OECD Corporate Governance Working Papers No. 24

The role of board-level committees in corporate governance

Marie-Estelle Rey

https://dx.doi.org/10.1787/8a97a3f6-en

OECD

CORPORATE GOVERNANCE WORKING PAPER SERIES

OECD Corporate Governance Working Papers provide timely analysis and information on national and international corporate governance issues, including capital market developments, state ownership and privatisation policies. The working paper series is designed to make select studies by the OECD Corporate Governance Committee, OECD staff members and outside consultants available to a broad audience.

OECD CORPORATE GOVERNANCE WORKING PAPERS are published on https://doi.org/10.1787/22230939

The role of board-level committees in corporate governance

By

Marie-Estelle Rey*

This paper presents a review of the different committees set up by the boards of directors of companies to support their functions. It first focuses on the role of and trends in board committees, their contribution to corporate governance and their evolving role in light of the impact of the COVID-19 crisis and emerging issues. It then addresses the functioning, composition and accountability of committees, notably in terms of risk management and sustainability, and their impact on the effectiveness of boards.

Authorised for release by Carmine Di Noia, Director, OECD Directorate for Financial and Enterprise Affairs.

Keywords: Corporate governance, board of directors, board committees, audit committee, nomination committee, remuneration committee, risk management, sustainability, diversity, independent directors.

JEL Classification(s): G3, K2, M1, M2, M4.

* This paper was prepared by Marie-Estelle Rey, Senior Policy Analyst, under the supervision of Serdar Çelik, Acting Head of Division, both of the Corporate Governance and Corporate Finance Division of the OECD Directorate for Financial and Enterprise Affairs. It benefits from discussions within the OECD Corporate Governance Committee and incorporates comments from delegates.

Table of contents

FIGURES

Introduction

This paper offers a review of the role of the different committees set up by company boards of directors to support their functions, the trends in their establishment across jurisdictions, and their key features in terms of internal functioning, composition and accountability. The paper aims at informing policy makers on some relevant factors to consider when evaluating and improving their legal, regulatory and institutional frameworks for corporate governance, in particular regarding the role and responsibilities of the boards and disclosure requirements. The paper supports the OECD Corporate Governance Committee's ongoing review of the G20/OECD Principles of Corporate Governance, the international standard in the field of corporate governance.

The role of committees has significantly evolved in the last 20 years, with new regulations and recommendations and numerous and diverse business practices. The COVID-19 crisis, which put boards under high pressure, has triggered more reflection on their use and increased discussions on their expected role to assist boards in fulfilling their functions. Besides the three "traditional" committees (audit, nomination and remuneration) required or recommended in most jurisdictions, additional committees have been established. The role of committees has been increasing as a result of the growing complexity of the business environment and the evolving nature of risks. Hence, their functions have expanded from a strictly monitoring role to provide more encompassing and forward-looking advice to the board. Indeed, boards may need additional support to deal with their broadening and challenging responsibilities, emerging complex risks, and more technical and specific issues. Therefore, they may tend to rely more on committees, while decision-making remains their entire responsibility. Other key principles to consider are flexibility and proportionality in their establishment, as increasingly reflected in regulations.

This paper aims to contribute to a better understanding of these developments, with a view to supporting the review of the G20/OECD Principles and the adaptation of related provisions in national corporate governance frameworks. The paper first focuses on the role of and trends in board committees, their contribution to corporate governance and their evolving role in light of the impact of the COVID-19 crisis and emerging issues, with reference to the recommendations of the G20/OECD Principles. It then analyses the functioning, composition, and accountability of committees, notably in terms of risk management and sustainability, and their impact on the effectiveness of boards.

1 Scope and background

The board of directors of a company is primarily responsible for monitoring managerial performance and providing strategic guidance to the management. In doing so, the board typically sets up specialised committees to carry out specific tasks with a view to support and improve its work. Committees perform both monitoring and advisory functions for the board, knowing that the latter retains collective responsibility for decision-making. Their importance has grown over time due to increased legal requirements and recommendations, corporate scrutiny, shareholders' and stakeholders' pressure on boards, and the more complex business environment.

Furthermore, during the COVID-19 pandemic, boards and their committees came under pressure to adapt the functioning of their companies to address emerging issues and risks. Experience from the crisis has prompted some policy makers and market participants to take a closer look at the use and operations of committees and the need to take into account the increasing attention devoted to risk management issues and growing environmental and social pressures. To ensure market confidence and long-term growth, boards and their committees may also be tasked with considering **emerging trends**, including environmental, social and governance (ESG) risks, corporate trust, diversity, increased activism, risks and opportunities related to evolving digital technologies (e.g. blockchain, artificial intelligence), supply chain risks and new global tax requirements.

Three **types** of board-level committees – audit, nomination and remuneration – are most commonly called for by law or listing rules or recommended by corporate governance codes in most jurisdictions. Over time, other committees that also serve on a continuous basis have emerged to support and advise the board on issues such as risk management, sustainability, ethics, corporate social responsibility, environment, technology and innovation. Some firms may also set up *ad hoc* committees or task forces to deal with a specific time-bound issue. Besides the most common committees, practices vary and are influenced by the company's size, structure, sectors or level of development. Local contexts may also influence requirements or recommendations (e.g. mandatory social and ethics committee in South Africa). Most regulations and codes of corporate governance deal with board committees, but significant differences can be observed, notably regarding the level of details specified for the composition, functions or responsibilities of committees.

It is also important to note at the outset that jurisdictions have varying legal frameworks, patterns and traditions for the structuring of boards and committees, notably with respect to single-tier (or unitary) vs. two-tier board structures. The G20/OECD Principles, in the introduction, are formulated to embrace both of these models, with the term "board" intended to refer to the supervisory board in two-tier structures, while "key executives" refers to the management board. While many of the issues and challenges related to the establishment and functioning of board committees are the same under either board structure, these differing structures in some cases also have different implications for board committees, for example with respect to the independence of their members. Such differences will be noted as relevant in the treatment of these issues in the paper.

The **G20/OECD Principles of Corporate Governance** recognise that "boards should consider setting up specialised committees to support the full board in performing its functions, particularly in respect to audit, and, depending upon the company's size and risk profile, also in respect to risk management and remuneration. When committees of the board are established, their mandate, composition and working procedures should be well defined and disclosed by the board" (Principle VI.E.2). Several other provisions in various chapters relate to committees and provide further recommendations on the establishment and functioning of these committees, on independence requirements, in particular regarding the audit committee, and on the role of the nomination and remuneration committees in preventing conflicts of interest.

The **origin** of corporate board committees dates back to the 1940s in the United States when the Securities and Exchange Commission (US SEC) recommended the establishment of audit committees comprising non-executive directors. In 1972, new US SEC rules required firms to disclose the audit committee composition. Since the early 2000s, a significant global trend has been the growth in the use and number of board committees. Following corporate and accounting scandals, the Sarbanes-Oxley Act (SOX)[1] was enacted in 2002 and followed by the revision of stock exchange standards in the United States. The SOX Act, with the aim of protecting investors by improving the accuracy and reliability of corporate disclosures, mandated the adoption of exchange listing rules to require listed issuers to have independent audit committees "for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer", noting that if no such committee exists, the audit committee means the entire board of directors (Sections 205 and 301, SOX). Each member of the audit committee shall be a member of the board and be independent (Section 301, SOX). Following SOX, the New York Stock Exchange (NYSE) adopted rules in 2003 to require listed issuers to establish fully independent nomination and compensation committees.

The impact was important and more and more countries have followed this trend, imposing the establishment of some committees, in particular audit committees, and recommending others to respond to specific needs. The European Commission recommended in 2005 the establishment in all Member States of the three traditional committees, as a key feature of the corporate governance framework (European Commission, 2005[1]). The 2006 Statutory Audit Directive (2006/43/EC) further regulated audit committees.

In addition to more stringent provisions in legal and regulatory frameworks, the proliferation of board committees has also been driven by other factors, such as stakeholder and institutional pressure, class-action lawsuits, increased competence and expertise of independent directors, evolution of CEOs' role and behaviour, and diversity requirements (Kolev et al., 2019[2]).Board committees present many **benefits** but also **costs** and disadvantages that need to be taken account of to ensure boards' efficiency and productivity.

The G20/OECD Principles recognise the positive role of committees. Principle VI.E.2 states that "where justified in terms of the size of the company and its board, the use of committees may improve the work of the board." European Union legislation further emphasises this role, mentioning that "the primary purpose of committees should be to increase the efficiency of the board by making sure that the decisions are based on due consideration, and to help organise its work with a view to ensuring that the decisions it takes are free of material conflicts of interest" (EC Recommendation 2005/162/EC).

In addition to enhancing the board's effectiveness, supporting its managerial and co-ordination functions and specific or technical tasks, committees usually allow for labour division and more efficient task allocation for directors (task-division efficiency). They also help leverage directors' time and expertise, which contributes to knowledge specialisation and more precise advice to boards. The specific issues addressed by committees often require frequent meetings, exchange of information and opinions, and a level of consensus, for committees to be able to make useful and informed recommendations for board decisions. Committees can also balance the power of the board or a powerful CEO and increase the accountability of the board through greater separation from management. In theory, they can reduce the

[1] https://www.govinfo.gov/content/pkg/PLAW-107publ204/pdf/PLAW-107publ204.pdf.

information asymmetry between the management, the board and independent directors, as well as corporate misconduct.[2]

However, committees may also have disadvantages and costs. First, they can impair communication, create silos within the board and produce information segregation. Their members may not benefit from the full range of experience represented in the board and may lack knowledge and understanding of the firm's strategy. In addition, some members may strategically withhold or manipulate information. Directors appointed to a specific or powerful committee may enjoy status differences and greater power within the board (Chen and Wu, 2016[3]; Gilson and Gordon, 2019[4]; Kolev et al., 2019[2]). However, "it is not clear how [committees] affect aggregate group information production and decision-making" (Adams, 2020[5]). To alleviate this concern, some firms allocate independent directors to several committees, though raising the issue of directors' busyness.

Second, the proliferation of committees creates additional expenses for the company. Their workload and responsibilities can increase together with the occurrence and length of committee's meetings.[3] In addition, directors sitting on multiple boards (busy externally) tend to sit on more committees in each firm (busy internally) (Lee, 2020[6]). This multitasking or overboarding of independent directors can improve board performance, but can be burdensome and create diversion. Hiring external experts, advisors or counsels to support the work of the committee can also be costly and may not be fully efficient. Third, committees' membership may raise concerns. Questions on composition, independence and relationship with the management, auditors and external advisors need to be carefully assessed and regularly reviewed to fulfil the company's objectives. Fourth, the liability of committees and their members can raise issues that need to be carefully handled (Lumsden, 2004[7]) (see Section 3.3). Finally, the proliferation of committees may increase the risk of dilution of collective professionalism, power and accountability of the entire board.

Research on board committees is scarce compared to literature on boards. The few studies on the impact of committees do not provide clear results due to the diversity of committees, the differences in legal frameworks, the variety of firms, and difficulties related to measurements. However, research tends to show that committees play an important role in firms' functioning and corporate governance (Adams, 2020[5]) and that audit committees have the largest benefits. Overall, it is recognised that committees can have a valuable impact in terms of board monitoring, executive behaviour, accounting and nomination practices, and investors' and stakeholders' perceptions.

---

[2] (Kolev et al., 2019[2]) showed that committees can have an impact on corporate misconduct and inappropriate behaviour, such as earnings management, fraud and stock option manipulation. "Research has consistently shown that stronger monitoring by committees, measured as having a majority of independent directors serving on at least two of the three major committees, reduces abnormal accruals." Kolev added that "greater expertise and stronger diligence at the committee level, especially in the audit committee, are appropriate mechanisms for preventing or reducing managerial misconduct." A well-functioning audit committee improves the quality of financial reporting, the conformity of companies' statements and the earnings forecasts.

[3] "The increased workload of committees disproportionately affected outside directors. Outside directors spent approximately 40% of annual operations (responsibilities and meetings) in committee at the start of our sample and about 60% at the end" – sample period: 1996-2010 (Adams, 2020[5]).

2 Role and trends

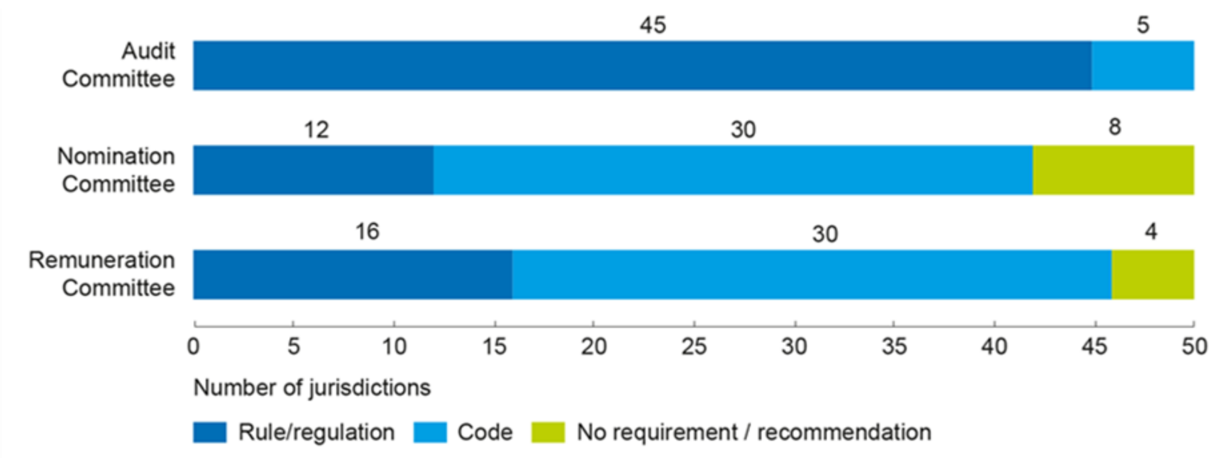
This section focuses first on the three traditional committees and reviews their role, the related provisions in the G20/OECD Principles and recent developments in jurisdictions. It then analyses other committees set up for specific purposes with advisory functions, with a particular focus on risk management and sustainability.

2.1. Traditional committees: audit, nomination and remuneration

The G20/OECD Principles refer to board-level committees in three different chapters. The main references to the establishment and functioning of the committees are in chapter VI on the responsibilities of the board. Chapter V on disclosure and transparency deals with the independence requirements of committees' members, especially of the audit committee, while chapter II on rights and treatment of shareholders refers to the nomination committee. The specific elements of these recommendations are described in greater detail below.

According to the 2021 OECD Corporate Governance Factbook which surveys 50 jurisdictions, "nearly all jurisdictions (90%) require an independent audit committee. Nomination and remuneration committees are not mandatory in most jurisdictions, although a similar proportion of jurisdictions at least recommend these committees to be established and often to be comprised wholly or largely of independent directors" (OECD, 2021[8]) (Figure 2.1).

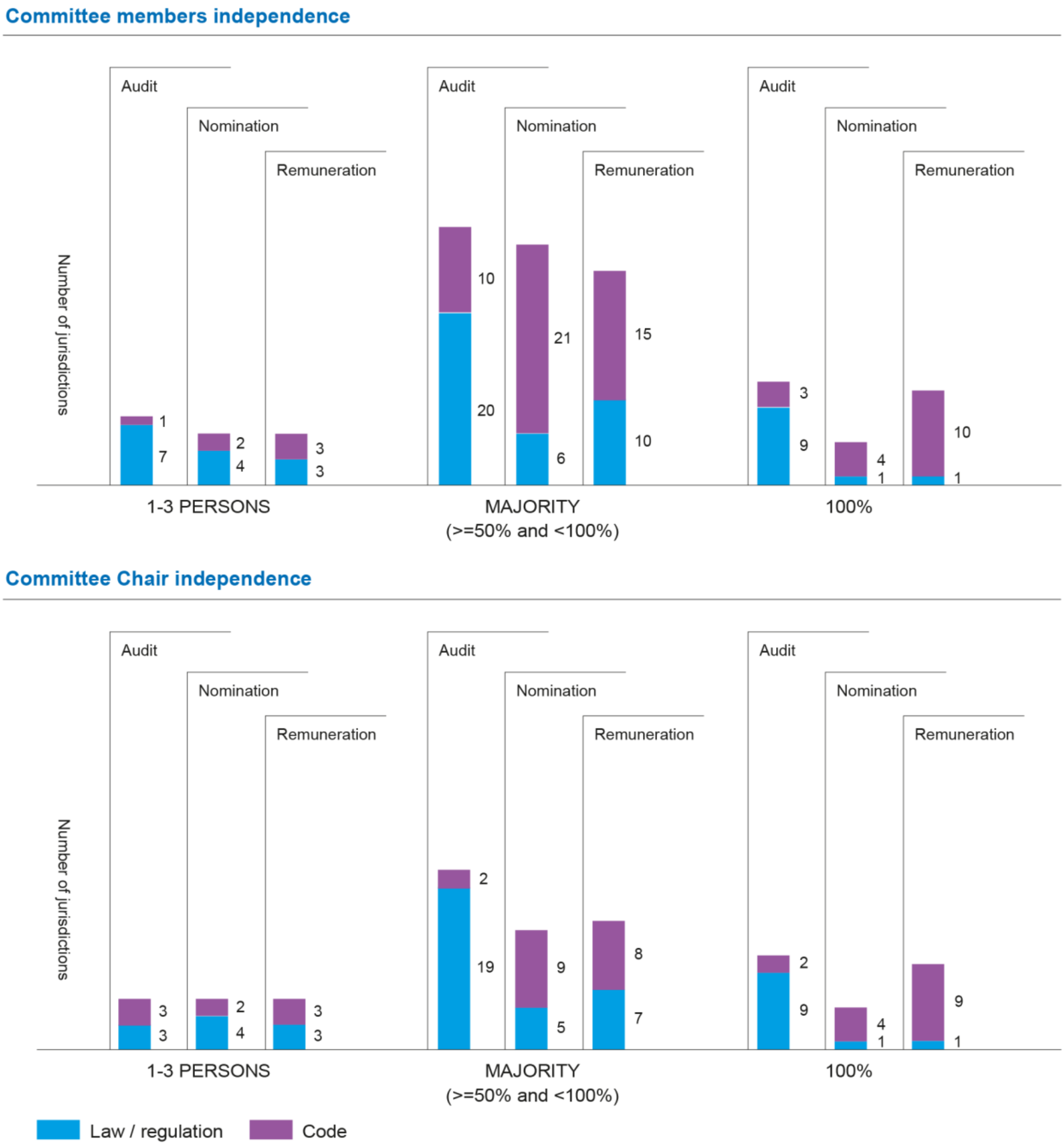
Figure 2.1. Board committees by category and jurisdiction



Note: Based on 50 jurisdictions.
Source: OECD (2021[8]) Corporate Governance Factbook 2021, https://www.oecd.org/corporate/corporate-governance-factbook.htm.

The Factbook also analyses the composition of committees and the level of independence of their members and the chair (Figure 2.2). The audit committee remains the most regulated in terms of members' and chairs' independence (see Section 3.2).

Figure 2.2. Independence of the chair and members of board committees



Note: The upper figure shows the number of jurisdictions overall and the specific provisions for independence for the members of the audit, nomination and remuneration committees. The lower figure shows the number of jurisdictions that require or recommend committee chair independence, differentiated by their overall requirements or recommendations for independence among members of the three types of committees. Based on 50 jurisdictions. Jurisdictions with multiple requirements or recommendations counted more than once.
Source: OECD (2021[8]) Corporate Governance Factbook 2021, https://www.oecd.org/corporate/corporate-governance-factbook.htm.

2.1.1. Audit committee

The audit committee plays a key role in corporate governance by overseeing the companies' financial reporting and disclosure. The vast majority of jurisdictions now require its establishment by law, regulations or listing rules (90%), or recommend it through corporate governance codes. When not mandatory by law, codes recommend voluntary audit committees depending on the size of the company (e.g. Peru) or for its functions to be handled by the board, though tasks are usually defined by law (e.g. Brazil, Finland, Sweden).[4] A majority of the 50 jurisdictions analysed in the OECD Factbook (58%) require the audit committee to have at least a majority of independent directors, while 26% recommend it in their codes (Figure 2.2). Only seven jurisdictions require independence of all members in their legislation (Canada, Hungary, Mexico, Türkiye, Slovenia, South Africa and the United States). The chair of the audit committee should be independent by law in 27 out of the 50 jurisdictions.

The establishment of audit committees and the definition of their role have been subject to more binding rules, starting from the early 2000s in the United States and then in the European Union and worldwide. The audit committee's duties usually include oversight of financial reporting, monitoring of accounting policies, oversight of external auditors and internal control system, implementation of regulatory compliance, and review of risk management systems (even though the latter can be assigned to a risk committee).

Most jurisdictions provide general requirements on the composition and independence of audit committees, though the level of detail differs. The 2002 Sarbanes-Oxley Act, by introducing requirements to strengthen the role of audit committees in financial reporting, instilled some good practices that inspired other countries. According to the EU Directive 2014/56/EU (European Parliament, 2014[9]), the audit committee shall: inform the administrative or supervisory body about the outcome of the statutory audit; monitor the financial reporting process and submit recommendations to ensure its integrity; monitor the effectiveness of the internal quality control and risk management systems; review and monitor the independence of the statutory auditors or the audit firms, and be responsible for the selection procedure and recommend appointments (Article 39). The Commission Recommendation 2005/162/EC (European Commission, 2005[1]) provides further guidance on the establishment and functions of the audit committee, mentioning that it should also oversee the independence, objectivity and effectiveness of the external auditor. Some jurisdictions, either in laws or codes, also give detailed provisions on its role and functioning (e.g. Section 4 of the UK Code of Corporate Governance (Financial Reporting Council, 2018[10])).

Audit committees in the G20/OECD Principles

The G20/OECD Principles address the audit committee in several board and disclosure related principles and their annotations. Principle VI.E.2 recommends the establishment of an audit committee to support the board in performing its functions. The setting up of this committee, together with the remuneration and nomination committees, is also considered as a means to address conflicts of interest: "The board should consider establishing specific committees to consider questions where there is a potential for conflict of interest." (VI.E.1). Another function relates to accounting policies: "it should also be regarded as good practice for this committee, or equivalent body, to review and report to the board the most critical accounting policies which are the basis for financial reports" (VI.D.7). Some jurisdictions go beyond, encouraging audit committee involvement in the implementation of new accounting standards (US SEC) or increasing convergence related to these standards (EU).[5]

[4] The **EU** Directive 2014/56/EU provides that "in view of the size of boards in companies with reduced market capitalisation and in small and medium-sized public-interest entities, it is appropriate to provide that the functions assigned to the audit committee for such entities, or to a body performing equivalent functions within the audited entity, may be performed by the administrative or supervisory body as a whole". Similar provision is found in the **US** SOX Act.

[5] **US** SEC issued a Statement on Role of Audit Committees in Financial Reporting and Key Reminders Regarding Oversight Responsibilities on 30 December 2019 to remind audit committees to support implementation of new accounting standards: "we encourage audit committees to engage proactively with management and auditors in the implementation process of new standards to understand management's implementation plan, including whether the

The G20/OECD Principles also address internal audit systems and external auditors, recommending additional functions for the audit committee. "The audit committee or an equivalent body should provide oversight of the internal audit activities and should also be charged with overseeing the overall relationship with the external auditor including the nature of non-audit services provided by the auditor to the company" (Principle V.C). This is reiterated in the Principle on board oversight, which "includes the establishment of an internal audit system directly reporting to the board. It is considered good practice for the internal auditors to report to an independent audit committee of the board or an equivalent body which is also responsible for managing the relationship with the external auditor, thereby allowing a co-ordinated response by the board" (Principle VI.D.7). For the board to exercise "objective independent judgment on corporate affairs", it is again recommended that "audit committees should also be able to oversee the effectiveness and integrity of the internal control system" (Principle VI.E.2).

Chapter V on disclosure and transparency describes further good practices on annual audit, the duties and accountability of external auditors and the related role of the audit committee. Annotations to both Principles V.C and V.D suggest that it is good practice that external auditors are recommended by an independent audit committee of the board or an equivalent body and that external auditors are appointed either by that committee/body or by the shareholders' meeting. Most jurisdictions now recommend that the external auditors are appointed by the shareholders' meeting directly since it clarifies that the external auditors should be accountable to the shareholders.

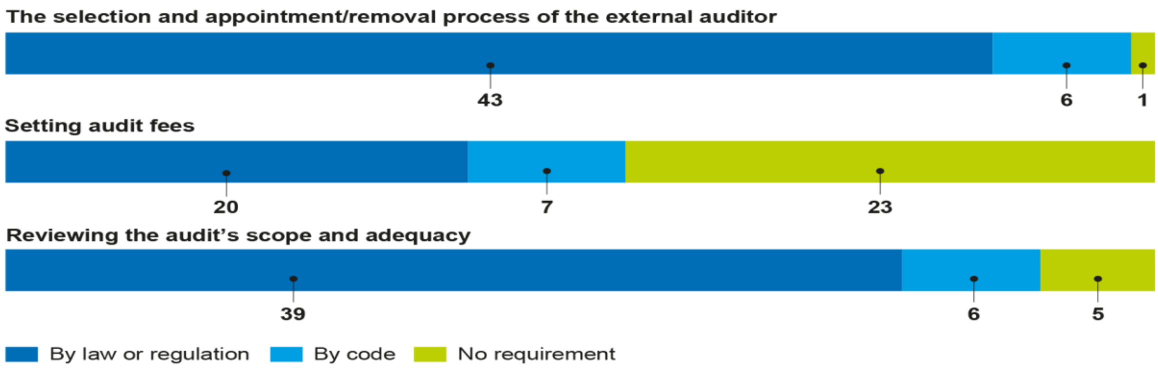
The OECD 2021 Corporate Governance Factbook reviews the role of the audit committee in relation to external audit (Figure 2.3). In all but one of the 50 jurisdictions surveyed, the audit committee is required or recommended to play a role in the selection and appointment or removal process of the external auditor of listed companies. As mentioned above, most jurisdictions now request the audit committee to make recommendations to the board and/or the annual general meeting where the shareholders appoint the external auditors. In 90% of the jurisdictions, the audit committee also plays a role in reviewing the audit's scope and adequacy. The audit committee is involved in setting the audit fees in more than half (54%) of the jurisdictions.

Finally, the G20/OECD Principles contain several references to the independence of the members of the audit committee (and of the other traditional committees). "These committees should require a minimum number or be composed entirely of non-executive members" (Principle VI.E.1). In addition, information on purpose, duties and composition of board committees "is particularly important in the many jurisdictions where boards have established independent audit committees with powers to oversee the relationship with the external auditor and to act in many cases independently" (Principle VI.E.2).

---

plan provides sufficient time and resources to develop well-reasoned judgments and accounting policies. It is also important for an audit committee to understand management's processes to establish and monitor controls and procedures over adoption and transition." The Statement also recalls the need to oversee internal control over financial reporting (ICFR) to better address related risks with management, and to enhance communication with the independent auditor https://www.sec.gov/news/public-statement/statement-role-audit-committees-financial-reporting. The **EU** Directive 2014/56/EU recalls the importance of increasing the minimum level of convergence with respect to the auditing standards.

Figure 2.3. Role of the audit committee in relation to the external audit



Note: Based on 50 jurisdictions. Jurisdictions with both requirements and recommendations regarding the role of the audit committee in the selection/removal process of the external auditor, and in reviewing the audit's scope and adequacy, are only counted once under the category of "by law or regulation".
Source: OECD (2021[8]) Corporate Governance Factbook 2021, https://www.oecd.org/corporate/corporate-governance-factbook.htm.

Recent developments

Following the COVID-19 crisis, the role of audit committees is under stronger scrutiny, not only to assess the impact of the crisis, but also to consider additional risk factors that could expand their tasks and skills required, and to improve the quality of audit processes and disclosures. As exemplified by the European Securities and Markets Authority (ESMA) in its annual public statement on 2021 Annual Financial Reports, listed companies need to assess the recovery from the crisis, which includes impacts on the financial statements and corresponding disclosures (including disclosures of government support measures and the impact of their termination).[6] In addition, audit committees are increasingly requested to better consider and disclose global risks, including climate change and other ESG risks, even though separating crisis and risk management from the audit function is a noticeable trend in some jurisdictions. Finally, compliance, conformity and care duties are expanding for audit committees, which increasingly deal with corruption risks analysis, ethics, protection of personal data, due diligence and whistleblower follow-up.[7]

A most noticeable trend for audit committees relates to **ESG-related disclosures**, and in particular climate-related disclosures, based on the company's risk strategy. Audit committees, therefore, may consider the expansion of their roles in this new landscape. However, the task is complex and challenging for several reasons. There is a great number of frameworks and standards to disclose climate-related and other ESG issues that companies may choose to apply, making consistency across time and comparability difficult (OECD, 2022[11]). The launch of the International Sustainability Standards Board (ISSB) during COP26 in November 2021, tasked with developing a global baseline of sustainability disclosure standards, may alleviate this challenge. However, the process, and the incorporation of the new standards in domestic regulatory regimes, may take time. Moreover, jurisdictions are increasingly considering assigning an oversight role to audit committees on internal reviews and external assurance on ESG disclosures and

[6] https://www.esma.europa.eu/sites/default/files/library/esma32-63-1186_public_statement_on_the_european_common_enforcement_priorities_2021.pdf.

[7] See for example, EY and Labrador (2021), Panorama de la gouvernance 2021, https://www.labrador-company.fr/wp-content/uploads/2021/10/panorama-de-la-gouvernance-2021.pdf?utm_source=sendinblue&utm_campaign=FR_Confirmation_Etude_Panorama_2021&utm_medium=email.

sustainability reports. Another issue relates to the skills and competencies on climate change disclosures. To comply with more demanding auditing and reporting requirements, audit committees members need to update and expand their skills. According to a recent survey (Deloitte, 2021[12]), nearly half of audit committee members surveyed responded that they are not well-equipped to fulfil their climate regulatory responsibilities and 60% said that their audit committee does not discuss climate change at all or as a fixed agenda item. The main challenges raised by the respondents are the lack of clear strategy and the poor quality of data. Three-fourths of audit committee members mentioned that their organisation has not completed a comprehensive climate change assessment. Just over one-third of respondents said that their organisation is reporting or planning to report on greenhouse gas emissions (as part of their TCFD disclosures). Ambiguity of measurement standards, lack of robust information on the value chain, and absence of clear parameters are the main constraints. The survey encourages audit committees to be more climate literate, better manage information and improve alignment around the company's climate strategy. However, combining climate expertise with business and financial skills remains a challenge for many companies.

Many jurisdictions have been taking significant steps to frame ESG-disclosures requirements through regulatory reforms. However, while the responsibilities and oversight of the board and management are often recognised, there is little reference to the role of the audit or other committees. An exception can be found in the US SEC proposed regulatory amendments on climate-related disclosures, which would require, if adopted, disclosure regarding oversight and guidance of climate-related risks by the registrant's board and management. Entitled "the enhancement and standardisation of climate-related disclosures for investors", the proposed rule was issued by SEC in March 2022 for public comment. The Commission explained that the proposed amendments would require the company to "identify any board members or board committees responsible for the oversight of climate-related risks. The responsible board committee might be an existing committee, such as the audit committee or risk committee, or a separate committee established to focus on climate-related risks." Additional governance-related disclosures in the proposed amendments relate to competencies, as the proposed rules would require disclosure of expertise in climate-related risks of any board members "in sufficient detail to fully describe the nature of the expertise." Further, the proposed rules would require a description of the processes and frequency by which the board or board committee discusses climate-related risks. The proposed rule also would require disclosure about whether and how the board or board committee considers climate-related risks as part of its business strategy, risk management, and financial oversight. In proposing the rules, the Commission noted that "this disclosure could enable an investor to understand whether and how the board or board committee considers climate-related risks when reviewing and guiding business strategy and major plans of action, when setting and monitoring implementation of risk management policies and performance objectives, when reviewing and approving annual budgets, and when overseeing major expenditures, acquisitions, and divestitures."[8]

Another important issue is the role of audit committees in monitoring and approving **related party transactions** (RPTs). Several recommendations of the G20/OECD Principles deal with RPTs. Chapter VI notes that an important function of the board is "to guard against abusive related party transactions", a function often assigned to the internal auditor who should maintain direct access to the board (Principle VI.D.6). It is then stated that "boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest", including the review of related party transactions. It is further stated that boards "should consider establishing specific committees to consider questions where there is a potential for conflict of interest" (Principle VI.E.1). In most jurisdictions, the board has to approve RPTs – which is also a right for shareholders (preamble of chapter II and II.F.1), and to disclose material information on RPTs for investors (Principles V.A.3 and V.A.6).

[8] https://www.sec.gov/rules/proposed/2022/33-11042.pdf.

The OECD Factbook 2021 showed that nearly three-quarters of the 50 jurisdictions surveyed require board approval of certain types of RPTs. In 21 of these jurisdictions, the review of RPTs by independent directors or the audit committee is a condition for board approval. Three-fifths of jurisdictions require shareholder approval for certain defined transactions, and in some jurisdictions (e.g. Argentina and Chile) this approval should be based on an opinion of the audit committee.

The Securities and Exchange Board of India's Listings Obligations and Disclosure Requirements Regulation 23 provides detailed provisions on RPTs. All RPTs and subsequent material modifications (to be defined by the audit committee) shall require prior approval of the audit committee, as well as prior approval of the shareholders through resolution. This is applicable for all listed companies and their subsidiaries on certain conditions. The audit committee can also grant "omnibus approval" for RPTs proposed to be entered into by the listed entity, subject to conditions (Securities and Exchange Board of India, 2015[13]). Requirements to involve the audit or a special committee in RPT approval exist in various jurisdictions. In Argentina, the board shall request a ruling from the audit committee on whether the terms of a transaction may be reasonably deemed adapted to regular and usual market condition (the committee must decide within five days). Notwithstanding consultation of the audit committee, a resolution may be adopted by the company on the basis of a report from two independent evaluation companies, which shall express their opinion on the same matter and other terms of the transaction. In Canada, an independent committee review is recommended for certain RPTs involving public companies. In Finland, the Companies Act requires that the audit committee (or, in the absence of an audit committee, the board of directors) must monitor and assess how agreements and other legal acts between the company and its related parties meet the requirements of ordinary activities and arm's-length terms. In Singapore, the Listing Manual requires the audit committee to announce whether it believes that the interested person transaction is on normal commercial terms, and is not prejudicial to the interests of the issuer and its minority shareholders, or if it wants to obtain an opinion from an independent financial adviser before making a decision (OECD, 2021[8]).

2.1.2. Nomination Committee

Nomination committees usually identify and recommend board members and executive candidates, and deal with skills and diversity, performance, succession planning (executive and non-executive), independence, tenure, overboarding and related disclosure. These committees are mandatory in only 24% jurisdictions surveyed by the OECD Factbook, sometimes depending on the size of the company (e.g. Korea). However, 60% of the jurisdictions have code recommendations to establish them on a "comply or explain" basis and 64% require or recommend having a majority of independent members. Only in Canada, Germany, Slovenia and the United States do codes or listing rules call for full independence (OECD, 2021[8]) (Figure 2.1 and Figure 2.2).

While there are large variations in the composition of the nomination committees (between 3 and 11 members), their functions are relatively similar (KPMG, 2020[14]). The European Commission Recommendation 2005/162/EC mentions that they should at least: identify and recommend, for the board's approval, candidates to fill board vacancies; assess the structure, size, composition and performance of the board and make recommendations for changes; assess the skills, knowledge and experience of directors; consider issues related to succession planning; and review the policy of the board for selection and appointment of senior management (European Commission, 2005[1]). Some codes (e.g. the French AFEP-MEDEF Code of corporate governance of listed companies (AFEP-MEDEF, 2020[15])) require the committee to define the independence criteria of its members. Others contain provisions on candidates' identification, somehow limiting the authority of the nomination committee. For example, according to the X (Ten) Principles of Corporate Governance of the Luxembourg Stock Exchange, the nomination committee shall consider all proposals submitted by the shareholders, the board or the executive management – including the CEO, especially when executive directors are under consideration (Recommendation 4.8 (Luxembourg Stock Exchange, 2017[16])). The Italian Code specifically recognises flexibility regarding the establishment of the nomination committee, notably mentioning that companies with concentrated ownership, even large ones, can assign the functions of the nomination committee to the board of directors (Recommendation No. 16 (Italian Corporate Governance Committee, 2020[17])).

Nomination committee in the G20/OECD Principles

The G20/OECD Principles emphasise the role of the nomination committee in Chapters II on shareholders' rights and VI on the board's responsibilities. They mention that "boards in many companies have established nomination committees to ensure proper compliance with established nomination procedures and to facilitate and co-ordinate the search for a balanced and qualified board." It is good practice for independent board members to play a key role in this committee. "To further improve the selection process, the Principles also call for full and timely disclosure of the experience and background of candidates for the board and the nomination process, which will allow an informed assessment of the abilities and suitability of each candidate. It is considered good practice to also disclose information about any other board positions that nominees hold, and in some jurisdictions also positions that they are nominated for" with a view to avoid conflict of interest and better assess possible overboarding (Principle II.C.4). Chapter VI recommends a formal and transparent board nomination and election process. It gives the board or the nomination committee "the responsibility to make sure that established procedures are transparent and respected and to identify potential candidates to meet desired profiles and propose them to shareholders, and/or consider those candidates advanced by shareholders with the right to make nominations." However, only the board has "a key role to define the general and individual profile of board members […], considering the appropriate knowledge, competence and expertise to complement the existing skills of the board" (Principle VI.D.5).

Recent developments

While audit and remuneration committees have received more attention in recent decades, the nomination committee is increasingly scrutinised by investors, proxy advisors, shareholders and activists looking for better accountability and transparency in its key functions (KPMG, 2020[14]). By recommending and assessing the performance and independence of board members (including the chair) and the management team (CEO and senior executives), the role of the nomination committee has increased in some jurisdictions. In fulfilling their responsibilities, nomination committees may need to consider a variety of skills to help ensure that boards and management can effectively respond to, among others, ESG considerations, global emerging risks, stakeholder governance, shareholder engagement, diversity, including gender diversity, equity and inclusion (DEI) performance, new disclosure requirements, and technological and digital changes.

While the initial focus during the COVID-19 crisis was ensuring workers' health and safety and staying financially afloat, many companies then started to assess how the crisis has changed their business and working models. This has led them to consider how to adapt their human resources and recruitment strategies and the role of the nomination committee in rethinking talent management and diversifying the pool of board members and executives. However, stronger oversight of talent management and expertise requires clear allocation of responsibilities (DeNicola, 2021[18]; Nachemson-Ekwall, 2018[19]). Human capital disclosure requirements are also expanding, adding responsibilities to the board and the nomination committee. For example, the SEC amended its rules in November 2020 to require companies to discuss, to the extent material to an understanding of their business, a description of their human capital resources, including the number of employees, and any human capital measures or objectives that they focus on in managing the business, such as measures or objectives that address the development, attraction, and retention of personnel.[9] To address the post-COVID-19 crisis challenges related to climate change, social

[9] https://www.sec.gov/rules/final/2020/33-10825.pdf and https://corpgov.law.harvard.edu/2020/10/14/the-new-sec-regulation-s-k-rules/.

pressures and technology developments, some market observers have called for more diversity in the composition of the nomination committee, notably with respect to age, qualifications and gender,[10] [11] as well as better balance of all shareholder interests.[12]

The role of the nomination committee in defining and supervising independence is also increasing, as boards are required to better exercise their independent functions on many issues, including climate change and related party transactions.

The nomination committee may also play a role in spurring diversity on boards and in management. It is more and more requested to ensure that diverse candidates are considered in board and management recruitment. With that aim, proxy advisors and asset managers are changing their voting recommendations. For example, State Street Global Advisors revised its voting guidelines and recommend voting against the chair of the nomination committee if diversity disclosure requirements are not met or if there is not at least one female board member and at least one director from an underrepresented racial or ethnic community in large listed companies.[13] Succession planning, usually in the mandate of the nomination committee, could also be a long-term strategic tool to support diversity.

As companies are called upon to deal with various increasing risks, implement more encompassing strategies in a post-pandemic environment, display more transparency (DeNicola, 2021[18]) and promote diversity, nomination committees may play a greater role in developing a variety of talents and expertise.

2.1.3. Remuneration Committee

The remuneration or compensation committee's purpose is typically formulated as advising the board on the remuneration policy that attracts talent while achieving the long-term interests and values of the company. As exemplified in many corporate governance codes, though with differences on the scope of its functions, the remuneration committee usually recommends the level of remuneration of the board's directors and senior management, determines their terms of engagement, oversees stock options packages and overall compensation, and reviews and operates performance-related pay plans for executives. Overall, its monitoring role consists in ensuring transparency and compliance, exercised through appropriate disclosures.

Remuneration committees are mandatory in only 32% of the 50 jurisdictions surveyed in the 2021 Corporate Governance Factbook, though 60% of codes recommend their establishment on a "comply or explain" basis. They are required or recommended to have a majority or full independence in 72% of

---

[10] According to (KPMG, 2020[14]), FTSE100 nomination committees have an average female representation of 37%, higher levels of gender diversity overall than boards in the same group. The study shows that "gender diversity within nomination committees appears to be correlated to the make-up of senior leadership teams."

[11] According to (KPMG, 2020[14]), the average age of FTSE100 nomination committees is 60. "Given the pace of technological change, having board members with an understanding of new technology and the agility to manage the consequential opportunities and risks is vital to success. And an age diverse nomination committee – or at least a committee open to the strategic needs of the business and the advantages of more technology savvy directors – might be useful in challenging whether a potential appointee really has the cocktail of skills needed as a FTSE leader in today's digital world."

[12] (Nachemson-Ekwall, 2018[19]) compared the nomination process in Sweden and the United Kingdom and analysed the variations in the way in which the nomination committees have been structured and operate in the two countries. In Sweden, an external nomination committee, not considered as a board committee, encourages shareholder and stakeholder engagement in the nomination process. In the UK, appointments follow an internal process in which independent board members nominate other board members for ratification at shareholder meetings. She concludes that "a flexible application of internal and external nomination committees may help to address many of the issues associated with free-riding and conflicts of interests in corporate governance while promoting sustainable wealth creation in the interest of the company and its shareholders as a whole."

[13] https://www.ssga.com/library-content/pdfs/asset-stewardship/racial-diversity-guidance-article.pdf.

jurisdictions. Only the United States requires full independence of remuneration committees, except under limited circumstances, by requiring national securities exchanges to have listing rules that require listed companies to have compensation committees comprised of independent members. Ten jurisdictions recommend full independence in their codes (Figure 2.1). Nearly all now have a requirement (41 jurisdictions) or a recommendation (7 jurisdictions) for the disclosure of remuneration policy and the level/amount of remuneration at least at aggregate levels. Disclosure of individual remuneration levels is now required or recommended in 88% of jurisdictions (OECD, 2021[8]).

Some jurisdictions require members to perform their role objectively and professionally, with integrity, and taking into consideration company culture and values, existing arrangements within the company, shareholder interest and the business environment. In the exercise of their duties, remuneration committees can also be called to consider a number of factors in proposing remuneration packages, such as business size, performance records and prospects, industry sector, international practices and norms, and the cash flow and debt ratio of the company.

The establishment and functions of the remuneration committee differ among jurisdictions, some tending to have detailed provisions, others only recommending its establishment. As an example, Italy's Corporate Governance Code details the role of the remuneration committee, whose first duty is to support the board in the development of the remuneration policy, submit proposals or issue opinions to the board on remuneration and related performance objectives, monitor the application of the remuneration policy, verify the effective achievement of the performance objectives, and periodically evaluate the adequacy, overall consistency and actual application of the policy for the remuneration of directors and key management personnel (Italian Corporate Governance Committee, 2020[17]). The United Kingdom adopted a "say on pay" legislation in 2002, followed by many other jurisdictions (Edmans, Gosling and Jenter, 2021[20]). Its code provides detailed provisions on the remuneration committee's consideration of executive director remuneration policy and practices, which should incorporate clarity, simplicity, risk, predictability, proportionality and alignment with company culture. The code also lists the elements that the description of the work of the remuneration committee should contain (Chapter 5 on remuneration (Financial Reporting Council, 2018[10])). The Swiss Code of Obligations has provisions on the composition of the remuneration committee: the general shareholder meeting elects individually the members, only board directors are eligible and their mandate ends after the next meeting, with possible re-election (Article 733 nCO). To provide for flexibility, the code deliberately does not provide for eligibility requirements.

Remuneration committee in the G20/OECD Principles

In Chapter VI on the responsibilities of the board, the G20/OECD Principles recommend "aligning key executive and board remuneration with the longer term interest of the company and its shareholders." They also consider as good practice in large companies that "remuneration policy and contracts for board members and key executives be handled by a special committee of the board comprising either wholly or a majority of independent directors and excluding executives that serve on each other's remuneration committees, which could lead to conflicts of interest." The board is advised "to develop and disclose a remuneration policy statement covering board members and key executives" specifying the relationship between remuneration and performance and including measurable standards that emphasise the longer run interests of the company over short-term considerations. Policy statements also tend to set conditions for payments to board members for extra-board activities, such as consulting. They often specify terms about holding and trading the stock of the company, including the procedures to be followed in granting and re-pricing of options (Principle VI.D.4). Provisions on remuneration are also included in Chapter II on the rights of shareholders and focus on disclosure. It is stated that the disclosure of remuneration of board members and key executives is important for shareholders, as well as the total value of compensation arrangements, the link between remuneration and company performance, the different forms of say-on-pay, the equity-based schemes, which should be approved by shareholders (Principle II.C.4).

Recent developments

Executive salaries and compensation packages have attracted increased attention and some degree of criticism which increased during the COVID-19 crisis (Edmans, Gosling and Jenter, 2021[20]). As stated in the OECD report *The Future of Corporate Governance in Capital Markets Following the COVID-19 Crisis*, "first, given that many companies laid off or put employees on short-time working schemes during the pandemic, the level of executive remuneration has become an area of scrutiny; particularly in companies that receive some sort of direct or indirect public financial support. Second, there are also concerns that companies are adapting the conditions for executive bonus programmes, switching performance metrics and ignoring missed targets in order to evade or mitigate otherwise unavoidable reductions in executive pay resulting from the pandemic" (OECD, 2021[21]). Therefore, to avoid reputational risks, boards may consider paying increased attention to the impact of high-level executive compensation.

Another noticeable trend is the growing number of jurisdictions recommending the incorporation of ESG metrics into compensation plans.[14] This creates implications for remuneration committees and boards which have to set up clear targets aligned with the evolving ESG strategy of the company, but also to respond to more demanding stakeholder expectations on ESG issues.

2.2. Other committees

Besides the three traditional and more prevalent committees, companies have been establishing other committees to support certain tasks and address specific issues. There is a large variety of practices, depending on firm size, structure, sector, level of development and purpose. Their names differ across companies, but mainly refer to broad categories: risk management; sustainability; ethics and corporate social responsibility (CSR); executive and strategy; and technology. Regulations on the roles and structures of these committees, as well as related literature on their multiplicity and impact, are limited. Usually not mandatory, they can be recommended by codes and are established voluntarily by companies. In terms of the number of committees established by S&P 500 companies, 71% have more than the three traditional committees, with an average of 4.2 committees (SpencerStuart, 2020[22]; Adams, 2020[5]).[15]

These committees tend to serve a different purpose than the traditional committees described above, which are predominantly justified from the standpoint of dealing with principal-agency problems and managing conflicts of interest. Other committees beyond the traditional ones tend to be less focused on monitoring, for which independence may be more important, and more focused on advising with respect to specific areas of expertise.

The G20/OECD Principles state in the chapter on board responsibilities that "the establishment of additional committees can sometimes help avoid audit committee overload and allow more board time to be dedicated to those issues. Nevertheless, the accountability of the rest of the board and the board as a whole should be clear" (Principle VI.E.2). This recommendation emphasising audit committee overload

---

[14] For example, "the UK FCA – which has six remuneration codes covering different kinds of regulated financial services firms – recently wrote to the remuneration committee chairs of companies covered by these codes, stating that the FCA expects them to include ESG factors within directors' remuneration. Likewise, the latest remuneration code enacted by the FCA explicitly states that firms should consider ESG factors when setting remuneration policies and practices" (OECD, 2022[11]).

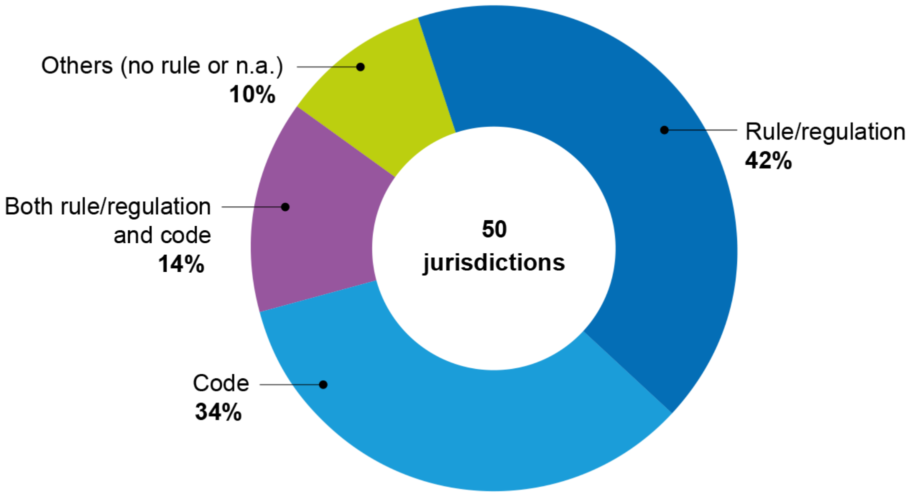
[15] (Adams, 2020[5]) found that a median firm has three committees and that for every board meeting, there are approximately 2.3 committee meetings, on average. The increase in the total number of committee meetings per year nearly doubled between 1996 and 2010 from approximately 11 to about 20. The average number of traditional committees has remained mostly unchanged for the past decade, as the increase happened after the enactment of the 2002 Sarbanes-Oxley Act (SOX) in the United States. (Lee, 2020[6]) stated that "the portion of board activities conducted at the committee level has increased from 36% pre-SOX to 52% post-SOX".

highlights the importance of this committee, despite the emergence of other functional committees such as the one dealing with risks. Importantly, it also clearly reiterates the overarching responsibility and accountability of the board on all committees, whether monitoring or advising.

2.2.1. Risk committee

While risk management committees are often required by regulation in the financial sector, they have traditionally been less common in non-financial companies, with risk management responsibilities often established as an overarching duty of the board or the audit committee. However, provisions to assign this role to a separate board committee have grown substantially in recent years, a sign that risk management has been one of the areas most subject to market regulation in recent years. According to the OECD 2021 Factbook, provisions to assign a risk management role to a committee increased from 62% in 2015 to 90% in 2020, either as a legal requirement or as a recommended good practice (OECD, 2021[8]). This trend is linked to the 2008 financial crisis and is likely to continue following the COVID-19 crisis and the impact it may have in expanding consideration of the nature of risks. A majority of jurisdictions surveyed (56%) now have requirements regarding board responsibilities on risk management in the law or regulations (including 14% that have both rule and code provisions), while another 34% recommend it solely in codes (Figure 2.4).

Figure 2.4. Board responsibilities for risk management



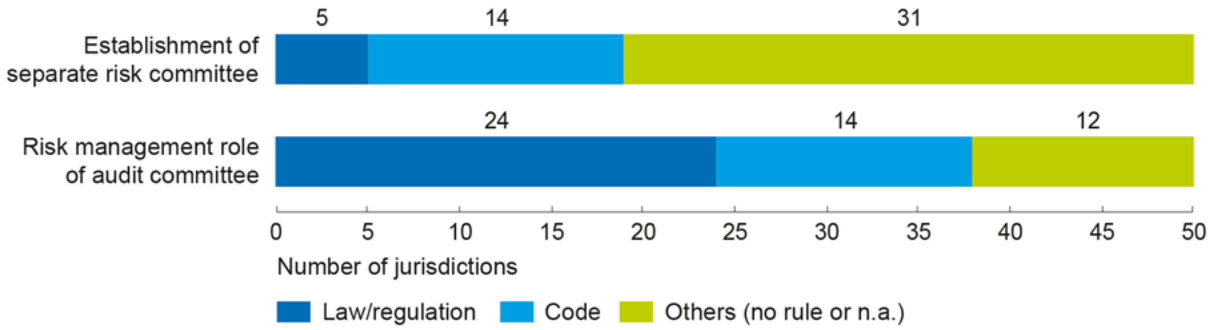
Note: Based on 50 jurisdictions.
Source: OECD (2021[8]) Corporate Governance Factbook 2021, https://www.oecd.org/corporate/corporate-governance-factbook.htm.

Risk management is therefore conferred either to the audit committee or to a separate risk committee. The audit committee remains the preferred choice in 38 jurisdictions, while risk committees are required or recommended in 19 jurisdictions (Figure 2.5). While requirements or recommendations to establish separate risk committees exist in only 38% of all jurisdictions, this is still more than double the amount compared to 2015 (OECD, 2021[8]). Thirteen jurisdictions have requirements or recommendations pertaining to both the audit committee's risk management role and the establishment of a separate risk committee, presumably permitting either model or a combination of both.

Several jurisdictions have taken such an approach. For example, the UK Code recommends that audit committees cover risk management, but allowing for the use of risk committees and for splitting the function across separate audit and risk committees (Financial Reporting Council, 2018[10]). India now requires the top 1 000 listed companies to constitute a risk management committee.[16] The NYSE allows a company to create a separate risk committee as long as the audit committee reviews the risk oversight processes (Watchell, Lipton, Rosen, Katz, 2021[23]). The European Commission favours the audit committee approach and recommends that the audit committee also monitors the procedures established for the evaluation and management of risks (European Commission, 2005[1]). Italy's 2020 Code of Corporate Governance took an alternative approach – in companies adopting the traditional governance system – by combining risk management and internal control within a single control and risk committee,[17] different from the compulsory audit committee required by the EU Directive 2006/43/EC. It mentions that this committee supports the board's assessments and decisions relating to the internal control and risk management system and the approval of periodical financial and non-financial reports.

For large companies, and particularly in high-risk or regulated industries (e.g. banking, insurance, health care, oil and gas), the separation of audit and risk committees may be valuable, as the first is traditionally more focused on financial risks and responsible for the accuracy of financial positions, while the second is conceived to be forward-looking and go beyond financial matters to address all types of risks. The global pandemic, the acceleration of climate change, social pressures and technological developments have drawn increased attention to the large range of risks for companies and the need to have adequate risk mitigation strategies.

Figure 2.5. Board committee for risk management



Note: Based on total number of provisions across 50 jurisdictions. Jurisdictions with requirements or recommendations related to both committees are counted twice.
Source: OECD (2021[8]) Corporate Governance Factbook 2021, https://www.oecd.org/corporate/corporate-governance-factbook.htm.

In Australia, the Corporate Governance Principles detail the role of the risk committee (Principle 7 (ASX Corporate Governance Council, 2019[24])). They recommend that the board establishes a risk committee, otherwise discloses why it does not and explains the processes it employs for overseeing the entity's risk management framework. They further mention the usual role of the risk committee: to monitor management's performance against the entity's risk management framework, including whether it is

[16] Regulation 21 (Securities and Exchange Board of India, 2015[13]) subsequently amended in 2021). The 2021 amendments increased the number of concerned companies (from 500 to 1 000) and detailed the role of the risk management committee. It shall formulate and monitor the implementation of a detailed risk management policy which shall include 1) a framework for identification of internal and external risks, including financial, operational, sectoral, sustainability (particularly, ESG related risks), information, cyber-security risks; 2) measures for risk mitigation including systems and processes for internal control; and 3) a business continuity plan.

[17] "Such a name highlights, again, the central position of the risks and distinguish such a body from the Board of statutory auditors as "audit committee", as imposed by the recent rules in matter of auditing, whose duties remain clearly separate from the Board of Directors' preliminary needs" (Article 6 (Italian Corporate Governance Committee, 2020[17])).

operating within the risk appetite set by the board; to review any material incident involving fraud or a break-down of the entity's risk controls and the "lessons learned"; to receive reports from internal audit on its reviews of the adequacy of the entity's processes for managing risk; to receive reports from management on new and emerging sources of risk and the risk controls and mitigation measures; to make recommendations to the board in relation to changes that should be made to the entity's risk management framework; and to oversee the entity's insurance programme.

The number of risk committees has increased greatly over the last decade due to regulatory evolutions and risk expansion. According to the 2020 US Spencer Stuart Board Index (SpencerStuart, 2020[22]), 13% of boards have risk committees, compared with 4% in 2010. As noted at the outset, risk management committees are more common in financial companies than in non-financial listed companies.[18] BoardEx analysed the establishment of risk committees in companies in six indices and found that 60% of financial services companies have a risk committee, the highest rate, followed by business services with just over 20%. The tobacco and chemicals sectors had the lowest rates (BoardEx, 2020[25]).

Following the COVID-19 crisis, boards are drawing lessons from the crisis, assessing their risk management policies and considering potential improvements. As regulators and courts scrutinise the existence and effectiveness of board-level risk oversight systems,[19] companies may be prompted to give further consideration to enhancing the role of the risk committee or increasing functions within the audit committee. Such scrutiny may also lead to calls to strengthen the role of risk/audit committees as a means to regularly review key companies' risks, support informed decisions by the board on how to navigate and mitigate risks, and ultimately ensure the business continuity process.

2.2.2. Sustainability committee

As a result of the increasing attention given to sustainability issues, sustainability committees are on the rise. However, approaches and functions differ. Several codes of corporate governance in the EU attribute corporate social responsibility functions to a pre-existing board committee or to a CSR or sustainability committee. For example, in France, the establishment of a CSR Committee is a new recommendation of the Middlenext Code, updated in September 2021 (Middlenext, 2021[26]). The Spanish Good Governance Code of Listed Companies provides detailed provisions regarding CSR functions to either a pre-existing committee or a dedicated committee (CNMV, 2020[27]).[20] A dedicated committee on sustainability or CSR typically has the following five functions:

- monitor compliance with the company's internal codes of conduct and corporate governance rules, and ensure that the corporate culture is aligned with its purpose and values
- monitor the implementation of the general policy regarding the disclosure of economic-financial, non-financial and corporate information, as well as communication with shareholders and investors, proxy advisors and other stakeholders

[18] 42 of the 62 boards with a stand-alone risk committee are financial services companies (SpencerStuart, 2020[22]).

[19] *Caremark* claims in Delaware courts, which allege failures of board oversight, is a good example of the importance of boards' risk management. Even if *Caremark* claims remain difficult to plead and prove, Delaware law developments highlight the critical importance for boards to adopt and regularly assess, evaluate and update their risk management systems to avoid potential liability under *Caremark* and protect directors from personal liability for a failure of corporate oversight.

[20] Recommendation 53 of **Spain**'s Code states that "the task of supervising compliance with the policies and rules of the company in the environmental, social and corporate governance areas, and internal rules of conduct, should be assigned to one board committee or split between several, which could be the audit committee, the nomination committee, a committee specialised in sustainability or corporate social responsibility, or a dedicated committee established by the board under its powers of self-organisation. Such a committee should be made up solely of non-executive directors, the majority being independent".

- periodically evaluate the effectiveness of the company's corporate governance system and environmental and social policy, to confirm that it is fulfilling its mission to promote the corporate interest and catering, as appropriate, to the legitimate interests of remaining stakeholders
- ensure the company's environmental and social practices are in accordance with the established strategy and policy
- monitor and evaluate the company's interaction with its stakeholder groups (Recommendation 54).

In Italy, the establishment of a sustainability committee was suggested for large companies by the 2015 version of the code. However, the new code of 2020 does not properly recommend anymore the setting-up of a sustainability committee for several reasons (Italian Corporate Governance Committee, 2020[17]). First, sustainability is now to be integrated in the business strategy (Principle 1). Second, it is considered that companies are best placed to assess whether either a board committee (with independent directors), a task force of managers, or a combination of both might better support the board. This is without prejudice to the sustainability-related functions of certain board committees, namely (1) the risk and control committee, which has specific duties in assessing whether the periodic financial and non-financial information is suitable to correctly represent the company's business model and its strategies, and expressing opinions on specific aspects relating to the identification of the main corporate risks (ESG included); and (2) the remuneration committee that drafts remuneration policy also connected with ESG criteria, where such matters are material for the business. In practice, recent evidence still shows that notwithstanding this evolution of the code, the setting-up of a sustainability committee is still increasing, up from 35% of Italian listed companies in 2019 to 43% in 2020 (43%).[21] Some companies have also established an environmental committee with a view to increasing transparency on environmental issues, improving firms' environmental performance, reducing industry fines (Kolev et al., 2019[2]), and enhancing disclosure.

Different approaches are therefore in place for sustainability committees, notably in Europe. It remains to be seen whether the results of the EU public consultation on sustainable corporate governance will encourage harmonisation of national laws and codes in recommending the establishment of a CSR or sustainability committee (Ferrarini, 2021[28]).

With the clear trend toward companies and regulators embracing ESG considerations, questions arise. Will the increased adoption of ESG standards by companies lead to the proliferation of ESG committees? Will the risk and/or CSR committees deal with these issues? Will the audit committee be further empowered to report on ESG (OECD, 2022[11]))?[22] The evolution in jurisdictions' and companies' practices (e.g. Italy) shows that various options, sometimes combined, can be considered to address sustainability issues: CEOs' delegated power on sustainability, managerial bodies or executive committees supporting the CEO and management, mixed committees (with directors and managers), and board-level sustainability committees (with independent members).

[21] The sustainability committee in Italian listed companies has an average number of 3.5 members, largely independent (84.2%), and an average number of meetings per year of 9.4 (CONSOB, 2021[37]).

[22] See also https://corpgov.law.harvard.edu/2021/11/10/esg-governance-board-and-management-roles-responsibilities/. This article discusses various approaches to board oversight on ESG issues which can reside with the full board, existing committees or a standalone committee. This last option presents the risk of separating ESG discussions from broader business, finance and strategy discussions, but may streamline board reporting on ESG issues and facilitate co-ordination across committees.

2.2.3. Other examples of committees advising the board

The **corporate governance committee** aims to assist the board in fulfilling its corporate governance responsibilities. Among possible tasks, this committee typically:

- ensures the board's effectiveness and due observance of sound corporate governance principles
- monitors regulatory developments and best practices relating to corporate governance issues and makes recommendations to the board
- oversees the review and evaluation process of the board, and sometimes the CEO, the chair and individual directors[23]
- reviews the effectiveness of the board committees
- develops a healthy and effective corporate governance framework and culture
- prepares any public disclosure and statements on the company's corporate governance practices.

The corporate governance committee can also review the company's code of business conduct and ethical guidelines for directors; consider possible conflicts of interest; and oversee systems for the identification, evaluation and approval of related party transactions in lieu of the audit committee (Lumsden, 2004[7]). Some boards have delegated to their governance committees some degree of risk management. The governance committee (or the nomination committee) may oversee the CEO or other leaders speaking out or engaging publicly on social, political, environmental, or public policy issues on the company's behalf.[24] It may be in charge of overseeing changes in regulations, technology, workforce demographics and disruptions to the business model. As a result of the COVID-19 crisis, the corporate governance practices of companies will continue to be heavily scrutinised,[25] which may give governance committees additional responsibilities.[26] Overlapping responsibilities with other committees, such as the nomination, audit or ethics committees, would require particular attention.

Some companies have also established **committees for ethics**. Once again, there are diverse approaches and below are some examples from legal and codes' provisions and companies' practices. Some legislation and codes recommend or require the establishment of an ethics committee. For example, a social and ethics committee is required for listed public companies and state-owned enterprises by South Africa's Companies Act, which mentions OECD recommendations on anti-corruption.[27] According

[23]The EY Centre for Board Matters (2019) mentions that 98% of governance committees perform board evaluations annually. About 70% of governance committees oversee board committee evaluations, and about 35% of governance committees oversee individual director evaluations. A little over half of governance committees oversee or provide for director orientation and continuing board director education, https://insights.diligent.com/nominating-governance-committee/governance-committees-role-in-corporate-governance/.

[24] A July 2021 survey of in-house members of the Society for Corporate Governance showed that among public companies, 70% of large-caps and 63% of mid-caps have a management-level committee, group, or individual(s) overseeing corporate governance. In 24% of cases, it is the governance or the nomination committee which has oversight of the CEO or other leadership speaking out or engaging publicly on the company's behalf on social, political, environmental, or public policy issues, https://corpgov.law.harvard.edu/2021/09/19/board-practices-quarterly-the-outspoken-corporation/#more-140188.

[25] In its Proxy Voting Guidelines for 2022, Glass Lewis recommends voting against the governance committee chair at companies in the S&P/TSX 60 that fail to provide explicit disclosure concerning the board's role in overseeing material environmental and social issues, https://www.glasslewis.com/2022-glass-lewis-policy-guidelines-updates-now-available-for-north-america-europe-uk-and-esg/.

[26]https://insights.diligent.com/nominating-governance-committee/governance-committees-role-in-corporate-governance/.

[27] According to the **South African** Companies Act no. 71 of 2008 (Section 72 (4) of the Act) and regulation 43, the social and ethics committee should comprise at least three members and has the following functions:

to the King IV Report on Corporate Governance for South Africa (2016), companies not under a statutory requirement to establish such a committee, should consider allocating oversight of organisational ethics, responsible corporate citizenship, sustainable development and stakeholder relationships to a dedicated committee, or adding it to the responsibilities of another committee. Brazil's Corporate Governance Code for listed companies recommends the establishment of a conduct committee, in charge of implementing, disseminating and revising the code of conduct that promotes company's values and ethical principles and reflects the organisational identity and culture. It is also responsible for conducting investigations and proposing corrective measures related to breaches of the code of conduct (Principle 5.1).

The G20/OECD Principles cite the ethics committee twice to protect stakeholders and manage conflict of interest. Though not recommending the establishment of such a committee, the Principles refer to the need for a direct contact for employees. "The board should be encouraged by laws and or principles to protect [employees and their] representative bodies and to give them confidential direct access to someone independent on the board, often a member of an audit or an ethics committee" (Principle IV.E). This is reiterated in the chapter on the board's responsibilities: "A contact point for employees who wish to report concerns about unethical or illegal behaviour that might also compromise the integrity of financial statements should be offered by the audit committee or by an ethics committee or equivalent body" (Principle VI.D.6).

Some jurisdictions retain the provision of a contact point for employees and even recommend whistleblower protection mechanisms (e.g. the ASIC whistleblower policies review[28] and the SEBI vigil mechanism which provides for direct access to the chairperson of the audit committee (Securities and Exchange Board of India, 2015[13]). Principle 2.5 of Japan's Code relates to whistleblowing and recommends the establishment of a point of contact independent of the management (for example, a panel consisting of outside directors) allowing employees to report illegal or inappropriate behaviour, disclosures, or any other serious concerns without fear of suffering from disadvantageous treatment. The European Commission recommends the audit committee to review the process whereby companies provide possibility for employees to report alleged significant irregularities through anonymous submissions, normally to an independent director, and ensure arrangements for proportionate and independent investigation (2005/162/EC Annex I). The EU Directive on the protection of whistleblowers on internal company processes and structures, adopted by Member States in December 2021, reinforces mechanisms but does not mention the role of committees. The revised Corporate Governance Code of

---

- to monitor the company's activities on matters relating to: (i) social and economic development, including the company's standing in terms of the goals and purposes of the ten principles of the United Nations Global Compact Principles, the OECD recommendations regarding corruption, the Employment Equity Act and the Broad-Based Black Economic Empowerment Act; (ii) good corporate citizenship, including promotion of equality, prevention of unfair discrimination, and reduction of corruption; contribution to development of the communities; and sponsorship, donations and charitable giving; (iii) the environment, health and public safety, including the impact of the company's activities and of its products or services; (iv) consumer relationships; (v) labour and employment, including the company's standing in terms of the International Labour Organization Protocol on decent work and working conditions; and the company's employment relationships, and its contribution toward the educational development of its employees
- to draw matters within its mandate to the attention of the Board as occasion requires
- to report, through one of its members, to the shareholders at the company's annual general meeting on the matters within its mandate.

[28] The **Australian** corporate whistleblower laws and ASIC review recommend public and large companies to review their whistleblower policies and processes against the current legislative and regulatory guidance, with one priority to review the level of board and executive oversight of whistleblower programmes, https://www.lexology.com/library/detail.aspx?g=c4e9a86a-dc43-4f4c-ab12-dc55400ce8c3.

Hong Kong (China)[29] mentions the role of the audit committee or a designated committee in the whistleblowing policy and system to be established.

Given the critical impact of the digital transformation on companies' business models, some boards have established a **technology and innovation committee** to help define and evaluate technology strategies and improve their oversight and engagement in these areas, but also to advise the board on the management of digital security risks. This trend is relatively recent and dynamic. A technology committee has at least three important functions, though varying between companies and sectors: ensure effective and secure utilisation of technology within the company (technology management role); evaluate and advise the board on technological evolution and risks; and oversee effective protection of the company's intellectual property. The committee can also recommend technology-related procedures to meet the company's financial and regulatory obligations with respect to privacy, data retention and data protection. Overall, the committee can enhance the digital transformation agenda within the company, increasing visibility, developing technology-driven growth opportunities, addressing related risks, and sending clear signals to the boards and investors. According to the 2021 US Spencer Stuart Board Index, 12% of S&P 500 companies have established technology committees.[30]. Large technology companies do not typically have such a committee given that technology is the core of their business. The issue of digital security governance, especially in light of the COVID-19 crisis and imposed remote working, has become a pressing issue for boards and is given increased attention by regulators, investors and society as a whole.[31] However, regulations do not yet seem to link digital security governance to committees' tasks, nor dedicate powers to either the technology or the risk committee (see OECD Working Paper on Digitalisation and Corporate Governance, (OECD, Forthcoming[29])

The **strategy committee** allows monitoring the strategy and the operational performance of the management. Recommended in some research, it can enhance long-term initiatives vs. short-term financial outcomes and involves management in strategic planning (Gilson and Gordon, 2019[4]). Other committees can be dedicated to **compliance, legal, regulatory or finance issues**.

It may also be recommended to some companies, usually in specific industries, to establish a **health and safety committee**. For example, the Institute of Directors in New Zealand and WorkSafe New Zealand, the workplace health and safety regulator, published the "Health and Safety Guide: Good Governance for Directors" in which the board is recommended to assign a lead role in health and safety to a board member or to a committee. The purpose of the committee is to assist the board in its role in providing leadership and policy and to fulfil its responsibilities to ensure compliance with health and safety legislation. The Guide includes sample terms of reference for the health and safety committee.[32] The COVID-19 crisis may lead to an increase in such committees, even though health and safety may still be considered as an issue pertaining to risk management and internal control systems.

Finally, cases from Japan and India are noteworthy. To strengthen governance systems, protect minority shareholders and deal with conflicts of interest, Japan's revised Corporate Governance Code issued in June 2021 introduced a new special committee: "Companies that have a controlling shareholder should either appoint at least one-third of their directors […] or establish a special committee composed of

[29] Following a consultation in April 2021, the **Hong Kong** Exchange revised its corporate governance code, adding the following provisions (effective as of 1 January 2022): "The issuer should establish a whistleblowing policy and system for employees and those who deal with the issuer (e.g. customers and suppliers) to raise concerns, in confidence and anonymity, with the audit committee (or any designated committee comprising a majority of independent non-executive directors) about possible improprieties in any matter related to the issuer" Provision D.2.6, https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/April-2021-Review-of-CG-Code-and-LR/Conclusions-(Dec-2021)/cp202104cc.pdf.

[30] https://www.spencerstuart.com/-/media/2021/october/ssbi2021/us-spencer-stuart-board-index-2021.pdf.

[31] https://corpgov.law.harvard.edu/2021/08/01/sec-returns-spotlight-to-cybersecurity-disclosure-enforcement/#more-139281;https://corpgov.law.harvard.edu/2021/06/10/principles-for-board-governance-of-cyber-risk/.

[32] https://www.iod.org.nz/resources-and-insights/guides-and-resources/health-and-safety-governance-guide/#.

independent persons […] to deliberate and review material transactions or actions that conflict with the interests of the controlling shareholder and minority shareholders" (Supplementary Principle 4.8.3). In India, a SEBI Circular on Corporate Governance (2000) recommends the establishment of a shareholders/investors grievance committee (previously called Stakeholders Relationship Committee under the 2013 Companies Act and the 2015 SEBI regulations) "to specifically look into the redressing of shareholders and investors complaints like transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends etc."[33]

2.2.4. Ad hoc committees or task forces

Ad hoc committees, sometimes called task forces, can be appointed by the board to respond to a specific need. These committees are different from aforementioned committees because they are time-limited and have a delimited task. *Ad hoc* committees oversee specific projects, such as a capital campaign, or are established to recruit a new executive director, launch a new division, develop a strategic plan, form a new subsidiary or deal with specific corporate transactions.

For example, Denmark's Recommendations on Corporate Governance mention that "the board of directors may elect to set up an ad hoc committee to handle important assignments or matters that may be of a temporary nature, for instance for the purpose of addressing reputational issues, negotiating large acquisitions or responding to takeover bids" (Headline 3.4 (Corporate Governance Committee, 2020[30])). France's Code of Corporate Governance of Listed Companies recommends that the board establishes an *ad hoc* committee in case of sales of at least half of the company's equities, comprising of at least two-third of independent directors (Article 5.5 (AFEP-MEDEF, 2020[15])). US companies may also establish special committees to deal with specific business transactions, such as mergers, acquisitions or contracts.[34] On that matter, the G20/OECD Principles state that "disclosure need not extend to committees set up to deal with, for example, confidential commercial transactions" (Principle VI.E.2).

[33] https://www.sebi.gov.in/legal/circulars/feb-2000/corporate-governance_17930.html.

[34] Debevoise & Plimpton launched a Special Committee Report reviewing the role of these *ad hoc* committees set up for specific transactions and summarising recent judicial decisions from Delaware courts involving these committees, https://www.debevoise.com/insights/publications/2021/04/introducing-the-debevoise-plimpton-special.

3 Key issues

This section reviews committees' internal functioning, composition, accountability and oversight. It is based on national codes and associated annotations or guidance if any. Still, many codes do not elaborate on the functioning of committees and focus on recommendations for their establishment and sometimes their membership. They generally do not touch upon the exercise of responsibilities of committees.

3.1. Internal functioning of committees

To function effectively, committees are usually required to have a well-defined mandate, clear reporting rules, access to information, budget and external advice, and regular performance evaluation. Recent revisions of codes of corporate governance tend to be more precise on these issues.

3.1.1. Committees' mandates

The G20/OECD Principles and codes that contain comprehensive provisions on committees recommend that committees have a clear and precise definition of their role and functions to ensure their effective functioning and governance. The G20/OECD Principles note the following good practice: "when committees of the board are established, their mandate, composition and working procedures should be well-defined and disclosed by the board. […] In order to evaluate the merits of board committees, it is important that the market receives a full and clear picture of their purpose, duties and composition" (Principle VI.E.2). The chapter on disclosure also reminds that it is "good practice to disclose the articles of association, board charters and, where applicable, committee structures and charters" (Principle V.A.9).

Charters, mandates, terms of reference or written statements (the main terminologies used in codes) need to be carefully drafted and describe the objectives and structure of the committee in line with the overall purpose and operations of the company. Holding members accountable for their actions, charters are usually disclosed on the company website or in the annual report. Some codes are more detailed. For example, Singapore's code requires the disclosure in the annual reports of the names of the committee members, any delegation of the board's authority to make decisions, and a summary of each committee's activities (Principle 1.4 (Singapore, 2018[31])) and the Danish Recommendations require the disclosure of the independence and special competencies of members (Headline 3.4 (Corporate Governance Committee, 2020[30])).

While charters differ across committees and companies, they have some common features. They usually comprise the following elements: mission statement; role, purpose and responsibilities; delegation of authority, extent of power and decision-making abilities; composition and structure; membership requirements and procedure for meeting attendance by non-committee members; frequency of meetings; terms of access to internal and external resources and information; reporting requirements to the board and formalities; special duties and powers of the committee chair; and tenure. Some provisions also request charters to clarify the committee limitations and ensure the avoidance of potential overlaps with other committees or bodies. Many templates are available, especially for standing committees.[35]

Noteworthy is the "comply or explain" rule contained in most codes that provide for flexibility with respect to the establishment of some recommended committees. For example, the ASX Code mentions that "the boards of some listed entities may decide that they are able to deal efficiently and effectively with board composition and succession issues without establishing a separate nomination committee. If they do, the entity should disclose in its annual report or on its website the fact that it does not have a nomination committee and explain the processes it employs to address board succession issues and to ensure that the board has the appropriate balance of skills, knowledge, experience, independence and diversity to enable it to discharge its duties and responsibilities effectively" (Commentary of Recommendation 2.1 (ASX Corporate Governance Council, 2019[24])).

3.1.2. Reporting to the board and participation rules

Similarly, codes with provisions on committees usually state that the charter should include reporting rules, as the committee is accountable for delivering timely reports to the board. The minutes or written report of each meeting are expected to highlight the issues, capture the deliberations, present the underlying reasons of the advice provided, submit options for action, make recommendations for the board's decision or approval, and propose possible changes to the company's policy, strategy or budget.[36] The company secretary is usually responsible for taking the minutes of each committee meeting. The minutes or a written report are typically included in the board papers for its next meeting.

Some codes mention specifically that committees' meetings should be held separately from the board's meetings to ensure independence.[37] If a committee meeting occurs just before a board meeting, the committee chair is expected to present a verbal summary of key points raised at the committee meeting, with the minutes to follow. Specific rules may apply to the standing committees, which may have to deliberate on specific or urgent matters. For example, reporting of the audit committee can be linked to the disclosure requirements.[38]

Committee members can usually invite and consult executive or non-executive directors and the chair of the board, as well as advisors or other experts. Some jurisdictions recommend possible direct communication with shareholders (e.g. Annex I 2005/162/EC). In some codes, specific rules may apply to the audit committee, which has discretion to invite relevant persons, including employees.[39]

---

[35] E.g. the 2020 Chartered Governance Institute Guidance Note contains terms of reference for the remuneration committee, which ensures compliance with the requirements of the 2018 **UK** Corporate Governance Code, https://www.cgi.org.uk/my_cg/download-resources/downloadt?fileId=3321

[36] E.g. **Brazil**'s Corporate Governance Code states: "The minutes of the meetings of the board of directors should be written in clear language, record the resolutions taken, the persons in attendance, the split votes, and any abstentions". The **Portugal**'s Code of Corporate Governance (revised in 2020) mentions that minutes should "allow an understanding not only for the meaning of the decisions taken, but also of their grounds and opinions expressed by their members."

[37] E.g. **Malaysia**'s Code on Corporate Governance (revised in April 2021) indicates that: "Board committee meetings should be conducted separately from the board meeting to enable objective and independent discussion during the meeting" (Guidance 1.6 (Malaysia, 2021[44])).

[38] E.g. the **European Commission** recommends that "the audit committee should report to the board on its activities at least once every six months, at the time the yearly and half-yearly statements are approved" (2005/162/EC, Annex I)

[39] E.g. **Spain**'s Code states that "the audit committee should be empowered to meet with any company employee or manager, even ordering their appearance without the presence of another senior officer (Recommendation 43). The **Luxembourg** Code mentions that "the audit committee may invite any other person whose collaboration it considers to be beneficial to assist it in its work and to attend its meetings. In addition, it shall be authorised to meet with any

3.1.3. Access to information, funding and external advice

Codes with provisions on committees usually mention access to the necessary information to comply with their duties and to contribute to transparent, fair, and timely decision-making. Some codes also state that committees should also receive appropriate funding to accomplish their tasks and benefit from the specific expertise they may need.

In some jurisdictions, there is flexibility to appoint outside experts to participate in board committees. These experts (outside counsels, advisors, specialists or consultants) are independent[40] and have only advisory roles, supporting committees' members in their recommendations to the board. For example, the SOX Act states that "each audit committee shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties" (SOX, SEC 301). The European Commission allows the remuneration committee "to avail itself of consultants, with a view to obtaining the necessary information on market standards for remuneration systems. The committee should be responsible for establishing the selection criteria, selecting, appointing and setting the terms of reference for any remuneration consultants who advise the committee" (2005/162/EC). Outside experts can mitigate members' overload and the risks of excessive membership, though they should not be used extensively with a view to maintain internal knowledge and direct link with the board.

Legislation or codes rarely reference the remuneration of committee members. Poland's Best Practice for Listed Companies from March 2021 mentions that "the remuneration of members of committees, in particular the audit committee, should take into account additional workload on the committee" (Paragraph 6.4). Portugal's Code of Corporate Governance adds to the functions of the remuneration committee to approve the maximum of all compensations payable to any board and committee members due to termination of office (Recommendation V.2.3).

3.2. Composition

The composition of committees influences their effectiveness and performance. Some jurisdictions provide rules or recommendations on committees' members, their independence, multiple membership, diversity, profiles, skills and training. The traditional committees are subject to more regulations and recommendations than the other committees, and among the traditional committees, more requirements are generally imposed on the audit committee. The multiplicity of rules could be burdensome, hence some recently revised codes also reiterate the principle of flexibility and proportionality in the establishment of committees.

Committee members are generally board members. This is the predominant model in most jurisdictions. However, some regulatory frameworks allow non-board members to serve on committees. These members, as mentioned in the above section, are independent outside experts and are appointed on a continuous or *ad hoc* basis. While having the advantage of bringing specific expertise, outside experts also increase the risk of creating a disconnect with the board, particularly if they comprise a majority of a board committee.

---

individual outside the presence of any executives. It shall meet with the internal auditor and with the Statutory Auditor at least once a year without the presence of any executives (Recommendation 8.4).

[40] **Portugal**'s Code allows the remuneration committee to hire consulting services, but it should ensure that the services are provided independently and that the providers do not provide other services to the company or to others in controlling or group relationship, without the express authorisation of the Committee (Recommendations V.2.5 and 6).

3.2.1. Size

Committee size usually depends on the needs of the board and the way it is organised, the size of the company, and an assessment of the number of members needed to carry out the specific work. Most jurisdictions require or recommend that committees have at least three members – with rarely size limits – and full or majority of independent membership – at least for the three traditional committees. There is no optimal number of members, though committees are expected to remain efficient, not overburdening, and not too costly.

3.2.2. Independence

According to the OECD Factbook, codes (and in a few instances regulations) recommend that remuneration and nomination committees have full or majority independence, in 72% and 64% of jurisdictions respectively. In the case of audit committees, 58% of jurisdictions require at least a majority of independent members, with 26% recommending it in their codes (Annex I). There are much less rules for other committees, leaving discretion to the board on the number of members, even though independent members are sometimes recommended. Some jurisdictions provide provisions on committee chair independence, maximum tenure and members' rotation.

The presence of independent board and committee members, cited as good practice by the G20/OECD Principles in several instances, is widely considered as a means to effectively exercise oversight functions and to protect the interests of minority shareholders and other stakeholders. The legal and regulatory approaches to define independence vary considerably across jurisdictions, some having developed criteria.[41] In many jurisdictions, independent directors play a key role in participating in board committees, but also in specific tasks such as approving related party transactions. Issues may arise when the definition of independent director is weak. In practice, it is frequent that independent directors owe their position to the controlling shareholder, generating conflicts of interest whenever the independent director is confronted with situations where minority shareholders' interests are at stake.

Some jurisdictions have strengthened the definition of independent directors by requiring a higher share of independent directors whenever the chair of the board is a representative of the controlling shareholder or an executive director. A different approach has been to ensure independence through the nomination process. In Italy and Israel, for example, some of the independent directors are elected with the votes of minority shareholders. However, this could possibly give disproportionate power to minority shareholders, particularly in markets where there are low levels of free float (OECD, 2018[32]).

There are differing requirements for independence in unitary vs. two-tier board systems. Notably, in unitary systems, regulations may specify requirements related to non-executive directors serving on board committees to ensure their independence from management, whereas in two-tier systems supervisory board members appointed to serve on board committees are already by definition non-executive directors. However, it is increasingly the case in both one and two-tier board systems for regulations defining board member independence to take account not only of independence from management, but also from controlling and substantial shareholders, usually through the establishment of ownership thresholds above which a shareholder serving on the board would no longer be considered independent. While the G20/OECD Principles do not prescribe a specific method for determining the degree of independence of board committees, they address the importance of both independence from management, as well as from

[41] Regarding the definition of independence, typical criteria include a combination of: 1) not to be a member, or an immediate family member of a member, of the management of the company; 2) not to be an employee of the company or a company in the group; 3) not to receive compensation from the company or its group other than directorship fees; 4) not to have material business relations with the company or its group; 5) not to have been an employee of the external auditor of the company or of a company in the group; 6) not to exceed the maximum tenure as a board member; and 7) not to be or represent a significant shareholder (IOSCO, 2007, *cited in* OECD Factbook).

shareholders by mentioning in Principle V.E that boards should consider assigning to board committees a sufficient number of non-executive board members capable of exercising independent judgement. Therefore, the key issue is the capacity to exercise this objective independent judgement under either board structure. Some studies have found that the independence of board and committee members improves the functioning of the board. For example, the independence of the nomination committee results in a more effective monitoring of the CEO and increasing discipline. A growing number of outside directors on the board and on the audit and compensation committees reduces the likelihood of corporate wrongdoing (Uzun, Szewczyk and Varma, 2004[33]). Overall, the independence of board committees has a positive impact on leadership, structural change and financing (Kolev et al., 2019[2]).

The capacity for objective and independent judgement of board and committee members is considered an essential component of corporate governance. The rising challenges boards and committees are confronted with, along with increased shareholder and stakeholder scrutiny on issues ranging from ESG disclosure, remuneration policies to RPT approval, may increase the focus on the independence issue.

3.2.3. Multiple membership

Independent members can usually sit on several committees within the same company, as well as on the boards and committees of other companies, which raises the issue of directors' availability and their level of performance. Research has shown that members who are members of several committees within the same firm (busy internally) can increase their performance if not over-stretched, while members who are members of committees in different companies (busy externally) may reduce their committee work. Long-tenured independent members tend to perform better due to their understanding of the company and experience (Lee, 2020[6]), although in some jurisdictions such members may no longer be defined as independent after a specified period of time. This raises the question of how firms may best balance members' internal and external busyness, to avoid overburdening members and to optimise their performance. Differentiation should also be considered for members sitting in the traditional and in other committees, as responsibilities and expertise are different. For example, while the nomination and compensation committees comprise members who may sit on multiple boards, it is not the case for audit committees where members should have a financial expertise. Usually, the chair of the board cannot be a member of the traditional committees.[42]

Some codes provide provisions on multiple membership and related duties. For example, the Practical Guidance 4 of Singapore's Code for Listed Companies (revised in July 2021) provides precise recommendations on multiple directorships. The board and nominating committee should "take into account the number of directorships and principal commitments of each director in assessing whether he or she is able to or has been adequately carrying out his or her duties; establish guidelines on the reasonable and maximum number of such directorships and principal commitments for each director; and take into consideration the adverse track record, the history of irregularities and the possible investigations by regulators of the company in which the director previously served and seek clarity on the director's involvement" (Singapore, 2021[34]). Italy's code mentions that "the board of directors defines the tasks of the committees and their composition, favouring the competence and experience of their members and avoiding, in large companies, an excessive concentration of offices" (Italian Corporate Governance Committee, 2020[17]). Very few codes stipulate a maximum number of committee memberships. An

[42] E.g. the **Malaysian** Code on Corporate Governance (revised in April 2021) states that: "the Chairman of the board should not be a member of the Audit Committee, Nomination Committee or Remuneration Committee" (Practice 1.4). "Having the same person assume the positions of Chairman of the board, and Chairman of the Audit Committee, Nomination Committee or Remuneration Committee gives rise to the risk of self-review and may impair the objectivity of the Chairman and the board when deliberating on the observations and recommendations put forth by the board committees. Thus, the Chairman of the board should not be involved in these committees to ensure there is check and balance as well as objective review by the board" (Guidance 1.4 (Malaysia, 2021[44])).

example is the SEBI Circular of February 2000 which recommends that: “a director shall not be a member in more than ten committees or act as Chairman of more than five committees across all companies in which he is a director”.

3.2.4. Diversity

An increasing number of regulations are requesting or recommending more diversity on company boards. Diversity requirements may be expected to *de facto* apply to committees when their members are board members. Diversity may be understood both in terms of specific criteria such as gender, age, or other characteristics, but also in terms of experience and skills (as analysed in the next section).

The OECD working paper on enhancing gender diversity on boards and in senior management of listed companies (OECD, Forthcoming[35]) underlines the benefits of gender diversity (as well as other forms of diversity) on the board of directors, and the need for further progress. A similar case should be made for supporting such diversity in the composition of board committees.

According to the Diligent Institute, female representation in committees increased from 24% in 2020 to 27% in 2021, and women’s representation as committee chairs rose in the same proportion, from 21% to 24%.[43] Audit committees saw the largest increase in female representation (from 25% in 2020 to 32% in 2021) (Diligent Institute, 2021[36]). CONSOB’s 2021 report mentions interestingly that gender parity is reached in the remuneration, risk and control, and sustainability committees (women over 50% of the committees). In the audit committee, required by law to comply with a 40% of women quota, women account for 41% of members. The report also mentions that the professional background of committee members is more diverse than the whole board (CONSOB, 2021[37]). Board diversity can also be an asset during crisis times. One study has found that companies with more diverse boards tend to adopt more long-term and less risky financial policies, and can be more immune to crises such as the COVID-19 crisis (Bernile, Bhagwat and Yonker, 2018[38]). In addition, boards composed of diverse backgrounds, when facing uncertain and complex situations, may draw from a wider set of experiences and perspectives to advise companies on different issues, which may have benefits for risk management (e.g. by helping to avoid groupthink).

Up until now, it remains unclear in many jurisdictions whether diversity policies should also apply to board committees. In the United Kingdom however, the Financial Conduct Authority released in July 2021 a consultation paper on “diversity and inclusion on company boards and executive committees”[44] proposing that diversity targets and disclosure requirements be extended to traditional committees. In addition to this proposal, the paper raises the question of whether additional or different targets should be considered in committees. The OECD working paper on gender diversity on boards and in senior management (OECD, Forthcoming[35]) also highlights the need to better assess the number of women on management boards and executive committees. It also states that “companies can implement practices to strengthen the pipeline of female talent, such as through the establishment of diversity and inclusion committees.”

---

[43] In **France**, progress at the board and executive levels thanks to the law Copé-Zimmermann has not yet trickled down to the committee level: women represent only 22% of committees among SBF 120, against 7% in 2009. EY and Labrador (2021), Panorama de la gouvernance 2021, https://www.labrador-company.fr/wp-content/uploads/2021/10/panorama-de-la-gouvernance-2021.pdf?utm_source=sendinblue&utm_campaign=FR_Confirmation_Etude_Panorama_2021&utm_medium=email.

[44] https://www.fca.org.uk/publication/consultation/cp21-24.pdf.

3.2.5. Skills and training

Several codes stipulate that committee members should have specific expertise and should be selected based on their skills, experience and interests to support the board in taking effective decisions and fulfilling its fiduciary duties. For example, Italy's Code mentions the need for specific skills in the remuneration and nomination committee.[45] The Swiss Code stipulates that the majority of the members of the control (audit) committee, including the chair, should have solid knowledge in finance and accounting, adding that in complex structures, at least one member must be a financial expert (CEO or former CEO, CFO or chartered accountant, for example) (Economiesuisse, 2014[39]). Japan's revised Code of Corporate Governance issued in June 2021 introduced a new tool that could be applied to committee members. It recommends disclosing a skill matrix of board members conforming to the company's business strategy.[46]

Interestingly, CONSOB has analysed the backgrounds of committee members. It shows no particular differences among them, with the relevant exception of audit committees where members with managerial expertise are fewer compared to professionals and academics. A recent development in CONSOB analysis covers the sustainability and digital skills of directors: 15% of directors have sustainability skills (the figure is higher for larger companies) and 16% have digital skills; in both cases such skills are more frequently observed among women.[47] Some codes also recommend induction and continuous training for committee members. For example, the European Commission recommends that "the company should provide an induction programme for new audit committee members, and subsequent relevant training on an ongoing and timely basis" (Annex I 2005/162/EC). The X (Ten) Principles of Corporate Governance of Luxembourg also recommend an induction training for new directors on the way the company operates and to allocate adequate training resources. For directors appointed to a board committee, this induction training programme shall cover the description of the committee's remit and the skills required to fulfil its assignment. Emphasis is given to the acquisition of the necessary skills to manage the various risks that require specific monitoring. Skills updates to improve their knowledge of the company with a view to fulfilling their role on board committees is also recommended (Recommendations 3.6 and 3.7 (Luxembourg Stock Exchange, 2017[16])). Training is becoming more and more important with the rising complexity of the business environment as a result of increasing sustainability risks, emerging ESG requirements, new technologies and consumer behaviours.[48]

3.3. Committees' accountability and oversight

As mentioned, the G20/OECD Principles encourage the establishment of specialised committees (Principle VI.E.2). However, they clearly mention that "the accountability of the rest of the board and the board as a whole should be clear". Therefore, boards remain fully responsible for any decision taken based on the preparatory work and recommendations of committees, as stated in several codes.[49] The

---

[45] The Code recommends that at least one member of the remuneration committee "has adequate knowledge and experience in financial matters or remuneration policies; such skills are assessed by the board of directors before his or her appointment" (Recommendation 26). Similarly, the control and risk committee "has expertise that is consistent with the company's industry and assessment of its risks; at least one member of the committee has adequate knowledge and experience in accounting, finance or risk management" (Recommendation 35) (Italian Corporate Governance Committee, 2020[17]).

[46] A similar recommendation is provided in the **Australian** ASX Corporate Governance Principles (2019) Recommendation 2.2.

[47] https://www.consob.it/documents/46180/46181/rcg2021.pdf/47b754d2-16e3-4c3e-8ea1-5add239444e0.

[48] https://corpgov.law.harvard.edu/2021/06/21/how-to-accelerate-board-effectiveness-through-insight-and-ongoing-education/.

[49] E.g. Headline 3.4 of the Recommendations on Corporate Governance of **Denmark** (2020) states that "board committees should solely have a preparatory function prior to the board of directors' consideration of and decision on

committees' objectives are to facilitate the board's work, through monitoring, information, advice and preparation of decisions to be taken by the board. They are not a substitute for the board (2005/162/EC) and are directly accountable for their work to the board. Malaysia's code is detailed on this issue and clearly mentions the collective oversight of the board on committees.[50]

It is also the responsibility of the boards to establish the committees and, besides some mandatory rules on certain committees, boards should enjoy flexibility in their establishment.[51] This flexibility is also important for jurisdictions which may need to tailor the establishment of committees to their specific circumstances (e.g. establishment of an ethics and social committee in South Africa), but also for companies which could plan the establishment of committees, according to their needs, size, sector or level of development. For example, the same rules cannot apply to small listed companies or large unlisted companies.

Committee members are expected to act in good faith, dedicate the necessary time to fulfil their specific tasks that have been delegated by the board, conduct due diligence, be comprehensive in pursuing their duties, alert directors on developments and risks within their areas of focus,[52] and be accountable for making timely reports to the board to support its decisions. In return, boards are expected to delegate responsibilities to committees in a reasonable manner, with the necessary expertise, resources and information to achieve their role. Since committee members are mostly board members, one could expect that their fiduciary duties are similar. However, there are no clear references to that effect in codes or regulations. Therefore, the question of whether the provisions applying to board members are automatically extended to committee members has no clear answer. This also raises the issue of liabilities of a director serving on the board and in a committee.

The liability of board members for their conduct while serving on board committees has been under increased scrutiny given the rising number of legal cases involving their responsibilities as committee members. In particular, chairs of the audit committee have been facing heightened liability exposures. Questions arise as to whether the liability of a director increases with committee membership[53] and

a matter […]. Consequently, the board of directors remain responsible for decisions prepared by a board committee" (Corporate Governance Committee, 2020[30]). Recommendation 3.9 on special committees of the X (Ten) Principles of Corporate Governance of the **Luxembourg** Stock Exchange (2017) mentions that "decision-making shall remain a collective responsibility of the Board, which shall remain fully answerable for decisions taken within its area of competence". Recommendation 1.1 (footnote 16) of the **Australian** ASX Corporate Governance principles (2019) affirms that "matters may be delegated to a committee of the board, with the board retaining the ultimate oversight and decision-making power in respect of the matters so delegated."

[50] E.g. the **Malaysia**'s Code on Corporate Governance (revised in April 2021) mentions that: "there is demarcation of responsibilities between the board, board committees and management" (intended outcome 2). "While the board may appropriately delegate its authority to board committees or management, it should not abdicate its responsibility and should at all times exercise collective oversight of the board committees and management. The board should not delegate matters to a committee or management to an extent that would significantly hinder or reduce the board's ability to discharge its functions" (Guidance 2.1) (Malaysia, 2021[44]).

[51] E.g. Italy's code mentions that the board sets up committees with specific functions which "can be either assigned to the three board committees recommended by the Code or distributed in a different manner or even combined in a single committee" (Recommendation 16 (Italian Corporate Governance Committee, 2020[17])).

[52] https://corpgov.law.harvard.edu/2021/05/10/directors-oversight-role-today-increased-expectations-responsibility-and-accountability-a-macro-view/.

[53] As recognised by the Australian Institute of Company Directors, this question is not very clear and not fully explored by the law. Section 190 of the Corporations Act of **Australia** recalls that directors remains responsible when delegating a power. However, there is a limited exception where the director who delegates will not be held responsible if that director believed: "on reasonable grounds at all times that the delegate would exercise the power in conformity with the duties imposed by the Act and the company's constitution; and on reasonable grounds and in good faith that the delegate was reliable and competent in relation to the power delegated".

involvement in a decision-making process.[54] Directors sitting in committees can also experience reputational risks that may hinder their career. Enhanced pressure from stakeholders, activists, proxy advisors and society at large, linked to the expansion of lawsuits, are elements that can lead to enhancing committees' discipline and effectiveness (Kolev et al., 2019[2]) Another related issue concerns the departure of directors from committees and their use of private information obtained through committee membership (Jagannathan, Krishnamurthy and Spizman, 2021[40]). In order to avoid exposure to litigation risk and the reputational penalty associated with their poor performance or a deterioration in earnings quality, directors may voluntarily and opportunistically leave companies in which they are member of a committee, especially the audit committee.

A responsibility of the board vis-à-vis its committees is also to evaluate and monitor them in order that they best respond to its needs and as a way to measure their accountability and balance their liability in the decision-making process.

In several codes, boards are requested to regularly assess the performance of each committee, as well as review, update and amend their mandate if necessary. Jurisdictions can also recommend an annual review of the board and its committees and the support of external facilitators on a regular basis (often every three years). Evaluation by external facilitators is therefore becoming more frequent. In the United Kingdom, 60% of listed companies are evaluated annually with the support of an external consultant, and 24% in France.[55]

Spain's Code offers detailed provisions regarding evaluations: "regular evaluation of the performance of the board of directors, its members and committees is of fundamental value. This is recognised in company legislation, which requires listed companies to annually evaluate the performance of their board and board committees, and draw up an action plan to address any weaknesses detected" (Principle 18, III.3.3.6). Particular attention should be devoted to the committees' chair. "Every three years, the board of directors should engage an external facilitator to aid in the evaluation process." Any business dealings that the facilitator maintains with the company should be detailed in the annual corporate governance report, as well as the process followed and the areas evaluated (Recommendation 36.e (CNMV, 2020[27])). Denmark's Code has similar provisions, but also recommends that the board establishes an evaluation procedure. It further states that "the evaluation may consist of an anonymous questionnaire focusing on the topics set out in the recommendation and subsequent individual interviews between the chairperson and the individual members during which feedback may be given based on the survey." It is also recommended that the board discusses the result of the evaluation and that the procedure and general conclusions are described in the management commentary, on the company's website and the general meeting. (heading 3.5 (Corporate Governance Committee, 2020[30])).

In the United States, the NYSE Listing Rules state that the "board should conduct a self-evaluation at least annually to determine whether it and its committees are functioning effectively." The audit, compensation, and nominating/corporate governance committees must also conduct an annual performance evaluation. It is interesting to note that companies listed on NASDAQ are not required to engage in self-evaluations, but still do so as a matter of good practice (OECD, 2018[41]).

---

http://aicd.companydirectors.com.au/resources/all-sectors/roles-duties-and-responsibilities/role-of-board-committees?no_redirect=true.

[54] In that regard, the **European Commission** Recommendation on the role of directors and committees is not very precise. While recognising the statutory decision-making authority to the board as a whole, it mentions that "the (supervisory) board should not be precluded from delegating part of its decision-making powers to committees when it considers it appropriate and when this is permissible under national law, even though the (supervisory) board remains fully responsible for the decisions taken in its field of competence" (2005/162/EC) (European Commission, 2005[1]).

[55] EY and Labrador (2021), Panorama de la gouvernance 2021, https://www.ey.com/fr_fr/assurance/panorama-de-la-gouvernance-2021.

In assessing these different rules, it may be advisable for jurisdictions to provide specific guidance for the periodic review of committee mandates, structures and duties to assess performance and efficiency, together with an assessment of membership and diversity and a focus on overlap avoidance among committees. However, such guidance should not be prescriptive, but rather indicative. Another trend in evaluation processes is the increased emphasis on directors' effectiveness which may involve, besides the board and committees reviews, individual director evaluation, hence covering director committee functions if applicable.

The nominating committee can sometimes have a specific role in the evaluation of the board, by deciding how the board's performance should be evaluated, proposing objective performance criteria and monitoring the process (e.g. Singapore Practice Guidance on Board Performance[56] and Malaysia's Code of Corporate Governance[57]). In Poland, the audit committee has a participatory role in the evaluation of the internal audit function of listed companies by an independent auditor at least once every five years (Polish Best Practice for GPW Listed Companies (2021) paragraph 3.10). In India, the Companies Act of 2013 requires listed companies to disclose the annual evaluation process regarding the board, its committees and the individual directors. The nomination and remuneration committee is responsible for carrying out the evaluation of each director's performance. Moreover, the 2015 SEBI (Listing Obligations and Disclosure Requirements) Regulations require the evaluation of the performance of each individual director, including the independent directors and chair of the board and the board's various committees. The mode, manner and evaluation criteria must be defined (and disclosed) by the nomination and remuneration committee. SEBI also issued a Guidance Note on Board Evaluation in January 2017 which includes detailed recommendations and suggestions on how to conduct an evaluation process. As a result, the number of board and committee evaluations is increasing in India. A report by the Institutional Investor Advisory Services (IiAS), in collaboration with the National Stock Exchange of India Limited (NSE), shows that 84% of companies surveyed evaluated their individual directors in 2016 (compared to 81% in 2015) and 83% of board committees were evaluated (compared to 78% in 2015) (OECD, 2018[41]). Evaluation of committee structures, functioning and duties seems to have increased importance with a view to enhance boards' efficiency. Today, boards are dealing with an ever-expanding range of issues and responsibilities and committees may enhance their capability to address them with a view to best advise boards. However, to avoid additional and burdensome layers in the decision-making process and to benefit from their monitoring and advisory role, boards should strategically and with flexibility establish and manage committees.

[56] **Singapore** Practical guidance 5 on board's performance states that "the Nominating Committee should decide how the Board's performance may be evaluated and propose objective performance criteria" (Singapore, 2021[34]).

[57] The **Malaysian** Code mentions that: "In disclosing the evaluation carried out on effectiveness of the board, its committees and individual directors, the Nominating Committee should disclose the following information in its CG Report: How the evaluation was conducted, the criteria used such as the assessment of fit and properness, contribution and performance, calibre and personality of directors; Whether an independent expert was engaged, or was it internally facilitated; Key strengths and/or weaknesses that were identified from the evaluation; Steps or enhancements proposed to be undertaken to mitigate or address the weaknesses identified; and impact of the evaluation on board composition (if any)" (Guidance 6.1 (Malaysia, 2021[44])).

References

Adams, R. (2020), "Death by Committee? An Analysis of Corporate Board (Sub-) Committees", https://doi.org/10.2139/ssrn.2736027. [5]

AFEP-MEDEF (2020), *Code Afep- MEDEF révisé de gouvernement d'entreprise des sociétés cotées*, https://www.medef.com/fr/content/code-afep-medef-revise-de-gouvernement-dentreprise-des-societes-cotees-janvier-2020. [15]

Alhossini, M., C. Ntim and A. Zalata (2020), "Corporate Board Committees and Corporate Outcomes: An International Systematic Literature Review and Agenda for Future Research", *International Journal of Accounting*, https://doi.org/10.2139/ssrn.3614878. [45]

ASX Corporate Governance Council (2019), "Corporate Governance Principles and Recommendations", https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-fourth-edn.pdf. [24]

Bernile, G., V. Bhagwat and S. Yonker (2018), "Board diversity, firm risk, and corporate policies, 127(3), 588-612", *Journal of financial economics*, Vol. 127/3, pp. 588-612, https://doi.org/10.1016/j.jfineco.2017.12.009. [38]

BoardEx (2020), "The Rise Of The Risk Committee", https://www.boardex.com/rise-risk-committee/. [25]

Chen, K. and A. Wu (2016), "The Structure of Board Committees", https://doi.org/10.2139/ssrn.2646016. [3]

CNMV (2020), "Good Governance Code of Listed Companies", https://www.cnmv.es/DocPortal/Publicaciones/CodigoGov/CBG_2020_ENen.PDF. [27]

CONSOB (2021), "Report on corporate governance of Italian listed companies", https://www.consob.it/documents/46180/46181/rcg2021.pdf/47b754d2-16e3-4c3e-8ea1-5add239444e0 (accessed on 30 June 2022). [37]

Corporate Governance Committee (2020), *Danish Recommendations on Corporate Governance*, https://corporategovernance.dk/sites/default/files/media/anbefalinger_for_god_selskabsledelse_engelsk.pdf. [30]

Deloitte (2021), "The Audit Committee Frontier – addressing climate change", https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/gx-the-audit-committee-frontier-climate-change-nov-2021.pdf. [12]

DeNicola, P. (2021), "A Deeper Dive Into Talent Management: The New Board Imperative", *PricewaterhouseCoopers LLP*, https://corpgov.law.harvard.edu/2021/08/12/a-deeper-dive- [18]

into-talent-management-the-new-board-imperative/#more-139633.

Diligent Institute (2021), "Gender Diversity in the Boardroom: Progress in a Tumultuous Year", https://www.diligentinstitute.com/wp-content/uploads/2021/04/2021. [36]

Economiesuisse (2014), *Swiss Code of Best Practice for Corporate Governance*, https://www.economiesuisse.ch/sites/default/files/publications/economiesuisse_swisscode_e_web_2.pdf (accessed on 13 July 2022). [39]

Edmans, A., T. Gosling and D. Jenter (2021), "CEO Compensation: Evidence From the Field", *ECGI Working Paper Series in Finance N° 771/2021*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3877391. [20]

European Commission (2005), "Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board", *Official Journal of the European Union*, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:052:0051:0063:EN:PDF. [1]

European Parliament (2014), "Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts Text with EEA relevance", *Official Journal of the European Union*, https://op.europa.eu/en/publication-detail/-/publication/39de2648-e657-11e3-8cd4-01aa75ed71a1/language-en. [9]

Ferrarini, G. (2021), "The EU Sustainable Governance Consultation and the Missing Link to Soft Law", *European Corporate Governance Institute, Law Working Paper No. 576/2021*, https://ssrn.com/abstract=3823186. [28]

Financial Reporting Council (2018), "The UK Corporate Governance Code", https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf. [10]

Gilson, R. and J. Gordon (2019), "Board 3.0 -- An Introduction", *The Business Lawyer, Columbia Law and Economics, Working Paper No. 602*, Vol. 74, https://ssrn.com/abstract=3332735. [4]

Harrast, S. and A. Swaney (2019), "What Is the Role of the Board-Level Technology Committee?", https://doi.org/10.2139/ssrn.3456770. [46]

Huang, S. and G. Hilary (2018), "Zombie Board: Board Tenure and Firm Performance", *Journal of Accounting Research, Georgetown McDonough School of Business Research Paper*, Vol. 56/4, https://ssrn.com/abstract=3249092. [43]

Italian Corporate Governance Committee (2020), "Corporate Governance Code", https://www.borsaitaliana.it/comitato-corporate-governance/codice/2020eng.en.pdf. [17]

Jagannathan, M., S. Krishnamurthy and J. Spizman (2021), "Board Committees and Director Departures", https://doi.org/10.2139/ssrn.3823393. [40]

Kolev, K. et al. (2019), "Board Committees in Corporate Governance: A Cross-Disciplinary Review and Agenda for the Future", *Journal of Management Studies*, https://doi.org/10.1111/joms.12444. [2]

KPMG (2020), "Nomination committees", https://assets.kpmg/content/dam/kpmg/uk/pdf/2020/03/nomination-committee.pdf. [14]

Lee, W. (2020), “The Determinants and Effects of Board Committees”, *Journal of Corporate Finance*, Vol. 65, https://doi.org/10.1016/j.jcorpfin.2020.101747. [6]

Lumsden, A. (2004), “The Role and Responsibilities of Directors on Board Sub-Committees”, https://doi.org/10.2139/ssrn.990201. [7]

Luxembourg Stock Exchange (2017), “The X Principles of Corporate Governance of the Luxembourg Stock Exchange”, https://www.bourse.lu/corporate-governance. [16]

Malaysia (2021), “Code on Corporate Governance”, https://www.sc.com.my/api/documentms/download.ashx?id=239e5ea1-a258-4db8-a9e2-41c215bdb776 (accessed on 29 June 2022). [44]

Middlenext (2021), *Code*, https://www.middlenext.com/IMG/pdf/c17_-_cahier_14_middlenext_code_de_gouvernance_2021-2.pdf. [26]

Nachemson-Ekwall, S. (2018), “Nomination Committees and Corporate Governance: Lessons from Sweden and the UK”, *Saïd Business School WP 2018-12*, https://doi.org/10.2139/ssrn.317039. [19]

OECD (2022), *Climate Change and Corporate Governance*, Corporate Governance, OECD Publishing, Paris, https://doi.org/10.1787/272d85c3-en. [11]

OECD (2021), *OECD Corporate Governance Factbook 2021*, https://www.oecd.org/corporate/corporate-governance-factbook.htm. [8]

OECD (2021), *The Future of Corporate Governance in Capital Markets Following the COVID-19 Crisis*, Corporate Governance, OECD Publishing, Paris, https://doi.org/10.1787/efb2013c-en. [21]

OECD (2018), *Board Evaluation: Overview of International Practices*, https://www.oecd.org/daf/ca/Evaluating-Boards-of-Directors-2018.pdf. [41]

OECD (2018), *Flexibility and Proportionality in Corporate Governance, Corporate Governance*, OECD Publishing, Paris, https://doi.org/10.1787/9789264307490-en. [32]

OECD (2015), “G20/OECD Principles of Corporate Governance”, *OECD Publishing, Paris*, http://dx.doi.org/10.1787/9789264236882-en. [42]

OECD (Forthcoming), *Digitalisation and Corporate Governance*. [29]

OECD (Forthcoming), *Enhancing gender diversity on boards and in senior management of listed companies*. [35]

Reed, D. and A. Upadhyay (2010), “Subordinate board structures”, *Journal of Corporate Finance*, Vol. 16/4, pp. 469-486, https://doi.org/10.1016/j.jcorpfin.2010.04.005. [47]

Securities and Exchange Board of India (2015), “Listing Obligations and Disclosure Requirement”, https://www.sebi.gov.in/legal/regulations/nov-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015-last-amended-on-november-09-2021-_37269.html. [13]

Singapore (2021), *Practice Guidance*, https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Practice-Guidance-1-Jul-2021.pdf. [34]

Singapore (2018), *Code of Corporate Governance*, [31] https://www.mas.gov.sg/regulation/codes/code-of-corporate-governance.

SpencerStuart (2020), “2020 U.S. Spencer Stuart Board Index”, https://www.spencerstuart.com/-/media/2020/december/ssbi2020/2020_us_spencer_stuart_board_index.pdf. [22]

Uzun, H., S. Szewczyk and R. Varma (2004), “Board Composition and Corporate Fraud”, *Financial Analysts Journal*, Vol. 60/3, pp. 33-43, https://doi.org/10.2469/faj.v60.n3.2619. [33]

Watchell, Lipton, Rosen, Katz (2021), “Risk Management and the Board of Directors”, https://www.wlrk.com/webdocs/wlrknew/ClientMemos/WLRK/WLRK.27765.21.pdf. [23]