Twenty years of employee and employee shareholder representation on the board of directors. Attributes, review and outlook

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Research Report

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Attributes, review and outlook

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Abstract

Representation of employees and employee shareholders on boards of directors is the subject of increasing attention, both in France and internationally. Since the early 2000s, several pieces of legislation have reinforced this representation and contributed to the development of what some call a French-style co-determination model. Researchers have subsequently been trying to establish the link between this type of representation and the different measures of performance, on the assumption that the attributes of employee directors and employee shareholder directors play a major role. This report aims to pursue this line of enquiry by highlighting the attributes of these representatives, from a perspective comparing employees and employee shareholders. For this study, we have collected, over a period of 20 years, information on the attributes of representatives, both demographic (i.e. gender, age, internationalisation, education, duration of mandate, length of time with the company, and union membership) and statutory (i.e. committee membership, committee missions), and gathered the opinions of various experts (i.e. directors, union officials, government agencies) on some of the trends observed. This unique data collection reveals a high degree of variation in all attributes over the period, thus highlighting the impact of certain laws and regulations as well as disparities between the two categories of directors.

Key words: Employee board representation; employee representatives; employee shareholder representatives; demographic attributes; board committee membership.

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CONTENTS

Introduction

Shareholder governance, which aims mainly to ensure efficient management of the company's assets, has been discredited by various scandals that have shaken the business world. This type of governance, however, is now giving way to partnership governance. In this context and in order to counterbalance the omnipresent power of controlling shareholders, several laws have been enacted in France to promote employee representation on boards of directors (and supervisory boards). But to meet various societal and governmental objectives, France in fact has opted for representation of two categories of employees on these two types of board: directors representing employee shareholders and directors representing all employees. This choice of dual representation is in keeping with the aim of strengthening the hybridisation of the two approaches – partnership and shareholding – that characterise the French governance model.

A succession of recent academic studies confirms the importance of examining employee representation in relation to the performance and governance of French companies (e.g., Ginglinger, Megginson, & Waxin, 2011; Hollandts & Aubert, 2011; Hollandts, Aubert, Abdelhamid, & Prieur, 2018; Nekhili, Boukadhaba, & Nagati, 2021; Nekhili, Boukadhaba, Nagati, & Chtioui, 2019). These studies frequently raise the need to look at these relationships in the light of the socio-demographic attributes of employee and employee shareholder representatives and their degree of involvement in decision-making through their participation in the work of specific board committees.

This report is thus motivated by the lack of consolidated statistical data on the profiles of the two categories of representatives and how they have evolved over time. However, a succession of recent legislative developments (e.g. the 2006 law on the development of employee participation and shareholding, the 2013 law on securing employment, the 2015 Rebsamen law and the 2019 PACTE Law) also underline the need for more in-depth research initiative of this kind, particularly with a view to evaluating public policies. The aim of this report is threefold: (1) to draw up a comparative standard profile of employee and employee shareholder representatives; (2) to characterise the changes in these standard profiles over a lengthy and poorly documented period; and (3) to highlight the effects of legislation and different regulations on these profiles and developments.

1. Sample and data collection

The statistics and trends presented in this report concern French companies listed in the SBF120 index during the period 2001-2020. Since the composition of the SBF120 index changes from one year to the next, we decided to use the composition as of the middle of the period (beginning of 2012) since we have the annual reports of these companies before and after this time, thus enabling us to study their behaviour over the longest possible period.

The data was collected manually from the annual reports published by companies that had not been bought out, downgraded or restructured during this period. The final sample comprises 97 French companies for a total number of 1,842 observations (company-years). All the information collected was verified by at least two people.

A thorough reading of the reference documents (universal registration documents) allowed us to identify the number and proportion of employee representatives on (supervisory) boards. Only representatives with voting rights are considered in this study.

Directors' biographical notes provided in the annual universal registration documents and other information on the composition of the boards and specific committees allowed us to collect data on the profile (i.e., age, gender, nationality, educational level, length of mandate, experience and union membership) of employee and employee shareholder representatives as well as their membership of the specific board committees (i.e., strategy committee, CSR committee, audit committee, nomination committee, remuneration committee). Profile data was completed where missing and cross-checked with the data in each representative's active LinkedIn pages.

Data on the unionisation of employee representatives and employee shareholders, however, calls for special attention, because it is sometimes unavailable in the reference documents. When no satisfactory results were found, information on union membership involved additional research on Google using keywords containing the name of the employee director, the name of the company to which he or she belongs, and the word "union" (along with its synonyms and derivatives). Directors representing employees or employee shareholders for whom no information was found in the reference documents or through these Google searches were taken to be non-unionised for purposes of our study.

The number of specific committees varies from company to company. These committees are supposed to play an advisory role with the aim of preparing and facilitating the work of the board. A reading of the reference documents allowed us to identify five main types of specific committee: (1) strategy, (2) CSR (ethics, sponsorship), (3) audit, (4) nomination and (5) remuneration. The strategy committee is sometimes merged with the CSR committee, and the remuneration committee with the nomination committee. The audit committee, being the only one that is mandatory, is easier to identify among the various other committees. The coding adopted to prepare the data analysis involves matching an employee representative with a specific role played by the committee when he or she is a member, rather than with membership of one or more committees. For example, in the event of a merger of the strategy committee with the CSR committee, an employee representative is considered to be

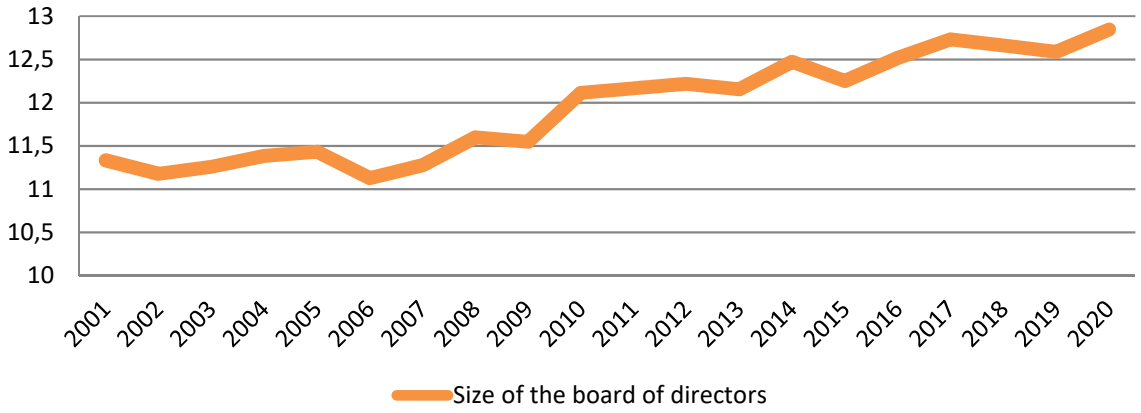
involved in two different board missions, namely strategy and CSR. The aim is not to count the number of committees on which employee and employee shareholder representatives sit, but to find out what types of tasks these representatives are responsible for on boards.

2. Evolution of employee representation on the board

2.1. Board size and employee representation

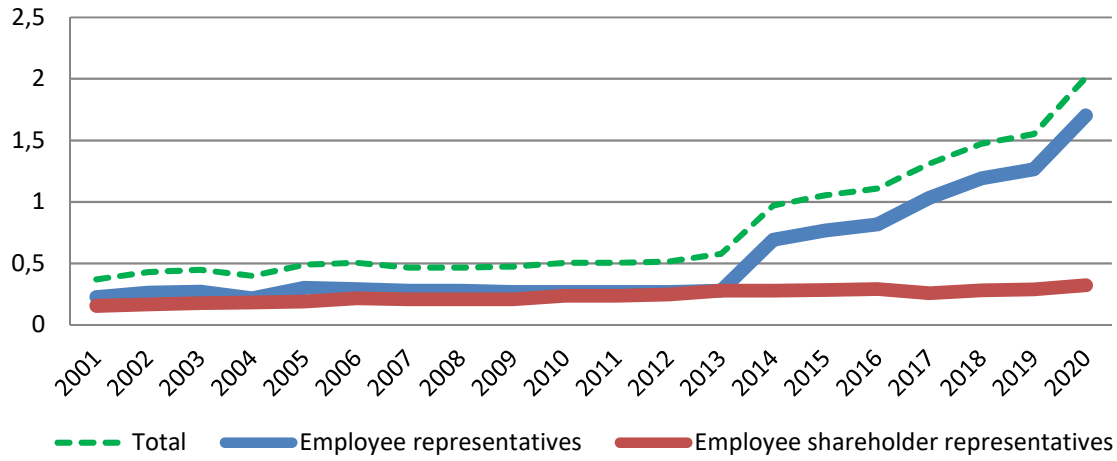
Board size is expressed as the average number of directors per year. Graph 1 shows that the average size of boards increased from 11.33 members in 2001 to 12.8 members in 2020. The aim here is to find out whether variation in board size is linked to changes in the number of employee and employee shareholder representatives.

Graph 1: Size of the board of directors

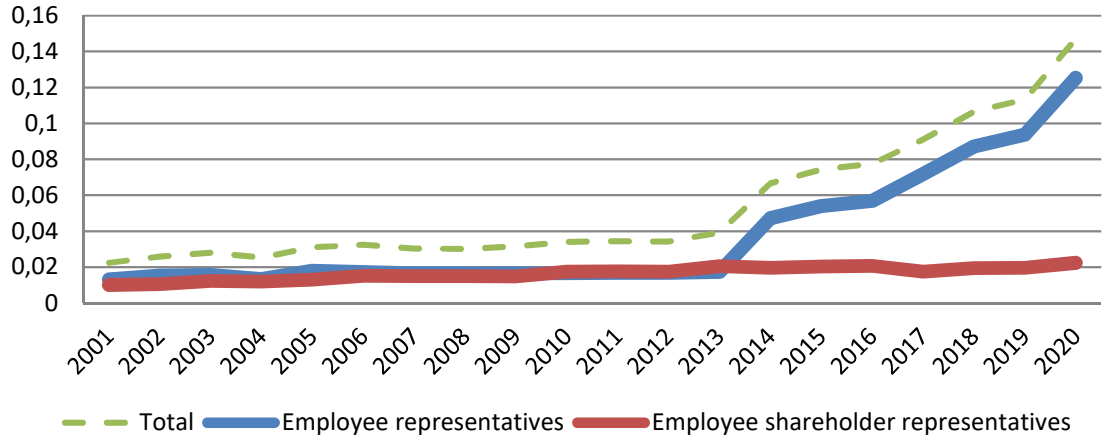


Graph 2 shows the number of employee representatives on the board, while Graph 3 shows the proportion of employee representatives on the entire Board.

Graph 2: Number of employee representatives



Graph 3: Proportion of employee representatives



Graphs 1, 2 and 3 show that the effects of the 2013 Act are very clear for employee directors. The number and the proportion of employee representatives depend on the size of the board. A board with more than 12 directors is required to appoint two representatives, whereas a board with 12 or fewer directors is required to appoint only one. In 2001, there was less than one representative per board on average (corresponding to 2% of the total number of directors), rising to an average of around two representatives in 2020 (15% of the total number of directors).

The 2019 PACTE Law now requires the presence of two employee directors for every eight members (or non-employee directors) on the board, instead of 12 previously. An acceleration in the number and proportion of employee directors is thus observed from 2019 onwards, leading to an increase in the size of boards of directors to an average of 13 members in 2020.

The representation of employee shareholders depends on the proportion of the company's capital held by employees. Such representation is compulsory only for companies in which the participation of the group's employees amounts to 3% of the capital (Article L. 225-23 of the Commercial Code). Our study shows that the representation of employee shareholders on the board of directors has remained relatively stable throughout the period.

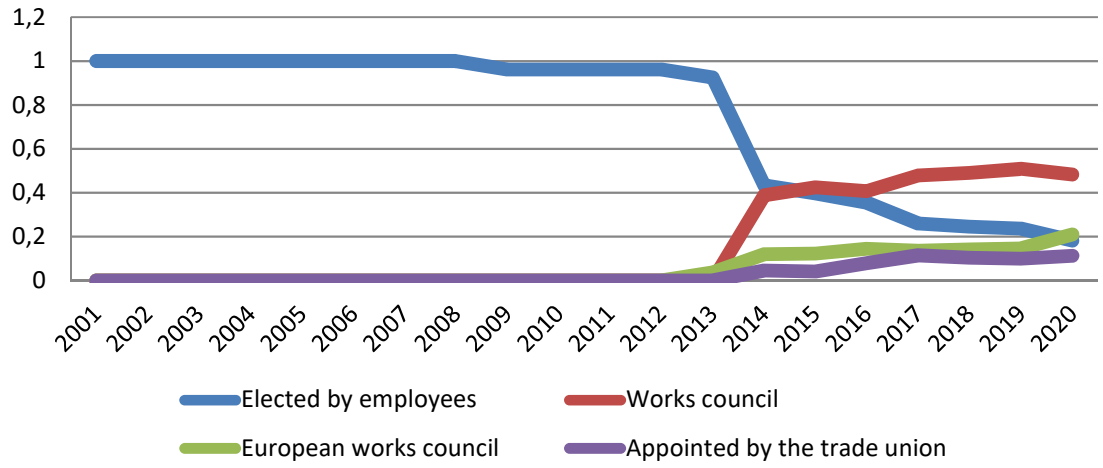
2.2. Types of employee representation on the board

Graph 4 shows the yearly evolution of the use of the different types of employee representation on boards. These trends do not include employee shareholder representatives, who are elected by the ordinary general meeting of shareholders on the proposal of employee shareholders in a single consultation of all employee shareholders.[1] As we will see later in this report, the choice of the type of representation can have significant consequences for certain attributes of employee directors.

[1] https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000042504997

Pursuant to Article L 225-27-1 of the Commercial Code, the first version of which was enacted in 2013,[2] directors representing employees may be appointed in four different ways: (1) election by the employees, (2) appointment by the group committee, the central works council or the company's works council, (3) appointment by the trade union organisation that obtained the most votes in the first round of elections or, where at least two directors are to be appointed, (4) appointment of one of the directors by the European works council.

Graph 4: Types of employee representation



Graph 4 shows that French companies have since 2013 been using all the provisions of Law 2013-504 of 14 June 2013[3], leading to a plurality of representation methods, but to different extents. The organisation of employee elections became a minority mode as of 2014, and in 2020 only 18% of the directors representing employees were elected by employees. When questioned on this issue, an employee representative explained to us that for reasons most probably linked to the significant costs and the complex organisation of elections at the level of all employees, the downward trend in the use of this mode of representation in French companies has mainly advantaged appointment by the works council.

3. Socio-demographic attributes

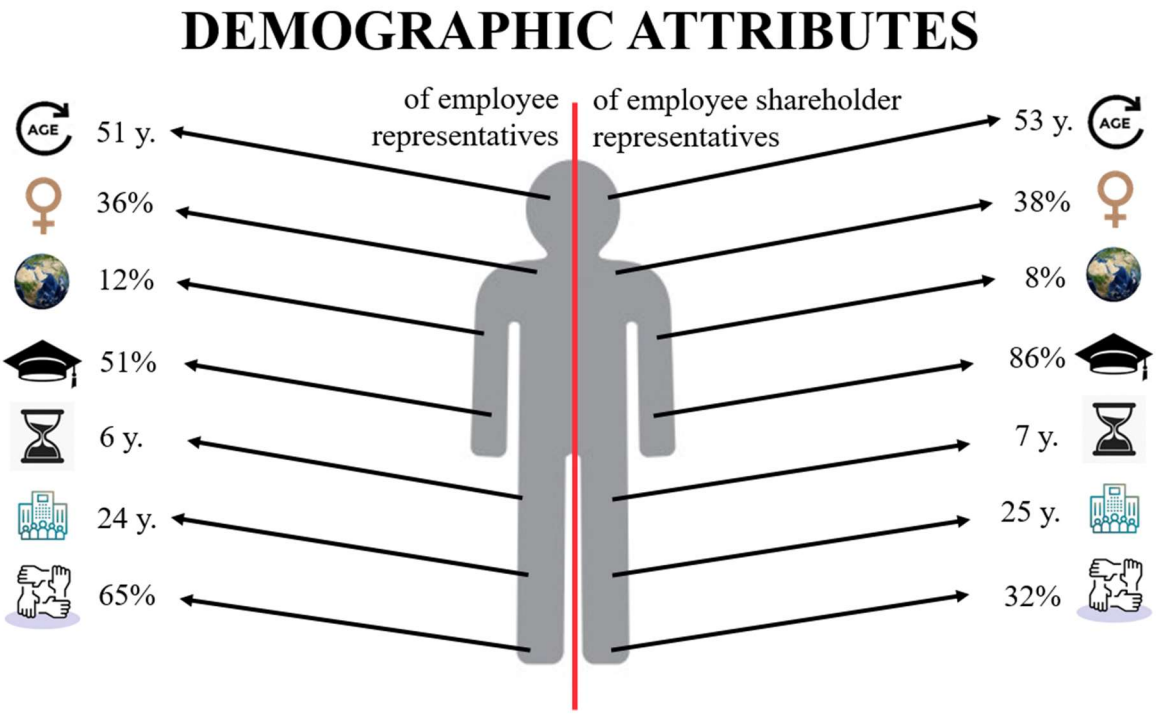
The purpose of this section is to profile directors representing employees and employee shareholders, and to compare both their average profile and the changing trends of these average profiles over the period 2001-2020.

3.1. Analysis of averages

The figure below compares the average socio-demographic attributes of the two categories of representatives we are studying.

[2] https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000042339592
[3] https://www.legifrance.gouv.fr/loda/id/JORFTEXT000027546648/

Figure 1: Demographic attributes' mapping by means of averages



Legend

	Average age of representatives.
	Percentage of women among employee representatives.
	Rate of internationalisation of employee representatives. Employee representatives with dual French and foreign nationality are included in the calculation of this rate.
	Percentage of representatives with an education level equal to or higher than master's degree (or equivalent).
	Duration of the mandate, including renewed mandates.
	Work experience of representatives in the company measured by the length of time they have been with the company in question.
	Rate of unionisation of representatives.

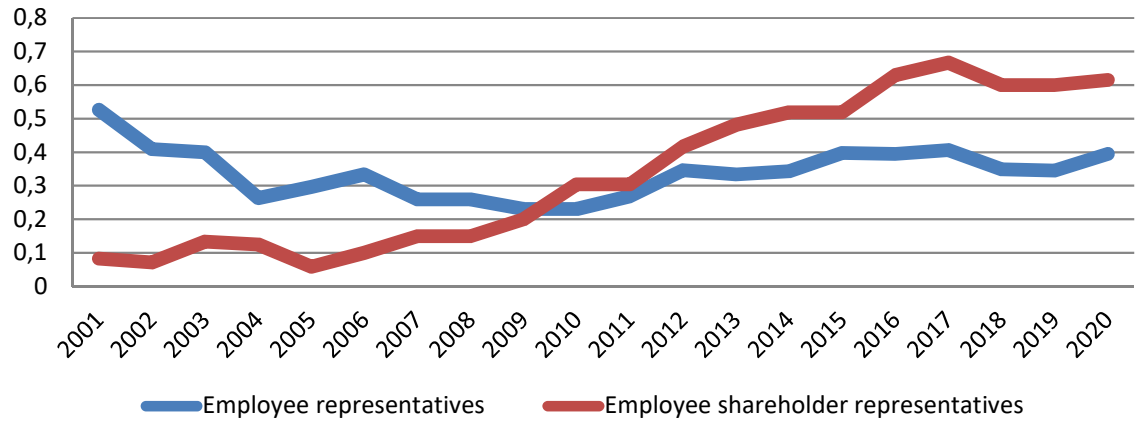
The main finding of this comparison is that, on average, the two profiles are similar. However, a distinction can be made concerning the education level (twice as high among employee shareholder representatives) and the rate of unionisation (half as much among employee shareholder representatives).

3.2. Analysis of trends

3.2.1. Feminisation of representatives

Graph 5 shows the evolution of the proportion of women among the employee and employee shareholder representatives on the board.

Graph 5: Feminisation



On the subject of feminisation, employee shareholder representatives have historically been predominantly male, even though the Institut Français des Administrateurs (IFA) very early on announced a target of 20% women on boards of directors (Lebègue & Picard, 2006).

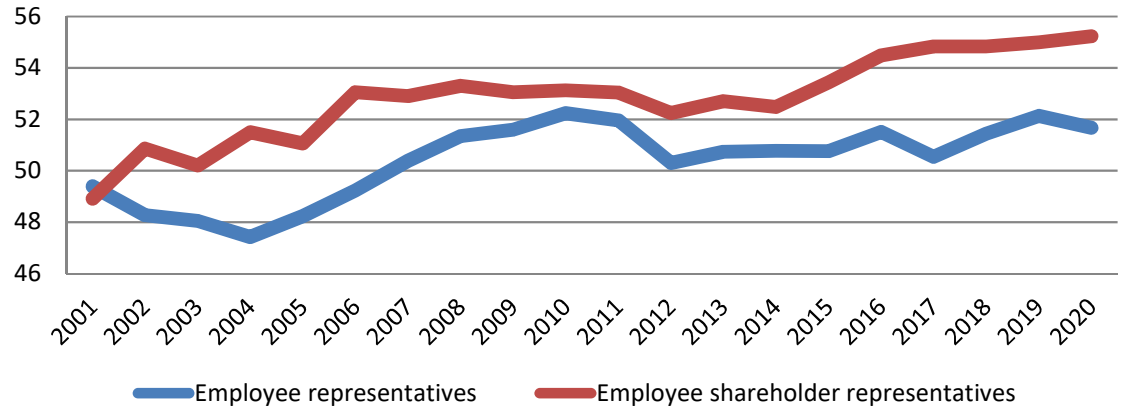
It should be noted in this respect that, according to Article 6.4 of the reference code for listed companies in terms of governance (AFEP-MEDEF Code), directors (or members of the supervisory board) representing employees are not taken into account for the application of the provisions relating to gender parity in boards of directors.[4] Since the PACTE Act, this exception has been extended to employee shareholder representatives elected by the general meeting of shareholders in companies whose shares are eligible for trading on a regulated market and in public limited companies employing, together with their subsidiaries, more than 1,000 employees in France or 5,000 in France and abroad (C. com. art. L 225-23, para. 1 and L 225-71, para. 1; PACTE Law art. 184, I-A-1° and 2°). This measure aims to harmonise the treatment of employee representatives and employee shareholder representatives in calculating the proportion of women on boards, in the same way as in calculating the proportion of independent directors.

[4] Tabled in the National Assembly in December 2009, the Copé Zimmerman law introduced two legal regimes for companies falling within the scope of the law (of which listed companies are one): (1) their board must have a proportion of directors of each gender that cannot be less than 40% as of 2016; or (2) where their board is composed of no more than eight members, the difference between the number of directors of each sex cannot be greater than two.

3.2.2. Age of representatives

Graph 6 shows the evolution of the age of employee representatives on the board.

Graph 6: Age

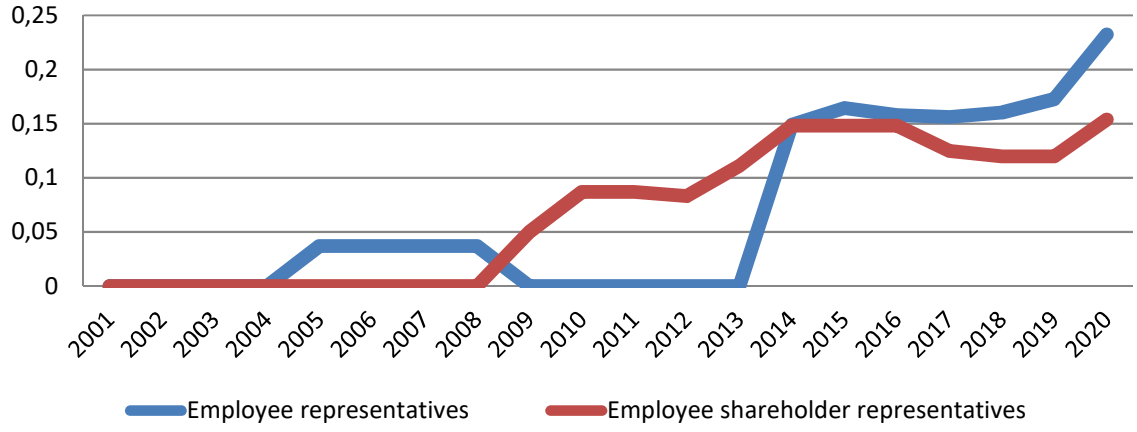


This graph shows that employee representatives are on average younger than their peers representing employee shareholders. Overall, we can also see that employee board members tend to be appointed at an age that traditionally corresponds to the middle or end of their career.

3.2.3. Internationalisation of representatives

Graph 7 shows the evolution of the internationalisation of employee representatives.

Graph 7: Internationalisation



First of all, it should be remembered (cf. 3.1.) that we are talking about a limited number of individuals, as the directors are mainly of French nationality. That said, we can see a first effect of Law 2006-1770 of 30 December 2006,[5] which obliges listed companies with

[5] https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000458333/

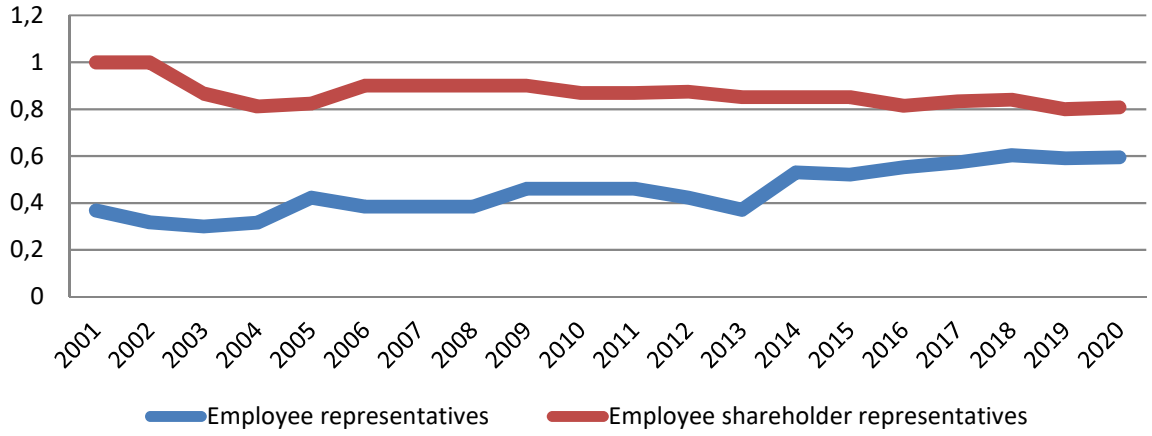
employee shareholding of more than 3% of the capital to elect a director representing employee shareholders (Hollandts & Aubert, 2011).

As for the representatives of non-shareholder employees, Article L225-27-1 of the Commercial Code[6] introduces a method of appointment by the European works council, which encourages the election of non-national representatives to the board of directors. Generally speaking, internationalisation has long been weak or moderate, but it seems to have increased since 2013, with an effect boosted by the PACTE law.

3.2.4. Education level of representatives

Graph 8 shows the evolution of the education level of employee representatives.

Graph 8: Education level



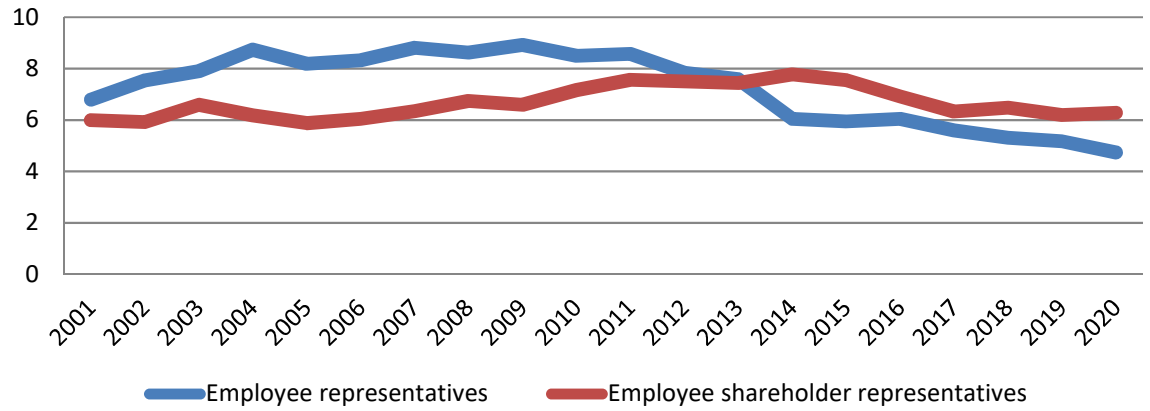
There is a trend towards convergence over the whole period. Indeed, the level of education has remained relatively constant for employee shareholder representatives, at least eight out of ten of whom have a master's degree or higher over the period. It should be noted, however, that the gap in educational level has decreased between the two categories of employee representatives. We can see that there is an upward convergence at the end of the period: six out of ten employee representatives have a master's degree or higher. While the diversity of appointment methods may provide a partial explanation, it is difficult to be sure. Our discussions with employee representatives also highlight the growing importance of the electoral weight of management in SBF 120 companies, due to massive relocation in some of these companies, resulting in the liquidation of many non-managerial jobs. Thus, managers are de facto more represented in the electoral colleges, and the system is becoming more favourable to certain trade unions representing managerial staff, who themselves have more highly qualified elected representatives.

[6] https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000042339592

3.2.5. Duration of the mandate

Graph 9 shows the evolution of the duration of the mandate of employee and employee shareholders representatives.

Graph 9: Duration of the mandate

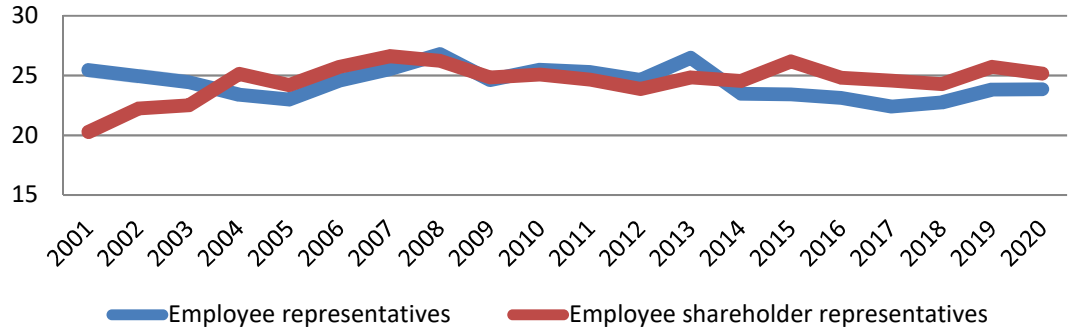


Although the duration of employee shareholder representatives' terms of office is relatively stable over the period, the terms of office of employee representatives decline more sharply, from 7.5 years with a peak of almost 9 years, to less than 5 years in 2020 (4.7). Moreover, the curves cross in 2013, the year in which the 2013 law was enacted,[7] apparently as a result of the four types of representation on the board for employee representatives. It is therefore likely that this variety of types of representation led to a greater rotation in terms of employee representation, thereby reducing the duration of their mandates.

3.2.6. Work experience of representatives in the company

Graph 10 shows the evolution of the number of years that employee representatives and employee shareholders have been with the company.

Graph 10: *Work experience*



[7] https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000042339592

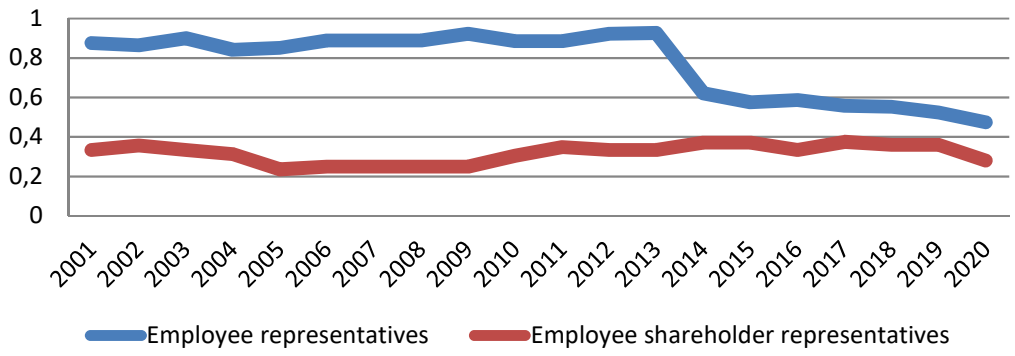
First of all, it can be seen that the curves are relatively correlated, and that length of service over the period is fairly volatile. Between the beginning and the end of the period, the average time that employee shareholder board representatives have been with the organisation increased by five years.

More generally, employees and employee shareholders are more frequently represented on the board by experienced employees, who have been with the organisation for more than 20 years and frequently close to 25 years. These figures confirm the age trend observed in this report (see 3.2.2.). Board members are usually experienced employees, which often means that they are both older and have been with the organisation concerned for a long time.

3.2.7. Unionisation of representatives

Graph 11 shows the evolution of the trade union membership rate of employee and employee shareholder board representatives.

Graph 11: Trade union membership



The first observation is that the rate of unionisation for employee shareholder representatives is stable. That the rate is less than 30% is not surprising since this category of representative is considered not to be part of the world of trade unions (Pagano & Volpin, 2005).

The second observation concerns the effect that we attribute to the 2013 law, which in particular impacts the types of employee representation within the board of directors. By introducing these various types of representation, the rate of unionised employee representatives has automatically decreased, as election among employees is no longer the norm.

It should be noted, however, that the mandate of a representative elected by the employees or appointed in application of Article L.225-27-1 of the Commercial Code is incompatible with any mandate of trade union delegate or member of the social and economic committee (Article L225-30 of the Commercial Code). Declaration of trade union membership by employee directors or by the companies in which they are directors does not always seem to be the rule, according to the CFE-CGC, the managers' union, during our meeting on the first draft of this report. Indeed, the CFE-CGC emphasised that trade union membership is

considered to be sensitive data that cannot be used without the consent of the persons concerned (Article 9 of the RGPD).[8] Our statistics on the unionisation rate must therefore be interpreted with caution.[9]

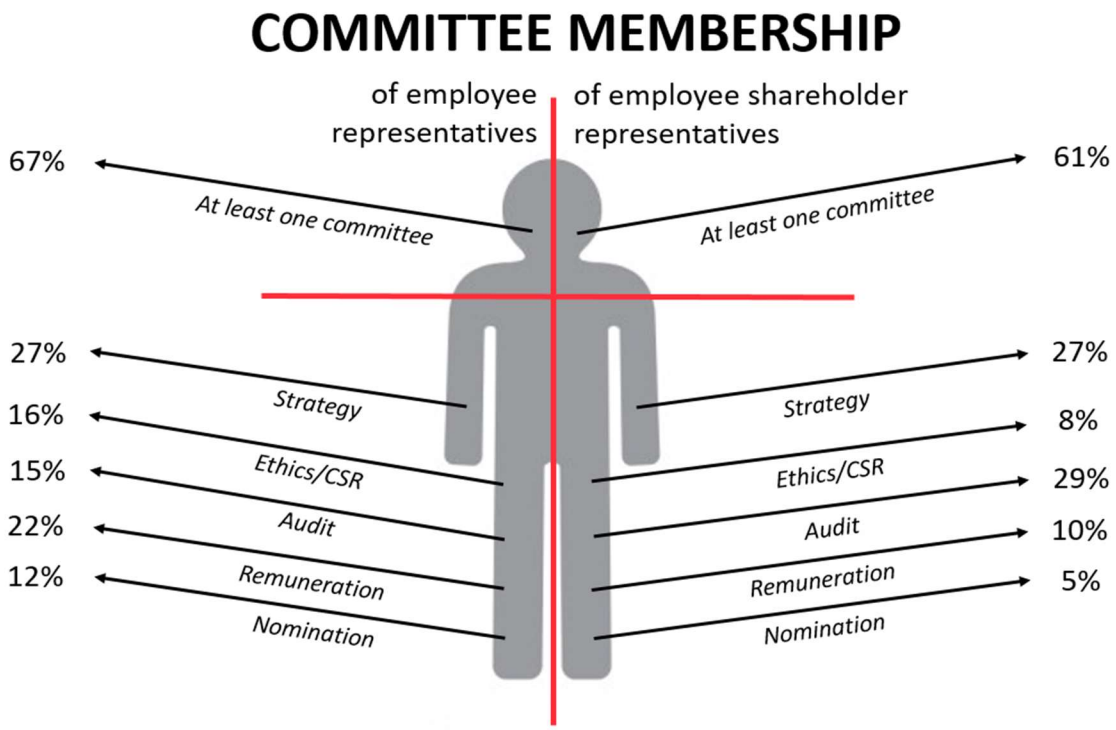
4. Membership of a specific committee

The aim of this section is to map the membership of the two categories of employee representatives on specific board committees. We provide firstly an analysis of the averages and secondly the trends in these memberships over the period.

4.1. Analysis of averages

Figure 2 compares the average membership of board committees for employee representatives and employee shareholder representatives.

Figure 2: Diagram of committee membership



[8] https://www.cnil.fr/fr/cnil-direct/question/une-donnee-sensible-cest-quoi

[9] We cross-tabulated the rate of union membership by type of employee board representation. It is clear that the unionisation rate is highest among representatives elected by the employees as a whole (89.67%) and reaches 100% among representatives elected by the union organisation that received the most votes in the first round of elections. The unionisation rate for representatives appointed by the works council or the European works council is 34.55% and 21.78% respectively.

The mission of the specific committees is to contribute to the board's deliberations and to support its decision-making. The frequency of the meetings is not fixed, but is determined according to the progress of the work. They operate on the basis of major tasks (CSR, appointments, audit, remuneration, etc.). It should be noted that some companies (e.g. Orange) like to have an employee representative on each specific committee. The IFA recommends that directors representing employees participate in the work of specific committees. [10]

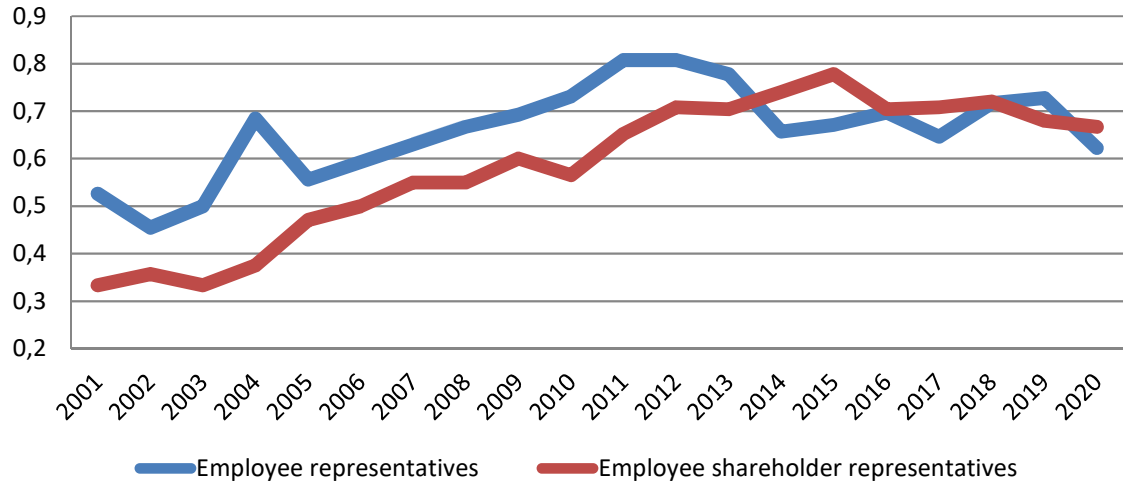
In concrete terms, Figure 2 shows that on average two out of three employee and employee shareholder representatives are members of a committee each year over the period. Employee representatives participate twice as much as employee shareholder representatives in CSR, nomination and remuneration committees. The analysis of trends in the following section will provide a better understanding of the dynamics at work.

4.2. Analysis of trends

4.2.1. Committee membership

Graph 12 shows the evolution of average membership of at least one committee.

Graph 12: Committee membership



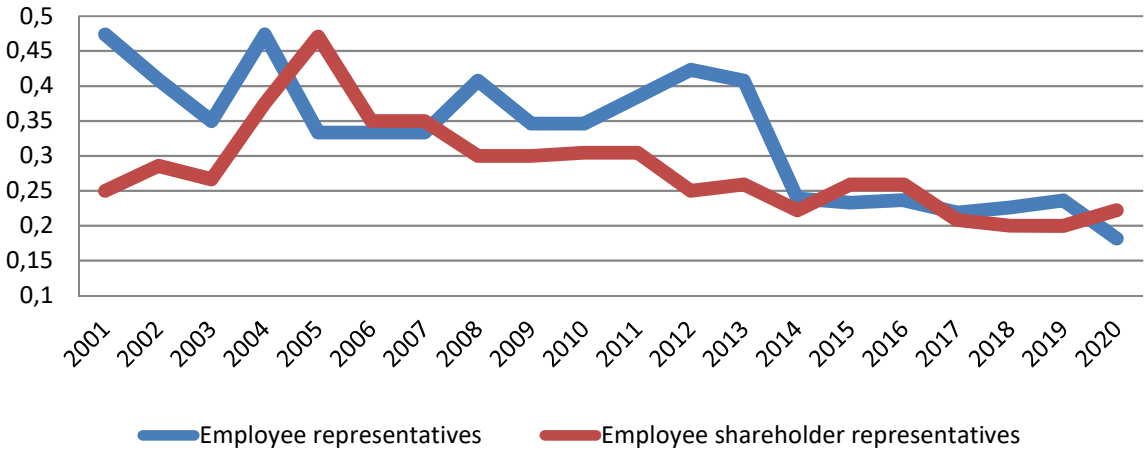
Over the whole period, the trend in committee membership is upwards, both for employee representatives and employee shareholder representatives. According to some trade unions,[11] increased participation in all committees is necessary to ensure effective participation in decision-making.

[10] IFA, "Les administrateurs salariés dans la gouvernance: une dynamique positive", Les travaux de l'IFA July. 2013, p. 3.
[11] https://lentreprise.lexpress.fr/actualites/1/actualites/salaries-dans-les-conseils-d-administration-la-loi-pacte-va-renforcer-leur-presence_2018327.html

4.2.2. Membership of the strategy committee

Graph 13 shows the evolution of the membership of employee representatives and employee shareholder representatives in the strategy committee. Sometimes presented as specific to France,[12] the strategy committee helps determine the company's strategy and monitors its implementation. It may also be called upon to study external growth or major investment projects.[13]

Graph 13: Strategy committee



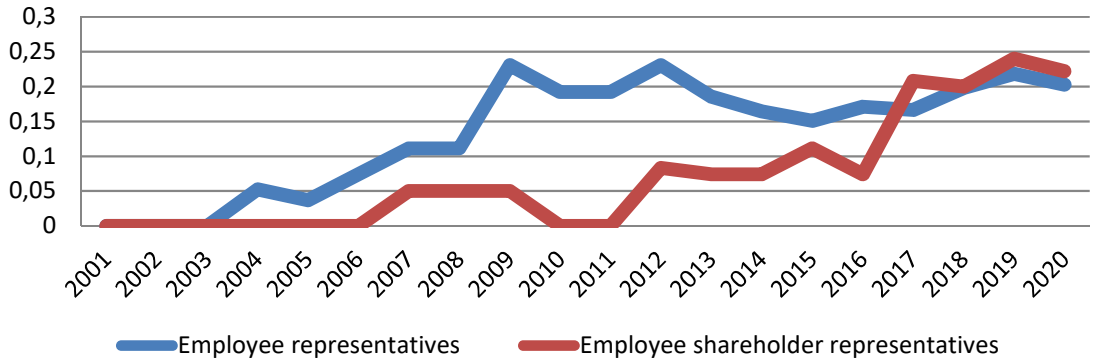
Over the period as a whole, membership of both categories of employee representatives on the strategy committee decreases. The decline is more marked for employee representatives than for employee shareholder representatives. These findings corroborate certain statements made in public discussion by the directors themselves, who often complain that they are restricted to other committees rather than being on the strategy committee, which they would like to join.[14]

4.2.3. Membership of the CSR Committee (or equivalent)

Graph 14 depicts the evolution of the membership of the CSR committee (sometimes called the ethics or sponsorship committee) of employee and employee shareholder representatives. The role of this committee is less formalised, and can be summarised by the structuring of management initiatives within CSR policies. The IFA states, for example, that it is "advantageous" for an employee director to sit on the CSR committee, while reminding us that this committee should maintain exchanges with the other committees, so as not to restrict CSR to itself alone.[15]

[12] https://www.lesechos.fr/2013/10/conseils-dadministration-a-quoi-servent-les-comites-specialises-330773
[13] https://www.ifa-asso.com/mediatheques/quel-est-le-role-du-comite-strategique/
[14] https://lentreprise.lexpress.fr/gestion-fiscalite/a-quoi-sert-un-administrateur-salarie_2017179.html
[15] Presentation of the IFA's CSR Club by France Stratégie, 16 May 2014 (available online).

Graph 14: CSR committee

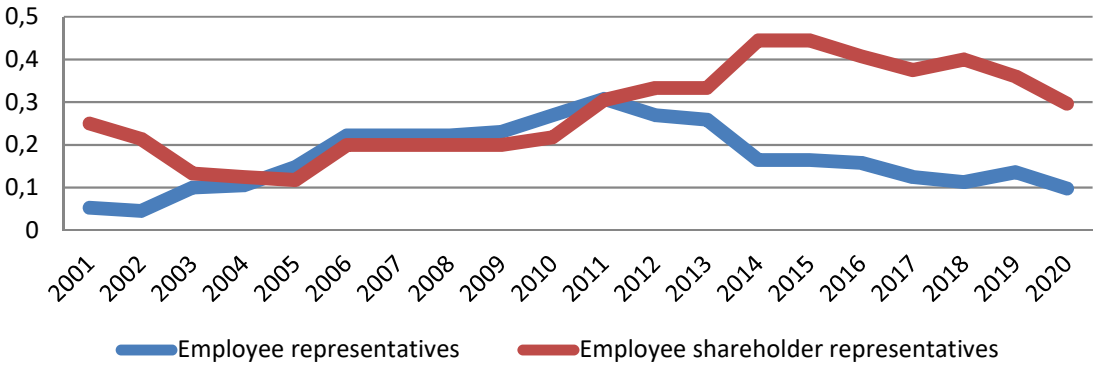


The CSR committee is often reserved for employee representatives, to the detriment, in the opinion of some representatives, of the strategy committee.[16] However, a major change has been seen since 2016, involving the equal participation of employee and employee shareholder representatives in this committee. This change appears to have occurred following the introduction by the French government in 2016 of a plan for the development of CSR in response to the European Commission's consultation for gathering stakeholders' views on the guidelines on extra-financial reporting. This plan for the development of CSR also seems to account for the significant growth in the number of CSR committees in the boards of French SBF 120 companies.[17]

4.2.4. Membership of the audit committee

Graph 15 depicts the evolution of the membership of employee and employee shareholder representatives on the audit committee. The only committee whose tasks are specified by legislation,[18] the audit committee is responsible for monitoring the preparation of financial information, the effectiveness of internal control and risk management systems, the statutory audit of the annual (and consolidated, if applicable) financial statements, and the independence of the statutory auditors.

Graph 15: Audit committee



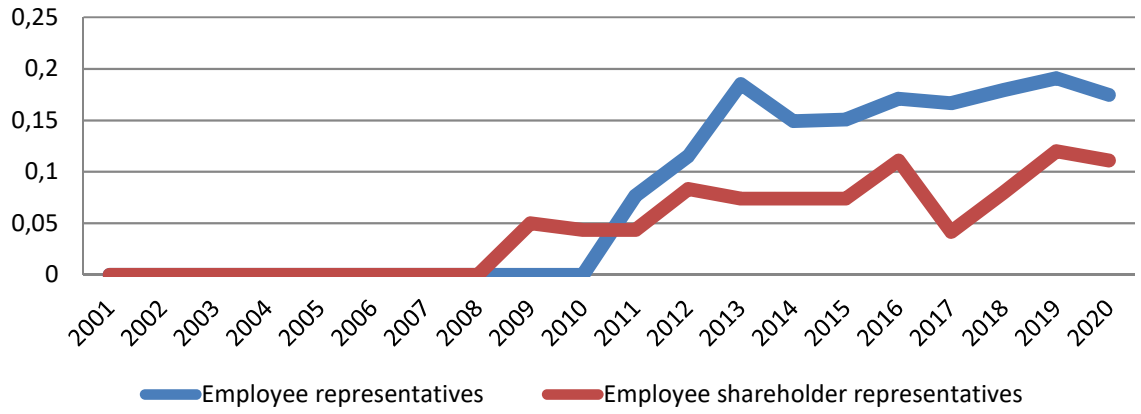
[16] https://lentreprise.lexpress.fr/gestion-fiscalite/a-quoi-sert-un-administrateur-salarie_2017179.html
[17] https://www.novethic.fr/actualite/entreprise-responsable/isr-rse/le-virus-de-la-rse-atteint-les-conseils-d-administration-150003.html
[18] https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000019900011/

Graph 15 shows that in 29% of cases employee shareholder representatives are members of the audit committee, with a notable increase as from 2010. There is a downward trend in the participation of employee representatives in audit committees from 2011 onwards. As shareholders, employee shareholder representatives are naturally more inclined to take an interest in the issues dealt with by this committee, particularly those relating to the quality of financial statements.

4.2.5. Membership of the nomination committee

Graph 16 depicts the evolution of the membership of employee and employee shareholder representatives in the nomination committee. The role of the nomination committee is to professionalise the methods of recruiting directors, by providing proposals or recommendations concerning the profiles required to complement the skills already present on the board.[19]

Graph 16: Nomination committee

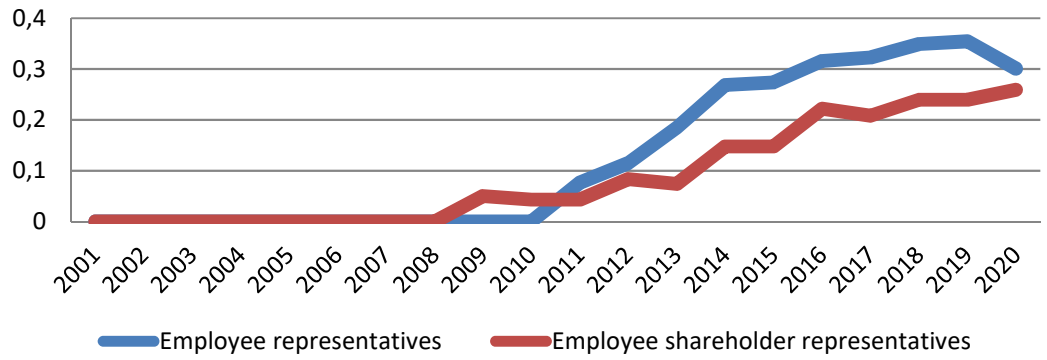


4.2.6. Membership of the remuneration committee

Graph 17 depicts the evolution of the membership of employee and employee shareholder representatives in the remuneration committee. The role of the remuneration committee is to ensure that executive remuneration is incentive-based, thereby enabling the recruitment and retention of the best executives, whilst being aligned with the performance requirements of the company and with the interests of shareholders.[20] The AFEP-MEDEF Code on Corporate Governance recommends that a director representing employees be a member of the remuneration committee.[21] This recommendation is consistent with the objective of aligning the remuneration of the executive director with that of the company's other managers and its employees.

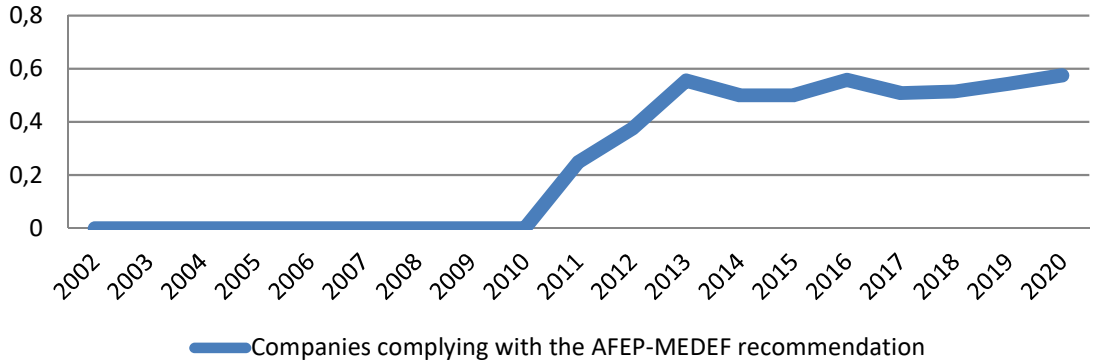
[19] https://www.ifa-asso.com/mediatheques/quel-est-le-role-du-comite-de-nomination/
[20] https://www.ifa-asso.com/mediatheques/quel-est-le-role-du-comite-de-remuneration/
[21] https://www.actu-juridique.fr/affaires/societes/les-administrateurs-representant-les-salaries-et-le-rapport-lentreprise-objet-dinteret-collectif/#ftn27

Graph 17: Remuneration committee



The graph below shows the percentage of companies complying with the AFEP-MEDEF code recommendation on the membership of an employee representative in the remuneration committee. The average percentage is around 46% over the entire period, rising sharply from 2010 and then stagnating from 2013. Since the enactment of the Employment Security Act, only slightly more than half of the companies with at least one employee representative have complied with the recommendation. This finding helps to put the binding and incentive nature of the AFEP-MEDEF code into perspective.

Graph 18: Companies complying with the AFEP-MEDEF recommendation on the participation of an employee representative in the remuneration committee



The participation of an employee board representative in the remuneration committee (or equivalent) is recommended by the AFEP-MEDEF code. In the course of various hearings prior to the publication of the AFEP-MEDEF report by government agencies (e.g. France Stratégie), professional associations (e.g. IFA) and trade union organisations (e.g. CFE-CGC), we felt it was appropriate to conduct further research into the general registration documents in order to identify, in accordance with the principle of "comply or explain", the reasons why certain companies do not follow this recommendation. For the year 2020 alone, we identified a total of 26 companies that do not comply with the AFEP-MEDEF Code regarding the participation of an employee director on the remuneration committee (or similar).

There are many reasons for this non-compliance, although some companies simply do not provide an explanation, or follow another reference framework, such as the Middlenext Code (e.g. ALTEN, VICAT). Others provide explanations to justify their decision, using arguments that are often complex and at odds with the spirit of the AFEP-MEDEF recommendation. Some companies say that the inclusion of a representative in the remuneration committee was not deemed "appropriate" (e.g. IPSOS, DANONE), a position that in our view is incompatible with the "comply or explain" principle, while some deny the relevance of the recommendation (e.g. ENDERED). Other companies appear to include an employee shareholder representative rather than an employee representative (e.g. AIR FRANCE-KLM, EIFFAGE), which seems to us to be an inaccurate reading of the AFEP-MEDEF code. Some companies explain their failure to comply with the recommendation in terms of their internal appointment method, and say, for example, that they allow their employee directors to choose the committee to which they wish to belong (e.g. PUBLICIS), or that they have opted a compensation committee comprised entirely of independent directors (e.g. LVMH). Some companies with SCA status also appear not to follow the recommendation because of this specific legal status. In cases where 2020 was the year for renewal of the mandates of directors representing employees, some companies said that they required a period for new representatives to adapt before including them in the committee (e.g. ALSTOM, MICHELIN), thereby accounting for temporary non-compliance with the recommendation. A final case, more anecdotal but certainly original, is that of PLASTIC OMNIUM, which, according to our reading of the report, offers no explanation for the absence of an employee director in its remuneration committee, even though its CEO is the president of AFEP (the French Association of Private Enterprises), the originator of the code whose compliance we are examining here.

5. Key points and recommendations

This section aims to highlight three points that we consider particularly interesting and important, and then to propose three recommendations for decision-makers, in line with the operational scope of this report.

5.1. Key points

→ **Point 1**. Employee shareholder representatives, who were taken into account before the PACTE Act in the calculation of the gender quota enacted by the French legislature in 2012, appear to contribute significantly to the feminisation of boards of directors.

→ **Point 2**. While the rate of participation in specific committees (exceeding 60% over the whole period) seems to stem from a sincere desire on the part of companies to involve employee representatives and employee shareholder representatives to a greater extent in the decision-making process, there are significant differences

between the two categories of representatives in the rate of participation in the various committees.

→ **Point 3**. For both categories of employees, membership of the strategy committee decreases over time, to the benefit of other committees such as the CSR committee, the nomination committee and/or the remuneration committee.

→ **Point 4.** The trends observed with regard to the participation of employee representatives in the remuneration committee (or similar) show that the effect of the "soft law" constituted by the AFEP-MEDEF code is limited, and that some companies choose to circumvent it, offering various types of explanation or sometimes no explanation at all.

5.2. Recommendations

→ **Recommendation 1**. Act to improve the transparency of the tasks allocated to the various committees so that they are uniformly identified with uniform wording. For example, the two committees Strategy and CSR can be grouped into a single committee, following the example of Cap Gemini or Vinci. Doing so has the advantage of reducing the animosity created by the idea that one committee is more important than another. If these two committees are kept separate, it may be assumed that membership of one automatically implies membership of the other. These considerations could also apply to the nomination committee and the remuneration committee.

→ **Recommendation 2**. Each employee representative should be a member of at least one of the board's specific committees. Some companies allow their employee representatives to choose which committee they wish to join. Combining such a practice with compliance with the AFEP-MEDEF code on remuneration committees would make it possible to move towards freer and more transparent employee representation on the board and its committees.

→ **Recommendation 3**. Support the creation of an observatory on co-determination and invite relevant organisations to participate in its funding, consider the annual monitoring of the trends given here, and undertake further specific work in order to understand them in greater depth, in partnership with funders.

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Directors' Circle of the CFE-CGC trade union, 8 September 2022,
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CFE CGC CONFÉDÉRATION FRANÇAISE DE L'ENCADREMENT-CGC

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