

# Annual report 2013



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### **Message from the Chairman**

Publishing a report on Afep activity in 2013 is an opportunity for me to highlight the main factors that drove its work. Given that the economic and social climate remains complex, our main priority continues to be improving public accounts and increasing the competitiveness of our companies to create jobs. However, while public authorities are more aware of these objectives, not enough measures have been put in place and sadly the results do not meet expectations.

The decision, once again this year, to balance budget in France primarily by increasing tax contributions casts doubt on the sustainability of economic policies carried out to date. While efforts have helped to curb public expenditure, it has not yet reached levels expected. In this respect, the pension reform adopted at the end of the year is a missed opportunity.

Having considered the concerns, the government started 2013 by implementing the tax credit for com-

petitiveness and employment. However, this alone will not get the French companies most affected by international competition back in the race. While the French President's announcement at the start of 2014 of the "Pacte de Responsabilité" (Responsibility Pact) is a good sign, relief measures must quickly follow so that business margins can be fully restored. The improvement of companies' situation will imply job creations and investment development.

In 2013, we saw the implementation of a long-awaited labour market reform, which helped companies make social procedures more secure and better adapt to economic difficulties. However, there is still some work to be done to generate employment.

After eager anticipation came the announcement of the Simplification Reform (called "*choc de simplification*"), a much needed set of measures which will also have to reduce the number of new restrictions on economic players. It is important not to adopt measures without an overall vision and without considering the specific consequences on the economic network. Too many measures were announced or adopted this year, for example, concerning relations with tax authorities, which go against business development.

Several important measures on corporate governance have been put in place by companies and Afep proved that an adequate code of conduct was the way

to reach targets. In this way, the new corporate governance code, which has been the subject of long discussions with all stakeholders, provides a better framework for remuneration, as well as greater transparency, while at the same time maintaining the necessary flexibility. The High Committee for Corporate Governance, effective since October 2013, was set up to clear up interpretation issues and to ensure that recommendations are followed up.

The competitiveness of our companies also depends on the choices we will have to make regarding the energy transition, which is part of the government programme. We publicly expressed our proposals at a symposium and we will continue our work to ensure an efficient transition in terms of costs, while facilitating the continuity and development of our industrial activities and encouraging the creation of innovation solutions in terms of energy efficiency and reducing carbon emissions.

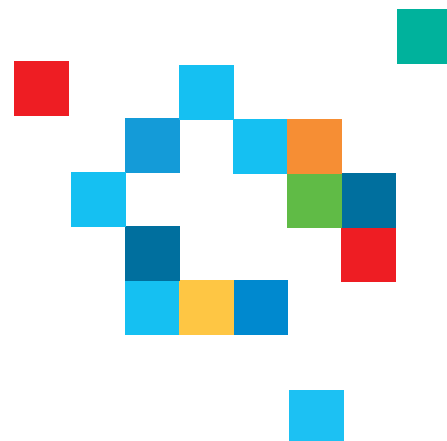
I want to highlight the importance of Europe. Our companies are active there. They aim to help guide decision-making and to ensure that European policies allow them to grow within a regulated internal market that does not put them at a disadvantage on the international arena. The main concerns for these companies are defending the Euro, strengthening financial markets, particularly with a view to ensuring long-term financing for our economies, a common

economic and industrial policy that requires relevant decisions in terms of regulation, competition or even protection of our industrial property.

All these actions have been achieved thanks to the efforts made by company leaders and best specialists, who are employed by these companies, as well as the Afep team. For this I am very grateful.

Afep and its member companies are open to dialogue and seek the development of our country, even if their markets and growth are also outside our borders. Afep action is focused on this goal only. France has many large companies that are a strength to the country and they intend to remain as such!

PIERRE PRINGUET  
Chairman of Afep



# Association Française des Entreprises Privées (Afep)

## Who are we?

Since 1982, Afep is the association which brings together large companies operating in France. The Association is based in Paris and Brussels.

Afep aims to foster a business-friendly environment and to present the company members' vision to French public authorities, European institutions and international organisations.

Restoring business competitiveness to achieve growth and sustainable employment in Europe and tackle the challenges of globalisation is Afep's core priority.

Afep's work relies on:

- the direct participation of business leaders and their teams in defining economic and social policy directions, as well as in determining the actions to be taken for growth and employment;
- direct and sound exchanges with public authorities, which are based on analyses and well-founded proposals;
- active and constructive contributions to French and European public consultations.

Afep is involved in drafting cross-sectoral legislation, at French and European level, in the following areas:

- economy,
- taxation,
- company law and corporate governance,
- corporate finance and financial markets,
- competition, intellectual property and consumer affairs,
- labour law and social protection,
- environment and energy,
- corporate social responsibility.

Afep has 108 members. More than 8 million people are employed by Afep companies; their annual combined turnover amounts to €2,000 billion.

The Association's website ([www.afep.com](http://www.afep.com)) provides more information on how it operates and its recent work, as well as on the role of the large companies in the French economy.

The Chairman of Afep is **Pierre Pringuet**, CEO of Pernod Ricard. **François Soulmagnon** is Director General of the Association and **Stéphanie Robert** is Director.

# Competitiveness



## 1. An economic and budgetary situation that remains complex

After registering zero growth in 2012, 2013 was another year of near stagnant economic growth (0.3 %), amidst an unfavourable context in Europe (the economy expanded by 0.1 % in the European Union and contracted by 0.4 % in the eurozone). The unemployment rate of the active population was almost 11 %, despite an increase in state-funded contracts (through the so-called “*emplois d’avenir*” programme and “*contrats*

*de génération*”). While public accounts have been showing signs of improvement since 2011, the pace of recovery is not enough to reduce public debt. In terms of the path marked out in French law on public finance planning, France failed to keep its commitment to lower public deficit to 3% of GDP in 2013, which the European Commission and Council officially recognised during the year by granting the government two more years to meet this target.

The marked decline in the tax base, particularly the fiscal base, casts doubt on the strategy used by successive governments, which consists of raising tax and social security contributions significantly (90% of the structural effort to reduce deficit between 2011 and 2013) and inadequate control of public expenditure.

## 2. Strong efforts to address major concerns regarding competitiveness

Afep has become more involved in the debate surrounding economic, social and environmental issues. The objective is twofold: studying an objective report on our country’s strengths and weaknesses and proposing solutions to major concerns regarding competitiveness.

In the first case, Afep decided to provide decision makers (a large group made up of ministry and parliament cabinet members and qualified individuals, among others) with “Economic news flashes” on a regular

basis. The aim is to provide a detailed analysis on several aspects of the national and international economy, for example, growth, investment, business margins, public finance, social protection, employment and education. A complete list of the news flashes is available in French at [www.afep.com](http://www.afep.com) ("Flash éco" section).

Afep also published its recommendations, which are based on three guiding principles:

- All government bodies must be reformed;
- Companies play a central role in generating more sustainable jobs;
- More efforts are needed for further European integration.

In line with these guiding principles, Afep believes that France should not expect to recovery as a result of actions taken outside the country, but should lay the foundation for internal recovery, by creating a setting that would encourage entrepreneurs. However, if the situation in Europe does not improve, these measures alone will not be enough. Given that it is a difficult time across the continent, it seems that pursuing European integration is essential for companies to make the best use of all the options that the economic and monetary union has to offer.

The Euro depends on the credibility of its Member States (primarily France), which means that implementing sound budget policies, which ensure intergenerational

equity and freedom for the financing of future projects, is important. Afep was also involved at the national and European level in matters that result in major developments for companies for example, financial transaction tax, country by country reporting, competition policy and financial markets (see European Affairs).

In a context of growing international competition, Europe must have a coherent policy for its companies, while ensuring that its priority is not to create competitive disadvantages in front of other major industrial and emerging powers. These issues must be central to the next European elections campaign in 2014 and the renewal of the European Commission.

### **3. The pension reform: Afep proposals and analysis of the law**

At the start of 2013, the government began wide consultations with social partners with a view to presenting a draft pension reform to parliament.

This work highlighted the importance of the forecasted deficit of our pension system (€20 billion by 2020) and was an opportunity to evaluate the different measures for saving and raising funds to address the issue. Afep defined three areas for reform to ensure the sustainability of the pension system:

- making sure that corporate burden and tax on active population are not raised again;

- working more throughout life;
- in the short-term, prioritising measures that do not have a negative effect on competitiveness.

These areas are based on three objective facts: life expectancy continues to rise, the number of people entering into employment later in life continues to increase and the standard of living for pensioners is in line with that of the working population. To this end, Afep proposed gradually increasing the statutory retirement age set by the 2010 reform, by a quarter each generation, but keeping the life expectancy

profit-sharing rule brought in with the 2003 reform, which concerns the length of time that individuals have to make contributions.

This draft reform, which was presented at the end of August by the Prime Minister, includes the principle of further increasing the number of years that an individual has to make contributions from 2020 so that it will be equivalent to 43 years in 2035. Apart from this point, this text has serious shortcomings.

This means that a new reform will be needed in the future.



# Taxation

## 1. The context

The tax credit for competitiveness and employment (CICE) was announced at the end of 2012. Despite the fact that this measure was designed to aid companies, it is not part of an overall effort to reduce their tax and social contributions, which have been increasing over the past three years. Under the 2014 finance law, new calculations of productivity were made, equivalent to around €3 billion, and several measures to tighten up tax audit and fight against fraud were introduced.

In a complex economic situation, in which large companies are sometimes perceived as a source of productivity, because of their size, Afep tried to show the extent of their effective contribution to tax contributions and the negative impact that a policy, which places most of the responsibility for lowering public finances on large companies, would have on investment and employment. As the conferences on taxation begin, Afep's request is that goals are defined for lowering tax contributions in order to improve the competitiveness and attractiveness of France.

## 2. Concerns and benefits

In 2013, Afep's aim was that measures implementing previous finance laws would address companies' competitiveness needs.

Afep also organised a discussion between management and the companies on the implementation of measures on the transmission of computerised accounting information as part of tax audits. There have also been many talks with management to develop ways of testing the "relationship of trust".

While preparing the 2014 finance law, several discussions and talks were held with public authorities. The aim of these discussions was to prevent it from placing more tax burdens on companies, particularly large companies, which, in 2013, had backed measures to restrict financial interest deductions, increase taxes on long-term capital gains on shares in associated

companies and limit carrying over of deficits to 50%. However, this law resulted in a further rise in corporate tax, equivalent to around €3 billion.

This new rise in tax contributions follows on from a continual rise in corporate tax charges over the past three years. Afep endeavoured to show that these charges had reached their peak and that measures were now needed to reduce them. There are no facts to support the idea that large companies would not pay enough tax. According to a survey of its members, 76 companies, which represent 9% of national value added, contribute to 18% of taxes on companies. Their contribution to corporate tax is equivalent to 14% of overall corporate tax (the weighting of these companies in the added value is one point higher than the national average). Taxes and charges on inputs paid by these companies represent 26% of the national total, while social contributions represent 17% (see results of the survey at the end of the chapter).

Afep took part in the French National Assembly's fact-finding mission, "Companies' tax optimisation in an international context", aimed at providing information on this issue, particularly double taxation incurred by multinational companies, given there are different expectations in States where the parent company and subsidiary are located.

Afep ensured that while combating tax fraud was necessary, it did not become an excuse to extend government authorities' powers when carrying out

tax audits. Afep strongly opposed extending the concept of non-cooperative States and territories, and backed the introduction of a clause to keep the existing system. As a result of tighter tax audit, introduced by parliamentary amendments to the 2014 finance law, they do not just involve checking that tax provisions are being kept and the penalties are higher.

The Constitutional Council approved studies carried out by Afep by removing the new definition of the abuse of right, the compulsory declaration of tax optimisation diagrams, the measure on business restructuring, penalties based on turnover, particularly in the event of a dispute regarding documentation on the transfer price.

Afep showed that increasing tax contributions could be achieved by lowering taxes on inputs, which would mean that the tax on profits increases. The creation of a tax on the gross operating surplus, which offset the removal of tax on production, in this particular case, the social welfare tax, resulted in several problems. This tax penalised investments in particular (non-deductible costs on industrial assets and financial charges to finance them). In addition, it had a considerable impact on transfers between activity sectors and companies.

In the end, this tax was abolished and the one-off contribution to corporate tax was increased temporarily<sup>1</sup>. While this is not a long-term solution, because of the corporate tax incurred by large companies

(38 %), it prevents a new tax on profits on an extremely severe tax base from being implemented.

Lastly, Afep hoped to place fiscal matters at the heart of companies' international concerns. European talks on the financial transaction tax and on the country by country reporting requirement are an opportunity for Afep to recall concerns regarding the competitiveness and attractiveness of France, but also tax concerns in the European Union. For more specific information on these issues, please see the sections on financial affairs and corporate social and environmental responsibility.

Within the framework of the international tax agreements observatory, Afep hopes to encourage dialogue between management and companies to resolve conventional tax problems. Through its study on the difficulties encountered by its members in Brazil, the annual symposium of the observatory, or even regular talks with the Director for tax legislation, Afep hopes that management will have access to real time information on the extent of the problems identified by French companies in other countries. Management and its foreign representatives could then discuss the ways of resolving these issues.

### **3. Outlook**

At the national level, there will be several projects on taxation. A number of reforms that may affect tax were announced at the end of 2013. The conferences

on taxation, which are part of the "*Pacte de responsabilité*" (Responsibility pact), will be the opportunity to examine all aspects of corporate tax.

Afep is concerned about the rise in the number of projects on taxation, given that under the French budget plan, around €20 billion per year must be saved between now and 2017, and that there is not much scope for reducing tax. It is essential that these reflections are part of a reduction plan that applies to all economic stakeholders and that they do not include transfers between companies.

Given that the corporate tax base has expanded considerably over past years, any corporate tax reform must only involve reducing the corporate tax rate, without charge.

Afep will focus, in particular, on the link between tax on inputs and tax on profits to prevent any reform that could lead to transfers between activity sectors or even company size.

Action plans on the fight against fraud will be implemented this year at the European and international levels. It is also hoped that a number of considerations on the fight against tax fraud will be finalised, in particular, concerns regarding the introduction of tax optimisation and better management of the tax charge.

The action plan, recommended as part of implementation of the OECD project "Base erosion and business restructuring", should be defined. European initiatives

are expected to continue (particularly the proposal to extend the automatic exchange of information so it would cover dividends, capital gains, all other financial income and account balances of companies; assessment of the proposal amending the parent company directive so that it would include common anti-abuse rules and so that it would no longer include hybrid loans; the proposal on taxation of the digital economy and the assessment of the proposal for a directive on non-financial information, which may result in a requirement for country by country of location reporting of financial and tax information).

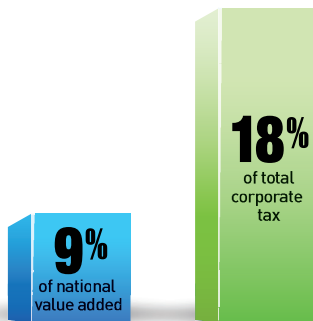
Afep is concerned that as it is only government authorities who are in charge of fiscal matters, they focus primarily on the problems of transparency, without taking into account companies' concerns (for example, removing double taxation). They do, however, take into account the Treasuries concerns regarding the allocation of tax revenue.

Afep believes that to defend companies' interests, strong political action is essential, designed to protect the tax legislation in the country where the headquarters are located, meaning that the tax base is in line with management and intangible assets.

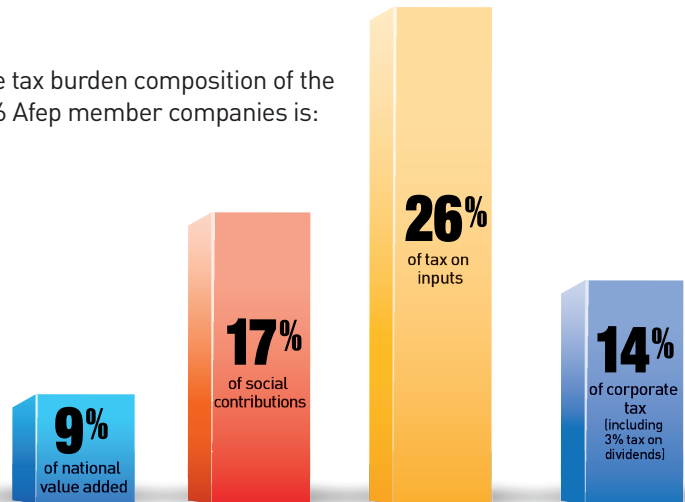
[1] Increase from 5% to 10.7% for the 2013 and 2014 fiscal years.

## Survey on the weighting of tax contributions paid by large companies (March 2014)<sup>[2]</sup>.

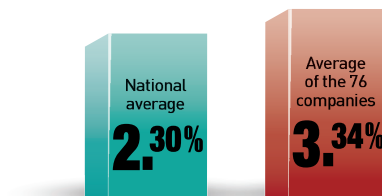
The 76 Afep member companies that participated to the study represent:



The tax burden composition of the 76 Afep member companies is:



With respect to contributions to corporate tax, the weighting of corporate tax paid by 76 companies with a valued added that is higher than the nation average:



<sup>[2]</sup> Updated data on corporate tax for the 2012 financial year and the 3% tax on 2013 dividends.



# Company law & corporate governance

## 1. The context

2013 was marked by many developments in the area of corporate governance in terms of soft law and hard law. Corporate governance is always changing, so that it is in line with requests made by investors and stakeholders...

Since 2011, Afep has been preparing new updates for corporate governance code for listed companies. Rather than adopting legislation, the government focused on professional regulation. The revised Afep -MEDEF code

was published in June 2013 having been discussed, as requested by government authorities, with the ministries concerned, the French financial markets authority (AMF), representatives of investors and voting advisory agencies. The High Committee for Corporate Governance was set up in October following this revision.

The year was also marked by several amendments to legislation. For example, at the national level, the extension of recommendations in the pact for competitiveness and in the French President's programme, and the Secure employment law of June 2013, which transposed a national inter-branch agreement, helped to increase the number of employees in the Councils. The draft law aimed at restoring the real economy contains measures on takeover bids, which are particularly concerning and were drawn up without consulting the other stakeholders in the financial market.

Along the same lines as social and corporate social responsibility is the proposal for a law on parent companies' and principal companies' duty of care, which aims to place the responsibility for any damages caused by subsidiaries or subcontractors, almost without question, on the parent companies. Two directives on transparency and market abuse were adopted at the European level. They reveal new developments in the area of corporate law and stock exchange law.

## 2. Progress and developments

In 2012, the government considered drafting a law that would make it possible to limit some remuneration

practices and to update private corporate governance. These provisions saw the adoption of a say on pay measure, restrictions on the number of mandates, employee representation at the remuneration committee, as well as measures to restrict wages.

Highlighting how well the professional regulation worked, Afep warned the government that legislative measures that were too restrictive or not well adapted were likely to make French groups less attractive and could deter the most skilled professionals. As an alternative to the law, the Association and MEDEF proposed amending several aspects of the code.

In May 2013, the government agreed to drop the legislative approach so that the law would not contain rules that were designed to continually evolve in a changing international environment, thus enabling the professional regulation to find its right place.

After extensive consultation, the revised code was published in June 2013. The fact that it was well received by public authorities and the different stakeholders, not only in France, but also in the rest of the world, shows the interest in concerted professional regulation.

With respect to managers representing employees at board of director meetings within large companies, the secure employment law of June 2013 outlines the structure of companies when they have a strong international dimension, as Afep had hoped for. The European Works Council may appoint one of directors in the event that there are two nominations.

While stakeholders in Paris stock exchange were not consulted, provisions aimed at protecting companies against hostile takeover bids have been included in the bill on reconquering the real economy. The law raises real concerns for companies because some measures are not in line with the objective of fighting against the rise in takeovers and in general could make the Paris stock exchange less attractive (in particular, streamlining double voting rights and strengthening the works council's offering price).

In January 2014, a text authorising the government to make business activity easier and more secure was adopted.

To help companies prepare for the general meetings in 2013, Afep prepared a comparative table of the main proxy advisory firms' voting policies. Afep sent the results of a survey conducted with its members. It provides an overview of the most important facts and the main trends in voting on resolutions at general meetings. During the last quarter of 2013, Afep organised meetings with representatives of investors and proxy advisory firms in order to further dialogue and to prepare a consultative vote for shareholders on wages. Lastly, the Association responded to the European Securities and Markets Authority (ESMA) consultation regarding draft code of conduct applicable to proxy advisers, which it believes does not place enough importance on dialogue between issuers and proxy firms.

Afep published several studies on fees paid to directors

of the SBF 120 companies as well as the performance requirements.

At the European level, the year was marked by the adoption of the revised transparency directive and adoption of regulation on market abuse. Contrary to initial proposals made by the Commission regarding the first text, several provisions on transparency in French law were kept. For example, reporting stocks or votes that exceed the threshold, declaration of intent, declaration of securities lent or borrowed during general meetings. French law provides the directive on thresholds and declarations.

In terms of corporate governance, discussions are still ongoing regarding the proposal for a directive on improving the gender balance among non-executive directors of companies listed on the stock market. While the objective that each gender represents 40% of the members is in line with national law, the text has several technical errors.

### 3. Outlook

In 2014, it is expected that regulation on the simplification of law will be drawn up at the national level.

During the next general meetings, Afep will monitor in particular implementation of the say on pay provision and the appointment of directors, but also the reaction of investors to new provisions on public offers.

In terms of corporate governance, the High Committee must work on two areas: responding to companies' requests regarding implementation of specific parts

of the code or problems interpreting the code and, where appropriate, taking action. It must focus its action on a several issues, namely say on pay, the independence of directors and the plurality of mandates.

At the European level, the initiatives announced in the Commission's action plan on corporate governance and corporate law should come into force during the first quarter of 2014 with the adoption of the revised directive on shareholders' rights, which should include provisions on the transparency of remuneration policies and the remuneration of individual directors, in addition to the introduction of a say on pay provision; tightening shareholders' control over relationships with parties concerned; increasing the transparency of voting policies for investors and the votes cast; regulations applicable to proxy advisers in the area of transparency and conflicts of interest. Afep is in favour of the transparency objective and will monitor this work carefully. As a member of the European Corporate Governance Codes Network, an informal network made up of national organisations responsible for monitoring codes, Afep will also continue its discussions with the European Commission on the comply or explain principle. It will be recommended to Member States during the first quarter of 2014.

Lastly, Afep will carefully monitor the measures for implementing level 2 of the regulation on market abuse prepared by ESMA.

# Financial affairs

## 1. The context

In 2013, international projects dominated financial affairs. There were fewer issues at the national level and they were often linked to international problems.

At the European level, 2013 was marked by intense legislative activity, which, in the context of a financial crisis, aims above all to ensure financial stability and to strengthen regulation of markets, financial products and stakeholders.

To reduce the banking crisis' impact on public debt and tax payers, as well as fragmentation of the European market, European institutions focused on setting up a Banking Union with two main pillars: the single supervisory mechanism for the most important banks in the eurozone<sup>1</sup> and the banking crisis resolution mechanism (recapitalisation or adjudicated bankruptcy). After an agreement was made on the Single Supervisory Mechanism (SSM), significant progress was made at the end of 2013 on three texts outlining the future banking crisis resolution and management system: the resolution and recovery directive for distressed banks,<sup>2</sup> the directive on the deposit guarantees scheme<sup>3</sup> and the text on the single resolution mechanism even if an agreement on this text is yet to be agreed by the European Council and European Parliament<sup>4</sup>. The aim of this mechanism, which will apply from 2015 and will be financed up until 2026, until it reaches a target amount (around €55 billion),<sup>5</sup> is to act as a last resort after applying bail-in and, at least to begin with, after intervention by national authorities. The first bank supervisions will be carried out from 2014 at the European level as part of the single supervisory mechanism. The European Central Bank (ECB) will assess the quality of their assets and then the European Bank Authority (EBA) shall test their resistance.

**Despite the fact that priority was given to the Banking Union, many other developments were made:**

■ some texts were published in 2013 and are in the

process of being implemented, for instance, in response to the priorities defined by G20, the European Market Infrastructure Regulation (EMIR) and the ESMA technical standards on over-the-counter derivatives, central counterparties and trade repositories; the amended regulation on credit rating agencies (CRA III); and finally the revised transparency directive;

■ after intense discussions over past years, the following two projects were the subject of inter-institutional agreements reached at the end of 2013: in November, the Omnibus II directive which applies the Solvency II directive concerning insurance undertakings; in December, the general reform of the statutory audit market;

■ three projects are under discussion:

- dialogues between European Parliament, the European Council and the European Commission on the structure and complexity of texts on Markets in Financial Instruments (MiF)<sup>6</sup> are currently in the final stages;
- the draft European regulation on packaged retail investment products (PRIIP)<sup>7</sup> should lead to dialogues. One of the issues for negotiation will be including companies' requirements within the scope of the text, which was decided in November by the European Parliament. This text is different to the European Commission's legislative proposal and the Council's opinion and comes in spite of strong opposition from the companies;

- the proposed Council directive issued in February 2013 by the European Commission on the implementation of a European financial transaction tax (FTT)<sup>8</sup>. This proposal aims to respond to 11 Member States' desire, as part of enhanced cooperation, for new sources of financing, for banks to contribute and for a stronger single market and financial markets.

Given the vast number of rules that have been adopted or are under consideration at the European level, there is uncertainty as to how they will affect the companies and their financing, and even the stability of the system, if, for example, reducing bank intermediation leads to the development of a shadow banking system. Discussions launched in 2013 by the European Commission as part of its Green Paper on the long-term financing of the European economy and the Maystadt report on IFRS<sup>9</sup>, are opportunities to develop a shared vision of the European economy, to ensure the consistency of public actions and to make sure that there is better consideration of European interests. Time will tell how these guidelines will be implemented and whether IFRS will be able to meet the expectations expressed in the Afep-MEDEF report on the future of international accounting standards.

The European Union (EU) is also developing financial regulations and is considering reforming the structure of its banking sector. The European Commission's legislative proposal echoes the Volcker Rule, which

was adopted by US authorities in December 2013 and aims to separate high-risk bank activities by 2015. In a bid to maintain its sovereignty and safeguard its economic interests, the United States is gradually making progress on a number of matters. For example, in July, the Federal Reserve adopted the Basel III rules, although later than in EU. However, the adoption of IFRS for US domestic business has reached deadlock and the country by country reporting requirement, which prompted EU to adopt similar provisions, may be relaxed by SEC (since the US Federal Court removed this requirement). Given that it is not always easy to coordinate US and European agendas, some companies, particularly financial institutions, may eventually be subject to two sets of requirements in certain areas (accounting standards for listed companies in the United States; derivatives for US stakeholder counterparties; resolution and separation of banking activities).

At the international level, the Integrated Reporting Council (IIRC), supported by major audit firms, is making considerable efforts to promote a complex, wide framework for integrated reporting, and to encourage legislative and regulatory authorities to adopt it. This framework covers financial reporting and non-financial reporting, as well as the area of statutory audits (see Corporate Social Responsibility).

In France, several audit firms see this project and other possible interventions in the field of social and environmental reporting, as an area for development

and a means for increasing their level of activity. The other issues dealt with mainly focus on AMF audits of financial reports published by companies.

## **2. Companies' concerns**

The companies agree with the measures and proposals that are aimed at ensuring greater financial stability and improving the transparency and security of financial operations and orders. It is useful not only to draw conclusions from the crisis, but also to consider legislation and new technologies, which resulted in fragmentation of markets and liquidity, and the development of high frequency transactions. Yet, all too often these developments raise doubts about the primary objectives: to help finance the economy and promote the central role of markets; to reduce the costs of financing; to promote short-termism, to break the equality between investors and to separate issuers' and investors' markets, particularly in the long term. Companies are also concerned about maintaining the system for bank financing and financial institutions investments in the real economy.

So companies are faced with several challenges as a result of European texts and certain initiatives taken at the national and/or international level. They include:

- problems that may arise concerning financing and hedge transactions. They are sometimes linked to an inadequate assessment of the impacts on the real

economy or of crises, and guidelines that do not favour investments in shares or corporate bonds (tax, an inappropriate liability regime, prudential rules);

- while there is a greater focus on market transparency, there are more information constraints and/or checks on companies. This comes in spite of companies' hopes that French and European legislative authorities would introduce simplification measures;

- if supply is not adapted, European dogma on competition could affect the quality of some services required by investors (in particular, statutory audits); this dogma is expressed above all by mechanisms that restrict companies' choices, without organising supply development (for example, mandatory rotation of statutory audit firms);

- the array of rules to apply in an international setting.

These restrictions affect company costs, company operation and/or understanding by third-parties; they may expose companies to unjustified liability actions; result in sensitive information being disclosed, particularly to foreign stakeholders; or make listed companies less competitive than foreign competitors.

### 3. Progress and developments

At European level, the content of the main texts adopted in 2013 concerning financial matters –texts on rating agencies, regulation on over-the-counter derivatives,

revised directives on transparency requirements– has changed very little in terms of the projects at the start of the year and in general, it meets Afep's final expectations. That is to say, extending the period for publishing half-year financial statements, lifting the European requirement to publish certain financial information every quarter, and addressing requests to limit short-termism approaches. However, while Afep agrees that only extractive and forestry industries should report on payments made to governments, it is disappointed that the directive on financial statements forces companies in these sectors to publish project by project information, given that it may be sensitive in nature and could have a negative impact. The Association shall also monitor the procedure used to implement the requirement, brought in by the transparency directive, that as of 2020, all companies' annual financial reports must be prepared using the single electronic reporting format<sup>10</sup>.

The inter-institutional agreement concluded at the end of the year on the European reform of statutory auditing shows that real progress has been made in terms of the European Commission's legislative proposal. The latest innovation is the introduction of a mandatory rotation of firms' principle. This provision is less restrictive than initially envisaged (it may last a total of 24 years in the case of a joint audit, compared with 9 years at the start), however, when it is implemented, between 2020 or 2023, it could lead to a decline in the quality of audits of large companies.

This may be because there is a shortage in audit supply in this area and not enough measures for increasing the supply. The chair of the dedicated working group of the European Issuers' association normally sends Afep the considerations in the directive and regulation on pragmatic, fixed cost solutions, which are in line with the organisation and operation of companies, their governing bodies and the audit committee: the role of this committee is strengthened, but its structure remains unchanged; the content of statutory audit reports (determining the scope of the auditor's mission) is now balanced. It is no longer an issue of prohibiting the largest firms from providing large public-interest entities with services other than statutory audits or from publishing assessments of internal control and risk management. In this respect, by using the results obtained, it is possible, in France, to deal with, as best possible, the review, put forward by AMF, of its recommendations on the audit committee and its reference framework on risk management and internal control.

As part of the reform of the legislative framework on markets in financial instruments, considerable progress has been made on the report adopted by the European Parliament and the Council's general approach. However, some developments still need to be approved at Council, European Parliament and European Commission dialogues, as well as the text which will be published in 2014: these draft texts meet most of the expectations, particularly those

concerning restrictions on high frequency transactions, the terms and conditions for non-financial counterparty intervention in over-the-counter derivatives and CO<sub>2</sub> allowances. The scope for transparency requirements has extended, covering all order execution systems and financial instruments. However, given the concerns raised, further progress is still needed for two reasons: the delay in setting up a consolidated European database after talks meant that the opportunity to find out more about trade and prices was missed, but even so it is very useful for market stakeholders; while transparency discussed before talks has improved, there is still work to be done in this area.

Efforts carried out at the European level have also helped to extend actions beyond the implementation of the draft regulation on packaged retail investment products, while the European Parliament continues to support the inclusion of company requirements. The European Commission has also postponed revision of the prudential pillar of the directive on institutions for occupational retirement (IORP II) until after 2014. In keeping with the wishes expressed by the companies, this would delay the implementation of further capital requirements, which would weigh heavily on companies linked with such institutions, regardless of their special features: long-term social commitments and investments; specific mechanisms for ensuring the payment of pensions; non-commercial activities.

In France, AMF considered most of Afep's observations in its recommendation on pro forma information and many of them in its recommendation on financial statements; the market authority did not issue new recommendations in its annual report for the chairman's reports on internal control procedure and risk management. Lastly, the Ministry of Justice considered amendments requested by Afep in the decree approving the standard on social and environmental reporting services. This decree recognises their special features on financial reporting, in particular, the lack of systematic reference to the concept of insurance, used for certifying financial information.

#### 4. Outlook

Afep actions will be guided two principles: prioritising long-term approaches and maintaining the conditions for financing companies. While improving market security and the security for financial stakeholders is extremely important, it must not lower business competitiveness or curb sustainable growth.

At the European level, 2014 is a pivotal year because it marks the end of the European Parliament term and raises questions regarding EU guidelines for 2020.

Under current legislation, European institutions must first reach inter-institutional agreements on texts relating to markets in financial instruments —probably at the very start of the year—, European regulation

on packaged retail investment products (PRIP) and the single bank resolution mechanism. The European Commission's next legislative initiative on separating certain banking activities should be monitored carefully. However, delaying publication of the European Commission's proposal makes it increasingly unlikely that the European Parliament will take a stance before it is renewed<sup>11</sup>.

As part of future dialogues, Afep will continue to request that company debt securities are excluded from the scope of PRIP regulation. Additional information requirements, which are unsuitable for these securities, could hinder companies' access to bond markets or may be a source of confusion for investors and could generate unjustified costs.

Discussions on banking matters are expected to be complicated:

- in the short-term, considerable efforts will be needed so that an agreement is reached between the European Council and European Parliament on the European resolution mechanism for the financial stability of the eurozone: as stressed by the chairman of the ECB and the president of the European Parliament, it is important to make this mechanism and decision-making less complex;

- for non-financial companies, the debate on the organisation of banking activities is focused on how to prevent the separation of certain activities —particularly marketing making— from affecting the issuance

of securities, the conditions for bank financing and counterparty activities, particularly hedging transactions;

■ lastly, the risks associated with a shadow banking system must be controlled better.

Unlike these texts, the Council's draft directive on the financial transaction tax (FTT) is not legally bound by the end of the parliamentary term since the European Parliament does not have authority to make decisions. Talks on this project, which have slowed down as a result of legislative elections in Germany, may pick up in 2014 once it is clear what the German government's stance is and as a result of certain participating State's desire to make fast progress during the next months. Given that it is not easy to reach an agreement on the existing draft, it seems likely that its scope and calendar will be reconsidered, to say the least.

Afep continues to stress the undesirable effects that a FTT would have on non-financial companies: the impact would be felt by banks and it would have considerable direct effects on company transactions (transactions on derivative contracts, including hedging transactions, intra-group transactions, marketing making on their capital and debt securities, even spot transactions...<sup>12</sup>).

Likewise, following the Maystadt report, the European Commission will be able to monitor the process of evaluating European regulation on international

accounting standards throughout 2014 and may go on to evaluate them before publishing, at the start of 2015 a report and legislative propositions. In this context and as part of the EFRAG reform already underway, Afep is preparing three further requests: better representation of private stakeholders, despite the reluctance shown by the European Commission and the Member States; strengthening the conditions for the adoption of IFRS and the European Union's power to amend a standard, in well-defined cases.

Companies believe that long-term financing of the economy must be at the top of European agendas during the next parliamentary term. In its response to the European Commission's Green paper, Afep stresses the need to allocate resources primarily for productive investments and recommends adapting all regulations to these requirements (prudential and tax regulations; financial information, corporate law...). It also recommends preserving bank transformation and better organising of alternative financing arrangements (refocusing markets on the long-term, improving systems for some instruments or channels of financing...). That means restoring public finances and companies' self-financing capacity, stabilising the legislative environment, coordinating fiscal and social policies and developing a specific European economic and industrial policy.

In terms of finance, 2014 will be marked by the results of bank audits in the autumn and perhaps further increases in interest rates, which are likely to drive

some European economies and the eurozone. In this context, the most important challenges to deal with this year are:

- to help sustain European recovery, which is still weak and to encourage business investment by reducing, rather than increasing, charges and restrictions on them;

- to create the conditions for even greater solidarity within the eurozone, to strengthen its attractiveness and redirect investments towards enterprises<sup>13</sup>, by initiating at the national level the reforms needed to reduce debt and for the sustainable stabilisation of public finances;

- to take the opposite view of withdrawing and to define a more collective, unifying European project, which places the real economy and the coordination of economic policies at the heart of the measure; adopting, at least in the eurozone, the political action needed to go beyond monetary and banking union and the European Union budgetary surveillance process.

It is often still difficult to reach agreements on certain European matters – particularly if they involve transfers of powers or pooling resources– and as a result, to set up decision-making procedures and single, responsive and convincing mechanisms for financial markets. This must not, however, overshadow progress that has been made since 2009 in preparing common rules and developing European institutions that are increasingly recognised – ECB and European supervisory authorities in particular –, even if changes are still needed. Afep's

hope is that proactive efforts will be made to achieve the next stages, rather than in response to repeated crises.

1/ The 128 establishments targeted have more than 85% of bank assets.

2/ Bank Resolution and Recovery Directive (BRRD). According to this directive, which will apply as from 2016, national authorities may use their resolution funds or public funds –up to 5% of liabilities– only after applying bail-in, that is to say, contributions of up to 8% of bank liabilities by shareholders, junior (subordinated debt) or even senior creditors and depositors (deposits above €100,000). National authorities may intervene only after receiving authorisation from the European Commission, in exceptional economic circumstances. However, after receiving approval from the European Commission, the States may apply precautionary recapitalisation tools, without bail-in tools in place (particularly if a bank fails a stress test and is unable to raise capital on the markets).

So the national resolution funds must be built up through bank contributions to reach the level of 1% of the covered deposits within 10 years. These funds are added to deposit guarantee funds and they would make up national compartments of European resolution funds that would be merged gradually over 10 years. Combining national compartments' resources and the single funds is possible only if a treaty is signed by March 2014 between the States participating in the Banking Union (18 of the eurozone States and volunteer States) and approved by national parliaments. This treaty has received criticism from the European Parliament, which would rather adopt an EU approach.

3/ Deposit Guarantee Schemes (DGS). Each country must raise funds equivalent to 0.8% of covered deposits (0.5% in countries where the banking sector is concentrated in the hands of a few establishments) within a 10-year period, which may be used as a preventative tool for resolution purposes, which would indirectly involve depositors in a bail-in. Apart from this case, the deposit guarantee systems would be set up in the event that a bank recovery plan fails.

4/ Single Resolution Mechanism (SRM). The most common discussion points concern the methods used to support distressed banks, that is to say, methods of setting up and using single resolution funds (the contribution scale...); the nature and methods for provisionally setting up a public safety net that would be used in the event of insufficient bail-ins and funds resources (backstop); decision-making processes, particularly the European institution responsible for endorsing the Council's single resource draft projects concerning the bail-out or liquidation of a bank; scope of covered banks.

5/ Those €55 billion represent 1% of customers' covered deposits. By way of comparison, almost €1,612 billion of guarantees and recapitalisation has been used to support banks in the European Union between 2008 and 2011.

6/ (Markets in Financial Instruments/MiF).

7/ Packaged Retail Investment Products (PRIps).

8/ This proposal envisages a minimum tax rate of 0.01% on financial transactions on credit derivatives and 0.1% for other financial transactions.

9/ Report on increasing the European Union's contribution to the development of international accounting standards.

10/ AFEP remains opposed to the mandatory use of XBRL reporting language (data format). XBRL language, developed by a private, international consortium, makes it possible to process data, which has been standardised in different fields (financial or non-financial) beforehand, under certain conditions. However, companies have voiced three reservations about mandatory use of this language: the complexity of processes and higher costs; the instability of references and risks of error; the possible negative impact on communication and corporate responsibility.

11/ The aim is the continuity of legislative works after the elections. The new European Parliament may decide not to continue these works, even if talks under the previous parliament were very advanced. However, in practice, this is hardly ever the case.

12/ In an announcement made in July 2013, the European Parliament backed the inclusion of spot transactions.

13/ The ECB considers sovereign debt a risk-free asset, which requires under Basel III ten times less capital base than corporate loans. This encourages certain banks to hold considerable, growing amounts of them. Given the ECB does not have the authority to change the status of these assets, the question is how would sovereign debt react in unfavourable situations -this will be part of stress tests led by EBA in 2014.



# Work, Employment & Social protection

## 1. The context and concerns

Once again, employment was one of the main concerns in 2013. The unemployment rate continued to rise, increasing the need for structural reforms. While talks on the labour market and professional training between both sides of the industry have led to considerable developments, the announcement of a pension reform heightened expectations to a certain extent, but resulted in disappointment: not only was its contribution to restoring fiscal balance

too low, but the law resulted in greater burdens on companies, particularly in relation to the rules on work hardness which, in addition to being extremely complex, incurred higher costs.

Reducing the cost of labour is still a priority since the tax credit for competitiveness and employment (CICE) introduced in 2013 was not enough to make up for France's lack of competitiveness. The responsibility pact proposed by the French President at the start of 2014 is expected to reduce the wider wage spread. Afep is working so that this reduction will have a simple and efficient impact on the economy, particularly since these efforts follow on from several rises in social security contributions that continue to weigh on business margins.

The young people situation has attracted particular attention and is the inspiration behind commitments between young people and companies. Launched on 21 March 2013, this new initiative brings together 60 companies that are committed to contributing more to youth training and employment. It is large companies' answer to help insert young people into the labour market.

## 2. Progress and developments

The year 2013 saw two inter-branch agreements being signed, one on job security and the other on professional training. Afep contributed and formulated proposals during negotiations on these two agree-

ments, which meant that large companies were more closely involved in leading these structural reforms for the development of the labour market.

Afep monitored closely the legislative transposition of the agreement on job security, which provides new procedures for adapting to the economic situation at the company level by strengthening social dialogue (agreements on maintaining employment, particularly managing redundancies).

These developments represent significant progress in terms of legal certainty and support collective bargaining on restructuring.

The December 2013 agreement on professional training is a reform of the method in which training is financed and makes management of training more efficient. Although it removes the 0.9% tax requirement, a contribution equivalent to 0.2% was created. The training system for employees and job seekers hinges upon the personal learning account (known by its French acronym, CPF).

Many of Afep's proposals have been adopted, for instance, defining the quality of training and business skills needed in the training programme. However, the apprenticeship reform led by the government may reduce companies' room for manoeuvre in terms of their policy on financing learning and training establishments.

Contrary to what companies had expected, the pension reform has not resulted in the adoption of significant

measures, such as raising the age of retirement to restore the system's financial balance, as suggested by Afep. On the contrary, it has increased the cost of labour, decreased pensioners' financial contributions to help restore public accounts and resulted in a measure on work hardness that will lead to early retirements and extra costs for companies.

### **3. Outlook**

The law on transposition of the inter-branch agreement on professional training is a major concern for 2014.

This draft law also includes provisions on employer representation, trade union representation, financing for professional organisations and the certification of company committee accounts.

Inter-branch talks on the quality of social dialogue should start during the second half of the year. Afep hopes that as a result of these talks, information-consultation processes with institutions representing staff are streamlined, making corporate social dialogue much more efficient.

It is important that efforts to reduce labour costs, announced as part of the responsibility pact, effectively lower corporate tax (either by removing contributions made by employers to finance the family branch of social security and tax credits for competitiveness and employment at the same time, or by implementing

other measures aimed at reducing labour costs regardless of the wage).

Renegotiating the agreement on unemployment insurance is a major opportunity for reforming the way the labour market operates, to encourage people to return to work while ensuring the financial sustainability of the system. Afep has formulated some proposals on a reform of unemployment insurance, which aim in particular to reduce the maximum

period that job seekers are entitled to benefits without affecting the amount of compensation; to extend the required contribution time for entitlement to benefits; to strengthen support for job seekers by prioritising help for them to find jobs.

2014 will also see the implementation of joint projects on youth employment, agreed by Afep member companies as part of the young people and companies approach.



# Competition, Consumption & Intellectual property



## 1. The context

Overall, 2013 was not a good year for companies in terms of competition, consumption and intellectual property. The prospect of European and national elections in 2014 is undoubtedly the reason for greater consumer - citizen - voter protection, considered necessary both in Brussels and in Paris. Sometimes this does not go hand in hand with regulated and flexible economic activity.

While the European Council has rightfully slowed rapid progress, as hoped for by the European Commission and members of European Parliament, on the proposal for a regulation on personal data protection, Afep activity has come up against new texts that do not favour companies. The Commission published a proposal for a directive on action for damages for breach of the provisions of the law on competition, of the guidelines on national regional aid or of the texts on certain aspects relating to merger control, in particular the acquisition of minority interests.

In France, Afep aimed to identify problems that stemmed from the bill on consumption, which states the group's actions and increases penalties on late payments.

## 2. Companies' concerns

The objective guiding Afep approaches in Brussels and Paris was maintaining an economic and legal balance between consumers' concerns and the flexibility required for trade.

The proposal for regulation on personal data protection is a sign that only citizens are expected to benefit. In a bid to protect their private life on social networks, members of European Parliament have not given much consideration to the fact that personal data is a tool for companies. The complexities brought about by this text go hand in hand with penalties that are

particularly harsh, based on the international turnover of the companies concerned. Meanwhile, although the principle of compensation for victims is not debatable, the proposal for introducing a directive on action for damages into competition law -which would make it easier to obtain compensation for damage resulting from a breach in competition law- would mean that provisions would be introduced which challenge national principles on civil liability in a way that puts companies at a disadvantage.

### **3. Progress and developments**

At the European level, works carried out in 2013 by the Council on the proposal for a regulation on personal data protection mean that the Council agreement on the one stop shop was postponed.

The one stop shop, which is a key feature of the measure proposed by the European Commission and backed by the companies, aims to make the administrative steps taken by controllers in several Member States easier, enabling them to approach the single competent authority governing the companies' main establishment.

This temporary delay is needed to improve this aspect and several other points (express consent, sanctions, collective action) as well as to preserve any benefits, particularly on details concerning notifications of the breach of data. Rather than allocating 24 hours for the delay, which is not very realistic and could lead to

heavy sanctions if broken, these conditions are based on "a reasonable period".

Likewise, Afep is pleased that a proposal for a directive on protecting trade secrets was published by the European Commission. This text may help to provide companies affected by the misappropriation of trade secrets with the extra means for obtaining compensation and dealing with economic espionage.

Conversely, it was not possible to stop publication in June 2013 of the European package on collective actions and compensation for breaches of competition law. One of the European Commission recommendations urges Member States to equip themselves with collective action mechanisms for the purposes of injunction or compensation.

The proposal for a directive on actions for damage in EU competition law contains several provisions that would severely penalise companies. To overcome the problems associated with determining the damage caused by anti-competitive practice, the proposal includes in particular a rebuttable presumption concerning the damage caused by an agreement. The companies stated that an agreement would not necessarily affect the market, even if it aims to restrict competition. Forming a presumption of damage could lead to unjustified sentences. Given that the Member's vote on the European Parliament draft report at the start of 2014 was postponed on several occasions, affected to a certain extent by economic

concerns, Afep should be able to convey its views on this point and on the protection of data provided under the leniency procedure, the preliminary effect of decisions taken by national competition authorities before the judge overseeing compensation or the limitation period.

As for France, the flagship text for 2013 is the draft law on consumption.

In addition to a wide range mechanism for group action (pecuniary damage resulting from material damage), this text contains a simplified action procedure.

This procedure contained in consumption law will apply to measures and contracts concluded before the date that the law comes into force. This is particularly concerning and the financial consequences for companies are profound.

As for strengthening the provision on administrative and penal sanctions, the text provides management with a power to impose sanctions, which is not governed by specific criteria. Other considerable causes for concern include the rise in the number of sanctions or the decline in the rights of the defence. In terms of time limits for payments between companies, Afep's efforts helped give parties back their freedom to choose computerised payment deadlines.

Other texts, however, aim to consider companies concerns in greater detail.

The bill on the fight against counterfeiting does not provide punitive damages against counterfeiters. While companies' aim is to make counterfeit economically unattractive, they do not want more punitive laws for damages resulting from a breach of civil law.

#### **4. Outlook**

As a result of new deadlines for examining regulation on personal data protection in Europe, it will be possible to intensify efforts backing the one shot shop principle and to agree on sanctions for any infringements made. In addition, when setting up the future system for damages in the field of competition, Afep will remind the representatives of the principle of economic and legal balance between consumers and companies.

At the end of 2013, the European Commission launched a consultation on a draft framework on State aid for Research and Development, as well as on the exemption regulation. At the start of 2014, Afep examined these documents, particularly in terms of the impact on competitiveness of European companies.

As for intellectual property, provided that there are some improvements, Afep will support the European Commission's efforts to promote the protection of trade secrets.

In France, Afep will closely follow any possible variations in the group actions mechanism. The draft law on consumption provides that the government

report is returned to Parliament 30 months after it is applied to the health and environment sectors.

As for payment deadlines, Afep is monitoring the development of the ordinance on electronic invoicing and is participating in the meeting led by the Ministry of Economy on the dematerialisation of invoices.

A report on transfrontier mergers has been submitted to the Minister for Economic Affairs. One of the reforms recommended is creating a mechanism for

preventing conflicts between regulators within the single market. This would mean that companies could request that files on transfrontier mergers are returned to the European Commission when at least two national competition authorities are competent to deal with them, instead of three or more, as is the case at present. Afep shall monitor the development of this approach, which will help to resolve certain problems.

# Environment & Energy



## 1. The context

2013 in France was characterised above all by the national debate on energy transition, in preparation for the energy transition planning law, and by organisation of the “6 stakeholders” dialogue (State, local authorities, representatives of Parliament, companies, environmental associations and trade unions), with its strengths and limitations. As a result of the government's desire to update and simplify law, several projects were launched within the framework of the “*Etats*

*Généraux*” on environment law: it gave rise to a general roadmap.

At the European level, 2013 was a transition period in terms of energy, climate and environmental issues. Most of the year was dedicated to adopting a short-term back-loading mechanism, which aims to temporarily withdraw allowances between 2013 and 2020 under the ETS directive. Such measure should have been adopted much quicker if the European Parliament had not been against solutions initially envisaged by the Commission. Several important consultations were also launched by the European Commission this year. They mainly dealt with the development of a new climate and energy package, which aims to define new goals for 2030. In relation to environmental issues, the directorate-general dedicated the year to developing a package on air quality and launched a consultation for revising the targets for 2020 on waste.

## 2. Companies' concerns

In terms of climate and energy, Afep supports the need for more transparent European policies, particularly for 2030, in order to encourage investments in the European territory. In this context, companies believe that the key issue is to draw on lessons learnt from the 2020 energy and climate package. In this respect, it is important to set the 2030 EU targets not only on sustainable development, with a priority on

greenhouse gases emissions, but also on competitiveness and energy security. At the national level, it is important that a study is carried out on the objectives set out by the French President – namely reducing greenhouse gas emissions by 75% between 1990 and 2050, lowering energy consumption by 50% for 2050, cutting the use of fossil fuels by 30% for 2030 and reducing the share of nuclear power in electricity to 50% by 2025 – to assess the impact they will have on employment. In the same way, it is important to ensure those targets are in line with EU guidelines and are based on economic growth assumptions.

Afep, in cooperation with the Cercle de l'Industrie, stressed companies' energy priorities during a symposium organised on 17 May and which was focused on energy and competitiveness. The Association explained them during a high-level working group chaired by Jean-Pierre Clamadieu (Solvay) last fall. The aim was to encourage exchanges with public authorities in 2014 on the preparation of the draft energy transition law. The priority is to make energy a sustainable leverage for the competitiveness of economic players.

As for environmental matters, more emphasis must be placed on simplifying environmental law and designing realistic technical, economic and environmental impact studies above all new measures. Given the difficult economic conditions at present, it is important to highlight how exemplary French and EU economic stakeholders performed in terms of

legislative and regulatory requirements –unlike anywhere else in the world– that they must keep. It is important that they are not burdened by new restrictions.

These trends must also be adopted by non-EU competing companies as far as their products, services and manufacturing processes are concerned, within the European Union and elsewhere. In this respect, it is important that environmental and trade negotiations are coherent in order to serve this purpose.

### **3. Progress and developments**

In terms of combating climate change and energy at the international level, talks on climate change during the Warsaw Conference in November were an opportunity to enhance action involving all greenhouse gas-emitting countries and not just developed countries, as part of the Durban Platform. In order to prepare as far in advance as possible for a possible agreement at the Paris Conference (COP 21 – from 30 November to 11 December 2015), it was agreed that each party must do its part to reduce GHG emissions for the post 2020 period, by the first quarter of 2015 at the latest. Ahead of the Paris Conference, government authorities in France plan to increase the number of consultation forums in 2014 and 2015, including those which are held outside the United Nations framework (G20, B20, Major Economies Forum, among others). The New York Summit in September 2014 is expected to

play an important role in preparation for the Lima Conference (COP 20) in December 2014.

In this context, Afep informed French and EU authorities of companies' interest in reaching an international agreement for the post-2020 period at Paris in 2015. As a result of this agreement, major emitting countries' emissions should be reduced in absolute terms. It must be based on credible systems, which are set up in advance, for measuring, reporting and verifying emissions so that each party to the agreement is aware of its responsibilities. The Association also stressed that economic stakeholders must be included in preparations for COP 21 and that there was a desire to make a "conference for finding solutions".

At EU level, as part of the European Commission's Green Paper on energy and climate goals for 2030, the Association highlighted the importance of setting a binding target on greenhouse gas emissions for 2030, provided that it is in line with the companies' economic resources, based on the level of growth, and that the 2015 international agreement results in a fair effort sharing between major emitting countries. Some specific, non-binding targets could be considered for non-mature renewable energies and some sectors to improve their energy intensity. These comments made by the Association coincide to a large extent with French public authorities' stance.

However, it would appear that the European Commission prefers to prioritise three binding targets for

2030 on GHG emissions, renewable energy sources and energy efficiency. Member States disagree on the number of targets, the levels to be reached and their binding force.

In 2013, the European Commission also debated the issue of withdrawing allowances (back-loading) between 2013 and 2020 to boost allowance prices which had fallen to  $\approx 5$  at the start of 2013. The Association supported the agreement adopted in the end by the European Parliament in July, which aims to withdraw 900 million tonnes from the market until 2019 (300 million tonnes) and 2020 (600 million tonnes). However, as the Association pointed out, this measure had very little effect on the price of allowances ( $\text{€}1/\text{€}2$  extra per allowance). A clear outlook for 2030 may be the only way of determining the price that could encourage investments in the medium-term.

Meanwhile, Afep requested that the list of sectors exposed to carbon leakage, to be adopted at the end of 2014 for 2015-2019, was not changed since this would prevent companies from relocating outside the European Union and investments being made in sectors not on the list outside the European Union. French government authorities stated that they also hoped the list would remain unchanged.

The companies suggested structural reforms for the Emission Trading System, in particular, the feasibility of adjusting the allowances available and granting them in accordance with the level of activity.

All of these points will be included in January 2014 in the Commission's new energy and climate "package", including an analysis of unconventional gas and the results of a comparative study on energy costs.

At national level, the national debate on energy transition, the preparation of the "programme bill" on energy transition and the introduction of the carbon tax in 2014 finance law were the main developments in the area of energy and climate change. The national debate closed in July, after six months of meetings as part of multiple working groups. It was at these meeting that a summary of work was agreed, representing 15 challenges –and not 15 recommendations as the minister for energy had initially hoped for– in the form of principles and actions.

While the work of the debate was focused on four scenarios promoted by the different stakeholders based on the percentage of nuclear energy up to 2050, it is important to note that there has been no impact assessment of the targets announced by the French President at the 2013 environmental conference, particularly the share of nuclear energy by 2025 and the target of reducing energy consumption by 2050. The effect of these targets on economic growth does not seem to have been fully considered in the final summary document. Afep hopes that the draft energy transition programme incorporates all of the factors which determine whether these targets will be achieved. In this context, it seems that priority

must be given to managing these targets regularly, as well as the factors on which they depend and the means of action.

A carbon tax, which has been incorporated into the domestic consumption tax, is in line with the provisions of the proposed energy taxation Directive. Sites of energy intensive companies under the directive on allowances (ETS) and energy intensive businesses are exempt from this tax. This measure comes into force on 1 April 2014 and the amount increases gradually per tonne of carbon dioxide (€7/tCO<sub>2</sub> in 2014; €14.5/tCO<sub>2</sub> in 2015; €22/tCO<sub>2</sub> in 2016).

As for the environment, industrial risks and sustainable development, the Association focused on the issue of the circular economy.

The Association also contributed to the General Meeting's work on updating environmental law by suggesting several forms of simplifying law. The Association stated that procedures were long and complex and regulations in place were not effective enough and so solutions had to be found to address these issues.

Lastly, Afep supported the launch of an inter-ministerial mission to identify ways of providing proof of sustainable urban development on national territory, which will be an example to the rest of the world of the collective know-how of French companies.

#### **4. Outlook**

2014 will be marked by the Commission's desire to focus, before it changes, major debates on energy and the environment: "the climate and energy package", "the air quality package", new guiding principles on State aid on energy and the environment.

The most important question is whether the EU process at the beginning of the year will lead to firm conclusions or will they only contribute to decisions that will be finalised at the end of 2014.

Member States and France must decide whether to consider EU framework when preparing their own policies, as well as whether to work independently or together, while they wait for a coherent European framework to be defined, hopefully by the end of the year.

At the national level, the draft law on energy transition will be a major challenge for companies. Afep will ensure that the decision made guarantees the sustainability of the competitiveness in France.



# Corporate social responsibility

## 1. The context and concerns

Afep members incorporated the social responsibility concerns into their strategy. These companies have been implementing many policies and actions for several years now to maximize the positive impact and reduce the negative impact on their activities. They consider corporate social responsibility an important factor for their competitiveness. It enables them to find sustainable solutions to their company needs thanks to social and environmental innovation

and the constant interaction with all the stakeholders in their system.

The French legal framework is undoubtedly the most ambitious in Europe and Afep companies adhere to the provisions of article 225 of the Grenelle 2 Act, which they undertake to put in place. While they are aware of the usefulness of this framework, they want to make sure that they are able to launch their CSR activities in a safe, predictable legal context, which suggests that the legal framework is not reviewed very often.

In 2013, Afep work focused on bringing legislative and regulatory texts in line at the French and European levels, representing companies at the new national platform for corporate social responsibility and taking into account companies' point of view when preparing national and international frameworks or guides.

## 2. Progress

Afep participated in several proceedings aimed at exchanging best practices on CSR and actively contributed to setting up a national platform for CSR, implemented under the Prime Minister. While Afep requested this forum for exchanging with the different stakeholders, the composition, method of operating and objectives of the forum do not guarantee that the companies' and primary stakeholders of CSP points of view are taken into account fully. Despite the specifications provided in the Statue, it is not guaranteed that

the platform's purpose, a space for dialogue and not creating new regulatory constraints, will be kept. To this end, Afep insisted that a consensus system was used instead of voting, and if necessary, the differences between stakeholders were brought to light. The platform started its works on three areas: CSR and competitiveness; transparency and corporate governance in the area of CSP; the impact of corporate responsibility on companies' value chain.

At the French regulatory level, Afep monitored the formulation of the latest measures for implementing environmental and social reporting in companies, which stems from the Grenelle 2 Act. The companies hoped that the decree on the procedure for independent third-party verification provides for the verification of processes for gathering and consolidating social and environmental information published by them. A working group was set up within AFNOR, an association that Afep is involved in, to prepare a guide for independent third-party organisations taking part in the procedure for verifying social and environmental information.

At the European legislative level, Afep closely followed the proposal for a directive on the disclosure of non-financial information by major European companies. Afep expressed its support for the initial version of this text proposed by the Commission and for the amendments of the agreement adopted by the European Parliament Committee on Legal Affairs. However, given the extremely negative impact on Member

States and European companies, the introduction of a requirement for companies to publish their strategic data, such as the net profit in each of the countries where they carry out economic activity as well as the amount of corporate tax, country by country, must be ruled out. This requirement would make it impossible to reach the target of combating tax fraud and tax evasion set by the European Council. But above all, it entails high risks for States themselves and companies. They are explained in a detailed position paper published on the Afep website. Following the votes held in December 2013, these arguments were heard and a review clause, which postponed the assessment of this topic for five years, was passed by European Parliament.

At the international level, Afep took a stance on the consultation draft of the international integrated reporting framework presented by the International Integrated Reporting Council (IIRC). While Afep member companies accept some of the most important principles formulated by IIRC, they have, however, reservations about the concept of integrated report presented by IIRC. They argue that performing an accurate valuation of non-financial assets (such as intangible assets and human and natural resources) of which the company is not necessarily the sole owner, is an extremely complex exercise, if not impossible and may pose risks to all stakeholders. Measuring the value creation of these different assets seems such a difficult target that it even calls into question the

feasibility of an integrated report (see Financial Affairs).

### 3. Outlook

At the French level, companies hope that the comprehensive and ambitious legislative and regulatory framework on CSP is not changed in the short or medium-term, except in the case that it is made simpler. They hope to be able to fully implement their CSP policies and actions without being forced to focus their efforts, year after year, on the time consuming and costly transposition of new reporting standards, using considerable internal organisational resources.

To highlight the progress made in publishing social, environmental and corporate information, revealing the wide range of corporate practices in place, Afep conducted a survey on CSR reporting practices. After reading this study, large companies made important changes to the way CSP information is published, as part of implementation of a CSR legislative and regulatory mechanism; they included stakeholders in this; while their overall assessment of the new mechanism was positive, there are still some problems concerning methodology and organisation, which will have to be overcome in the future.

One issue of particular concern for all French companies is the possible publication in 2014 of the bill on parent company's and contractor company's duty of care. This text constitutes a major legal

impediment and could seriously affect the competitiveness of France and companies. At present, French companies are making considerable efforts to comply with OECD and UN principles by conducting audits and inspection processes in their subsidiaries and sub-contractors in these different areas. The method of sanction, on which the aforementioned bill is based, would be counterproductive. Afep therefore hopes that this project will not be brought forward.

It is in the open and construction spirit of exchange and dialogue that Afep intends to participate in the works of the CSP platform, provided that they comply with the original aim. Afep hopes to make progress in the development of good business practices, so that as many economic stakeholders in France will be inspired as possible and will thus help to spread these practices as best possible.

At the European level, Afep will carefully follow, and fully supports, tri-lateral negotiations on the proposal for a European directive on companies' disclosure of non-financial information. Afep will share the experiences of French companies in this field.



# European affairs



## 1. The context

In 2013, the European Union's top priority was the crisis recovery, notably by encouraging Member States to improve their public finances and strengthening the EU financial stability. However, little progress has been made to bridge the gap between northern and southern countries in terms of growth and managing public deficit. Ireland, and to a lesser extent Spain, seem to have got out. That is to say, Ireland is no longer in the European Union / IMF aid programme and

Spain is slowly coming back to growth.

2013 was a pivotal year for European institutions. The European Union welcomed its twenty-eighth Member State, Croatia. The European Commission, Barroso II, started the last year of its mandate, as did the European Parliament. As a result, the pace of legislative works has picked up. The Commission hopes to present its final, most important proposals and the Parliament and Council would like to close priority legislative files.

Germany plays a particularly important role in the Council's works. Some cases came to a standstill (for example, the financial transactions tax) before the German elections on 22 September 2013. The re-election of Angela Merkel and the formation of a broad coalition government in Germany should mean that these cases are reopened. More generally speaking, Germany's European policy should change very little and its impact on European files is vital. France's influence in several cases is important at the technical level, but it is weakened in the Union's most important political arbitration processes because Paris' European strategy is often unclear.

## 2. Company concerns, progress and developments

In this context, Afep's priority is to support the development of a regulatory environment that fosters business competitiveness. However, in several European

negotiations, Afep observed that the challenge is also not to impose further regulatory constraints on:

- companies' financing (financial markets reform, financial transactions tax);
- their competitive environment and their relations with customers and suppliers (collective redress, action for damages, State aid reform, merger control and data protection);
- their production activities (reform of the ETS system), or
- their requirements in terms of corporate governance and transparency (directives on accounting and transparency, market abuse and non-financial reporting).

Negotiations on financial perspectives for 2014-2020 have been completed; the Banking Union has made strong progress with the completion of the Single Supervisory Mechanism and developments as regards the Single Resolution Mechanism; the Common Agricultural Policy was reformed; and talks with the United States on Transatlantic Trade and Investment Partnership were launched. Several actions, in which Afep was involved, were completed: the transparency directive, the new accounting directive, the audit reform, alternative dispute resolution (ADR), market abuse, amendments to the timing of ETS auctions (back-loading), the merger control reform, State aid control procedure, the recommendation on collective redress, the portability of supplementary

pension rights or the reform of Markets in Financial Instruments (MiFID II).

### 3. Outlook

2014 should be a difficult year in terms of legislative process. In December, the European Commission presented some important proposals relating to State aid, the protection of trade secrets and the policy on air quality. In January 2014, it also published its 2030 framework for climate and energy policies. There still remain some long-awaited proposals, particularly on structural reform of the banking sector, shareholder rights and pension funds (IORP). However, time is running out since the European Parliament's final plenary session will take place between 14 and 17 April 2014.

After that, there will be a legislative break, at least for the texts following the ordinary legislative procedure (co-decision), under which the Council and the Parliament are on an equal footing. The legislative process within the European Parliament will start again in autumn 2014. The new Parliament may decide not to restart discussions on certain texts that were not closed by the previous Parliament, even if in practice continuity is the rule.

Negotiations on the Commission's new proposals cannot be completed, not only because it is too late, but also because the legislative pipeline is already full. Older items, but which are still crucial, must be

closed before the final session in April, particularly the Banking Union (the Single Resolution Mechanism). There is a good chance that some of the files in which Afep is involved will be finalised. They include non-financial reporting (see Corporate Social Responsibility), antitrust damage actions (see Competitiveness, Consumption and Intellectual Property), or PRIPS (see Financial Affairs). Given the lack of consensus, it would be more difficult to conclude on other items, particularly the data protection reform or the gender balance on boards.

In cases where the Council can act alone, progress can be made by Council working groups, without the Parliament, under the Greek presidency (during the first half), and then the Italian presidency (during the second half). Some examples include the financial transactions tax, the energy taxation, the common

consolidated corporate tax base, the parent-subsidiary directive. In the same way, it is expected that the files where the Commission has the lead will be completed, in particular, the State aid reform (Afep focuses on environment and energy aid, aid for research, development and innovation and the reform of the General Block Exemption Regulation) or governance of the European Union's contribution to international accounting standards (implementation of the Maystadt report).

In addition to the legislative work, 2014 promises to be a year of change for Europe. The European Parliament elections in May, followed by the renewal of the Commission – for which the appointment procedure remains uncertain – between July and November, could change the governance of the European Union.

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BOURBON	HERMES INTERNATIONAL	SANOFI
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CAPGEMINI	ILIAD	SCOR
CARREFOUR SA	IMERYS	SEQUANA
CASINO GUICHARD PERRACHON	INGENICO	SIEMENS FRANCE SAS
CGG	INTERNATIONAL SOS	SOCIETE DES PETROLES SHELL
CIMENTS FRANCAIS	JC DECAUX	SOCIETE GENERALE
COMPAGNIE DE SAINT-GOBAIN	KERING	SOLOCAL GROUP
COMPAGNIE IBM FRANCE SAS	KINGFISHER FRANCE	SOLVAY
COMPAGNIE PLASTIC OMNIUM	LAFARGE	STMICROELECTRONICS NV
COMPASS GROUP FRANCE	LAGARDERE SCA	SUEZ ENVIRONNEMENT
CREDIT AGRICOLE SA	LAZARD FRERES	TECHNICOLOR
DANONE	L'OREAL	TECHNIP
DASSAULT SYSTEMES	LVMH - MOET HENNESSY LOUIS VUITTON	THALES
DELPHI FRANCE SAS	MANPOWER	TOTAL
EADS	MERSEN	UNIBAIL-RODAMCO
EDENRED	MICHELIN	VALEO
EIFFAGE	NATIXIS	VALLOUREC
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