evolution with the CSRD (2).

## 1. Towards a Renewed Philosophy of Extra-Financial Performance in ED Compensation

To renew the philosophy of extra-financial performance in ED compensation, it is essential to identify why ESG criteria are crucial to the company because they are beneficial in terms of value creation. It is also important to determine the extent to which ESG criteria should be imposed through regulatory soft law and how a company can, with full legitimacy and justification, select the ESG criteria that objectively apply to it.

### 1.1. Approaching ESG Criteria in ED Compensation as Vectors of Value Creation

While the integration of ESG criteria in compensation packages has become entrenched in practices, it remains too discretionary and potentially instituted with a single objective: to voluntarily or involuntarily increase ED compensation, potentially decoupled from actual performance—especially extra-financial performance. Given this challenge of legitimizing ED

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<sup>1</sup> ESSEC RESEARCH CENTER - Centre Européen en Droit et Economie 18 Juin 2024

compensation policy, ESG criteria can be justified when placed in the context of their deployment.

Indeed, if extra-financial performance is considered to contribute to a company's value creation, then incorporating ESG criteria into the compensation policy becomes as legitimate an objective as conventional financial criteria. In other words, ED are incentivized to achieve extra-financial performance for reasons other than increasing their compensation or some "moral conformity" on these issues. Pursuing ESG performance becomes a natural goal of ED performance.

This perspective, consisting of a change in the view of the ideal performance of a ED, thus calls for considering ESG criteria in ED compensation as vectors of value creation. This value is understood in a broader sense than that usually attributed to the financial performance resulting from the actions of a ED. This new perspective can find some justification in recent academic research.

By analyzing the following multiple regression (Fig. 10), we observe a positive and highly significant correlation between the explanatory variable "ESG Score" and the dependent variable "Adoption of Pay for Sustainable Performance." In other words, this correlation shows that among the 8649 listed companies in a sample spread across 58 countries, those that adopted a ED compensation policy based partly on ESG criteria had a better ESG profile beforehand than those that did not adopt such an ESG policy. Put differently, compensation based on ESG criteria stems from prior efforts to achieve extra-financial performance, indicating a new perspective where ESG performance is considered as important as more conventional financial performance.

**Figure 10 – ESG Scores and Adoption of Pay for Sustainable Performance<sup>2</sup>**

Independent Variable	Coefficient	Std Error
ESG Score	0.0227 ***	0.0016
Environmental Score	0.0138 ***	0.0012
Social Score	0.0168 ***	0.0014
Corporate Governance Score	0.0151 ***	0.0013
ESG Controversies Score	-0.0060 ***	0.0013

Nevertheless, the indexing of ED remuneration to non-financial performance does not indicate the contribution of ED remuneration based on ESG criteria to overall non-financial performance. Can we then establish a correlation between the adoption of a remuneration policy based on ESG criteria and the non-financial performance of the company? In other words, can we confirm the effectiveness of the incentive represented by the inclusion of ESG criteria in ED remuneration?

<sup>2</sup> “Sustainability and Executive Compensation”, European Corporate Governance Institute, R. Barontini, J.G. Hill, dec. 2023, pp.30.

**Figure 11 – Environmental Performance, Communication, and Adoption of ESG Remuneration Policies<sup>3</sup>**

Independent Variable	Coefficient	Std Error
Green Performance Index	0.3903 ***	0.0462
Green Communication Index	0.5387 ***	0.0463
Discrepancy Index	0.2311 ***	0.0548
- Discrepancy index	0.4947 ***	0.0599
- Green Performance Index	0.5649 ***	0.0515

Indeed, it appears that environmental performance ("Green Performance") is positively correlated with the adoption of ESG criteria within remuneration policies, as is the communication of the company's non-financial results (Fig. 11). The outcome of this study supports the notion that *"linking ESG criteria with remuneration is not an end in itself, but rather requires a simultaneous change within the organisation, as well as the emergence of a business culture largely oriented towards ethics."*<sup>4</sup>

**Box 1 – A New Philosophy of "Value Creation" for Genuine Non-Financial Performance Criteria and Indicators Influencing ED Remuneration**

Reflecting on the inclusion of ESG criteria within ED remuneration packages necessitates a complementary reflection on the meaning of "value creation." This box aims to outline a preliminary concept.

In recent years, the topic of "value sharing" has been frequently discussed, driven by an economic downturn and increased visibility of income and wealth inequalities. The culmination of these debates was the adoption, in August 2022, of legislation<sup>5</sup> aimed at improving purchasing power protection in France. Among the key measures of the law was the transformation of the exceptional purchasing power bonus ("Macron bonus") into a "value-sharing bonus (PPV)." At the employer's discretion, this bonus supplements wages up to a maximum of €3,000<sup>6</sup> per calendar year, exempt from all employee and employer contributions<sup>7</sup>. This provision highlighted the themes of value creation and sharing, leaving it up to companies to address them. However, no universally accepted definition has emerged, and economic actors generally refer to their own non-financial commitments to address this new issue. The question now is to what extent value sharing can be clearly understood and properly implemented for the benefit of all stakeholders.

The idea of "sharing a value" produced by a company is initially confined to accounting and financial considerations. Thus, even if there is no definitive consensus definition of "value

<sup>3</sup> *Ibid.*, pp. 31.

<sup>4</sup> Elisabetta D'Apolito, Antonia P. Iannuzzi, "Pay-for-non-financial Performance and ESG Criteria: Evidence from the European Banking Sector", Canadian Center of Science and Education, *International Business Research*; Vol. 10, No. 10; 2017, p.11.

<sup>5</sup> [Loi n° 2022-1158 du 16 août 2022 portant mesures d'urgence pour la protection du pouvoir d'achat](#)

<sup>6</sup> 6,000€ when certain conditions related to the implementation of an incentive or profit-sharing scheme are met.

<sup>7</sup> [Ministère du Travail, du Plein Emploi et de l'Insertion – la prime de partage de la valeur](#)

sharing," it can be summarized as "*a fair and optimal distribution of wealth among the various stakeholders of the company to enhance economic efficiency – strengthening the competitiveness of companies and boosting sustainable growth – and to foster social progress – creating quality jobs and increasing purchasing power.*"<sup>8</sup> Value sharing is thus considered as the distribution of "added value," meaning the fruits of economic production to be shared between labor – the employees – and capital – the shareholder owners. However, reducing the value produced by a company to a few figures in a financial statement seems narrow and outdated given the significant roles economic actors play in all dimensions of collective life: social, political, cultural, etc. This is why several business observers have opposed a purely financial conception of value.

Indeed, a purely economic definition<sup>9</sup> of value – as the assessment of a good or service based on the amount of labor required for its production in a market where supply and demand meet – is insufficient to address the non-financial dimensions of a company, which are recognized as sources of non-financial performance with future financial opportunities.

Reflecting on value sharing cannot ignore a broad conception of "value," placing it within an ecosystem nourished by the company's stakeholders. However, while financial value is well established by accounting, "non-financial value" is still open to interpretation, which is complex given the plurality of non-financial dimensions of a company: social, innovation, supply chain, philanthropy, etc. By maintaining a dual conception of both financial and non-financial value, it is possible to develop a typology of "value sharing" to provide some definitional elements.

By adopting a financial and non-financial approach to the notion of "value," the ICR has determined a typological definition, i.e., identifying the various meanings that can be attributed to the expression "value sharing," to facilitate setting the issues. Indeed, only a clear definition will allow economic actors to grasp the issues of this subject and commit their resources – financial, human, etc. – to address it with a certain degree of engagement and thus performance.

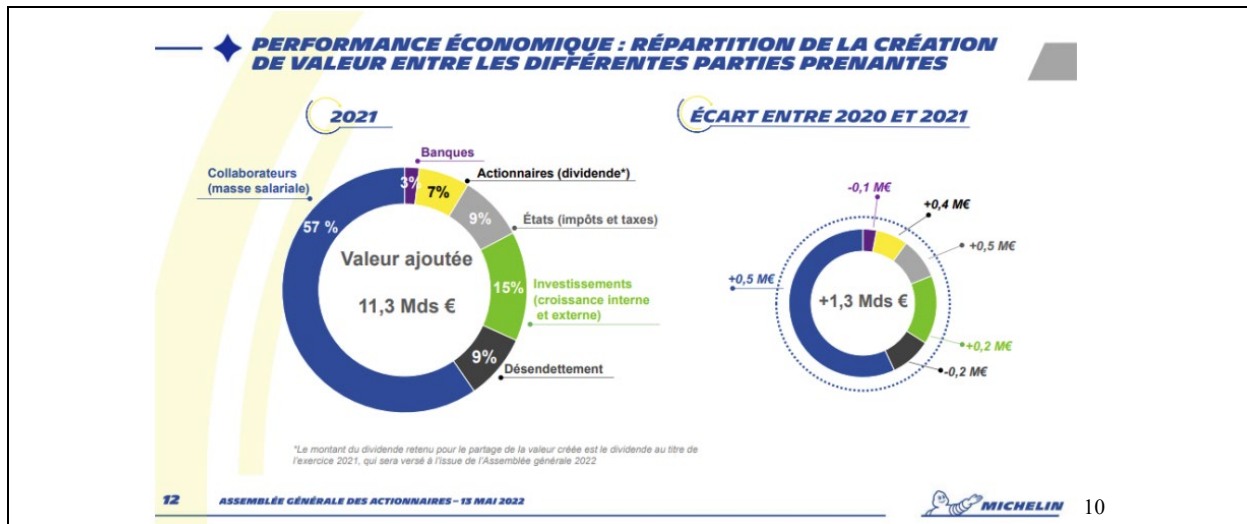
Without aiming for exhaustiveness, three definitions can be identified. The first is a weak restrictive definition: "*Value sharing corresponds to the distribution of a company's revenue among all its stakeholder contributors to the production of that value.*" For example:

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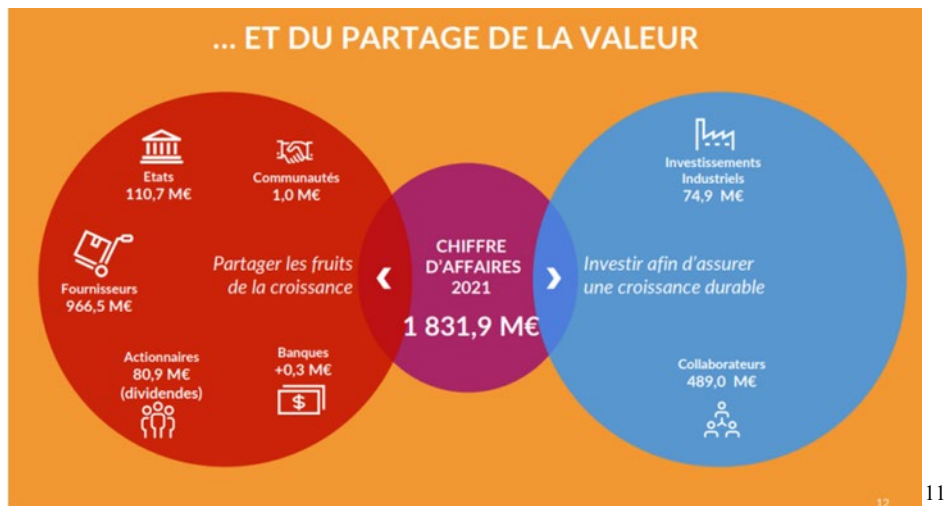
<sup>8</sup> [Deloitte - le partage de la valeur](#)

<sup>9</sup> [Centre National de Ressources Textuelles et Lexicales](#)





The second is a strong restrictive definition: "Value sharing corresponds to the distribution of financial value based on a financial indicator (revenue, net income, free cash flow, etc.) while considering non-financial considerations." For example:



The third is an extensive definition: "Value sharing corresponds to the distribution of financial and non-financial value based on financial and non-financial indicators (revenue, net income, free cash flow, etc., and CO2 equivalent emissions, equity ratio, occurrence of psychosocial risks, etc.) for the benefit of all stakeholders in an economic actor's ecosystem." For example:

<sup>10</sup> Presentation – Assemblée générale mixte des actionnaires – Michelin Group – 2023.

<sup>11</sup> Presentation – Assemblée générale mixte des actionnaires – BIC Group – 2023.

2022-2024 : la 5<sup>ème</sup> feuille de route RSE de Legrand



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Since the weak restrictive definition is purely "accounting," it is not favored. The strong restrictive definition is interesting as it legitimizes practices such as philanthropy or donations to charitable organizations. However, it lacks a fully non-financial conception of "value" and the role of "civic actors" that double materiality has granted to economic actors. The extensive definition marks a higher degree of commitment, as it addresses the notion of value in an irreversibly dual sense (financial and non-financial) and considers the distribution of created value as a strategic development tool for the company towards both financial and non-financial performance. This last definition is the most ambitious and thus the most desirable.

We have identified seven financial indicators that can lead to positive non-financial consequences in terms of value sharing and can be more or less easily implemented (difficulty level). The following table summarizes them.

Since the notion of value cannot be reduced to using financial indicators, even for non-financial purposes, it is preferable to develop non-financial indicators, detached from financial logic, to better conform to the extensive definition of value sharing.

To this end, we propose the following indicators:

<sup>12</sup> CSR press kit – « Nos engagements en faveur d'un développement responsable » – Legrand Group – 2022.

Indicateur	Description	Métrique	Impact	Niv. de diff.
Ratio de bénéfices non distribués	Mise en relation des bénéfices retenus par l'entreprise pour être réinvestis dans son développement futur ou pour faire face à d'éventuels besoins, par rapport aux bénéfices totaux.	$\frac{\text{Bénéfices non distribués}}{\text{Bénéfices totaux}}$	Bilan	Facile
Ratio d'équité	Mise en rapport de la rémunération des dirigeants avec la rémunération moyenne ou médiane des salariés en base Groupe ou Siège.	$\frac{\text{Rému. glob. DMS}}{\text{Rému. sala. } \bar{x} \cup \tilde{x}}$	Compte de résultat	Facile
Elasticité Rendement – Rémunération	Mise en relation du rendement des actionnaires avec la rémunération des salariés.	$\frac{\text{Dividende versé} / \text{Prix de l'action}}{\text{Salaire} + \text{avantages} / CA}$	Compte de résultat	Facile
Ratio R&D – M&A	Mise en rapport des investissements en R&D avec les investissements stratégiques.	$RDMA = \frac{R\&D + R\&D_{M\&A}}{\sum M\&A}$	Free-cash-flow	Moyen
Investissement en bien-être social	Part de l'investissement consacrée à l'amélioration de la société, nette de gains financiers.	$[\varphi (1 - \tau) + \Psi (1 - \pi)] * RDMA$ $\varphi$ contribution nette d'exonération $\Psi$ contribution nette de productivité	Free-cash-flow	Moyen
Soutenabilité des fournisseurs	Contribution de l'entreprise à la soutenabilité financière de ses fournisseurs par la politique de paiements.	$\sum_{i=1}^n P(X = \{F_i ; TR \rightarrow 0 \} \Leftrightarrow (\Delta WC \setminus Inv) \xrightarrow[n \rightarrow +\infty]{} -\infty) \xrightarrow[n \rightarrow +\infty]{} 1 \text{ avec } F_i \text{ fournisseurs } i$	FR (ou WC)	Difficile
Dividende vert/social	Conditionnement du versement du dividende à des atteintes d'objectifs extra-financiers.	$\sum \prod_{i=1}^n A_i$ $(A_i)$ conditions satisfaites $n$ conditions au versement	Net change in cash	Difficile

## 1.2. Afep-Medef Code: Towards an Ambitious Non-Financial Principles Framework for ED Remuneration

The inclusion of ESG criteria in remuneration packages is beneficial for a company's overall performance. The question then arises about how this inclusion is implemented. As noted earlier, the selection and weighting of criteria remain too discretionary, despite the growing prevalence of this practice.

Thus, it is essential to analyse how the recommendations outlined by the French Association of Private Enterprises (Afep) and the French Business Confederation (Medef), together within the Afep-Medef code, regulate the non-financial framework for ED remuneration. Specifically, it is necessary to assess the ambition of the code and any potential modifications that could enhance the promotion and effectiveness of incorporating ESG criteria into remuneration packages. In other words, considering the ESG issues highlighted thus far in relation to remuneration packages, is it pertinent to propose changes to the code?

The governance body within a company responsible for "*studying and proposing all elements of remuneration and benefits for executive directors*"<sup>13</sup> is the remuneration committee. Subsequently, the board of directors "*debates the performance of executive directors, excluding the interested parties,*" since determining remuneration packages "*falls under the responsibility of the board of directors,*" which must "*justify its decisions in this matter.*" The board then determines, based on the committee's proposal, remuneration that must be "*competitive, aligned with the company's strategy and context, and aimed at promoting the company's performance and competitiveness in the medium and long term.*" Thus, ED remuneration is situated within a market context – hence the requirement for competitiveness – and a sector context – hence the importance of strategy and performance promotion. While performance and competitiveness are mentioned for both the short and medium term, there is no explicit reference to responsibility or sustainability. The code specifies that these competitiveness and performance objectives must be achieved by "*integrating several criteria related to social and environmental responsibility, including at least one criterion linked to the company's climate objectives.*" Thus, the code's requirement for long-term competitiveness and performance is immediately restricted to a minimal environmental criterion, overlooking any notion of non-financial performance as a stakeholder in the company's strategy. This minimal requirement reflects our earlier observation of an over-representation of environmental and then social criteria, with a near absence of governance criteria. However, a company's non-financial performance can only be assessed at a global level and cannot be reduced to a single category of criterion.

Moreover, these criteria must be "*precisely defined,*" "*reflect the most significant social and environmental issues for the company,*" and, if possible, "*quantifiable.*" Therefore, there is a threefold nuance in the requirement: the criterion definition must be precise but not necessarily technical or objective, the criterion must reflect issues deemed important for the company and not necessarily for society at large as a more holistic view of value sharing might suggest, and finally, "*quantifiable criteria should be preferred,*"<sup>14</sup> though there is no obligation for such quantification. In other words, according to the Afep-Medef code, ED remuneration must include ESG criteria without specifying the number or proportion of such criteria, and these criteria need not be technical, holistic, or quantifiable, which directly raises the issue of measurability, as highlighted by Dell'Erba and Ferrarini : "*these metrics and targets frequently rely on vague and general indicators, making quantification challenging*" (p.32). There is also no mention of prohibiting the ex post definition of criteria.

To implement this ED remuneration policy, the board and the remuneration committee must adhere to a number of remuneration determination principles, totaling six. First, the remuneration policy must be "*comprehensive,*" meaning it should encompass all remuneration elements in a global assessment. This first principle is thus, in its global assessment, favourable to a non-financial approach to remuneration. Second, it must be "*balanced*" among the various remuneration elements, implying a justification for each criterion and alignment with the company's social interest. It is notable that a company is "*managed in its social interest, considering the social and environmental issues of its activity.*"<sup>15</sup> Next, a principle of "*comparability*" applies, which means remuneration must be assessed contextually, considering

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<sup>13</sup> Art. 19.2, Code Afep-Medef, dec. 2022.

<sup>14</sup> Art. 26.1.1, Code Afep-Medef, dec. 2022.

<sup>15</sup> Art. 1833, Civil code.

the profession, market, responsibilities assumed, results achieved, work performed, the company's state (e.g., turnaround), etc. The fourth principle is "*consistency*," requiring remuneration to be determined in relation to other executives and employees through equity ratios. Fifth, the code advocates for "*clarity of rules*," promoting "*simple, stable, and transparent*" rules. Performance criteria should align with the company's objectives while being demanding, explicit, and sustainable. Finally, the last principle is "*measurement*," deriving a fair balance between the company's social interest, market practices, executive performance, and stakeholders.

These principles can be categorized into two groups: internal principles (comprehensiveness, balance, consistency, clarity) which relate ED remuneration to the company's internal environment, such as combating abuse of trust (through the principle of comprehensiveness) or remuneration in relation to employees (through the principle of consistency); and external principles (comparability and measurement), which place ED remuneration in the context of society, including economic structures (market, sector, competitors, etc.) and social structures (adequate consideration of stakeholders).

It is evident that the second category, which relates ED remuneration to society, would benefit from further development, especially considering the recent emphasis on the "*double materiality*" concept, which requires ongoing interaction between the economic entity and its own environment, both close (scopes 1 and 2) and distant (scope 3).

Therefore, it would be advisable to consider establishing a new remuneration determination principle that accounts for this new evolution in the company's relationship with its environment. This new "*responsibility*" principle would extend from the "*measurement*" principle to highlight the importance of ESG criteria, potentially including a "*clawback*" clause, meaning the return of remuneration elements if non-financial results are restated, indicators are revised, or severe misconduct occurs. The remuneration component most concerned with these requirements is the annual variable remuneration, which is likely the most affected by the inclusion of ESG criteria. Keeping in mind the observed tendency to define ESG criteria discretionarily based on ED interests, it is possible to evolve the code's requirements to strengthen the role of ESG criteria in the actual assessment of ED performance and, consequently, in the determination of their remuneration policy. It is also noteworthy that the code provides for "*exceptional circumstances*"<sup>16</sup> in long-term ED remuneration, which may justify modifications to performance conditions during a period. Among the cited reasons are substantial changes in scope, unexpected competitive context changes, or the loss of relevance of a benchmark or comparison group. No specific non-financial conditions are mentioned.

In conclusion, amending the Afep-Medef code would represent a significant step towards greater incorporation of ESG criteria in ED remuneration packages. Given that these criteria are beneficial to the company, enforcing them through the reference code for listed companies would be legitimate. However, like any soft law framework, the code remains subject to debate and finds its effectiveness in its implementation rather than its structure. Thus, the importance of raising awareness among the board of directors about ESG issues cannot be completely disregarded if a true remuneration policy based on genuine non-financial performance of EDs

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<sup>16</sup> Art. 26.3.3, Code Afep-Medef, dec. 2022.

is to be realized. In this spirit, R. Barontini and J.G. Hill, in the aforementioned study<sup>17</sup>, conclude that increasing the independence and diversity rates within a board of directors enhances support for remuneration policies based on ESG practices. In other words, the composition of the board has direct effects on its sensitivity to ESG issues.

### 1.3. Sectorialise, Measure, and Communicate: An Effective Triptych for Justifying ED Remuneration Based on ESG Criteria?

While incorporating ESG criteria into ED remuneration policies is beneficial for the company and can be guided by the Afep-Medef code's soft law approach, the challenge of determining which ESG criteria should be used for a company, given its sectoral and market contexts, persists. As discussed earlier, it is challenging to establish a non-discretionary and impartial set of ESG criteria and indicators to support the determination of EDs' non-financial performance in remuneration policies. These conclusions are similar to those of Dell'Erba & Ferrarini (2024), whose data “*suggest a lack of clear patterns emerging from corporate practice, highlighting the need for consolidation in this context. Few metrics are clearly measurable, and there is a general lack of appropriate metrics and targets.*” (p.39)

Furthermore, while the principles outlined in the Afep-Medef code are not without merit, they lack both the coercion and ambition required to translate ESG criteria into genuine overall company performance.

Rather than merely selecting a list of criteria or applying principles, the focus should be on developing a "search for non-financial performance" approach, which can be executed in three phases: (i) **Sectorialise** the non-financial approach by determining ESG criteria suited to the socio-economic realities of the company (markets, competitors, society, stakeholders, etc.); (ii) Emphasize both quantitative and qualitative measurement of indicators resulting from these criteria using specific methodologies and metrics; (iii) Communicate the results to justify remuneration and invite stakeholders informed about these issues to contribute through discrete verification.

#### 1.3.1. Sectorialise

Sectorialising ESG criteria used to define ED performance and thus their remuneration is crucial for legitimizing the remuneration based on these ESG criteria. An ESG criterion that is not applicable to a company due to its specific sector could easily be deemed satisfied, triggering remuneration even if it does not correspond to any particular performance. For example, the payment of remuneration based on water consumption criteria for the advertising and media sector could seem questionable. Choosing criteria for executive remuneration and aligning these criteria with the company's real non-financial challenges is essential for responsible and sustainable management.

Moreover, not all sectors have the same impacts on their environments and stakeholders. The extent to which ESG criteria are incorporated into ED remuneration policies can be influenced by sector-specific characteristics. For instance, companies with significant environmental impacts, such as those in fossil fuels, mining, or heavy manufacturing, have seen a notable increase in the adoption of ESG-based remuneration policies in recent years. This reflects an

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<sup>17</sup> “Sustainability and Executive Compensation”, *European Corporate Governance Institute*, R. Barontini, J.G. Hill, dec. 2023, p.33.

increasing alignment of remuneration practices with sector-specific environmental performance requirements, as illustrated in Figure 12.

**Sectorialisation** involves tailoring ESG criteria to the unique socio-economic and environmental realities of the company’s sector. This means:

1. **Identifying Relevant ESG Issues:** Understanding which ESG issues are most pertinent to the company’s sector and operations. For instance, sectors with high carbon emissions may focus on climate-related metrics, while sectors with substantial labor forces may prioritize social issues like employee welfare and diversity.
2. **Ensuring Applicability and Relevance:** Selecting criteria that are both applicable and impactful for the specific sector. For example, an ESG criterion related to water usage might be crucial for industries like agriculture or textiles, but less relevant for software or consulting firms.
3. **Aligning with Industry Standards and Expectations:** Ensuring that the chosen criteria align with industry norms and stakeholder expectations. This involves keeping abreast of sectoral ESG reporting standards and benchmarks, and integrating them into the remuneration framework.

**Example:** A mining company might adopt ESG criteria focused on reducing environmental degradation, improving community relations, and enhancing safety standards, while a technology firm might emphasize data privacy, energy efficiency, and workforce diversity.

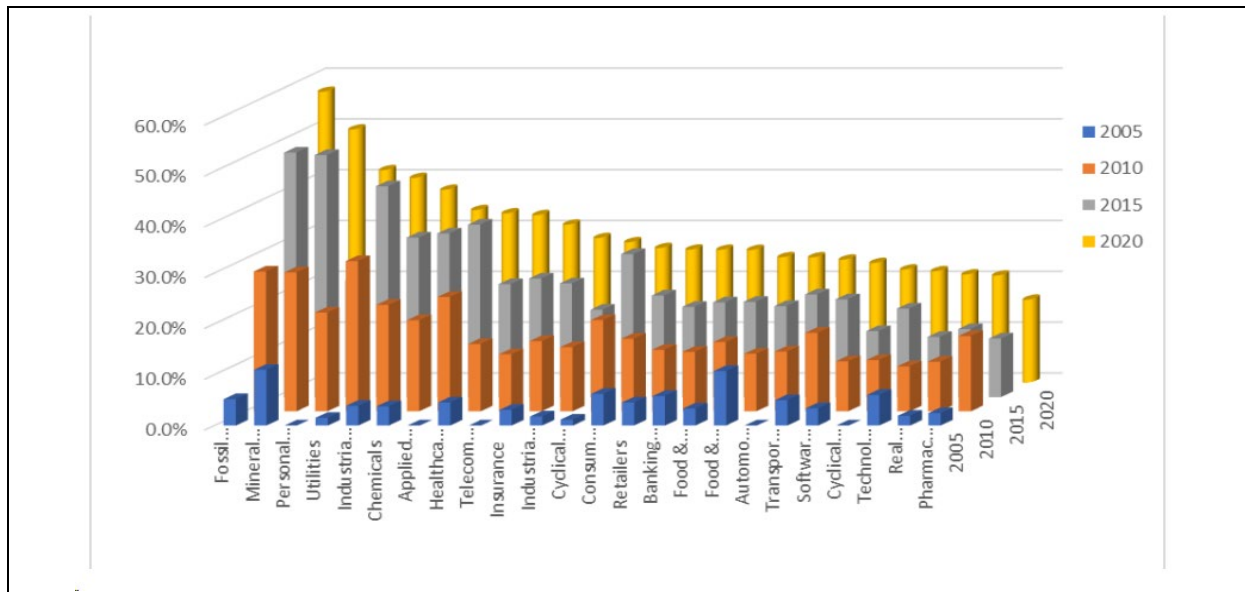
By sectorialising the approach, companies can ensure that their ESG criteria are meaningful, measurable, and truly reflective of their operational impacts and stakeholder concerns. This alignment is key to justifying the remuneration based on ESG performance and fostering greater accountability and transparency in executive pay practices.

**Figure 12 – ESG Indicators in Executive Remuneration**<sup>18</sup>

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<sup>18</sup> “Sustainability and Executive Compensation”, *European Corporate Governance Institute*, R. Barontini, J.G. Hill, dec. 2023, pp. 22.





Sectorialisation also helps avoid discretionary and self-serving determination of ESG criteria by utilizing the concept of "materiality." Materiality is understood as "what can have a significant impact on a company, its activities, and its ability to create financial and extra-financial value for itself and its stakeholders."<sup>19</sup> Therefore, sectorialisation of ESG criteria in the remuneration package ensures that remuneration is linked to the company's extra-financial performance. This is why the FIR chose in its latest campaign to ask CAC 40 companies to "specify how the E&S criteria integrated into the variable remuneration policies (short and long term, if applicable) [for executives] reflect the most material E&S issues the company is facing."<sup>20</sup> It concludes that aligning extra-financial criteria with the material issues of companies is neither widespread nor straightforward. Indeed, while most companies claim to align their criteria with materiality, the level of explanation and detail is limited, making it difficult to link materiality with evaluation criteria. Out of the 40 index companies, only 6<sup>21</sup> provided detailed information, thoroughly describing the criteria selection and its connection to ESG issues, strategies, and stakeholders.

Thus, sectorialisation is a key factor in justifying the ESG criteria used to legitimate the payment of remuneration based on extra-financial performance. However, selecting sector-specific ESG criteria is not straightforward and can be challenging to implement. In other words, identifying ESG criteria that accurately reflect the materiality of a company's extra-financial issues can be complex.

A first solution to this problem would be for a company to choose the most commonly used ESG criteria among its peers, that is, companies with which it shares certain characteristics: size, market, revenue, supply chains, stock index, etc., and of course, sector of activity. Such a selection would ensure a minimum level of objectivity in criterion choice, provided there is no collusion with the peers in question. For instance, Deloitte identifies among industrial companies the most commonly used ESG criteria as those related to health and safety (S) and

<sup>19</sup> Novethic, Lexicon, « Matrice de matérialité ».

<sup>20</sup> Forum pour l'Investissement Responsable (FIR), *Comment le CAC 40 répond-il aux investisseurs ? Rapport d'engagement – Saison 4*, « Questions écrites aux Assemblées Générales 2023 », Question n°4.

<sup>21</sup> Michelin, Schneider Electric, Veolia, Airbus, Pernod Ricard, Vivendi.



carbon footprint (E), while service companies focus more on criteria related to human capital, such as diversity and inclusion, or external ESG ratings<sup>22</sup>.

A second, less convincing solution, but preferable to not considering ESG criteria at all, would be to select the most common criteria or those most widely recognized as likely to align with the materiality of any economic activity. For example, the carbon footprint is a criterion that any economic entity can calculate due to the comprehensive approach of scopes 1, 2, and 3. This is reflected in the predominance of certain criteria within the FTSE 350, such as carbon footprint reduction (a criterion present in the remuneration policies of 102 FTSE 350 companies), employee engagement, and the company's sustainability strategy (Fig. 13).

Moreover, while selecting sector-specific ESG criteria can be challenging, linking these criteria to the company's performance can be even more arduous. However, this requirement to connect remuneration with performance is a historical demand of shareholder advisory agencies (proxies). With the rise of extra-financial performance-based remuneration, proxies view the choice of ESG criteria as essential. As they regularly emphasize, *"there must be a clear link between the company's performance and the incentives of variable remuneration. Financial and extra-financial conditions, including ESG criteria, are relevant as long as they reward effective performance in line with the company's purpose, strategy, and adopted objectives."*<sup>23</sup> The *"variable bonus component of executive remuneration should be subject to the company's financial performance and ESG criteria,"*<sup>24</sup> using *"key performance indicators (KPIs) included in its sustainability strategy."*<sup>25</sup>

**Box No. 2 – Example of Sector-Specific and Unique ESG Criteria in the Executive Compensation Policy**

Some companies may also develop their own ESG criteria as part of the executive compensation policy to better align with the actual financial and especially extra-financial performance of the company.

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<sup>22</sup> Deloitte, « Rémunération des dirigeants 2019. De la RSE à l'ESR (Executive Social Reward) », 2019.

<sup>23</sup> Institutional Shareholder Services (ISS) group, Continental Europe, *Proxy Voting Guidelines – Benchmark Policy Recommendations, effective for Meetings of after February 1<sup>st</sup>, 2023*, pp.26-27.

<sup>24</sup> Proxinvest, Principes de gouvernement d'entreprise et Politique de vote 2023, 4.2.9. Critères de performance ESG, p.39.

<sup>25</sup> Phitrust, Politique de vote, 4 mars 2022, p.9.

**◆ Politique de rémunération ex ante des DMS**

Synthèse des principales caractéristiques et évolutions de la rémunération pour l'exercice 2023

- ◆ Rémunération fixe inchangée
  - ◆ Présidente directrice générale = 320 000 €
  - ◆ Directeur général délégué = 248 000 €
- ◆ Rémunération variable annuelle – Lien renforcé avec les engagements RSE du Groupe
  - ◆ Remplacement du critère externe RSE (notation Moody's ESG) par un critère interne lié à la mixité au sein du management du Groupe pour une pondération de 5 %
  - ◆ Conditionnement de la surperformance de la rémunération variable annuelle à un niveau minimum d'atteinte des critères RSE et Jeu Responsable (versement plafonné à 100 % si les critères RSE atteignent moins de 20/30 points)
  - ◆ Plus grande précision sur les objectifs (ex ante) et introduction d'une plage de progressivité sur le critère de performance managériale
- ◆ Rémunération variable à long terme – Maintien d'un lien fort avec la performance financière et extra-financière du Groupe
  - ◆ Objectifs inchangés par rapport au LTI 2022-2024 (exceptée la suppression par Moody's de la notation lettrée)
  - ◆ Modification dans le panel des sociétés comparables du critère TSR (prise en compte de la restructuration de Tabcorp)
- ◆ Politique générale de rémunération – Encadrement plus strict de la rémunération exceptionnelle attribuée dans le cadre du pouvoir discrétionnaire du Conseil : limitation par un plafond de 100 % du fixe annuel.

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Here, for instance, is a "Responsible Gaming" criterion developed by La Française des Jeux (FDJ), a member of the SBF 120, and included in the variable part of the CEO's compensation.

It is interesting to consider the development of such unique criteria, as they reflect a genuine consideration of ESG issues at the human scale of the company and society, contributing to greater awareness of these topics, as well as stronger effectiveness due to their closer proximity to operational activities.

Obviously, a sector-specific ESG criterion is not necessarily unique to the company, but a unique ESG criterion is, by definition, sector-specific, unless it lacks relevance and should therefore be excluded. Thus, developing company-specific criteria is a "best in class" practice that companies concerned with advancing their ESG criteria can explore, especially when these criteria are used to shape the executive compensation policy for executives, C-suite, etc.

**Figure No. 13 – ESG Indicators in Executive Compensation within the FTSE 350**<sup>27</sup>

<sup>26</sup> Presentation – Assemblée générale mixte des actionnaires – FDJ Group – 2023.

<sup>27</sup> Longjie Lu (2023) “ESG-based remuneration in the wave of sustainability”, *Journal of Corporate Law Studies*, pp.312.

	Environmental	Social	Governance
Carbon emissions reduction	102	Employees Employee engagement: 93 Employee retention: 5 Employee welfare: 6 Employee engagement and retention: 9 Employee welfare and retention: 2	115 Sustainability strategy Including reporting: 26 Others: 77
Renewable energy or energy intensity reduction	32	Diversity and inclusion	89 ESG ratings and certifications
Waste reduction, plastic reduction and recycling	19	Customers Customer satisfaction score: 61 Customer service: 15	76 Responsible investing
Environmental innovation support	7	Health and safety	54 Stakeholder engagement
Water reduction	7	Social impact Via business: 15 Via volunteering: 7 Via volunteering and business: 1 Engaging with communities: 8	31 ESG purpose and culture (unspecified)
Biodiversity protection	3	Suppliers engagement	6
Forestation	4		
Zero discharge of hazardous chemicals	1		
Environment (unspecified)	2		

**Figure No. 14 – Evaluation of ESG-Based Compensation Performance: Variables and Measures<sup>28</sup>**

ESG-remuneration performance rating				
Measurement	Variables	2014 (%)	2015 (%)	2016 (%)
<i>Environmental (E)</i>	Environmental sustainability	2.8	2.8	2.8
<i>Social (S)</i>	Customer satisfaction	47.2	47.2	52.8
	Employment satisfaction	19.4	33.3	36.1
	Reputation	11.1	16.7	19.4
	Corporate Social Responsibility	16.7	22.2	19.4
	Customers relationships	11.1	16.7	16.7
	Contribution to growth and profitability	8.3	11.1	16.7
	Net Promoter Score	8.3	13.9	11.1
	Digital active customer growth	2.8	5.6	8.3
	Leadership	8.3	5.6	5.6
	Brand Value	5.6	5.6	5.6
	Stakeholder engagement	5.6	5.6	5.6
	Product innovation	0.0	5.6	5.6
	Team work	2.8	2.8	2.8
	Collaboration	2.8	2.8	2.8
	Net Trust Score	2.8	2.8	2.8
<i>Corporate Governance (CG)</i>	Vision & Strategy	27.8	33.3	38.9
	Respect for risk management policy	30.6	36.1	33.3
	Costs Efficiency	13.9	16.7	25.0
	Quality of profits	25.0	25.0	19.4
	Compliance	5.6	13.9	13.9
	Culture	5.6	11.1	11.1
	Efficiency of functions	8.3	8.3	8.3
	Individual/group performance and divisional level	5.6	5.6	5.6
	Board diversity	2.8	5.6	5.6
	Financial Crime Risk Mitigation	2.8	5.6	5.6
	Operational risk	2.8	2.8	2.8

Only sector-specific ESG criteria would satisfy the requirements of proxies. Indeed, it is important to remember that proxies are responsible for advising shareholders on their voting policies, based on a number of financial and extra-financial requirements. Such a task requires

<sup>28</sup> Elisabetta D'Apolito, Antonia P. Iannuzzi, "Pay-for-non-financial Performance and ESG Criteria: Evidence from the European Banking Sector", Canadian Center of Science and Education, *International Business Research*; Vol. 10, No. 10; 2017, p.9.

reliance on reliable information that accurately reflects the company's true performance. Translating a company's extra-financial practices into distinct and identifiable ESG criteria is a prerequisite for any performance evaluation. For instance, in the financial and banking sector—which has the most advanced regulation in Europe today—some banks have had to define highly precise ESG performance criteria and measures (see Fig. 14), which would benefit from being generalised.

Women Board Ready has been able to identify not only the types of criteria most commonly used but also the legitimacy of their selection by companies in the CAC 40. Among these indicators, some naturally pertain to specific sectors rather than others. Therefore, linking the choice of criteria to the sector is possible. Furthermore, beyond analysing the choice of criteria, it is also possible to assess their performance by the company. This is precisely the approach Women Board Ready used to highlight the extra-financial performance of certain CAC 40 companies based on dedicated sector-specific criteria.

For Environmental criteria, the most commonly used are: reduction of greenhouse gas emissions (particularly scopes 1 and 2), reduction of CO<sub>2</sub>, climate targets, percentage of decarbonised electricity consumed, reduction of energy consumption in customer solutions, recycling, sustainability training rates, and investments in climate funds. Some notable sector-specific practices include:

- **L'Oréal:** Achieving "carbon neutral" status by 2025 for all Group sites, improving energy efficiency, and using 100% renewable energy in the cosmetics sector, where energy consumption is significant.
- **L'Oréal:** Replacing 100% of plastic packaging by 2030 with recycled or bio-based alternatives, with a 50% target by 2025, to address plastic pollution, a major issue for the FMCG industry.
- **Dassault System:** 90% of electricity consumed from decarbonised sources, compared to 67% in 2021.
- **Bouygues:** Increasing the percentage of recycled aggregates in asphalt.
- **Renault:** Achieving the quantitative goal of recycling 30,000 used vehicles in 2022.
- **Kering:** Reducing carbon footprint (scope 3) to address the significant energy consumption challenge in the fashion sector.
- **Kering:** Funding the Climate Fund for Nature with €180 million by the end of 2023.
- **Kering:** By 2025, converting 1 million hectares in Kering's supply chain primarily to regenerative agriculture, and also protecting significant areas outside the supply chain.

For Social criteria, the most commonly used are: workplace safety, diversity and inclusion (D&I), gender representation in C-suite/executives, employee engagement through internal surveys, and youth employment. Some notable sector-specific practices include:

- **L'Oréal:** Assisting 100,000 people from disadvantaged communities to access employment by 2030.
- **L'Oréal:** 20% of the definitive acquisition of performance shares subject to achieving environmental and social objectives over a 4-year period from the grant date.

- **Vinci:** Aiming for 30% female representation in the C-suite by 2030 in an engineering and industrial sector where female educational pathways are fewer.
- **Capgemini:** Similarly, aiming for 30% women in executive positions by 2025.
- **BNP:** Labeling ISR (Socially Responsible Investment) of the employee savings fund and adding three new ISR funds in Asset Management in 2023, in a financial sector where integrating ESG criteria is crucial for financing environmental and social transitions.
- **Axa:** Advancing diversity and inclusion in senior management teams.

Regarding Governance, criteria are very limited, including aspects such as ethics/integrity/compliance, customer satisfaction, and the existence of a strategic plan. Nonetheless, these criteria are few and sometimes surprising as they seem more like prerequisites for good company functioning.

Thus, sectoralisation of ESG criteria is not only a guarantee of justification for the criteria but also of effective alignment with the company's actual performance. However, just because the ESG criteria used by a company are relevant to its sector and reflect genuine extra-financial performance does not mean that the criteria applied to executive remuneration based on ESG issues are the same or applied in the same way. For example, Women Board Ready has identified ESG criteria within the remuneration policies of CAC 40 companies, highlighting how these criteria can be "restrictive." In other words, the ESG criteria in executive remuneration packages might be less stringent or demanding than those in the company's operational activities. Some good practices include:

- **BNP:** 5% of the general manager's remuneration, out of a 15% variable component, based on achieving RSE objectives for key Group employees.
- **Crédit Agricole:** 5% of remuneration based on the criterion of "promoting youth employment and training," out of 10% of RSE societal criteria.

Nevertheless, some criteria appear limited or do not reflect genuine extra-financial performance, such as implementing a strategic plan or using vague criteria with no substance and no possibility of measurement, control, or verification.

Given these challenges, the question of the "measurability" of ESG criteria within executive remuneration packages is inevitably posed.

### *1.3.2. Measurement*

Given the challenges associated with selecting ESG criteria, the development of an "extra-financial performance assessment approach" requires a sector-specific approach. This involves determining sector-specific ESG criteria that are tailored to the socio-economic reality of the company to ensure genuine extra-financial performance, which can justify performance-based remuneration.

However, the justification of remuneration based on extra-financial performance is directly contingent on the justification of the sector-specific ESG criteria used. This is crucial to avoid any accusations of bias or discretion, as previously discussed in the first part of this research document.

In other words, focusing on both the quantitative and qualitative measurement of indicators derived from selected sector-specific ESG criteria—using specific methodologies and metrics—would help prevent the application of ESG criteria that are disconnected from the company's realities or, worse, the use of a uniform, biased, and discretionary normative framework with no real connection to the executive management's extra-financial performance. Consequently, this approach ensures the legitimacy of using extra-financial considerations to support performance-based remuneration.

### **Box 3 – Clarification of Definitions: Criterion, Indicator, Metric**

The terms "criterion," "indicator," and "metric" are often used interchangeably without clarification of the semantic differences between them. For the sake of clarity, it is important to define each of these terms.

The noun "criterion"<sup>29</sup> refers to a "principle or element used to judge, assess, or define something." Therefore, a criterion is more about the principle that guides actions. ESG criteria include efforts to combat climate change, promote Diversity and Inclusion, or share value equitably.

In contrast, the noun "indicator"<sup>30</sup> refers to any "device that provides benchmarks and is used for measurement." It is a collection of elements used to evaluate a company's extra-financial issues. Examples include the existence of a greenhouse gas reduction plan, a programme to promote the professional integration of people with disabilities, or a profit-sharing scheme through employee savings plans.

Finally, the term "metric"<sup>31</sup> was originally an adjective in French—except for its very specific use in poetic versification and mathematics—but has come to mean "unit of measurement" when used as a noun in everyday language. Derived from the English noun "metric," which technically means "system or standard of measurement," it now commonly denotes "unit of measurement." In the context of ESG issues, common metrics include the carbon equivalent (Eq.t.CO2) for greenhouse gas emissions reduction or the percentage of women in senior positions (C-suite, executives, CEO).

This definitional clarification is particularly useful for understanding the potentially biased and discretionary use of ESG themes in determining extra-financial performance that justifies additional remuneration. However, the ongoing development of these issues may account for such confusion.

The question of the measurability of metrics is not a trivial one. In fact, clearly established metrics—i.e., technically defined—enable the creation of robust indicators capable of representing the extra-financial performance of the highlighted ESG criteria. Therefore, the issue of measurability is central to the legitimacy of the metrics, indicators, and ESG criteria used to determine the remuneration policy for senior management based on extra-financial performance. However, in practice, this is not yet fully addressed. The FIR, in its latest campaign<sup>32</sup>, lamented a still insufficiently formalised process for monitoring by the Board of

<sup>29</sup> Centre National de Ressources Textuelles et Lexicales (CNRTL), « Critère », I, définition A.

<sup>30</sup> Centre National de Ressources Textuelles et Lexicales (CNRTL), « Indicateur », II, définition C.

<sup>31</sup> Centre National de Ressources Textuelles et Lexicales (CNRTL), « Métrique ».

<sup>32</sup> *Ibid.*

Directors, which is often unspecified by companies. The Board is supposed to define in advance the ESG criteria that will govern part of senior management's remuneration, while also evaluating, retrospectively, the achievement of these criteria through monitoring mechanisms designed to specify the achievement rate of these objectives, and finally to identify areas requiring adjustments based on external and internal developments. The FIR observes that the post hoc monitoring of objectives, including the reassessment of performance requirements for high achievement levels, remains problematic, with at best insufficiently detailed responses from CAC 40 companies, and in the worst cases, responses are absent. The level of information remains very limited or general, often only confirming that an annual evaluation of objectives and performance measures is carried out by the Board, without details or examples.

In light of this observation, the FIR concludes that while *"the integration of E&S criteria into the remuneration of both executives and employees can truly reflect the incentive to implement ESG strategies, the vast majority of responses received do not allow for an evaluation of the alignment of remuneration with the material issues of companies, nor the effective control power that Boards can exert over these remuneration policies."*<sup>33</sup> However, the demand for the integration of ESG criteria, indicators, and metrics aligns with the need for greater stakeholder satisfaction and is a central and recurring claim by proxies. As Proxinvest<sup>34</sup> reminds us, *"defining ESG performance conditions is recommended,"* and *"it is advised that the company opts for the key performance indicators (KPIs) chosen in its sustainable development strategy"* because *"criteria must be precise, verifiable, and consistent with their sustainability goals."*

Nevertheless, it would be a mistake to limit the relevance of measurability to only extra-financial performance indicators. Indeed, the use of these indicators also contributes to this relevance. The measurability of an indicator is always contextualised; otherwise, it could be manipulated at will. Proxinvest<sup>35</sup> outlines several conditions that must be met to ensure the minimum viability of indicators and metrics. Clearly, these conditions must ensure the link between senior management remuneration and their long-term performance. However, the long term should not be confused with achieving annual objectives over several years, and any performance realised within a period shorter than three years cannot be considered long-term. Another condition for the viability of criteria is the expression of goals in absolute terms to be achieved or in relative terms based on an indicator, relying on a medium to long-term strategic plan. Establishing a minimum performance threshold is another condition, for example, by recognising the median or average of a peer group as a reference level for performance evaluation, with no remuneration attributed if performance falls short of this level, or worse, setting a target below this average or median. Finally, a key condition is the multiplicity of indicators, some of which should be external to the company and compared to peers, while prohibiting "catch-up" criteria—those meant to compensate without additional performance for failures on other criteria.

The final condition concerning the multiplicity of indicators and ESG criteria is a central issue for justifying senior management remuneration policies based on extra-financial performance.

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<sup>33</sup> Forum pour l'Investissement Responsable (FIR), *Comment le CAC 40 répond-il aux investisseurs ? Rapport d'engagement – Saison 4*, « Questions écrites aux Assemblées Générales 2023 » p.32.

<sup>34</sup> Proxinvest, *Principes de gouvernement d'entreprise et Politique de vote 2023*, 4.2.9. Critères de performance ESG, p.39.

<sup>35</sup> Proxinvest, *Principes de gouvernement d'entreprise et Politique de vote 2023*, 4.2.8. Critères de performance ESG, p.38.

Indeed, it is possible to infer a positive correlation between the number of criteria and indicators on one hand, and the measurability of senior management's extra-financial performance on the other. It is important to clarify that the number of criteria is not correlated with the measurability of indicators, as the presence of indicator B does not increase the measurability of indicator A. However, increasing the number of indicators could provide a more accurate measure of the true extra-financial performance of senior management, precisely because the plurality of indicators would increase the number of metrics used to calculate performance. This relationship between performance measurability and the multiplicity of indicators is confirmed by recent academic research.

Indeed, the multiplicity of indicators helps enhance the materiality<sup>36</sup> of ESG criteria and, consequently, the measurability of performance. Nonetheless, in practice, companies do not tend to multiply extra-financial metrics, even though the ideal evaluation of extra-financial performance would capture the maximum number of possible extra-financial dimensions. On average, most companies use no more than two metrics per ESG indicator, with a median of 1.6 metrics (Fig. 15), highlighting the partiality in evaluating extra-financial performance among companies, as we have demonstrated earlier in this research document.

**Figure No. 15 – Average Number of ESG Metrics in the Evaluation of Extra-Financial Performance of Companies Surveyed in the Study<sup>37</sup>**

Average number of metrics	Number of companies
1	72
1-2	90
2-3	38
3-4	9
5 and above	3

Moreover, some companies do not publicly disclose the extra-financial metrics used in their ESG indicators, providing no evidence of the actual performance of senior management, as no list of criteria is even established. Consequently, access to information is also a central issue when addressing the measurability of senior management performance, especially when questioning the relevance of evaluating qualitative criteria. In practice, it seems that remuneration based on ESG criteria is more often used by the board as a tactic to satisfy the private interests of senior management, rather than as an incentive for them to promote a "sustainability culture" within their company.

*1.3.3. Communicating – Transparency*

Since the development of a completely impartial and non-discretionary extra-financial normative framework is practically impossible, and only a sector-specific and technical approach to ESG metrics, indicators, and criteria provides sufficient justification to legitimise

<sup>36</sup> Elisabetta D’Apolito, Antonia P. Iannuzzi, “Pay-for-non-financial Performance and ESG Criteria: Evidence from the European Banking Sector”, Canadian Center of Science and Education, *International Business Research*; Vol. 10, No. 10; 2017.

<sup>37</sup> Longjie Lu (2023) “ESG-based remuneration in the wave of sustainability”, *Journal of Corporate Law Studies*, 23:1, p.322.



the existence of extra-financial performance worthy of rewarding senior management, the issue of communicating results now arises.

Indeed, the credibility of remuneration policies based on ESG metrics, indicators, and criteria hinges on their public exposure, allowing them to be subjected to remarks, critiques, and challenges of all kinds. This adherence to the principle of transparency regarding extra-financial results related to the actual performance of senior management would invite informed stakeholders on ESG issues to contribute and, consequently, validate or contest the resulting remuneration.

The principle of "transparency" is inextricably linked to the explanation of corporate governance practices and, consequently, their legitimacy. Only a well-explained and presented approach to stakeholders can, on one hand, ensure the proper functioning of the company by encouraging decision-making based on collective consent, and on the other hand, avoid accusations of using ESG issues for discretionary purposes. Generally, a lack of transparency in a company leads to a certain level of distrust, particularly from capital investors who, as owners of the company, seek reassurance about the sound management of their group. This observation was already made in our previous work on shareholder activism, especially concerning issues of lobbying ethics or tax reporting, noting that *"shareholder life in large groups seems driven by a trend comparable to that of civic impulses, with tendencies towards decentralisation, transparency, and numerous consultations"* (De Beaufort, V., 2022). It is within this spirit that the *"Comply or Explain"* principle was developed. Integrated into French law by the Act of 3 July 2008 and defined by the Afep-Medef Code, this principle requires companies subject to a governance code to either comply with its provisions or clearly justify any deviations. It aims to hold companies accountable and ensure transparency in their governance choices. In the event of non-application of a recommendation, explanations must be detailed and tailored to the company's specific situation, and included in the annual report. The High Committee for Monitoring the Application of the Corporate Governance Code, established by Afep and Medef, oversees compliance with this principle and can intervene in cases of non-compliance. Companies must then explain why they do not follow certain recommendations or indicate when they plan to implement them later. Given that each company has its specifics, it can be challenging to demand total normative application. However, this leniency should not be seen as a way to evade existing rules. It is all about nuance, and *"non-application is possible provided it is sufficiently justified"* (IFA).

Therefore, transparency is a matter of stakeholder will, particularly from shareholder advisory firms. Proxinvest, for example, emphasises that *"transparency on performance conditions (criteria and target thresholds) must be total"* and that *"performance conditions related to ongoing acquisition plans must be communicated to shareholders,"*<sup>38</sup> as well as *"the achievement rate of each criterion."* Companies, especially listed ones, have generally understood this issue and attempt to communicate both their commitments, mainly environmental and social, and the criteria they use in their remuneration policies in documents made available to shareholders. Thus, 56% of SBF 120 companies, out of a panel of 83, communicated the achievement rate of each climate-related goal in the short-term components

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<sup>38</sup> Proxinvest, *Principes de gouvernement d'entreprise et Politique de vote 2023*, 4.2.9. Critères de performance ESG, p.39.

of senior management remuneration policies in 2022, and 38% communicated the achievement rate of their company's qualitative ESG/CSR goals (Fig. 16).

This observation is confirmed by PwC<sup>39</sup>, which notes a growing maturity in communication practices, highlighting that 53% of CAC 40 companies communicate ESG indicators and goals integrated into senior management remuneration. Specifically, 53% publish their indicators and goals, while 30% only publish the indicators and 5% only publish the goals. Finally, 13% publish neither. However, these figures apply only to senior management. When extending the focus to other company populations, the trend clearly reverses. 65% of CAC 40 companies do not communicate any information regarding ESG objectives and indicators for C-suite executives, and only 18% do, with only 5% covering both indicators and goals. Notably, Schneider Electric's good practices are worth mentioning, as highlighted by FIR<sup>40</sup>, for providing additional detail by justifying the scores achieved in its "Sustainability Impact" programme, which reflects the impact of the score on the achievement rate of ESG criteria for executives, as well as the expected changes in criteria for the following year based on the company's issues, demonstrating transparency that should serve as an example for other companies.

PwC concludes that there is a lack of maturity in practices related to C-suite remuneration, as other company populations (executives, managers, employees, etc.) have only recently seen the integration of ESG criteria into their remuneration. The communication of ESG indicators and goals in remuneration policies is thus voluntary but still very heterogeneous.

However, communication regarding ESG criteria in executive remuneration policies touches upon the sensitive issue, in agency theory, of justifying the distribution of created wealth and the contemporary economic development of modern companies, namely the extra-financial impact of companies on their environments and stakeholders.

In other words, communication on the links between the extra-financial performance of senior management and other leadership populations, on one hand, and their remuneration based on this performance, on the other hand, is primarily a political matter related to trust among all stakeholders.

**Figure No. 16 – Distribution of Companies Reporting Achievement of Climate Objectives in the Short-Term Components of Senior Management Remuneration Policies in 2022**<sup>41</sup>

<sup>39</sup> *Critères RSE et rémunération : l'alignement stratégique ?*, PwC, Orse, Pacte Mondial, janvier 2024.

<sup>40</sup> Forum pour l'Investissement Responsable (FIR), *Comment le CAC 40 répond-il aux investisseurs ? Rapport d'engagement – Saison 4*, « Questions écrites aux Assemblées Générales 2023 ».

<sup>41</sup> *Baromètre des rémunérations, SBF120*, « Le climat dans la politique de rémunération des CEO », Institut français des administrateurs (IFA), Chapter Zero France, Ethics & Boards, 2ème éd., novembre 2022, slide 12.

## Ex post – rémunération CEO CT 2022

Plus de la moitié des sociétés du SBF 120<sup>1</sup> ayant intégré un objectif climat ont communiqué le niveau d'atteinte de chacun des objectifs.

Panel : 83 sociétés avec STI et objectifs climat/environnement en 2022



Beyond the trust it fosters from stakeholders towards the company, non-financial communication is also incentivising, as it encourages the development of extra-financial practices. Aligning with such practices increases the propensity to adopt remuneration policies based on ESG criteria<sup>42</sup>. Non-financial communication also carries materiality, for instance, when it aims to clarify qualitative measures and assessments by providing ex-ante indications of the objectives and parameters considered<sup>43</sup>. In other words, it allows for a more precise description of the expected extra-financial performance.

In conclusion, the inability to establish a uniform ESG normative framework applicable across all companies, activities, and sectors leads us to advocate for a tailored approach, based on the specifics of each economic entity and its associated extra-financial issues.

To advance this renewed philosophy of extra-financial performance in senior management remuneration, we have examined ESG criteria as value creation vectors, explored potential changes to the Afep-Medef Code, and highlighted the importance of a technical triad: sectorialisation, measurement, and communication.

The question now is whether recent European normative and regulatory developments are conducive to advancing this renewed philosophy of extra-financial performance when it comes to justifying senior management remuneration based on ESG criteria.

<sup>42</sup> “Sustainability and Executive Compensation”, *European Corporate Governance Institute*, R. Barontini, J.G. Hill, dec. 2023, p.33.

<sup>43</sup> Elisabetta D’Apolito, Antonia P. Iannuzzi, “Pay-for-non-financial Performance and ESG Criteria: Evidence from the European Banking Sector”, Canadian Center of Science and Education, *International Business Research*; Vol. 10, No. 10; 2017.

## 2. The Corporate Sustainability Reporting Directive: A Sufficient Framework for the Emergence of this New Philosophy?

### 2.1. From Voluntary to Normative: The CSRD

Since 1 January 2024, in compliance with the Corporate Sustainability Reporting Directive (CSRD), the European Sustainability Reporting Standards (ESRS) have come into effect. This set of European standards applies to listed companies and those exceeding at least two of the following three thresholds: having at least 500 employees, reporting over €40 million in turnover, or reporting over €20 million in total assets. From 1 January 2025, the scope will be expanded to include European companies meeting at least two of the three criteria, with the employee threshold reduced to 250. Approximately 55,000 companies in Europe, primarily French and German, will be affected. These changes will significantly impact the 5,700 mid-sized enterprises (ETIs) and 140,000 small and medium-sized enterprises (SMEs) in France, particularly due to the scope 3 requirements, which cover supply chains and business environments of companies subject to the new regulation. Furthermore, non-European companies with activities in Europe will also be affected from 2028, leading to a projected fourfold increase in the number of affected companies over the next two years. Therefore, the CSRD has acted as a catalyst for the expansion of extra-financial initiatives by companies and represents a shift from a voluntary to a normative approach.

However, this directive marks a new stage in corporate sustainability by establishing a framework aimed at encouraging companies to disclose information on the extra-financial impacts of their activities with a focus on double materiality. Whereas the Non-Financial Performance Declaration (DPEF) introduced a principle of materiality focused on describing the main risks related to the company's activities and the policies and procedures used to manage them—essentially the company's impact on society—the principle of double materiality requires consideration of both the impact of the company on society (including climate change and social developments) and the impact of societal changes on the company.

Nonetheless, this shift from voluntary to normative, introducing double materiality, is limited regarding senior management remuneration policies. Of the 12 general standards, only one requirement related to senior management remuneration appears in the general disclosure requirements (ESRS 2 – GOV-3), without a dedicated section.

In other words, the CSRD framework does not place the issue of incorporating ESG criteria into senior management remuneration policies at its core, whether in terms of performance or regulatory information disclosure. Companies will be encouraged to extend beyond legal requirements through best practices, involving stakeholders more comprehensively. Drawing from practices like "Say on Climate," which aimed to include shareholders more in the company's environmental strategy to foster consent for climate change efforts, and "Say on Pay," which invites shareholders to vote on senior management remuneration policies under the 2019 Pacte law, the CSRD framework offers the possibility to further involve various stakeholders, particularly shareholders, in approving remuneration policies based on ESG criteria.

## 2.2. Towards Standardisation of Practices with the CSRD?

The desire to regulate remuneration by incorporating ESG criteria into senior management remuneration policies has been evident for about two decades, with various voluntary initiatives. For example, the Pacte law introduced transparency requirements for listed companies, adding new paragraphs (4 and 5) to Article L.225-37-3 of the Commercial Code to mandate the disclosure of the "equity ratio," intended to show the difference in remuneration between executives and employees.

For unlisted companies, only certain best practices were applied, without any legal obligation. With the CSRD now imposing specific requirements on companies meeting the aforementioned criteria, it is worth questioning the viability of this framework—specifically, its capacity to standardise practices regarding ESG-based remuneration for senior management.

Within the general provisions (ESRS 2), the CSRD introduces a "Disclosure Requirement," specifically titled "Gov-3 – Integration of sustainability-related performance in incentive schemes." This requires companies to disclose information regarding the integration of sustainability performance within remuneration policies. The aim of this standard is to shed light on whether a company has an incentive system based on extra-financial issues for its executives, including administrative (board members), managerial (executive directors), and supervisory (supervisory board members). In practice, it involves highlighting:

- The key characteristics of incentive schemes;
- An evaluation of performance based on specific ESG targets and/or clearly identified impacts;
- The consideration of ESG performance metrics;
- The proportion of variable remuneration linked to ESG impacts or targets;
- The level in the company where the terms of incentive schemes are approved and updated.

For listed companies, this disclosure standard must align with the remuneration report requirements as outlined by Articles 9a and 9b of Directive 2007/36/EC regarding the exercise of certain rights of shareholders of listed companies. However, to avoid repetition, companies can reference their remuneration report prepared under the aforementioned directive, provided they comply with paragraphs 119, 120, and 122 of ESRS 1 related to referencing rules.

Thus, the CSRD provides a comprehensive framework for presenting extra-financial results, objectives, and indicators that should guide the determination of senior management's extra-financial performance and, consequently, the determination and payment of their remuneration. However, while this framework is promising, it also appears to be incomplete and limited. It is incomplete because it does not cover all aspects of integrating ESG criteria into remuneration policies. For instance, while the CSRD requires companies to publish information on integrating ESG criteria into incentive schemes for administrative, managerial, and supervisory executives, it does not specify requirements for other top-management positions or employees more broadly. Given that a company's extra-financial performance relies on its operational performance, employees, who are key to driving environmental and social transitions, would

benefit from similar incentives as those of senior management under the European regulatory framework. Therefore, the CSRD framework is incomplete.

It is also limited. For instance, Appendix C detailing the application of specific ESRS in alignment with the general disclosure requirements (ESRS 2) only refers to ESRS E1 on Climate Change (paragraph 13) in relation to ESRS 2 – Gov-3. In other words, the CSRD is limited in that it does not list the issues, indicators, criteria, or metrics required to fully meet the ESRS 2 – Gov-3 requirements, except for climate-related considerations. Specifically, paragraph 13 of ESRS E1 on climate change only addresses the publication of information on how climate considerations are integrated into senior management remuneration, particularly regarding performance related to greenhouse gas emission reduction and the percentage of remuneration linked to climate considerations. In other words, the CSRD reduces the indexation of senior management remuneration performance to the simple criterion of greenhouse gas emission reduction and "climate considerations," without further detail. In other terms, the CSRD is more of a framework for the publication of a company's extra-financial information than a comprehensive set of applicable standards detailing the binding conditions for achieving objectives through clearly identified indicators and universally recognised metrics. Many other indicators, beyond greenhouse gas reduction, could have been included, drawing on recommendations from voting advisory agencies. For example, Proxinvest<sup>44</sup> suggests several non-exhaustive but relevant indicators: job creation, accident rates, employee training rates, employee satisfaction, energy consumption, funding for renewable energy, eco-responsible products, internal pay equity, and gender diversity in leadership roles.

The framework established by the CSRD thus has the merit of setting a guideline for the disclosure of information relevant to all stakeholders when addressing the issue of justifying the remuneration of senior management based on ESG criteria. Moreover, the requirement stemming from the CSRD aligns with the highest standards, such as the ISSB's<sup>45</sup> IFRS Sustainability Standards and the GRI<sup>46</sup> Standards. Nevertheless, this framework remains imperfect and would benefit from being addressed and improved by the concerned stakeholders.

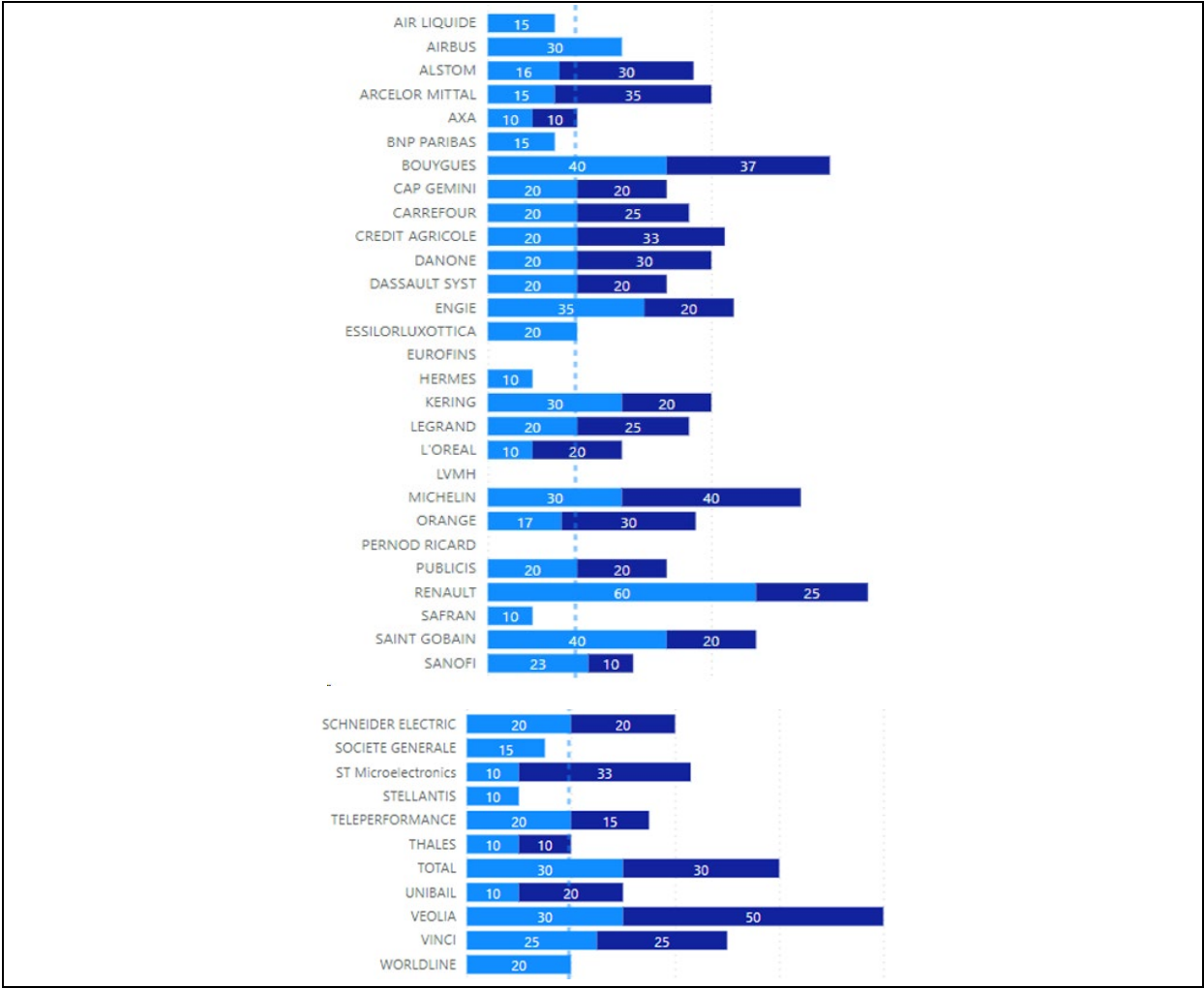
**Figure No. 17 – Distribution of ESG Shares (%) in Short-Term Remuneration (Light Blue) and Long-Term Remuneration (Dark Blue) among CAC 40 Companies<sup>47</sup>**

<sup>44</sup> Proxinvest, Glass Lewis, *Principes de gouvernement d'entreprise et Politique de vote 2024*, dec. 23.

<sup>45</sup> *International Sustainability Standards Board (ISSB)*.

<sup>46</sup> *Global Reporting Initiative (GRI)*.

<sup>47</sup> *Women Board Ready, 2023*.



For instance, the legitimate place of ESG criteria between short-term and long-term remuneration represents a major issue that remains inadequately addressed (see Fig. 17). Indeed, extra-financial issues are fundamentally long-term concerns, such as climate change or the fair distribution of created value. Therefore, it is challenging to consider short-term ESG remuneration without being accused of using ESG-based compensation to increase payouts to senior management. Moreover, beyond the trade-off between short-term and long-term, the distribution (in %) of ESG criteria relative to traditional financial criteria is also a concern, given the large variations between companies in the CAC 40 index (e.g., 10% of ESG criteria in short-term remuneration for Hermès compared to 30% in the short-term and 50% in the long-term for Veolia).

## Conclusion

In conclusion, the CSRD appears more as a framework for publishing essential extra-financial information for stakeholders rather than a precise and binding normative corpus that establishes universally applicable ESG criteria, indicators, and measures for extra-financial performance that would justify additional remuneration for senior management without possible dispute. In other words, the advancement represented by the CSRD reminds us primarily of the importance of not approaching the issue of ESG-based senior management remuneration from the



perspective of a strict application of a predefined and universally deployable normative corpus, but rather from a collective assessment by all stakeholders, geared towards the development of a "*business culture broadly oriented towards ethics*."<sup>48</sup>

The integration of ESG criteria into executive remuneration policies, guided by the "comply or explain" principle and the Afep-Medef Code, represents a crucial lever for aligning corporate interests with sustainable development issues. In our latest publication on the state of ESG criteria in executive remuneration policies, we highlighted the difficulty of establishing a uniform set of ESG criteria applicable to all companies and proposed a new philosophy of extra-financial performance. Indeed, while the normative framework of the CSRD has encouraged transparency, it still requires improvements to effectively cover the integration of ESG criteria.

This approach promotes transparent and responsible governance, while encouraging a balanced overall performance between financial and extra-financial objectives. Increased recommendations and oversight by specialized committees, along with the normative framework of the CSRD directive, are key elements to ensure effective and consistent implementation of these practices. The importance of these criteria, properly justified and tailored to the specifics of each company, underscores their crucial role in promoting sustainable and responsible value creation.

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## ANNEXES

### Annex 1 - Recommendations from the Women Board Ready 2023 Participants, under the Direction of Viviane de Beaufort (ESSEC)

#### Focus Ratio d’équité : nos recommandations

- ▶ Avoir une définition non équivoque du ratio d’équité (périmètre et populations couverts ) → SOCLE d’éléments comparables pour permettre une **lecture transparente**
- ▶ Ajouter **un ratio entre le salaire minimum au sein de l’entreprise et la rémunération du dirigeant**, pour permettre une comparaison entre entreprises/secteurs
- ▶ **Watch out** : ne pas être trop mécanique dans nos approches



## Focus rémunération variable du dirigeant sur les critères ESG : nos recommandations

- ▶ Élaborer **des critères ESG communs mais spécifiques par activité/secteur**
- ▶ **Étendre la rémunération variable extra-financière à un scope plus large de dirigeants** (ex : top 250 voire plus)
- ▶ Proposer un **modèle unique de présentation de bilans, actions et objectifs ESG**
- ▶ **S'inspirer d'Hubert Joly** (ex PDG de Best Buy aux USA)



Hubert Joly, est devenu célèbre pour son approche de la rémunération variable des dirigeants. Il a été un ardent défenseur de ce qu'il appelle "le modèle de leadership humain" et a exprimé des points de vue clairs sur la rémunération des dirigeants.

### Annex 2 - Extracts from Code Afep-Medef

## 26 LA REMUNERATION DES DIRIGEANTS MANDATAIRES SOCIAUX

### 26.1 Principes de détermination de la rémunération des dirigeants mandataires sociaux exécutifs et rôle du conseil d'administration

#### 26.1.1 Rôle du conseil d'administration

Le conseil débat des performances des dirigeants mandataires sociaux exécutifs, hors la présence des intéressés.

La détermination de la rémunération des dirigeants mandataires sociaux exécutifs relève de la responsabilité du conseil d'administration qui les nomme et se fonde sur les propositions du comité des rémunérations. Le conseil motive ses décisions prises en la matière.

La rémunération de ces dirigeants doit être compétitive, adaptée à la stratégie et au contexte de l'entreprise et doit avoir notamment pour objectif de promouvoir la performance et la compétitivité de celle-ci sur le moyen et long terme, en intégrant plusieurs critères liés à la responsabilité sociale et environnementale, dont au moins un critère en lien avec les objectifs climatiques de l'entreprise. Ces critères, définis de manière précise, doivent refléter les enjeux sociaux et environnementaux les plus importants pour l'entreprise. Les critères quantifiables doivent être privilégiés.

La rémunération doit permettre d'attirer, de retenir et de motiver des dirigeants performants.

### **26.1.2 Principes de détermination de la rémunération**

Dans la détermination des rémunérations des dirigeants mandataires sociaux exécutifs, les conseils et comités prennent en compte et appliquent avec rigueur les principes suivants :

- **exhaustivité** : la détermination d'une rémunération doit être exhaustive. L'ensemble des éléments de la rémunération doit être retenu dans l'appréciation globale de la rémunération ;
- **équilibre entre les éléments de la rémunération** : chaque élément de la rémunération doit être clairement motivé et correspondre à l'intérêt social de l'entreprise ;
- **comparabilité** : cette rémunération doit être appréciée dans le contexte d'un métier et du marché de référence. Si le marché est une référence, il ne peut être la seule car la rémunération d'un dirigeant mandataire social est fonction de la responsabilité assumée, des résultats obtenus et du travail effectué. Elle peut aussi dépendre de la nature des missions qui lui sont confiées ou des situations particulières (par exemple redressement d'une entreprise en difficulté) ;
- **cohérence** : la rémunération du dirigeant mandataire social doit être déterminée en cohérence avec celle des autres dirigeants et des salariés de l'entreprise ;
- **intelligibilité des règles** : les règles doivent être simples, stables et transparentes. Les critères de performance utilisés doivent correspondre aux objectifs de l'entreprise, être exigeants, explicites et autant que possible pérennes ;
- **mesure** : la détermination des éléments de la rémunération doit réaliser un juste équilibre et prendre en compte à la fois l'intérêt social de l'entreprise, les pratiques du marché, les performances des dirigeants, et les autres parties prenantes de l'entreprise.

Ces principes s'appliquent à l'ensemble des éléments de la rémunération, en ce compris les rémunérations de long terme et exceptionnelles.

### **26.3.2 Rémunération variable annuelle des dirigeants mandataires sociaux exécutifs**

Le conseil peut décider d'attribuer une rémunération variable annuelle dont le paiement peut, le cas échéant, être différé.

Les règles de fixation de cette rémunération doivent être cohérentes avec l'évaluation faite annuellement des performances des dirigeants mandataires sociaux exécutifs et avec la stratégie de l'entreprise. Elles dépendent de la performance du dirigeant et du progrès réalisé par l'entreprise.

Les modalités de la rémunération variable annuelle doivent être intelligibles pour l'actionnaire et donner lieu chaque année à une information claire et exhaustive dans le rapport sur le gouvernement d'entreprise.

Le conseil définit les critères permettant de déterminer la rémunération variable annuelle ainsi que les objectifs à atteindre. Ceux-ci doivent être précis et bien entendu préétablis.

Il doit être procédé à un réexamen régulier de ces critères dont il faut éviter les révisions trop fréquentes.

Les critères **quantifiables**, qui ne sont pas nécessairement financiers, doivent être simples, pertinents et adaptés à la stratégie de l'entreprise. Ils doivent être prépondérants.

S'il est retenu, le cours de bourse ne doit pas constituer le seul critère quantifiable et peut être apprécié de manière relative (comparaison avec des pairs ou des indices).

Les critères **qualitatifs** doivent être définis de manière précise. Au sein de la rémunération variable annuelle, lorsque des critères qualitatifs sont utilisés, une limite doit être fixée à la part qualitative.

Le maximum de la rémunération variable annuelle doit être déterminé sous forme d'un pourcentage de la rémunération fixe et être d'un ordre de grandeur proportionné à cette partie fixe.

Sauf exception motivée, l'attribution d'une rémunération variable annuelle ne doit pas être réservée aux seuls dirigeants mandataires sociaux exécutifs.

### **26.3.3 Rémunérations de long terme des dirigeants mandataires sociaux exécutifs**

- **Principes généraux**

Les mécanismes de rémunération de long terme ont non seulement pour objectif d'inciter les dirigeants à inscrire leur action dans le long terme mais aussi de les fidéliser et de favoriser l'alignement de leurs intérêts avec l'intérêt social de l'entreprise et l'intérêt des actionnaires.

Ces mécanismes peuvent consister en l'attribution d'instruments tels que les options d'actions ou les actions de performance ou encore faire l'objet d'une attribution de titres ou d'un versement en espèces, dans le cadre de plans de rémunérations variables pluriannuelles.

De tels plans ne sont pas réservés aux seuls dirigeants mandataires sociaux exécutifs et peuvent bénéficier à tout ou partie des salariés de l'entreprise.

Ils doivent être simples et compréhensibles aussi bien pour les intéressés eux-mêmes que pour les actionnaires.

Le conseil peut prévoir lors de leur attribution une stipulation l'autorisant à statuer sur le maintien ou non des plans de rémunérations de long terme non encore acquis, des options non encore levées ou des actions non encore acquises au moment du départ du bénéficiaire.

Ces plans, dont l'attribution doit être proportionnée à la partie fixe et variable annuelle, doivent prévoir des conditions de performance exigeantes à satisfaire sur une période de plusieurs années consécutives. Ces conditions peuvent être des conditions de performance internes à l'entreprise ou relatives, c'est-à-dire liées à la performance d'autres entreprises, d'un secteur de référence... S'il est retenu, le cours de bourse peut être apprécié de manière relative (comparaison avec des pairs ou des indices). Lorsque cela est possible et pertinent, ces conditions de performance internes et relatives sont combinées.

Seules des circonstances exceptionnelles (modification substantielle du périmètre, évolution imprévue du contexte concurrentiel, perte de la pertinence d'un indice de référence ou d'un groupe de comparaison...) justifient que les conditions de performance puissent être modifiées au cours de la période considérée. Dans ce cas, ces modifications sont rendues publiques après la réunion du conseil les ayant arrêtées. La modification des conditions de performance doit maintenir l'alignement des intérêts des actionnaires et des bénéficiaires.

En cas de départ du dirigeant, il convient de se référer au § 26.5.1.



- **Dispositions spécifiques aux options d'actions et actions de performance**

L'attribution d'options ou d'actions de performance doit correspondre à une politique d'association au capital, c'est-à-dire d'alignement des intérêts des bénéficiaires avec ceux des actionnaires, avec la part d'aléa qui s'y attache.

Le conseil doit veiller à procéder à des attributions aux mêmes périodes calendaires, par exemple après la publication des comptes de l'exercice précédent et de préférence chaque année.

Des périodes précédant la publication des comptes annuels et intermédiaires doivent être fixées, pendant lesquelles l'exercice des options d'actions n'est pas possible. Il appartient au conseil d'administration ou de surveillance de fixer ces périodes et, le cas échéant, de déterminer la procédure que doivent suivre les bénéficiaires avant d'exercer des options d'actions, pour s'assurer qu'ils ne disposent pas d'informations susceptibles d'empêcher cet exercice.

S'agissant des dirigeants mandataires sociaux exécutifs, il convient :

- de veiller à ce que les options d'actions et les actions de performance valorisées selon la méthode retenue pour les comptes consolidés représentent un pourcentage proportionné de l'ensemble des rémunérations, options et actions qui leur sont attribuées. Les conseils doivent fixer le pourcentage de rémunération que ne doivent pas dépasser ces attributions ;
- d'éviter qu'ils bénéficient d'une trop forte concentration de l'attribution. Il appartiendra aux conseils, en fonction de la situation de chaque société (taille de la société, secteur d'activité, champ d'attribution plus ou moins large, nombre de dirigeants...), de définir le pourcentage maximum d'options et d'actions de performance pouvant être attribuées aux dirigeants mandataires sociaux par rapport à l'enveloppe globale votée par les actionnaires. La résolution d'autorisation du plan d'attribution proposée au vote de l'assemblée générale doit mentionner ce pourcentage maximum sous forme d'un sous-plafond d'attribution pour les dirigeants mandataires sociaux ;
- d'être cohérent avec les pratiques antérieures de l'entreprise pour la valorisation des options et des actions de performance attribuées.

Aucune décote ne doit être appliquée lors de l'attribution des options d'actions aux dirigeants mandataires sociaux.

Les dirigeants mandataires sociaux qui sont bénéficiaires d'options d'actions et/ou d'actions de performance doivent prendre l'engagement formel de ne pas recourir à des opérations de couverture de leur risque tant sur les options que sur les actions issues des levées d'options ou sur les actions de performance et ce, jusqu'à la fin de la période de conservation des actions fixée par le conseil d'administration.

**4. Les intérêts personnels du « dirigeant »  
peuvent-ils porter préjudice à l'entreprise ?**

On évoque deux dimensions : d'une part, les conflits d'intérêts et d'autre part, le niveau de rémunération.

- Nombre de situations peuvent faire apparaître aussi bien des communautés d'intérêts que des conflits d'intérêts, par exemple quand le « dirigeant » est également actionnaire significatif.

C'est moins sur le conflit, parfois inévitable, que sur sa gestion qu'il faut être vigilant.

- La rémunération du « dirigeant » est-elle susceptible d'influencer sa capacité de jugement et donc de contrarier l'exercice de sa mission ?

Ainsi, le mode et le niveau de rémunération doivent être cohérents et incitatifs sans éloigner le « dirigeant » de la juste perception de la réalité vécue par les parties prenantes de l'entreprise.

Il est aussi souhaitable que la structure de rémunération induise des préférences pour des stratégies conformes à l'intérêt long terme de l'entreprise. S'il y a une part variable dans la rémunération, elle comporte, a minima, un indicateur extra-financier.

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**a) Les sept principes fondant le niveau  
et les modalités de rémunération  
des dirigeants :**

- **Exhaustivité** : chaque entreprise est libre de déterminer les composantes de la rémunération des dirigeants mandataires sociaux. La communication aux actionnaires des rémunérations des dirigeants mandataires sociaux doit être exhaustive : partie fixe, partie variable<sup>26</sup> (bonus), stock-options, actions gratuites, rémunérations au titre du mandat de « membre du Conseil », rémunérations exceptionnelles, conditions de retraite et avantages particuliers, autres...

En cas de rémunération variable, l'appréciation de l'atteinte de la performance prend en compte des critères quantitatifs – financiers et extra-financiers – ainsi que des critères qualitatifs.

- **Équilibre** entre les éléments de la rémunération : chaque élément de la rémunération doit être motivé et correspondre à l'intérêt de l'entreprise.

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