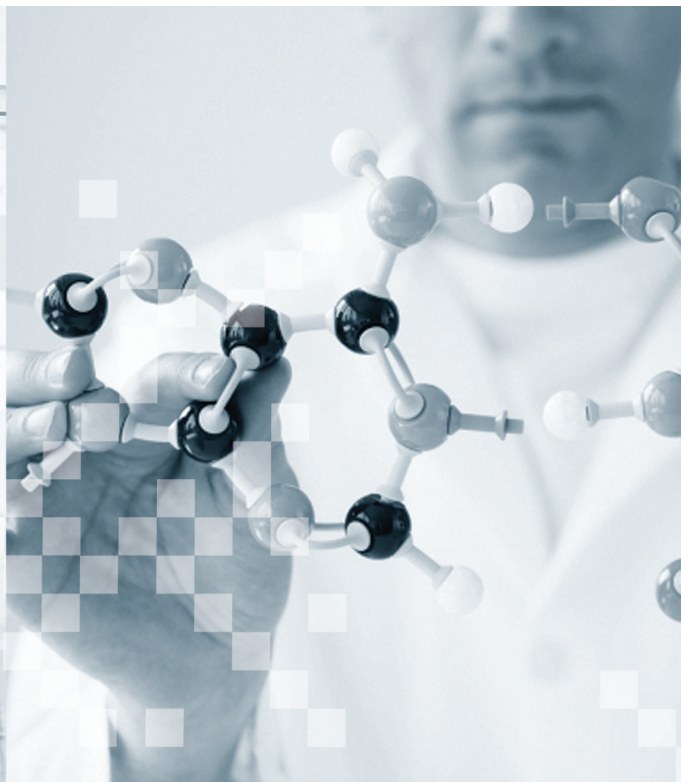
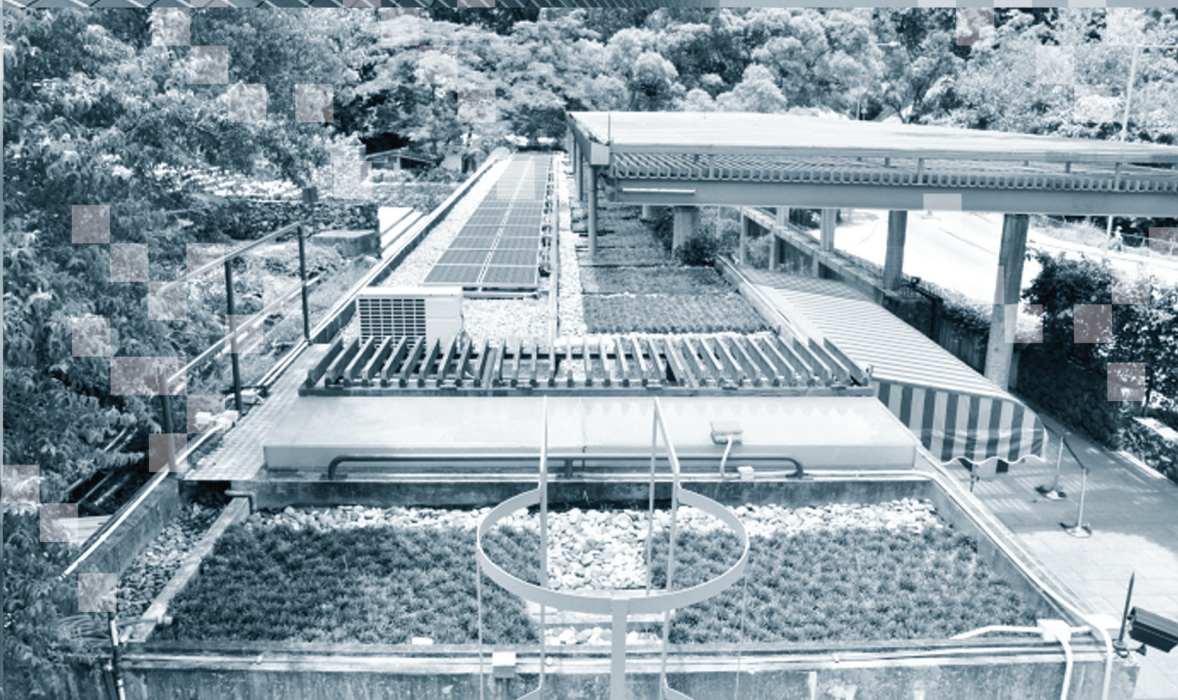


Annual Report 2016







President's foreword



For the past five years, I have had the honour of leading AFEP and, in that capacity, representing major French companies. During this time, we have strived for a prosperous French economy, upholding its social

model and being open to the world. Faced with the challenges ahead, I firmly believe that large companies are a great benefit and a tremendous driver for our country. Their success, both in France and abroad, reflects their significant capacity for adaptation and innovation, which enables our country to maintain a strong position in the global economy. Large companies are an asset to France. They merit our support.

2016 was a politically turbulent year. The outcome of the Brexit vote and Donald Trump's election as US president were both uncertain to the end and many observers were surprised at what became a political reality. While uncertainty was indeed a watchword in 2016, 2017 has started in the same vein, including many uncertainties for France too.

In this climate, France continues to face enormous economic and social challenges.

International competition is becoming ever stiffer and France is losing ground year on year. We remain convinced

that the country can only recover if its public finances are put in order as this alone can guarantee a sustainable reduction in corporation tax and social contributions and make companies competitive again. It is now imperative for France to take this route. The lending policy that began in 2014 is beginning to show initial results but needs to be greatly expanded. In addition to further reductions in social charges, reform of the labour market is also a pillar of this economic policy and should boost investment and employment. This year was marked by heated debates around labour law reform. Unfortunately, the scope of the labour law reform was reduced in the face of the opposition it raised. However, this work must be continued. Our social model remains a valuable common good, but excessive protection is a snare and delusion.

A little-known and sometimes disputed reality is that large companies account for nearly one in three jobs in France. Their proposals to reduce unemployment deserve to be heard.

The situation is urgent as we see the rise of aggressive economic policies throughout the world. This environment and the threats it brings require a response at a national level in France but also at a European level which is the appropriate level of response for the scale of the challenge.

It is vital that we have a level playing field with our partners. This requires the implementation of European policies that will enable our companies to develop on a regulated and attractive internal market, which does not penalise them in the international field.

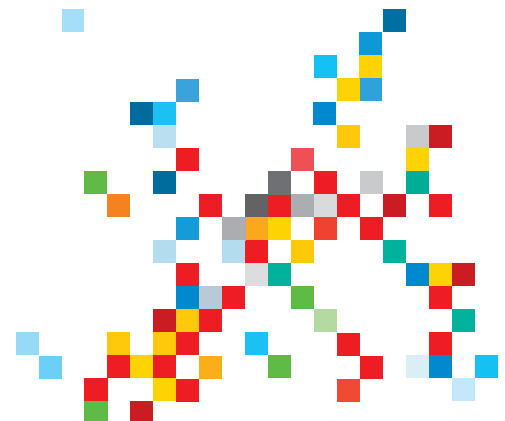
Europe is now at a turning point. Although we cannot ignore a growing scepticism surrounding the European project, AFEP companies all support it. The European Union, an area of peace and economic development, has made previously unthinkable actions possible. Today, we call for the renewal of this project through the strengthening of the eurozone and the development of concrete initiatives that meet the demands of citizens and companies. To ensure the prosperity of Europe, competitiveness and attractiveness must be at the heart of trade, tax and competition policies. To uphold this vision, we are committed to strengthening our relationships with European institutions to alert decision-makers from all political backgrounds and nationalities to our priorities.

At this pivotal time, we have many proposals and values to put forward within the public sphere. Because we are convinced of the need for a stronger dialogue with the authorities, we have decided to promote these ideas in a constructive way, but also to share them as part of a public

debate in a spirit of openness. Our proposals are focused on France's growth. In that sense, we want to start a conversation with all parties concerned. This huge communication challenge must be rolled out in keeping with AFEP's ethos: measured and constructive discussions rather than futile controversy.

I would like to thank the leaders of France's large companies, specialists, and the standing committees and employees of the Association for their ongoing and constant commitment and their determination to advance ideas and actions to enhance the prosperity of our country.

Pierre Pringuet
President of AFEP



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List of Members

ACCORHOTELS
ADECCO FRANCE
AIRBUS GROUP
AIR FRANCE KLM
AIR LIQUIDE
ALSTOM
ARCELORMITTAL FRANCE
ARKEMA
ARTEMIS
AVIVA FRANCE
AXA
BNP PARIBAS
BOUYGUES
CAPGEMINI
CARREFOUR SA
CASINO GUICHARD PERRACHON
CGG
COMPAGNIE DE SAINT-GOBAIN
COMPAGNIE PLASTIC OMNIUM
CONSTELLIUM
CREDIT AGRICOLE SA
CRITEO
DANONE
DELPHI FRANCE SAS
DOMUSVI
EDENRED
EIFFAGE
ELIOR GROUP
ELIS
ENGIE
ERAMET
ESSO SAF
EURAZEO
EURONEXT
EUTELSAT SA
FAURECIA
FFP
FIVES

FONCIERE DES REGIONS
GALERIES LAFAYETTE
GE FRANCE
GENERALI FRANCE
GROUPAMA
GROUPE AFFLELOU
GROUPE EUROTUNNEL SE
GROUPE FNAC-DARTY
GROUPE INDUSTRIEL MARCEL DASSAULT
GROUPE ROCHER
GROUPE SEB
HERMES INTERNATIONAL
HSBC FRANCE
IBM FRANCE
ICADE
ILIAD
IMERYS
INGENICO
INTERNATIONAL SOS
IPSEN
JCDECAUX
KERING
KINGFISHER FRANCE
KLEPIERRE
KORIAN
LAFARGEHOLCIM
LAGARDERE SCA
LAZARD FRERES
LEGRAND SA
L'OREAL
LVMH – MOET HENNESSY LOUIS VUITTON
MANPOWER
MERSEN
MICHELIN
NATIXIS
NESTLE FRANCE
NEUFLIZE OBC
NEXANS
NEXITY

NOKIA
ORANGE
PERNOD RICARD
PSA GROUPE
PUBLICIS GROUPE SA
RAMSAY GENERALE DE SANTE
REMY COINTREAU
RENAULT SAS
REVEVOL
REXEL
RIO TINTO FRANCE SAS
ROQUETTE FRERES
ROTHSCHILD & COMPAGNIE BANQUE
SAFRAN
SANOFI
SCHLUMBERGER SA
SCHNEIDER ELECTRIC SA
SCOR
SEQUANA
SFR GROUP
SIEMENS FRANCE SAS
SOCIETE DES PETROLES SHELL
SOCIETE GENERALE
SOLOCAL GROUP
SOLVAY
STMICROELECTRONICS NV
SUCRES & DENRÉES
SUEZ
TECHNICOLOR
TECHNIP
THALES
TOTAL
UNIBAIL-RODAMCO
UNIPER FRANCE
VALEO
VALLOUREC
VEOLIA
VINCI
VIVENDI
WENDEL
ZODIAC AEROSPACE

Who are we?

Since 1982, the Association française des entreprises privées (AFEP) has represented private multinational corporations operating in France. It is headquartered in Paris and Brussels.

The objective of AFEP is to contribute to the development of a favourable environment for the growth of economic activity and to uphold the vision of its member companies with French government, European institutions and international organisations.

Establishing business competitiveness to ensure sustainable growth and employment in the European Area and meet

the challenges of globalisation is at the heart of its efforts.

AFEP contributes to the preparation of French and European regulations in the following sectors: **the economy, taxation, company law and corporate governance, corporate financing and financial markets, competition, intellectual property and consumer affairs, labour law and social protection, energy and the environment, and corporate social responsibility.**

AFEP's work is based on:

- direct participation by company executives and their teams in the definition of economic and social policy strategies and in the determination of the programmes to be conducted in the interest of growth and employment;
- direct and concrete discussions with the government on the basis of analyses and solid arguments;
- constructive contributions to French and European consultations and public debate.

AFEP has 118 members. AFEP members employ more than 8.5 million people around the world and 2 million in France.

Our website **www.afep.com** provides more detailed information about the operation and recent work of AFEP and about the place of large companies in the French economy.

Large companies: serving the French economy

In 2016, AFEP expanded its action to highlight the **fundamental role** played by large companies in the French economy. This action was built on two data sources: **internally**, ongoing work with members to analyse their economic role and contribution to the country's public finances (see tax survey); **externally**, a more extensive use of the data provided by public statistics (INSEE, Banque de France) relayed in AFEP's 'Eco Flashes' (see offprint).

Substantial methodological work since 2008...

Since the Economic Modernisation Law (LME) of 2008, the French National Statistics office (INSEE) has illustrated the productive economic structure more closely, particularly by developing a better understanding of the concept of a

group. Under the terms of the LME, four categories of businesses were defined on the basis of economic criteria: a) **microbusinesses or start-ups** that employ fewer than ten people and have annual revenues or a balance sheet total of less than €2 million; b) small and medium-sized enterprises (**SMEs**) that employ fewer than 250 people and generate annual revenues not exceeding €50 million or have a balance sheet total of less than or equal to €43 million; c) intermediate-sized enterprises (**ISEs**) that do not belong to the SME category, employ fewer than 5,000 people and generate annual revenues not exceeding €1,500 million or have a balance sheet total not exceeding €2,000 million, and d) **large companies**, which are companies that do not fall within the preceding categories.

This **important** methodological 'profiling' represents a **major advance**: by shedding new light in an area where there is little information available, it enhances public debate with the vital **statistical rigour** required to approach the challenge of the French production economy objectively.

... that highlights the strong concentration of the French production economy...

The results of the public statistics work reveal an undisputed finding: the **high concentration level** of economic activity around a limited number of companies. In an economy composed of more than 3.7 million companies in 2013, nearly **6,000** (0.15% of the total) represent **at least half of each of the major indicators**: 51% of employment, 56% of added value, 64% of revenues. These are ISEs (5,300) and

large companies (274), each having a staff of more than 250 employees.

If we analyse **investment** and **exports**, two essential components of economic growth, the concentration is even higher: according to INSEE, the fifty companies that have made the largest investments represented 27% of investments (51% for the top 500 and 76% for the top 5,000). For exports, the top 50 – not necessarily the same companies as for investment – represented 34% of the total (60% for the top 500 and 86% for the leading 5,000).

... and confirms the fundamental role played by large companies...

With nearly 300 groups (274, including financial activities and insurance, 248 without these sectors), the category of **large companies** is the leader in each of the main indicators: 31% of jobs (4.3 million employees), one-third of value-added and half of export revenues. This leadership position held by large companies is extremely beneficial to their **employees**, whose **average net remuneration is 19% greater than the national average** (€31,440/year versus €26,400). This is true no matter which socio-professional category is studied.

Strongly internationalised, large companies derive a growing percentage of their results from operations conducted in the different locations where they are present. Far from being a threat, this is, to the contrary, a necessary condition of success for the companies and brings **many benefits to France**. According to Banque de France, 44

groups in the field of the 'expanded' CAC 40¹, made a decisive contribution to the balance of revenues from current transactions in France. As an illustration, the **€45bn in direct investment receipts** from abroad completely offset the foreign trade deficit in 2013. Thus, these revenues are an essential resource for the French economy.

... which must be reflected from the point of view of economic policy

Fully integrated in the global value chains, **the large companies are anchored in France**, particularly through the locations of their headquarters and various research units. In a highly competitive global economy, this dimension is crucial from a strategic standpoint. This is why AFEF places the restoration of the **attractiveness of the country** at the top of its priorities: the presence of the decision-makers in France is a major asset for the country.

This ambition must be concretely reflected in a comprehensive economic policy that promotes **wealth creation**. Where public debate too often sets SMEs against large companies and companies against employees, resulting in ineffective segmentation at many levels (tax, social, regulatory and other thresholds), the logic needs to be radically changed by bringing all stakeholders together in order to create a **virtuous dynamic**. In fact, large companies, ISEs, SMEs and start-ups actively cooperate at the local level, but also in international development, which encourages the expansion of vibrant and collectively enriching ecosystems (competition hubs, clusters and more). In the same way, the success of a company is closely tied to the quality of its

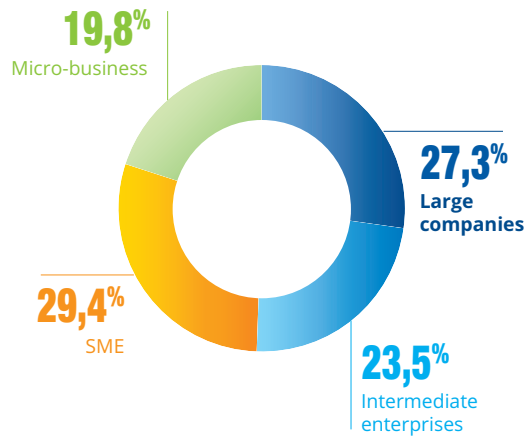
human capital, which must be supported and valued. In this respect, economic policy must fully integrate within its goals the challenge of initial and ongoing training; this is a necessary dimension for strengthening both the production network and social cohesion.

A shared **ambition**, a **global strategy**, and **consistent** deployment should be the three guidelines for the coming years. Serving the French economy, large companies want to actively participate in a new cycle of sustainable growth that will provide for all aspects of creation (business, jobs, etc.) and pave the way for the future.

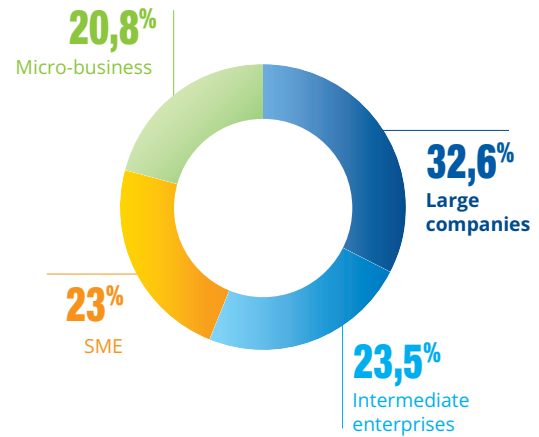
¹ The 37 resident groups at the end of 2013 and the 7 groups that have left the index since 1 January 2005.

Structure of the French economy

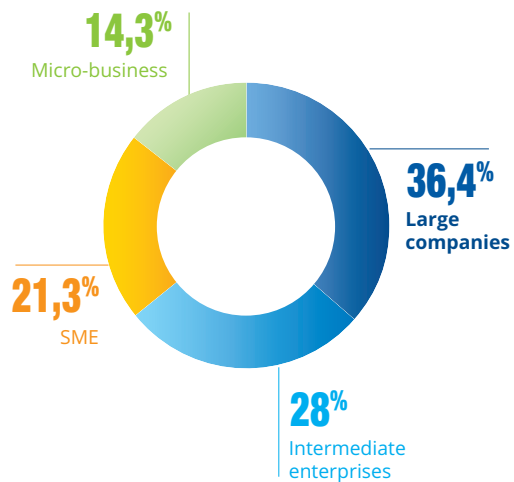
Employees



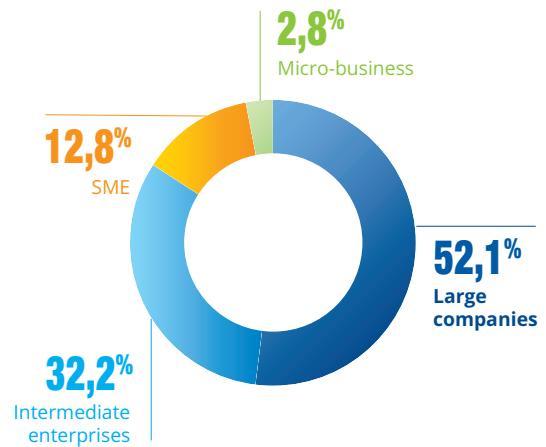
Value added



Export turnover



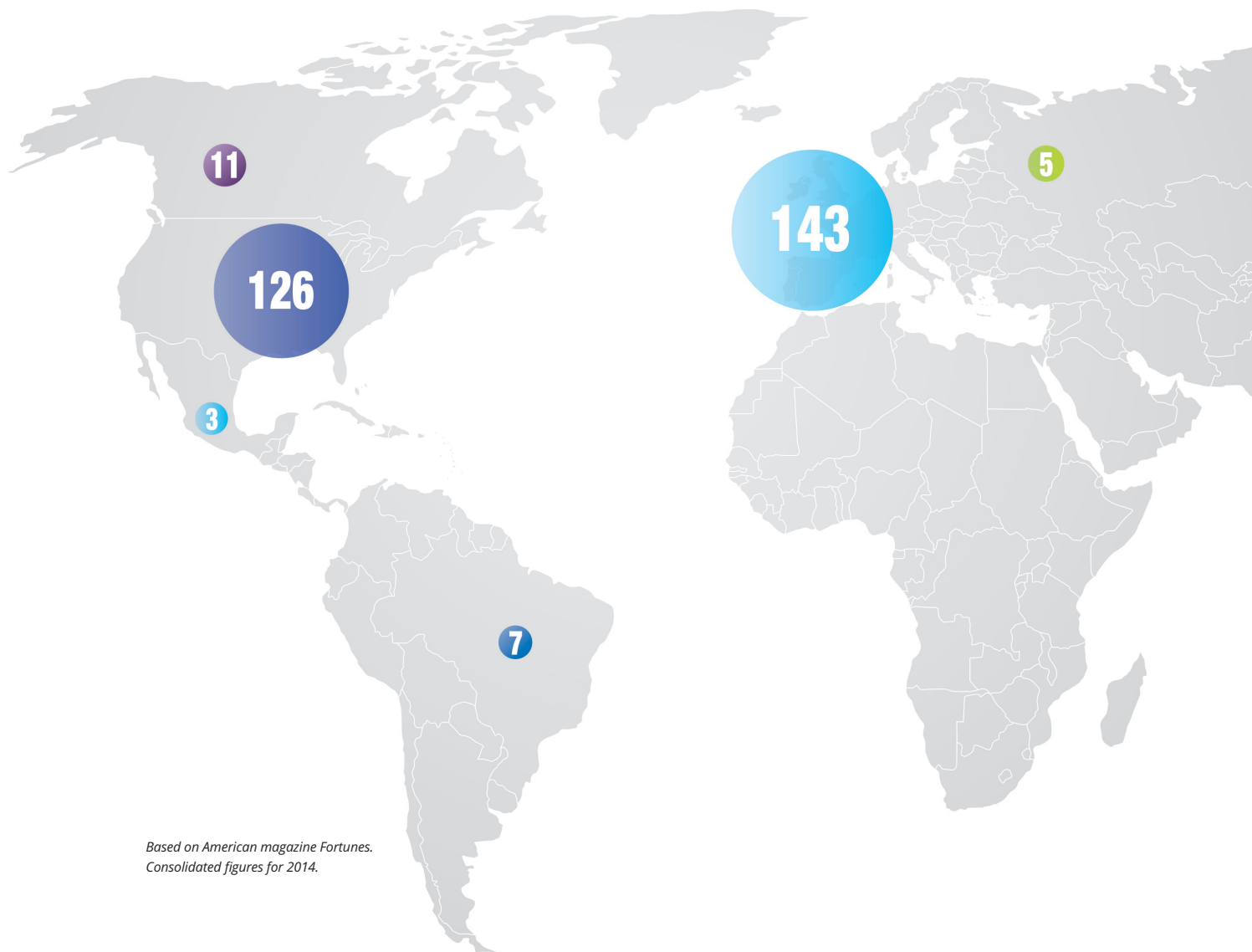
R&D



Source: AFEP based on INSEE. Scope: non-agricultural businesses, excluding financial and insurance business.

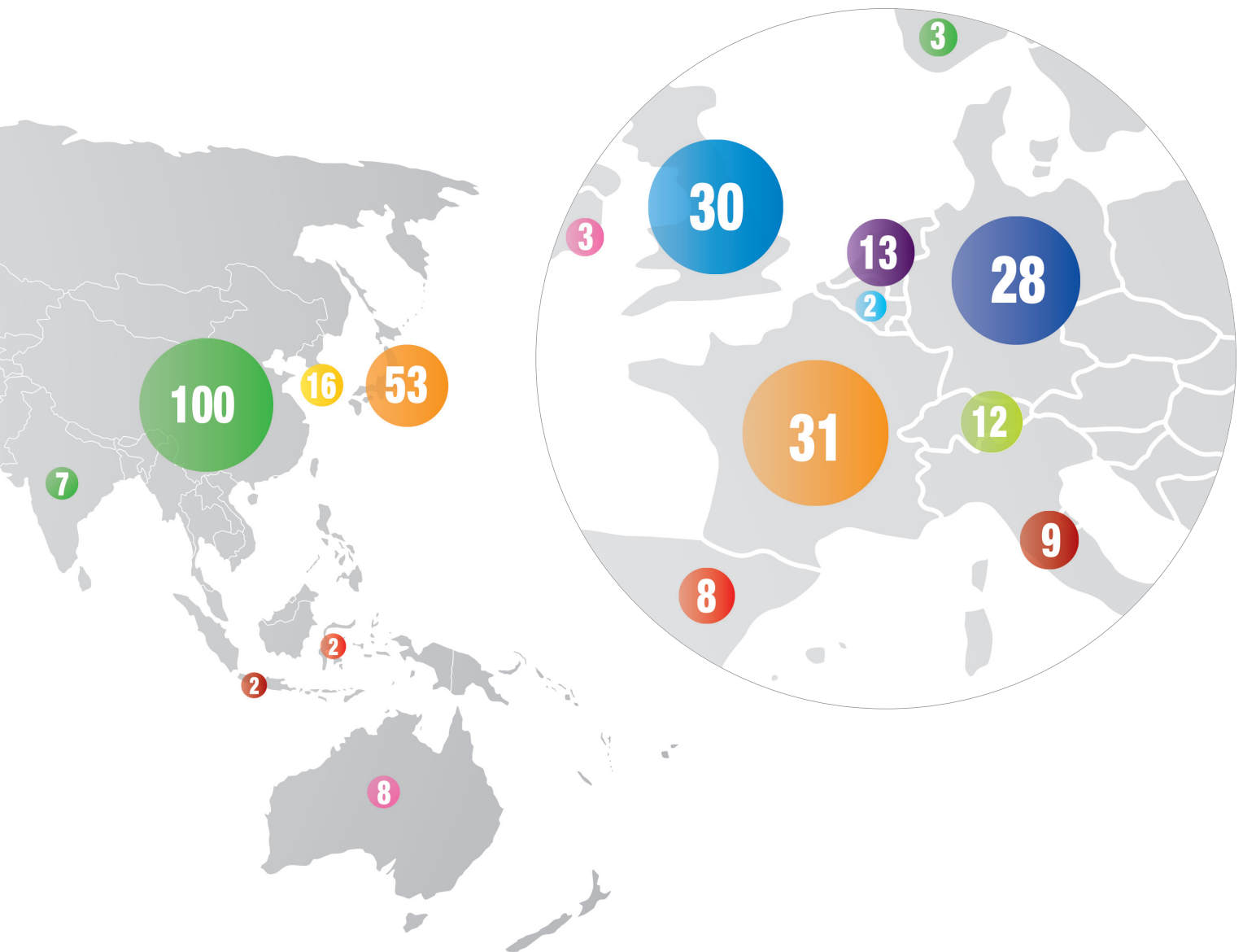
**Place of location of MNE worldwide...
(number of headquarters)**

UE as a first place of location of MNE



*Based on American magazine Fortunes.
Consolidated figures for 2014.*

...In Europe



Taxation

2016: a turbulent year for taxes

Throughout 2016, AFEP alerted the government to the growing power of international tax competition, particularly on high added value businesses, and the need for France to respond with a policy that preserves the decision-making centres and operations located in its territory. AFEP believes that the competitiveness of French companies and the attractiveness of the country alone can ensure prosperity.

However, French and European initiatives aimed at tougher tax rules have multiplied: elimination of the benefits related to tax consolidation rules, particularly for dividends, limits on the deductibility of financial expenses, overturning the

principle of French territoriality on corporation tax, publication of companies' commercial and tax data, attempts to challenge the reduced tax rate for French companies on patent royalties, etc.; never before have there been so many risks of damage to the competitiveness of our companies as there were last year.

Debates on the finance laws were an exercise in deception: while the government approved a decrease in the corporation tax rate to 28%, this will only take effect in 2020. Amid fierce tax competition, this is both too little and much too late. At the same time, a number of negative measures were taken. As a result, **AFEP deplores the fact that the government decided not to eliminate the C3S** (corporate social solidarity contribution) for large companies, which are now the only companies liable for this production tax. The increase in the rate of the Competitiveness and Employment Tax Credit (CICE) to 7%, while it has a valuable effect on the cost of labour, nonetheless remains too targeted toward the lower classifications to enhance the attractiveness of the country in high added value activities.

The preservation of the **tax treatment of dividends** was a priority for AFEP: since it is vital for French groups to be able to return their profits earned and taxed abroad to our country without double taxation and remunerate their shareholders without an additional tax cost.

To this end, the Association lobbied to **maintain exemption from the 3% contribution** on intra-group distributions that had been challenged by a decision of the Constitutional Council: AFEP communicated to the government, in colla-

boration with companies, the impacts of the elimination of this exemption and constructed an alternative solution, guided by maintaining companies' competitiveness and safeguarding public finances. The corrective finance law for 2016, which was the result of notable collaborative efforts, thus preserved the tax neutrality of intra-group distributions. Convinced from the beginning that this 3% tax on dividends was not only a competitive disadvantage for national groups, but that it also violates European texts, AFEP also joined an appeal to the Council of State and the Constitutional Council seeking a ruling on the compliance of this tax with Community law. The response is expected from the CJEU in the first half of 2017.

The Association is also defending the continuation of the French tax rules for **patent royalties**, questioned within the European '*Code of Conduct*' working group. In essence, this rule (application of a reduced rate of 15% on patent royalties instead of the Community law rate of 34.43%) cannot be considered as distorting tax competition in Europe since several European countries apply a comparable rate to all revenues, regardless of type.

The year was also marked by debates on the establishment of the obligation to report **companies¹ commercial and industrial data** ('public country by country reporting' or 'CbCR'). From the outset, AFEP has considered that such a mechanism was both useless and dangerous: useless in the fight against tax evasion because the '*Base Erosion and Profit Shifting*' (BEPS) plan, introduced into European law

and French law in 2015, already stipulates the transmission of this data to the tax authorities; and dangerous, because the publication of the information and transmission to foreign competitors and authorities that do not submit their companies to such obligations would significantly penalise European companies. Recognising the risks attached to this declaration obligation, the Constitutional Council ruled that the provision introduced in the Sapin 2 Law² by the deputies was contrary to the freedom to do business. At the European level, while France is one of the few countries to defend the introduction of this public reporting mechanism for European companies, the other Member States have identified the risks to which European companies are exposed from third-party countries.

Concerning the proposed 'Anti Tax Avoidance' directive, AFEP supported the introduction of a protection clause that will allow consideration of the position of the group in its entirety (assets and liabilities) in order to determine the limit on deduction of financial expenses.

The issue of **legal security** remains an essential concept for AFEP companies. This is why the Association took action in the context of a priority preliminary ruling on constitutionality concerning the scope of interpretative laws, the unconstitutionality of which was upheld by the Council. The tax and social rules for performance shares, revised less than 18 months ago, were heavily attacked by the legislators. Finally, while retroactivity was avoided and most of the tax system was preserved, the signal of unstable standards is very negative.



2017: the necessary reaction to mounting protectionist tax policies

Against the tide of the deployment of projects based on the idea that the large companies are responsible for the flight of tax receipts as the result of multiple avoidance practices, AFEP is calling on European and French public authorities **to build a tax system that meets the need for business competitiveness and the country's attractiveness.**

Particularly in France, where public action in recent years has primarily focused on the cost of labour of poorly qualified personnel, it is vital to take measures favourable to the development of added value activities which are one of the major assets of our country. A French reaction is even more urgent as a number of States have already implemented or announced measures to deal with this problem. As a result, the European countries are individually developing a new form of tax competition through cuts in corporation tax rates. This is why the proposed harmonisation of the corporation tax base should be conducted ambitiously. However, as it stands, the proposal published by the European Commission at year-end 2016 is not satisfactory and would penalise large European companies and, of key concern to us, large French companies.

Countries outside Europe, strengthened by the OECD's new international tax doctrine and the practices developed over several years by the large emerging countries (Brazil, India, China), are multiplying the mechanisms designed to prevent the return to European countries of the profits generated in their own countries (indirect withholding,

transfer price policy to their advantage, stringent foreign exchange controls): reciprocally, these practices represent lost receipts for our area.

The United States is not to be outdone. It has announced the implementation of a major protectionist corporation tax reform that favours businesses located in the US and is designed to boost exports; imports may no longer be granted a tax deduction while exports would be exempt from tax.

Faced with this type of structural reform, the lack of a European reaction – or worse, current discussions again exclusively focused on innumerable measures to fight tax evasion – could penalise both European competitiveness and public finances.

The world has changed. Some have decided to accept it and adapt. It is now crucial for France and Europe to take the necessary measures in this regard and defend the companies in their territory, without suspicions about them.

² Law 2016-1691 of 9 December on transparency, the fight against corruption, and the modernisation of economic life

The amount of taxes and social contributions paid by large companies in 2015

85 AFEF companies represent:

13%

of French national
added value

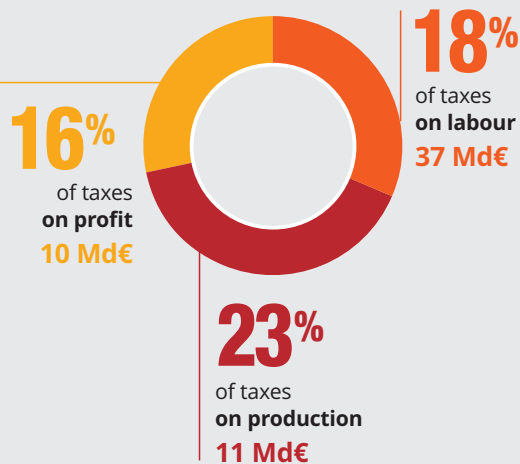
12%

of employees
in the private sector

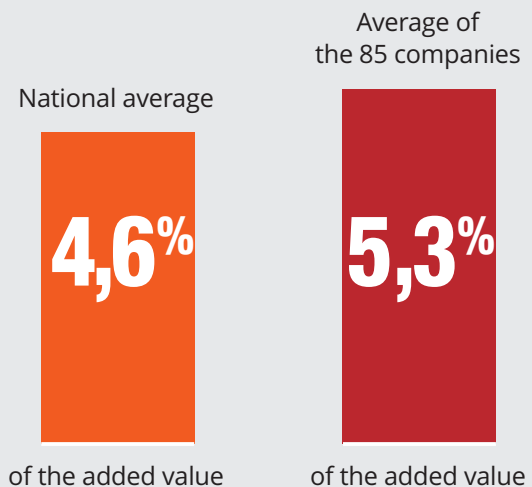
18%

of taxes and contributions paid
by companies in France

The taxes and contributions paid by the
85 companies are
distributed as follows:



**Corporate tax paid by the 85 companies in
relation to their added value is higher than
the national average:**



Company Law & Corporate Governance

At the national level, the year 2016 was marked by new advances in corporate governance, which led to the publication of the revised code and the application guide. As every year and looking ahead to shareholders' meetings, AFEP has conducted several studies in order to assist companies in their preparatory work. At the legislative level, important corporate reforms have been conducted; they result primarily from the provisions of the Law of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life, known as Sapin 2. Reform of the civil liability law has also been initiated by the Ministry of Justice.

In Europe, the work was marked by the adoption of the Shareholder Rights Directive and by work on the market abuse regulation.

A corporate governance code adapted to market expectations

In November 2015, AFEP and MEDEF made a public commitment to **revise the corporate governance code**. This change is part of a process initiated in 1995 and continued since then with revisions every three years on average. For the first time, the proposed changes were submitted to a **six-week public consultation on a dedicated website**. This consultation, welcomed by the stakeholders, yielded around thirty responses from leading funds, proxy advisory firms, legal firms, remuneration consultants, professional associations, and the HCGE³. A summary of the responses to the consultation was prepared independently by Bertrand Fages, a professor at the Sorbonne School of Law, and published at the same time as the revised code.

The general philosophy that guided this revision was to have a code more **focused on principles**. It was also to reaffirm the **role and the responsibility of the Board of Directors** in the effective application of governance rules. The changes include the distinction made by the code between executive and non-executive corporate officers, the integration of the CSR theme, the loss of 'independent' status for Board members after twelve years, and simplification of the provisions on the audit committee as certain missions of the committee are now governed by European regulations.

The wording on **remuneration** was also simplified to arrive at standards with a more general scope and eliminate redundancies. The principles that must guide the policy for

determining executive remuneration were supplemented and strengthened. In order to draw the lessons from specific cases, increased transparency is demanded, particularly for **golden hello bonuses**, exceptional **remuneration** and severance packages. Concerning shareholder votes on executive remuneration, AFEP regrets that the legislature took over the issue (see below).

Studies to assist companies in their work to prepare for shareholders' meetings

As it does every year, AFEP produced several studies to assist companies in preparing for their general meetings (table comparing **voting policies of the main proxy advisory firms**; a table of the **directors' fees** allocated to the directors of the SBF 120 companies; a study of **the performance conditions** applicable to the different components of the remuneration paid to corporate executive officers, a study that identifies the change in the rate of approval for 'say on pay'; the presence of employees on the boards of SBF 120 companies). After the general meeting season, AFEP conducted **an assessment of the general meetings** showing the main trends, particularly on resolutions approved, the issue of written and oral questions, and proxy voting recommendations. In addition, AFEP assisted the HCGE in its annual statistical study on the application of the principles of corporate governance by SBF 120 companies.

In addition, AFEP organises meetings with the main investors and proxy advisory firms every year.

Sapin 2 Law: contrasting measures

The latest major law of the last five years, this text contains very diverse measures, the wording of which sometimes lacks rigour.

For example, in the area of **corporate governance**, the legislature wanted to follow up immediately on the specific case of a company in which the State is a shareholder. What followed was the adoption, without consultation with the companies, of an unclear 'say on pay' process based on a double vote mechanism (on the remuneration policy, then on the payment), with payment of the variable and exceptional components dependent on the approval of the general meeting. An implementing decree is expected to clarify the provisions governing the vote on the remuneration policy, applicable as of 2017. AFEP regrets that the choice of the law was made to the detriment of self-regulation.

The law also includes a component on the **prevention of corruption** with an obligation to set up a multi-faceted prevention plan (risk mapping, assessment procedures for customers, suppliers, etc.). This mechanism is not much different from the practice of the large companies that are required to comply with foreign laws with extra-national scope stipulating similar obligations. The provisions on '**criminal transaction**' are interesting. AFEP supported them, believing that they would help to accelerate the procedures and avoid the consequences of a recognition of culpability leading, for example, to exclusion from public markets.

With regard to **whistle-blowers**, here again, the large companies had very widely developed ethical alert procedures. The legal mechanism remains problematic, however, primarily because of insufficient training in the conditions under which alerts can be made public. The strengthening of transparency on the activity of **representatives of interests** is ambitious and AFEP wanted the wording to be clarified, particularly as to the scope of the persons concerned. As for the **provisions to simplify** company law, they are certainly moving in the direction AFEP has recommended, but they remain quite insufficient, even though the Senate had attempted a much more ambitious reform largely based on the simplification work done by AFEP, ANSA⁴ and MEDEF.

Shareholder Rights Directive nearly finalised

At the European level, after several years of negotiation and stalemates, a political agreement on the **Shareholder Rights Directive** was finally reached in December 2016, pending formal adoption by the Council and the European Parliament this spring. For the identification of shareholders, AFEP regrets the addition of an optional threshold for the Member States, which violates the objective of transparency. On the other hand, AFEP believes that the provisions designed to frame the activity of proxy advisory firms is moving in the right direction. AFEP also regrets that the 'say on pay' mechanism was not a source of inspiration during the examination of the Sapin 2 Law. The amendment establishing fiscal reporting country by country was finally withdrawn in favour of a new directive proposal (see Tax Section).

The **regulation on market abuses** was also the subject of work by ESMA⁵ and the AMF⁶ to specify its contours through the publication of a permanent information guide on which AFEP had the opportunity to comment.

Outlook for 2017

The heavy edifice of the Sapin 2 Law will be completed only with the publication of a number of implementing decrees and the publication of orders on which the departments of the Ministry of Justice and the French Ministry of Finance are actively working. AFEP will continue to work to simplify company law, but also by conducting an inventory of the provisions adopted in the different texts that harm business competitiveness.

At the European level, other reforms are still to come. In particular, these include level II measures that specify certain aspects of the Shareholder Rights Directive, essentially on the identification of shareholders, as well as the guidelines from the European Commission on executive remuneration. A report on whistle-blowers is also expected ahead of a proposed directive on this issue.

³ High Committee for Corporate Governance: a body set up by French business associations AFEP and MEDEF to monitor the implementation of the AFEP-MEDEF Corporate Governance Code for Listed Companies

⁴ National Association of Public Companies

⁵ European Securities and Markets Authority

⁶ French Financial Markets Authority

Business Financing

AFEP's activity in 2016 was driven by the European financial agenda. The goal of AFEP's action was to communicate a better understanding of corporate financing needs. It acted in three main areas.

Improve financing conditions for businesses through the financial markets

On 14 September 2016, the European Commission announced that it wanted to accelerate the finalisation of the action plan for a Capital Markets Union (CMU) launched in 2015. In its current state, this plan provides little progress for large companies in terms of financing, because they have access to the markets and because it consists of a set of measures designed to correct the effects of excess regu-

lations. **AFEP believes that the action plan should place companies at the centre of the European policy on financial services and markets.** This is the message that AFEP carried to European Issuers and which it wants to transmit to the Commission in the context of the consultation on the progress of the CMU launched in January 2017.

AFEP was particularly active on two measures of the action plan: **the revision of the Prospectus Directive** defining the information obligations of companies raising finance on the markets and the functioning of the corporate **bond market**. Throughout the 'prospectus' discussions, AFEP defended the maintenance of the exemptions in effect and a necessary flexibility on the format of the prospectus summary and the presentation of risk factors. The Commission and the Member States, however, stuck to their position and imposed new requirements on the summary as well as a more detailed description of the risk factors. **Nevertheless, the challenge remains the content of the prospectus, which will be defined by the Commission in the coming months.**

Concerning the corporate bond market, **AFEP is part of a group of experts set up by the European Commission** and charged with submitting proposals in 2017 to improve the functioning of these markets.

2016 was also marked by Brexit and the announcement of a proposed merger between the London and Frankfurt stock markets. At the request of the Treasury Department, **AFEP surveyed companies in order to assess the consequences of a "hard" Brexit on access to the markets and**

the financial services located there. In coordination with Paris Europlace, **AFEP contributed** by in providing the competition division of the European Commission with the appropriate information it needed to investigate this project carefully.

With regard to the proposed European financial transaction tax, while stronger cooperation continues with ten Member States still participating in the project, **the work has not yet made much progress.** The economic consequences of this proposed tax make it a sensitive project that AFEP is carefully monitoring.

At the national level, **AFEP has monitored the discussions on the Sapin 2 Law,** which contains several provisions **designed to simplify corporate financing,** for example by modernising and simplifying the current provisions on bond issues and the representation of the body of bond holders. AFEP also responded to the consultation conducted by the Treasury Department on **the reform of the market for negotiable debt securities.**

Ensure the proportionality and relevance of corporate reporting and accounting obligations

The application in July 2016 of the European Regulation on market abuses⁷ led the AMF to amend its general regulations and its doctrine on periodic and permanent disclosure requirements. AFEP and the companies **identified the difficulties and alerted the AMF and the European regulator ESMA⁸** on the implementation of the new rules.

Companies also rallied against the establishment of an

electronic format for publication of the annual financial report given the absence of any demand expressed by shareholders and investors, the resulting costs and the impacts on financial communication (standardisation of the indicators used in the communication). Despite steady pressure exerted jointly with CLIFF⁹, MEDEF and Middle-Next on the French and European authorities, including the European Commission, **in late 2016 ESMA published its report recommending the implementation of XBRL technology¹⁰ from 1 January 2020.**

In the area of non-financial information, **AFEP participated in the working group formed by Paris Europlace to study the practice known as the integrated report.** Several major companies embarked on this process, which must necessarily include the elimination of obligations for information that is not useful or has become obsolete, and better discipline in the demands from the ratings agencies and NGOs. At the same time, **AFEP initiated regular dialogue with the task force set up by the Financial Stability Council on climate-related financial disclosures.**

In the accounting field, in collaboration with companies, AFEP has proposed to the authorities a solution to limit the impact of taking pension commitments¹¹ into consideration **in companies' individual accounts.** Finally, **in the area of international accounting standardisation, AFEP worked on governance issues,** including the composition of the IASB¹² and the operations of the IFRS¹³ Foundation.

Ensure effective implementation of the statutory audit reform

The conditions for serving as statutory auditor and the responsibilities and obligations of companies and their audit committees were significantly modified in 2016. The ordinance of 17 March 2016¹⁴ that transposed the Statutory Audit Directive¹⁵ and the European regulation on the requirements applicable to public interest entities, took effect on 17 June 2016.

The implementation of these obligations raised a number of questions related in particular to the European regulation and to certain options applied differently within the European Union. The new obligations, which are designed to strengthen the independence of statutory auditors (appointment of statutory auditors, fee caps, ban on certain non-audit services) and the responsibilities of the audit committee, along with strengthening the powers of the profession's regulatory authority, the Haut Conseil du Commissariat aux Comptes (H3C), particularly in terms of sanctions, could also pose difficulties for companies.

As a result, AFEP has initiated dialogue with the relevant authorities, particularly the H3C. Working together with ANSA, MEDEF, MiddleNext and CNCC, a provisional version of an application guide on prior approval by audit committees for the provision of non-audit services. The organisations representing companies and the CNCC will continue discussions with the H3C in order to answer pending questions and finalise this guide.

The year 2017 will also be marked by the European

agenda. The year opened with the revision of the European regulation on clearing derivative instruments traded over the counter¹⁶ and the negotiation of the United Kingdom's exit from the European Union. AFEP will closely monitor the development of the technical measures of the 'prospectus' regulation and the finalisation of the action plan for the CMU. Finally, it will also be important to exercise special vigilance over the European Commission's plans following the assessment completed in 2015 of the cumulative impact of the regulations on financial services and markets, the results of which were published at the end of 2016.

⁷ Regulation (EU) No 596/2014 of the European Parliament and Council of 16 April 2014.

⁸ European Securities and Markets Authority.

⁹ French association of financial communication professionals

¹⁰ Extended Business Reporting Language. The ESMA recommends the use of iXBRL, a new version of this technology.

¹¹ Supplemental defined-benefit pensions and retirement indemnities.

¹² International Accounting Standards Board.

¹³ International Financial Reporting Standards.

¹⁴ Ordinance 2016-315 of 17 March 2016 governing statutory auditors.

¹⁵ Directive 2014/56/EU of the European Parliament and Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual company accounts and consolidated financial statements.

¹⁶ Regulation (EU) 648/2012 of the European Parliament and Council of 4 July 2012 on over-the-counter derivative products, central counterparties and central standards.



Labour, Employment & Social Protection

In the labour field, the year 2016 was indisputably marked by the debates on the reform of the French Labour Code, a highly controversial issue, and by inter-professional discussions about the future of the unemployment insurance programme.

The place of the collective agreement at the centre of debate on reform of the Labour Code

Following the adoption of the “Rebsamen Law”, the Prime Minister charged Jean-Denis Combrexelle, President of the Labour Section of the “Conseil d’Etat” (Council of State), with a mission to strengthen the place of the collective agreement within labour law. **AFEP contributed to the work of this mission and recommended first strengthening the company-level agreement.**

Noting the lack of adaptation of our current laws to econo-

mic changes and the working world, the Combrexelle report remitted to the government in September 2015 proposed a rewriting of the Labour Code in order to clarify and expand the scope of collective negotiations, beginning with four areas (working time, wages, employment and working conditions). In these areas, provided the definition of legislative and professional sector public orders, it recommended that the provisions defined by company-level agreement apply first, while the provisions of the law would constitute back-up in the absence of an agreement, in accordance with the proposals made by AFEP.

Presented in the spring of 2016 by Labour Minister Myriam El Khomri, **the bill was in line with the general philosophy of the Combrexelle report, but only covered the more limited field of working time**, referring the task of re-writing the entire Labour code within a period of two years to a commission of experts. The divisive debate, even within the majority, and the strong opposition from several trade unions, led the government to reduce the reforming scope of the text even more during the parliamentary debate. Finally, **the law of 8 August 2016 ‘on work, modernisation of the social dialogue and job security’ appears to fall far below its initial goals. It is therefore crucial that the work to rewrite the Labour Code in light of this new architecture be continued.**

The advances in the law include: an expanded place for the company-level agreement regarding working time (for example, on the level of overtime increases and modulating work schedules); a better recognition of collective bargaining; a simplification of the conditions for revising collective agreements; a clarification of the conditions for challenging the expert assessments of the CHSCT (Committee for

health, safety and working conditions); the establishment of proactive agreements on jobs.

In return, this expansion of the place of the collective agreement entailed a stronger requirement in terms of validity with the implementation of majority agreement: although the principle is sound, AFEP expressed its reservations on generalising majority agreement to all collective agreements from 1 September 2019, believing that this very short period could penalise the signature of agreements, particularly since the use of a referendum with employees remains the sole initiative of the union organizations, which AFEP regrets. AFEP would like the initiative ability to also be open to employers.

Situation on the jobs front improving... but still fragile

On the employment front, the results of 2016 were mixed. Certainly, the unemployment rate as defined by the ILO began to decline in the fourth quarter of 2015, dropping from 10.2% to 9.7% in the third quarter of 2016. For job seekers registered with Pôle Emploi (the Employment Office), the decline over the first ten months of 2016 was -101,300. **This change is consistent with the number of net new salaried jobs, which returned to positive** (+175,700 jobs in the primarily merchant sectors from the 3rd quarter of 2015 to the 3rd quarter of 2016).

However, this positive statistic must be tempered by several elements. According to data from INSEE, unemployment (nearly 1.5 million people) and the number of persons declaring they are underemployed (more than 1.7 million) are still at historically high levels. In terms of a European comparison: according to data from Eurostat,

whereas unemployment rose in France by 0.4 point from May 2012 to year-end 2016, it fell 8 points in Ireland, 5 points in Spain and 3 points in the United Kingdom. Also, the situation for young people in the job market continues to be very degraded, with an unemployment rate of over 25%, up +0.8% over a year.

In a context of sluggish growth (+1.3% according to the latest projections, instead of the 1.5% initially forecast), several measures have been taken to boost hiring. This is specifically the case with the implementation of a hiring subsidy for SMEs with fewer than 250 employees, which was launched in January 2016: according to Treasury estimates, this hiring subsidy could result in a positive contribution of an additional 60,000 additional jobs at the end of 2016. On the other hand, the government abandoned the commitment it had made to definitively eliminate the “contribution sociale de solidarité des sociétés” – a turnover tax – (which AFEP regrets) and, instead, raised the rate of the “crédit d’impôt pour la compétitivité et l’emploi” (tax credit for encouraging competitiveness and jobs) from 6 to 7% of the payroll from 1 January 2017.

However, on the side of **legal obstacles to hiring, the results are much more nuanced.** Despite the advances of the 2013 law “on employment security” in terms of procedure (framing the employee representative bodies consultation periods, approval/validation procedures of PSEs¹⁷ by the administration), the lack of security if the employment contract is terminated remains high and is a real brake on hiring for full-time permanent employment. **While the initial proposal introduced by Minister Myriam El Khomri contained useful measures to make dismissal more secure, most of them were eliminated during the**

parliamentary examination. Ultimately, the only remaining element is the objective definition with the judge of the criteria that characterise economic difficulties, which essentially restates the elements already identified in case law. On the other hand, **the cap on employment tribunal compensation in case of unfair dismissal was eliminated, as was the change in the scope for assessment of economic difficulties/protection of competitiveness for companies that belong to a global group, a reform that would have been a powerful signal for the attractiveness of our country.**

On the inter-professional side, the failure of the UNEDIC¹⁸ negotiation led the government to take over unemployment insurance management

The year 2016 was marked at the inter-professional level by the **negotiation on the UNEDIC agreement.** AFEP formulated several proposals to ensure the financial sustainability of the scheme, which carries a high deficit, and more strongly encourage a return to work for unemployed people, particularly with the establishment of a descending scale of unemployment benefits, a change in the speed of capitalisation of rights, and a reform of the law on contract workers in the entertainment industry.

In a particularly tense context because of strong opposition to the Labour law (and the prospect in 2017 of the new measures on employer and union representativeness), **the social partners ultimately failed to reach an agreement, with the question of taxation on short contracts, which was the unions' principal demand, the focus of the opposing sides.**

These results led the government to adopt a decree to extend the last agreement signed in 2014. While this

extension preserved unemployment benefits for job seekers, it does not, on the other hand, generate the savings needed to correct the accounts of UNEDIC, which has a very deteriorated budget position (with a deficit of -€3.8bn in 2017 and debt of €33.8bn at year-end 2017 and €41.4bn in 2019). Aware of UNEDIC's challenges in balancing the budget, the government invited the social partners to resume discussions in October. Talks began in late 2016, as the social partners had decided to start by establishing a shared diagnosis.

Job discrimination: stronger tools... but not necessarily adapted

The fight against discrimination in the workplace, the worrying level of which has been stressed in several reports, was the target of a series of provisions in several pieces of legislation in 2016. At the procedural level, the **law to modernise Justice in the 21st century**, promulgated on 19 November, creates a new remedy for the victims of discrimination with the introduction of **class action. This class action can be initiated by representative union organisations and by associations, in this latter case, only for discrimination in hiring. A procedure with preliminary formal notice followed by dialogue with the social partners is mandatory** before filing a class action in order to try and find the most appropriate solutions through mutual cooperation. Only the damages generated after the promulgation of the law can be affected by the class action, in accordance with what AFEP wanted in the name of legal security.

The draft law on equality and citizenship also included certain proposals from the report by the discussion group on discrimination, in particular establishing man-

datory training in the fight against discrimination for recruiters in companies with at least 300 employees, and the possibility of taking into consideration actions against discrimination in the awarding of public contracts. The MPs also voted to create a fund for financing class action suits, which would be provisioned by increased fines levied by the courts. **Nevertheless, the Constitutional Council censored this provision, as per AFEP's request.** Finally, at the government's initiative, around forty companies with more than 1,000 employees were **tested regarding their practice in terms of hiring and the risk of discrimination.** A summary of the results was made public in December. AFEP began consultation with the government to ensure that the consequences to be drawn from the tests will be as efficient as possible.

In 2017, what role will social issues play in the presidential campaign?

The suspension of parliamentary activity in late February is only likely to allow the definitive adoption of texts that are already in committee. As for inter-professional negotiations, other than the negotiation currently underway on telecommuting, there are very few new topics on the agenda. It should be mentioned that **2017 will be marked by the first measure of the employer organisations representativeness, which could alter the balance at the negotiating table.**

Discussions in 2017 are likely to focus on the presidential campaign. In the social realm, several issues seem to have already emerged, including the future of co-determination with social partners (at the inter-professional as well as corporate level) and our social protection system; the

employment protection legislation (procedures and costs for the dismissal of fixed-term contracts); or the reform of our initial training system. As regards competitiveness, the question of the level of remuneration at which it would be appropriate to make an extra effort in terms of reducing social welfare contributions was addressed.

AFEP will play its full role in these debates. It has presented a series of structural proposals (available on its website) that, were they to be implemented, would allow French companies to make gains in flexibility, achieve a more efficient social dialogue and more effective training, and leave fewer young people out of work, as well as ensure the financial sustainability of our social protection system.

'YOUNG PEOPLE AND COMPANIES'

(Jeunes et Entreprises), an initiative launched by AFEP in 2013 and supported by large companies to promote the professional integration of young people.

THE GOAL: to allow young people who have benefited from apprenticeship training in a group to post their CVs on a database that can be accessed by other recruiters, particularly among the group's subcontractors.

THE RESULTS:

- a portal at www.engagement-jeunes.com where:
- **50 companies** share the CVs of young people who they have trained under apprenticeship contracts;
- **143 large companies** and **341 SMEs** have opened an account to recruit directly from the 'CVthèque';
- **more than 8,000 young people** have an active account;
- since the start of the portal, **90,000 offers** (permanent contracts, fixed-term contracts, internships, apprenticeships).

¹⁷ Job-saving plan

¹⁸ French National Professional Union for Employment in Industry and Trade



Commercial Affairs and Intellectual Property

At the domestic level, 2016 saw the adoption of numerous texts with big consequences for companies. Whereas in 2016 Europe focused mostly on the problem of personal data, in 2017 attention has shifted in multiple directions all at once. In addition to a new consultation in favour of a European data-based economy, the Directorate General for Competition took a long, hard look at mergers and concentrations. Civil procedures aimed at enforcing intellectual property rights may also be revised.

National legislative climate rather unfavourable to business

Throughout its preparation, the 'Law for a Digital Republic', published in the Official Journal of the French Republic

(JORF) on 8 October 2016, was followed closely by AFEP, as there were numerous implications for companies. As a result, the impact of European regulations on personal data was limited. A provision forbidding the storage of data outside the European Union was removed, in keeping with AFEP's requests. But a good number of provisions still remain sources of concern for companies. The provision concerning **open data**, which relies on vague definitions, could give rise to the publication by governments of sensitive data about companies. The **CNIL's power to impose sanctions has been reinforced** - it can now levy fines of up to €3 million (from the previous maximum of €150,000). These sanctions are applicable with the entry into force of the French law for situations that do not come under the scope of application of the General Data Protection Regulation and will be applicable from 25 May 2018, the date of application of the European text, for deeds that fall under its scope (data recovery and exercising of rights by the data subject with regard to how their personal data is processed). Several different **draft decrees for application** are currently being prepared. They mainly concern data recovery and portability, the trustworthiness of platforms, private digital correspondence, and the disclosure obligations of digital platform operators. Consulted about these projects, AFEP has alerted the drafters about the risk of going beyond what is allowed by law.

The Law on Modernisation of **Justice in the 21st Century**, passed on 12 October 2016, extends class action procedures to numerous fields. After consumer affairs and competition (Hamon Law of 2014), followed by health (Touraine Law,

2016), class action procedures may now be taken in case of **discrimination, environmental damage or violation of the Law on Information Technology and Civil Liberties**. Provisions relative to discrimination and to the environment are applicable only to actions where the act or omission generating liability occurs after the law has entered into force, a position supported by AFEP. However, the other provisions are rather unsatisfactory for companies: a procedural ‘common base’ is established, and the wording in relation to environmental class action procedures is legally vague and generates insecurity for all parties.

The creation of a **fund for co-financing class action suits**, drawing from **higher fines imposed by the criminal courts in class action suits brought before them**, was **discarded by the Constitutional Council**. The Council determined that this violated the principle of equality before the law, upholding AFEP's analysis of the subject.

In its section on **payment terms**, the law on transparency, the fight against corruption and the modernisation of economic life (**Sapin 2**) of November 2016 **reinforces the sanctions imposed by the DGCCRF**¹⁹. The limit for fines incurred by a legal person in case of failure to abide by the established payment terms increases from €375,000 to €2 million. The **publication** of these fines will be **systematic**. The absence of a calculation method on the part of the administration is problematic for companies; they are subject to highly variable estimates of these payment terms. An exception to this rule is payments for VAT-free purchases of goods to be shipped ‘as is’ outside the EU: the maximum payment period in such cases, regardless of the

product bought, is 90 days. These provisions, which are not applicable to procurements by large companies, may nevertheless affect their subsidiaries.

The problem of personal data was very present throughout the year

Four years after the proposal was launched, the **General Data Protection Regulation** was finally adopted in mid-April 2016. It will be applicable from 25 May 2018.

Even though it falls somewhat short of their expectations, for companies the text does represent **some progress**: a **‘one-stop shop’** where the company is in contact with a single national control authority; the **European Data Protection Board**, which ensures consistent application of the regulation by these authorities; conservation of the **legitimate interest of the data controller** as one of the foundations for the lawfulness of processing. **Deep concerns** remain, however: **administrative fines** ranging from **2 to 4% of annual global revenues**; the principle of accountability of companies based on the use of numerous tools (impact assessment, keeping a register of the processing operations carried out, notification of data breaches, certification and adherence to codes of conduct, etc.); **‘right to be forgotten’** implying a broad obligation to provide information in the context of data erasure.

As the implementation of this text has been the source of numerous uncertainties, AFEP has met with companies on several occasions to define the main difficulties (liability of the data protection officer, impact assessment of



processing high-risk data, certification mechanisms and labels, etc.) and subsequently responded to the consultation by the CNIL, which presides over the network of European personal data supervisory authorities (the 'G29'). In its various exchanges, AFEF has emphasised the importance of pragmatic solutions and the limitation of technical and administrative burdens.

In the context of the extension of the Schrems decision (October 2015), the conclusion of an 'EU-U.S. **Privacy Shield**' agreement, replacing the 2000 'Safe Harbor' decision between the US and the European Commission invalidated by this ruling, was announced in early February 2016. The 'G29' then studied the conformity of this decision with basic guarantees to be respected under disclosure arrangements, determining that companies were exposed to considerable legal insecurity because of the transfer of their personal data across the Atlantic. The CNIL interviewed companies directly in order to explain to them the interim legal framework that would allow them to continue doing business. The 'Privacy Shield' was officially adopted by the European Commission on 12 July. Companies were able to sign up to it from 1 August 2016.

Closely monitored reflections on intellectual property

In mid-September, the European Commission published the result of its survey, opened at the start of 2016, which inquired about the evaluation and modernisation of the legal framework for application of the **directive on civil procedures seeking to enforce intellectual property**

rights. AFEF has always stressed the relevance and efficiency of this text since its publication in 2004, along with its transversal dimension, which made it particularly welcome to fight against counterfeiting. For companies, improvements could be introduced in areas like the conservation of evidence, provisional and precautionary measures, corrective measures (in particular, injunctions), damages, or the right to information without radically undermining this text. Underlining the marked increase in counterfeiting, the survey results reveal that the directive has not delivered the expected results and that, moreover, national civil enforcement systems in general do not ensure sufficient access to justice.

Outlook for 2017

In relation to **competition**, procedural and jurisdictional aspects of **concentration control** are expected to be actively addressed by the European Commission after its consultation in late 2016, when it no longer addressed the acquisition of non-controlling minority shareholding. The referral mechanisms between the Member States and the Commission and the **efficiency of setting thresholds based solely on turnover should be on the agenda**. Regarding this last point, the Commission mentioned a **possible transaction values threshold** so as to be able to examine transactions that could pose competition problems even if they did not reach the current reporting thresholds. The results of this consultation were scheduled to be published in the first quarter of 2017, with the assessment being published in the second half of 2017.

AFEP will continue to work in favour of procedures that are as pragmatic as possible by examining revenue-based thresholds, which are more objective and, therefore, easier to control. In **digital information**, at the beginning of 2017, the European Commission published a communication on **the economy and the free flow of data within the European Union**. It wishes to harmonise the legislative framework so as to remove the barriers to this free flow that it seeks to encourage. AFEP will contribute to these

reflections. In the field of **intellectual property**, AFEP will follow the reflections of the European Commission on the upcoming revision of the directive on implementing civil procedures as a means for enforcing intellectual property rights. Finally, the implementation of the **General Data Protection regulation** will be closely monitored.

¹⁹ General Directorate for Competition Policy, Consumer Affairs and Fraud Control



Environment & Energy

The year 2016 was marked by **three key themes**:

Climate/energy: in a changing international setting, pursuit of policies fighting against climate change and relative to energy in Europe for the 2030 horizon

The start of the year was heavily influenced by the adoption of the **Paris Agreement at COP21 in December of 2015**. This positive atmosphere was nevertheless tempered just before COP22 in Marrakesh by the election of the new US president, who had made his climate change scepticism and desire to abandon the Paris Agreement known on several occasions. This withdrawal led to China's arrival at centre stage in the international negotiations. During these Climate Conferences, AFEP focused on high-level side

events showing the contribution of the circular economy to the fight against climate change.

The Financial Stability Committee set up an international task force chaired by Mr Bloomberg to formulate recommendations to companies concerning the publication of financial data associated with climate issues. Within the framework of the public consultation, the Association underscored **the interest of the initiative, but insisted on dissuading the task force from asking for the publication on very short notice of as-yet unreliable climate scenarios**. It pointed out the high risk that such recommendations would only be applied in Europe.

Work on revising the **directive on greenhouse gas emission allowances**, the Emissions Trading Scheme Directive (ETS) for the 2021-2030 period, began in earnest in the 1st half of 2016, in particular following the Anglo-French proposal to reduce allowances for industry. The pace of the work was stepped up in the 2nd half and early 2017 with the adoption of the report by the European Parliament proposing that auctioned allowances be shifted to free allowances in case too great a strain is put on industry, in order to preserve the competitive standing of European industry. **Companies** support this compromise.

Regarding energy, the European Commission adopted the **winter clean-energy package** with a draft directive containing a non-binding target at EU level for improving energy efficiency by 30% by 2030; a draft directive on renewable energies with a binding 27% renewable energy target on final energy consumption between now and 2030 and a proposed regulation on EU energy governance to be

implemented by 2020 in all Member States, and integrated 10-year 'energy-climate' plans validated by the European Commission. AFEP considers that this regulation is positive, but that it **will not be enough to ensure good synergy between energy-climate legislative texts** as it is applied *ex post*. It would have been preferable for the 2020-2030 period to examine all the energy-climate texts in parallel in the co-decision procedure rather than sequentially.

In France, **multi-annual energy planning** was adopted by decree on 27 October, with targets by energy type and horizons ranging from the end of 2018 to the end of 2023. The reform of the CSPE (public electricity service tax), in keeping with the EU rules on state subsidies, has entered into force, allowing for **relative stability of this tax for industries** (although certain companies are still being penalised). A national mechanism of **compensation for indirect emissions** was set up by electric-power-intensive companies subject to the ETS directive, for €93 million. A decree on application of the energy transition law was adopted in August to **provide more in-depth reporting on greenhouse gases by companies** in their management reports concerning emissions linked to their inputs and to the use of their products.

Circular economy: development of corporate initiatives regarding the circular economy and sustainable cities with French public authorities, in close collaboration with the European Commission's circular economy package

After submitting its report at COP21 in 2015 on good practices already in place in companies regarding the

circular economy, AFEP decided in 2016 to highlight **100 project commitments involving 33 companies**. The goal is to demonstrate that major groups have bought into this topic, and to underscore their ability to mobilize their suppliers, partners and customers on a global scale. An original aspect of the initiative was to organise an exchange of views midway through the commitments at a project stage with two 'primary witnesses': the Agency for the Environment and Energy Management (ADEME) and WWF France.

In 2016, AFEP encouraged companies to make **'green deals'** (In French Engagements pour la croissance verte, ECVs) with the French government for innovative circular economy projects. This initiative provides for inter-departmental backing for private project leaders when the project is innovative, environment-friendly and creates jobs. The first four pledges were signed in 2016 by the Environment and Industry ministries. This approach promoting a facilitating role on the part of government is positive, contributing to government reform and developing activity in the national territory.

The selection of **16 'sustainable city' industrial prototypes** in February by the Environment and Housing ministries following a call for projects is the culmination of the action undertaken several years ago by AFEP. The goal of these prototypes is to show the global relevance of the French 'sustainable city' proposals by basing innovation on two main drivers: circular economy and the sharing of spaces.

Finally, the Association examined the European Commis-



sion's '**circular economy package**', in particular reviewing the waste framework directive. It promoted the inclusion in the directive of **economic tools** to stimulate demand and proposed a mechanism for **mutual recognition** between Member States on the loss of waste and by-product status in cases where harmonisation was not anticipated at the European level.

Environmental law: numerous new measures generate greater constraints on companies without the certainty of achieving their goals

Companies have monitored the adoption of the **law on biodiversity** in July of 2016. The law helps recognise the challenges to biodiversity, but it also involves new risks for companies by introducing the notion of **ecological damage in the Civil Code** without providing for its coordination with the administrative law system implemented by the 2009 law on environmental liability.

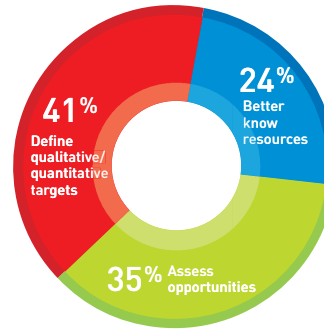
The decree on **democratisation of the environmental dialogue** was adopted in August, its goal being to develop 'upstream consultation' on projects. The main request of companies of reducing the lead times for public hearings 'downstream' once the 'upstream' consultation has been satisfactorily concluded has, unfortunately, not been taken into account by the government.

The **outlook for 2017** is directly linked to the general policy proposals brought to the table by the candidates in the presidential election. A possible consensus could probably be established on the need to somewhat simplify environmental reporting by companies, under the 'tell us once' goal and on the extension of authorisations covered by the 'silence equals consent' measure. More difficult measures should be taken, in particular with regard to private individuals, in a bid to reduce greenhouse gas emissions in buildings and transport. Finally, decisions with far-reaching consequences are expected to be taken concerning France's policy on nuclear generation of electric power.

Companies' commitments and actions to boost circular economy

In January 2017, AFEP made public 100 commitments for circular economy coming from 33 member companies. All those companies are worldwide based and wish to play a very important incentivizing role for their suppliers, partners and customers. The commitments have an average duration of 6 years. They tackle 3 levels of maturity:

- 1/ assessment of resources (24%),
 - 2/ identification of opportunities associated to the value chain, actors and markets (35%),
 - 3/ definition of quantitative or qualitative targets (41%).
- Some commitments may cumulate those 3 levels simultaneously.



The 3 levels of maturity are mobilized, especially the target issue

Key Figures

- Afep initiative encompasses **33 companies**

AIR FRANCE, ARKEMA, BOUYGUES, CARREFOUR, CREDIT AGRICOLE, DANONE, EIFFAGE, ELIS, ENGIE, FNAC, INGENICO GROUP, KINGFISHER, LAFARGEHOLCIM, LEGRAND, L'OREAL, MICHELIN, NEXITY, ORANGE, PERNOD RICARD, PSA GROUPE, RENAULT, SAINT-GOBAIN, SCHNEIDER ELECTRIC, GROUPE SEB, SEQUANA - ARJOWIGGINS GRAPHIC, SOCIETE GENERALE, SOLVAY, SUEZ, TOTAL, UNIBAIL-RODAMCO, VALEO, VALLOUREC, VEOLIA

- **18 sectors are represented**

Energy – Chemical Industry – Metal Industry – Machines/ Equipment – Cement – Automotive – Materials – Paper – Buildings – Retail – Food – Cosmetics – Water/Waste – Telecoms – Real Estate – Financial services – Renting/Leasing – Transport

- **100 commitments/actions** (average of 3 per company)

The 7 leverages of circular economy defined by the French Environment Agency (ADEME), with an additional 8th leverage "Multi-actor" highlighted by AFEP, are significantly mobilized:

- R** 18% recycling;
- MA** 15% multi-actor action;
- AD** 14% sustainable supply;
- EC** 14% eco-conception;
- CR** 14% sustainable consumption;
- EIT** 11% industrial ecology;
- EP** 7% systems services economy;
- ADU** 7% extension of lifetime.



All leverages of circular economy are mobilized

Corporate Social Responsibility

For many years now, corporate social responsibility (CSR) has been a key part of the strategy of AFEP members. They implement numerous actions to limit the negative impact and reinforce the positive impact of their activities. Thanks social and environmental innovation and closer collaboration with their environment, companies are evolving to respond sustainably to society's needs and expectations.

However, the government and parliament have wished to pursue the adoption of the law on the duty of care of parent companies and companies placing orders in spite of the **strong legal and economic concerns** this text raises among companies. Indeed, despite a few clarifications given in a new reading by parliament, major difficulties

remain, particularly due to the **vagueness of the material obligations** that weigh on companies and the **severity of the penalties**, in a context of complex international supply chains that rely on a large number of direct and indirect subcontractors, where it is legally and materially impossible to control everybody. AFEP has reiterated these concerns to the government and is awaiting developments by the end of the legislature.

In any event, for companies to benefit from sharing experiences with their peers and preparing themselves to address national and international obligations, a **task force** was set up by AFEP in mid-2016 to collect **examples, practices and difficulties of companies in matters of due diligence** (see box). This work, which resulted in some 20 meetings with companies between September and December 2016, will be completed in the first quarter of 2017.

Although the matter was clearly identified a long time ago, France's delay in **transposing European directive 2014/95/EU** relative to the publication of non-financial information is difficult to explain. An evaluation mission charged by the Prime Minister with determining the relevance and efficiency of the French CSR reporting mechanism and making proposals for ensuring compliance with the European directive, followed by public consultation organised by the General Directorate of the Treasury, nevertheless took place upstream. On these various occasions, AFEP proposed solutions to prevent the existing French requirements from clashing with the directive, emphasising the following points:

- the transposition of the European directive should be the opportunity to converge the French CSR reporting requirements with the **European principles-based logic** (i.e. as opposed to a logic based on detailed rules) and contribute to creating a level European playing field for non-financial reporting;
- the transposition should allow French companies to benefit from the flexibility and exemptions offered by the directive, particularly with regard to reporting by the parent company for its subsidiaries;
- regarding **transparency in the due diligence measures** put in place, companies caution against a 'Franco-French' interpretation of this basic notion: in particular, it is necessary to rely on the work of the OECD (sector-specific and general guidelines) and ISO (ISO 20400 draft standard on sustainable procurement).

AFEP continues to participate in work on the **CSR platform**, which brings together the different stakeholders. Over the year, the platform has formulated a number of recommendations to the government in 2016, in particular relating to:

- updating the **national priority action plan for CSR development**;
- drafting a **national action plan** for applying UN general principles relating to **companies and human rights**;
- **defining and drafting the contents of due diligence measures** implemented by companies and mentioned in European directive 2014/95/EU regarding the publication of non-financial information.

AFEP has also contributed to the **revision of the AFNOR guide** for handling verification missions relating to non-financial information published by companies, defending the position of the latter.

Internationally, AFEP has organised numerous encounters for companies to learn about, and position themselves with regard to, the following:

- The **international labour conference of June 2016** (with the topic of 'decent work in global supply chains' on the agenda).
- The **draft OECD guide on due diligence** and responsible business conduct. This project answers the urgent need of companies to understand what is expected of them with regard to due diligence in compliance with the OECD guidelines for multinational corporations. Companies have welcomed the approach based on the principal – and most severe – identified risks (prioritisation of action plans) and the recognition of practical and legal limits to their ability to influence their business relations.
- The future **ISO 20400 international standard on sustainable procurement**.

Outlook for 2017

The transposition of the European directive and **implementation** of the law on the duty of care, will pose major challenges to companies, since these texts introduce new concepts to French law (in particular, 'materiality' and 'due diligence', as well as management of risks throughout entire supply chains).

Transparency of CSR policies has been part of the regular practice of major French groups for years, while **transparency on due diligence procedures** is a more recent exercise. It constitutes a **challenge given the scope of operations and business relations** of big companies that have a large number of subcontractors and/or suppliers around the world. Mapping the risks linked to these business relations is no easy task, and they are not intended to be systematically disclosed to the public.

The **management of risks** linked to business relations is

especially difficult, because the prime contractor company does not always have the power – legal or economic – to impose a change of behaviour on its counterparts.

Companies are calling for a **stabilisation of the legislative and regulatory framework** regarding CSR that would allow them, after years of intensive progress – requiring the mobilisation of major human and financial resources to address the successive changes – to devote their efforts to implementing and enhancing their CSR policies in the spirit of, and in compliance with, international reference texts.

Companies facing the challenge of due diligence throughout their supply chains

The keys to the success of a due diligence process

The due diligence process involves a **wide range of practices**, reflecting companies' vastly differing cultures and organisations. Although there is no single best way of doing things, the companies that gathered together under AFEF's task force nevertheless emphasised the following key success factors:

STAGE 1 | Identifying actual or potential negative effects

1. **Changing the point of view:** the targeted risks are not those for the company, but risks to society and to the environment.
2. **Adapting existing processes to include the identification of "CSR risks":** impact studies, country reviews, KYC, supplier qualification, etc.
3. **Involving the different functions** (CSR officers, procurement, risk committee, audit committee, etc.) and establishing new forms of dialogue to scope out risks of harm.
4. **Prioritising risks to be addressed first**, starting with the most severe ones.

STAGE 3 | Correcting negative effects

1. **Envisaging remediation independently from measures that may be required because of a lawsuit.** The judicial system is not systematically the most likely to satisfy the victims.
2. **Establishing grievance mechanisms** in advance to identify negative impacts early and manage them more efficiently.
3. **Drawing on what already exists:** most companies already have processes in place that can be adapted include grievance mechanisms regarding negative impacts.
4. **Adjusting processes and remediation to specific situations and local customs**, involving stakeholders in the design of the grievance mechanisms and their subsequent implementation.

STAGE 2 | Preventing and mitigating potential effects

1. **Transversality and decompartmentalisation:** a wide variety of actors in the company must co-operate to set up and implement a plan, and then monitor and control it. Accountability for CSR should be clearly assigned and approved at the most senior level of the company.
2. **Training and encouraging the relevant teams:** e-learning, awareness campaigns, mandatory training for the most risk-exposed functions, variable portion of remuneration, etc.
3. **Supporting business relations with severe risks of negative impacts** to make them change their behaviour: contract clauses, audits, action plans, training, multi-stakeholder initiatives, international framework agreements, etc.

STAGE 4 | Reporting adopted diligence measures

1. Reporting adopted diligence measures is about **more than "top down communication"** and disclosing regulated information. It is also about engaging with stakeholders and responding to their concerns.
2. **Adjusting the content and form of communication** so that it is accessible, understandable and relevant for its recipients.
3. Providing information which allows stakeholders **to assess the way the company considers the impacts of its activities**, the way it selects the information that is disclosed and the challenges and lessons learnt etc.
4. **Reporting processes set up in case of severe impacts** allows stakeholders to be reassured on the company's consideration for the impact and allows to anticipate blocking points or potential improvements.

AFEP & Europe

2016: Deepening crisis in Europe

2016 was a difficult year for Europe. The British decided to leave the European Union on 23 June 2016, with Brexit proponents winning the referendum with 51.9% of the votes. The news was a shock, with the results confounding all the forecasts. The ensuing months revealed how unprepared the British government was for this outcome. However, Prime Minister Theresa May has finally proposed a 'hard' view of Brexit, leaving the single market under pressure to recover the UK's sovereignty on immigration.

Terrorism continued to strike Europe hard in 2016. The impact has been traumatic not only for the countries that were attacked, but for the Union as a whole. Brussels has responded to these threats with the creation of the

European Border and Coast Guard Agency (revamped Frontex) and the European PNR system. Moreover, a new Commissioner's portfolio was created, dedicated to the Security Union and entrusted to the new British Commissioner.

The refugee crisis did not abate in 2016. Although the number of asylum seekers declined by 250,000, the figure still exceeds one million. Deaths in Mediterranean crossings sadly increased by close to 1,000 people, with more than 4,700 dead over the year. In March 2016, the European Union implemented a controversial agreement with Turkey whereby any persons arriving in Greece who failed to apply for asylum or whose application had been refused were sent back to Turkey. However, relations with Turkey have deteriorated after the purge that ensued the coup attempt on 19 July. What's more, numerous Member States continue to refuse to participate in the refugee relocation plan. Europe's management of migratory flows progresses nonetheless, with the implementation of the European Border and Coast Guard Agency and reinforced co-operation with several African states.

With regard to trade, 2016 was mixed. The year brought significant progress, including the end of sanctions against Iran in January, the agreement on conflict minerals in June, the signing of the treaty with Canada (CETA) in October, and the proposal for a new anti-dumping methodology in December. Nevertheless, the scramble preceding the signing of CETA, following the blockage caused by certain Belgian entities, hurt the EU's trade policy as a whole,

and threatens the conclusion and ratification of future agreements. Also, the election of Donald Trump in November signalled the end of TTIP negotiations with the United States, which had moreover been condemned earlier by some German and French ministers.

Finally, 2016 was also marked by the continued progress of populist politics in Europe and the US. Like the Hungarian government, the Polish government remains popular in spite of its attacks on the rule of law (Constitutional Court and media). And yet, the EU's response has been extremely weak. Austria barely escaped the election of a far-right-wing president. Brexit is proving the UKIP populists right. In Italy, Matteo Renzi left power, while Beppe Grillo's 5-Star Movement is gaining steam. Three major elections await Europe in 2017: the Netherlands in March, where the Party for Freedom led by Geert Wilders, an ally of Marine Le Pen, leads the polls; France in April, where Marine Le Pen could reach the second round of the presidential election; and Germany, where the populist AfD is gathering wind in its sails. Finally, the election of Donald Trump is another source of deep apprehension. There have already been threats to disengage from NATO, renegotiate NAFTA and leave the Paris Climate Agreement, not to mention the threat of bilateral talks with the UK and attacks against the EU.

In regulatory terms, the year has been rather favourable to companies

While crisis after crisis has rocked the political scene in Europe, this should not overshadow the significant

amount of European work that has progressed over 2016. Throughout the year, AFEP focused on promoting the development of a regulatory environment that favours companies' competitiveness.

Several files where AFEP was involved reached a rather favourable conclusion. The Shareholder Rights Directive paves the way for significant progress in terms of supervision of proxy advisory firms and shareholder identification; it is also improved with regards to 'say on pay' and voting on transactions with related parties. The Prospectus Regulation, if it does not cause disruption, should lead to certain improvements, particularly in secondary emissions. The anti-tax evasion directive has taken into account the remarks of AFEP's companies, especially regarding the deductibility of interest or switch-over. A satisfactory version of country-by-country reporting to tax administrations was also adopted. The compromises found in the Environment commission of the European Parliament on directives concerning the market for CO₂ emission allowances and waste represent interesting groundwork for future negotiations with the Council. Finally, the European Union reached agreement on the Privacy Shield that governs data transfers with the United States in the context of judicial co-operation (although the future of the Privacy Shield is not yet guaranteed following the election of Donald Trump).

Moreover, certain cases that were problematic for AFEP companies have progressed little: the Financial Transaction Tax and the structural bank reform have been blocked at

the Council and Parliament levels, respectively; consensus on public country-by-country reporting is elusive among the Member States, which have doubts concerning the legal basis used. The revision of the directive on the application of intellectual property rights, for its part, has been delayed; a package is expected by the end of the first half of 2017.

Few new texts have been submitted, as the new Commission is sticking to its goal of 'better regulation'. By way of example, the Commission deemed it unnecessary to review the directive on mediation in civil and trade affairs. However, a few important new proposals were published, particularly a tax package that includes a proposal for a revised common base for corporation tax (CCTB), a proposed directive on double-taxation dispute resolution, a proposal for a new anti-dumping methodology, a broad 'Clean Energy' package that revises the directive on energy efficiency, among other matters, and a new proposal for managing the EU's energy & climate policy.

AFEP also focused on reinforcing ties with European institutions. Numerous meetings have been held with a view to expanding AFEP's European network, and contributing to alert decision-makers from across the political spectrum about the Association's priorities. Several events were also organised by AFEP in partnership with other organisations: in Brussels on the Capital Markets Union, in Marrakesh during COP22 on the contribution of the circular economy to the fight against climate change, and in Paris on reporting and governance.

2017: a year of awakening for Europe?

The European Union faces a number of challenges in 2017. The first of them would be to get off to a good start in negotiations about the UK's exit from the EU, which are expected to begin in late March. The European Union will also have to reflect on its own future without the United Kingdom. Such a reflection should take into account the results of the upcoming elections in France, Germany and the Netherlands, as well as possible early elections in Italy. The European Union should also respond to a changing geopolitical context, with the US on the path to unilateralism, a reinforced Russia and an ongoing substantial influx of migrants. The Union will also have to complete the major projects it has underway, including the Energy Union, the Capital Markets Union, the Digital Single Market, and enhancing its role as a global player.

AFEP will continue to actively support and defend the European project in these difficult times. It will also do its part to dampen the negative effects of Brexit. As regards regulatory matters, AFEP will continue to defend the competitiveness of large companies before the European institutions so as to ensure the sustained recovery of the continent's economy. It will continue actions in the field of taxation to get the Member States to commit to moving towards tax harmonisation whilst preserving competitiveness and ensuring the economic development of European companies in an increasingly competitive international setting (BEPS implementation, public CBCR, CCTB, black list of non-cooperative jurisdictions...).

It will encourage pro-business proposals (e.g. tax dispute resolution). It will support reform of European trade defence by contributing to the establishment of a new effective anti-dumping methodology in compliance with WTO law. It will contribute to giving fresh impetus to the Capital Markets Union, advocating less regulation for non-financial companies, particularly under the revision of the EMIR regulation. With regard to competition (reforms of the merger regulation and of the powers of national competition authorities) and companies' rights (digitalisation), it will ensure that the reforms provide real simplifications for companies. As for intellectual property, it will make sure that the revision of the IPR Enforcement Directive does not open a Pandora's box to the detriment of right holders. It will focus on preserving the competitiveness of

companies and ensuring greater consistency of texts in the context of the revision, currently underway, of the energy & climate package (i.e. ETS, non-ETS, energy efficiency, governance of the Energy Union). It will continue to promote circular-economy actions by companies, particularly following the publication on 1 February 2017 of 100 commitments in this field by 33 member companies. As for CSR, it will continue its action to ensure the effective and consistent application of the directive on non-financial reporting in the context of the adoption of the Commission guidelines. Finally, AFEP will do its utmost to propose a balanced framework regarding companies' due diligence in the value chain and whistle-blowers in the debates to be held in the European Parliament during the first half of 2017.

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