

Annual Report 2014



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President's foreword



The publication of the 2014 annual report of AFEP, the French Association of Large Companies, offers an opportunity to set out the major themes underpinning our activities. Improving the competitiveness of our businesses to ensure growth in jobs is our central priority.

2014 was a difficult year in economic and social terms, and unfortunately the results fall short of our expectations:

- The progress made in terms of restoring order to the public finances is insufficient. In 2014, efforts to reduce expenditure were intensified but have been limited to “stemming the rising tide”;
- The fall in receipts for compulsory contributions stems from the increases adopted between 2011 and 2013, which raises questions as to whether the current economic policies are appropriate;
- Although the Government has taken measures to reduce the cost of labour - following the introduction of the tax credit for competitiveness and jobs (CICE), the Pact of Responsibility introduced an initial reduction on low salaries implemented until 2017 - this is not sufficient to

restore the competitiveness of those French businesses most exposed to international competition;

- Restoration of business profit margins remains uncertain. When the situation for business improves, progress on jobs and investment will follow. New measures must be taken to encourage jobs, including the unemployment benefits reforms (UNEDIC) and complementary pensions.

Simplification efforts, which are both necessary and awaited, have begun but must be further intensified. Economic operators still are faced with too many new constraints, which undermine business development and put the country at risk in relation to keeping business decision-making within our borders.

Businesses have initiated a number of important measures which have been implemented in the area of governance; and the effectiveness of professional regulation has been demonstrated. The introduction of the new corporate governance code ensures greater transparency while retaining the necessary flexibility. The High Committee on Corporate Governance (HCGE), set up in 2013 on the initiative of the professional bodies, has proved particularly responsive and helped answer questions about the interpretation of the code and follow up on the recommendations.

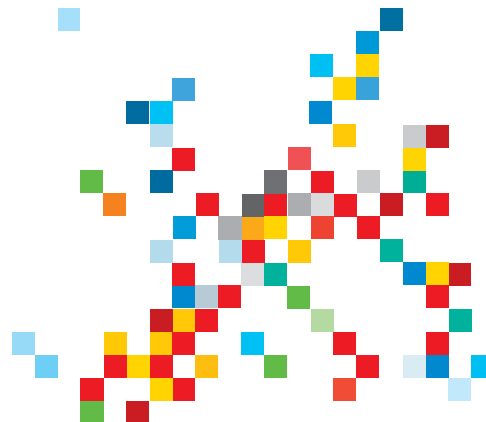
The competitiveness of businesses also depends on choices with regards to energy policy, both in France and internationally. The international Climate Change Conference in Paris in December 2015 (COP 21) will provide businesses with an opportunity to make their voice heard and promote a cost-effective transition, facilitating retention and development of industry and stimulating innovation. During the year, AFEP also worked to promote the capacity of French businesses in contributing to sustainable towns and cities and the circular economy.

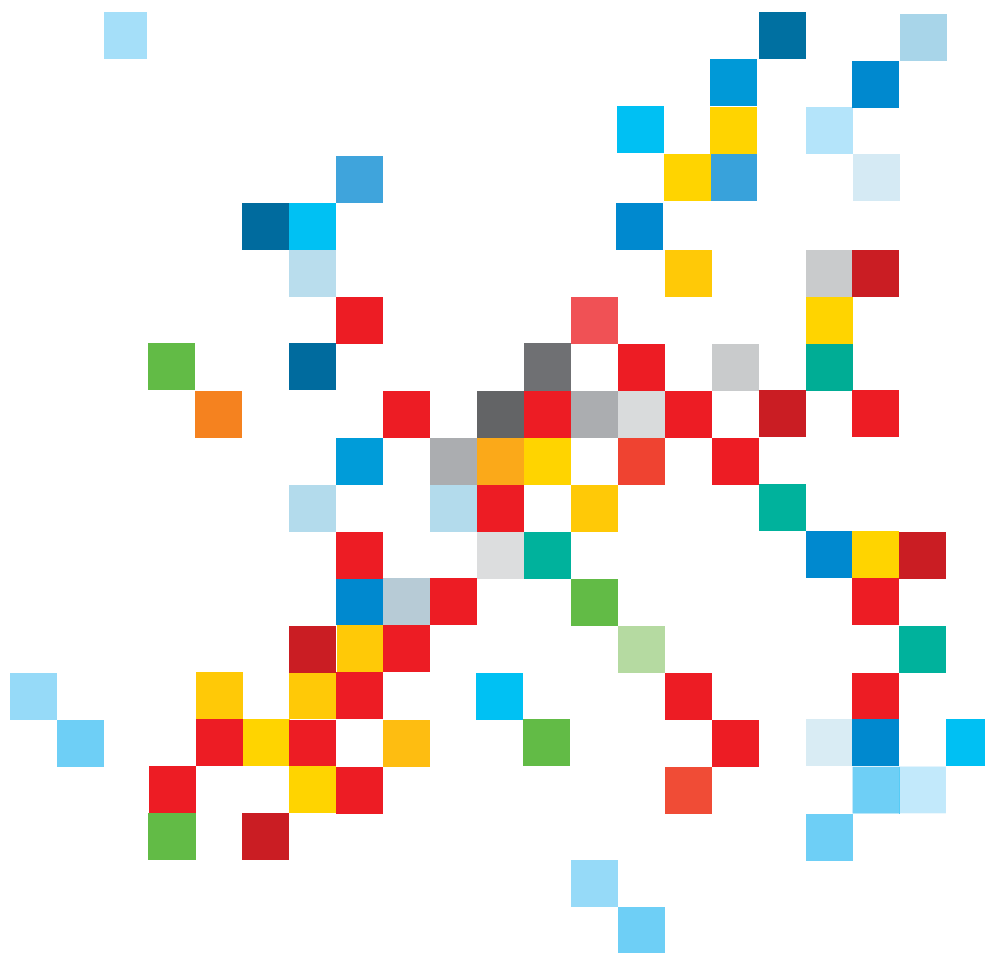
Our businesses are active at a European level, seeking to contribute to policy-making so that European policies will allow to facilitate their development in the context of a regulated internal market, without creating a disadvantage at an international level. The defense of the euro, strengthening financial markets, and a common economic and industrial policy that makes the right choices with regards to regulation, competition and the protection of intellectual property rights are issues of major importance for businesses. Businesses are hopeful that the recently re-elected European institutions will take initiatives to foster growth from 2015 onwards. With this in mind, AFEP has drawn up propositions for presentation to the European institutions.

The involvement of AFEP members' CEOs and top specialists as well as AFEP staff has facilitated the success of such initiatives. I wish to express my sincere thanks to them.

AFEP and its member companies are proud of their French identity. They play a major role in the French economy and aim to contribute to the development of the country, even though their growth and sales are also occurring beyond our borders. France can count on them.

Pierre Pringuet
President of the AFEP





About us

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

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

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

Afep is involved in drafting cross-sectoral legislation, at French and European level, in the following areas: **economy, taxation, company law and corporate**

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

Afep's work relies on:

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

AFEP has 113 members. More than 8.5 million people are employed by AFEP companies worldwide, and 2 million in France.

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



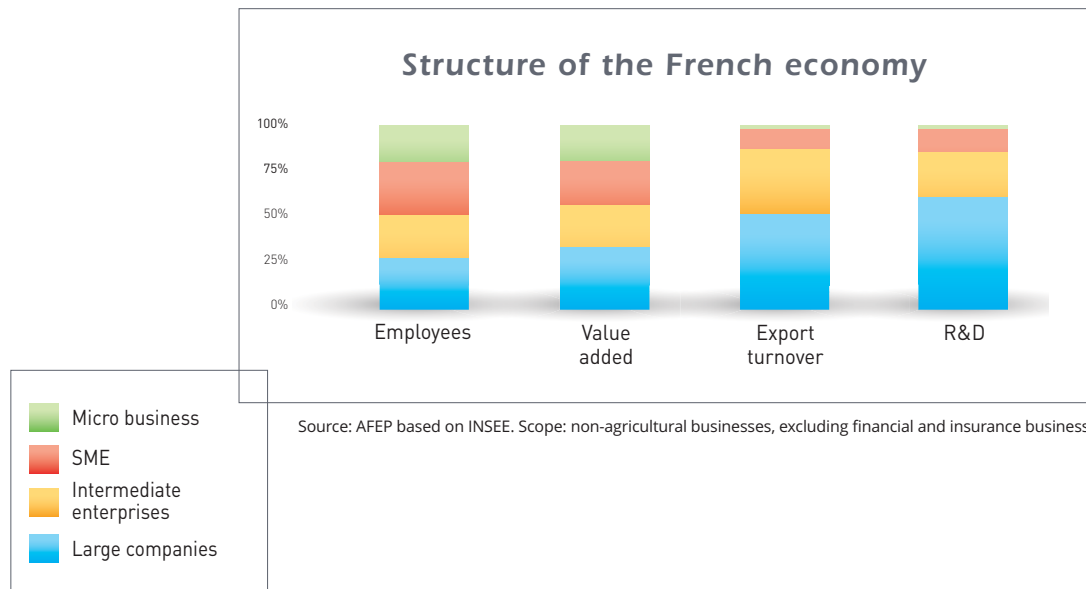
List of members 2015

ACCOR	EUTELSAT	PATHÉ
ADECCO FRANCE	FAURECIA	PERNOD RICARD
AIRBUS GROUP	FFP	PEUGEOT
AIR FRANCE KLM	FIVES	PHILIPS FRANCE
AIR LIQUIDE	FNAC	PUBLICIS GROUPE
ALCATEL-LUCENT	FONCIERE DES REGIONS	REMY COINTREAU
ALSTOM	GALERIES LAFAYETTE	RENAULT
ALTRAN TECHNOLOGIES	GDF SUEZ	REVEVOL
APERAM	GE FRANCE	REXEL
ARCELORMITTAL FRANCE	GENERALE DE SANTE	RIO TINTO FRANCE
ARKEMA	GENERALI FRANCE	ROTHSCHILD & COMPAGNIE BANQUE
ARTEMIS	GROUPAMA	SAFRAN
AVIVA FRANCE	GROUPE INDUSTRIEL MARCEL DASSAULT	SANOFI
AXA	HERMES INTERNATIONAL	SCHLUMBERGER
BNP PARIBAS	HSBC FRANCE	SCHNEIDER ELECTRIC
BOUYGUES	ILIAD	SCOR
CAPGEMINI	IMERYS	SEB
CARREFOUR	INGENICO	SEQUANA
CASINO GUICHARD PERRACHON	INTERNATIONAL SOS	SIEMENS FRANCE
CGG	JC DECAUX	SOCIETE DES PETROLES SHELL
CIMENTS FRANCAIS	KERING	SOCIETE GENERALE
COMPAGNIE DE SAINT-GOBAIN	KINGFISHER FRANCE	SOLOCAL GROUP
COMPAGNIE IBM FRANCE	KLEPIERRE	SOLVAY
COMPAGNIE PLASTIC OMNIUM	LAFARGE	STMICROELECTRONICS NV
COMPASS	LAGARDERE	SUEZ ENVIRONNEMENT
CONSOLIS GROUP	LAZARD FRERES	TECHNICOLOR
CREDIT AGRICOLE	LEGRAND	TECHNIP
DANONE	L'OREAL	THALES
DELPHI FRANCE	LVMH - MOET HENNESSY LOUIS VUITTON	TOTAL
EDENRED	MANPOWER	UNIBAIL-RODAMCO
EIFFAGE	MERSEN	VALEO
ELIOR	MICHELIN	VALLOUREC
ELIS	NATIXIS	VEOLIA
ERAMET	NESTLE FRANCE	VINCI
ESSO SAF	NEUFLIZE OBC	VIVENDI
EURAZEO	NEXANS	WENDEL
EURONEXT	NEXITY	ZODIAC AEROSPACE
EUROTUNNEL	ORANGE	

Large companies and the French economy

With 2 million employees in France, and 8.5 million worldwide, AFEP businesses have an important role in the French and world economy. Although all of the companies are international, they have a **major role in French production**, which benefits jobs, innovation and tax revenue.

According to INSEE, large businesses (243 in 2011 out of a total of 3.1 million businesses) are those with more than 5,000 employees in France or with a turnover greater than or equal to €1.5 billion.



Taxation

1. Context

2014 will have been a year of paradox for corporate taxation: the recognition of the crucial role of business in the economic recovery has yet to be translated into practical measures reflecting this new awareness. Regulatory provisions contrary to the pro-business outlook have been adopted on occasion, and measures that contradict this message have been implemented by the authorities.

On 31 December 2013, in his New Year's Eve message to the French people, the President of the Republic proposed a Pact of Responsibility with the objective of restoring the competitiveness of French businesses. Primarily focused on reducing labour costs, part of the

Pact was to be devoted to tax cuts amounting to 10 billion euros. Besides measures with a budgetary impact, major simplification initiatives would also contribute to restoring competitiveness.

After four years of successive increases in tax and social deductions applicable to businesses, AFEP has of course immediately been supportive of the principle of reducing tax and social deductions and simplifying business obligations. However, beyond principle, questions concerning the details of the implementation of the Pact quickly came to the fore.

2. Challenges and achievements in 2014

In the context of international tax competition, AFEP has argued that in order to produce the desired effects in terms of economic recovery, the reduction in tax and social deductions needs to happen quickly, be visible and respond to both the objective of **restoring the competitiveness** of our business as well as making France an **attractive place to do business**. At the Roundtable on business taxation, AFEP requested a **major reduction in the corporate income tax rate** in order to restore France to the European average. This proposal took into account the conclusions of the Roundtable, according to which the tax base for French companies is comparable to that of other European States, whilst the French corporate income tax rate is the highest.. However, AFEP's endeavors have not yet led to make public the data on tax concentration in relation to business size, and AFEP has therefore decided to carry out a new survey of its members (see below).

The solutions finally proposed by the authorities fall short of a full response to these findings.

The choice was made to apply progressive reductions to two types of deductions (social solidarity contribution and corporate income tax) instead of a drastic reduction in the rate of corporate income tax. The abolition of the social solidarity contribution (C3S) will be introduced over a period of three years: firstly, a billion euros reduction in 2015 in the tax base (i.e. a tax reduction limited to 5,200 euros per business); secondly a billion euros reduction in the tax base in 2016; and finally the abolition of the contribution in 2017 (a fiscal effort of 3.5 billion euros).

There is a lack of precision in the commitments in relation to the reduction in corporate income tax. In his general political speech of 08 April 2014, the Prime Minister indicated that the general rate would be reduced to 32% in 2017 and to 28% in 2020. These commitments are set out in the Report on the Public Finances Law of 29 December 2014: *"The exceptional contribution on corporate income tax will be abolished in 2016. The nominal corporate tax rate will be reduced from the current 33.33% to 28% in 2020, with a first step in 2017"*.

Overall, **the outcome of the Pact of Responsibility in 2014 has been less than satisfactory to large businesses**: the reduction to the C3S has hardly benefitted businesses given the chosen terms (reduction of the tax base instead of a uniform reduction in the rate). The exceptional contribution of corporate tax of 10.7% has been extended by a year, in contradiction with the commitment previously made by the Government.

Thus, **the tax burden has increased for over 90% of AFEP's members since 2011**, despite the introduction of the CICE (tax credit for competitiveness and employment).

Furthermore, the public authorities chose not to respond positively to the request from AFEP to enact the tax cuts announced for 2016 and 2017 as part of the Finance Act for 2015. Aside from issues with the timing for implementation, it would be useful to add to the existing proposals of the Pact of Responsibility some additional proposals in order to resolve the issues in relation to the loss of attractiveness of our country. In this regard, the Association firmly advocates that individual taxation and corporate taxation should be addressed together to achieve this objective: the presence of high added-value personnel in our country should be encouraged as this is inextricably linked with the presence of decision-making centers. In this regard, the provisions included in the draft law on growth and business for improving the taxation of performance shares are a step in the right direction.

Throughout 2014, AFEP has emphasised that the budgetary efforts granted by public authorities should not be undermined by aggravated taxation or by harmful practices of the administration.

The Association has stressed out the damaging effects of provisions presented as an attempt to combat fraud, but which in practice only impact international businesses carrying out their traditional economic activities. The Association opposed initiatives which would have

resulted in increased difficulties for applying the regime of research tax credits. The Association also resisted the premature introduction by France of provisions set out in the OECD program “base erosion and profit shifting” (BEPS): for example, the amendment seeking to introduce financial reporting obligations on a country-by-country basis, or the amendment aiming at restricting the parent-subsidiary regime. On this last point, AFEP welcomes the decision of the Constitutional Court, which sanctioned a provision excluding the application of the parent-subsidiary regime where dividends were distributed from tax-exempt revenues. In general, AFEP takes the view that this regime is a cornerstone of the French taxation policy and essential for supporting the expansion of French groups throughout the world. Based on this conviction, AFEP, along with some of its members, submitted an application for a preliminary ruling on constitutionality (QPC) with a view to ensuring that businesses can enjoy the parent-subsidiary regime when established in non-cooperative States for operational reasons, and independently of any tax-avoidance intentions. This QPC was favorably welcomed by the Constitutional Court (Decision n° 2014-437 QPC of 20 January 2015).

AFEP also insisted on having the favorable political commitments implemented by a “business-friendly” administration, whose newly “business-oriented” behavior should be illustrated both in its commentary on the taxation law and in its way of carrying out tax audits. In this regard, 2014 has been a truly disappointing year, despite repeated announcements regarding

simplification of the business environment. Businesses cannot fail to notice the proliferation of retroactive modifications to administrative practice presented as “corrections”. More and more businesses have noted that tax audits are now mainly focused on achieving profitability, which goes beyond the proper application of tax law.

3. Outlook for 2015

Therefore, AFEP continues to emphasise that reducing tax and social contributions, in particular, a reduction in the corporate income tax rate is crucial to ensuring competitiveness and making France an attractive place to do business.

AFEP wishes to ensure the adoption of its proposals on simplification drawn up with the help of its members. In order to ensure an effective debate on reform, an ambitious approach must be taken to defining simplification. AFEP is of the view that simplification should not be limited to the abolition of a few unnecessary formalities. It must also cover the possibility for business to anticipate regulations and how they will be applied. On this basis, AFEP has proposed three areas for simplification: a reinforcement of legal certainty in regulatory design (non-retroactivity, stability of regulations and administrative doctrine, etc.); an improvement of relations with the tax administration in the application of the tax law (independence of the hierarchical appeal system during tax audits, capping of the penalties for failures to meet compliance obligations without prejudice to the Treasury); as well as a reduction of the reporting burden in the area of compliance

(abolition of unnecessary reporting forms and formalities). AFEP will take care to ensure that such measures are discussed as part of the preparation of the draft law on simplification and transparency.

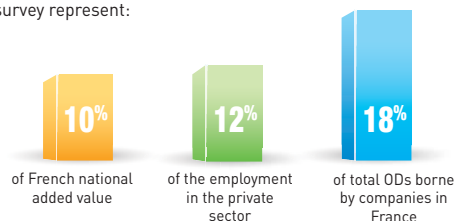
Finally, AFEP will continue to draw attention to the work undertaken at international level in the field of taxation. In this regard, the OECD (BEPS) action plan is an important point of interest. Contrary to widespread belief, the OECD recommendations do not contain measures to combat fraud. The recommendations mainly focus on updating OECD principles regarding the sways of sharing consolidated profits of multinational businesses between States. In that framework, new proposals are mainly introduced by non-OECD countries, which were invited to participate in the OECD work and are expressing increasingly frequent opposition to traditional tax principles.

The focus on aspects related to combatting fraud in the BEPS plan has led France, and perhaps even European countries in general, to underestimate the impact of all the other strategic discussions not specifically linked to tax fraud. AFEP takes the view that France and Europe absolutely must face the true impact of the BEPS action plan, and determine an approach in accordance with their interests and those of their businesses, in line with their shared interests.

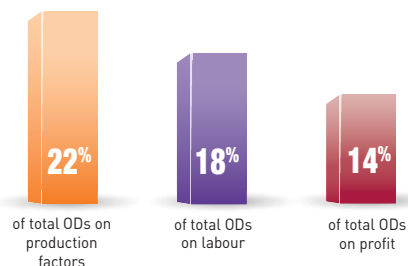
Three priorities for AFEP in 2015 are: a reduction in social and tax deductions for businesses, strengthening legal certainty, and building partnerships with the administration in order to protect French interests abroad.

The amount of obligatory deductions (OD) paid by large companies^[1]

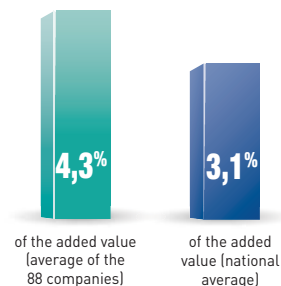
The 88 Afep companies that responded to the survey represent:



The tax contribution of the 88 companies by taxable asset is distributed as follows:



Corporate tax paid by the 88 companies in relation to their added value is higher than the national average:



¹ 2013 financial year data.



Public finances in 2014 and outlook for 2015

In 2014, the economic policies pursued by France have yet again been marked by the fiscal consolidation efforts initiated in 2011. Given the increasing public debt which was at €1,950 billion, or 92.2% of GDP at the end of 2013, financial laws, i.e. the Finance Act and the Social Security Funding Act for 2014 have set an objective of reducing the deficit from 4.1% of GDP in 2013 to 3.6% in 2014. This involved €15 billion in “natural” savings and relatively stable rates of mandatory contributions, including but not limited to, firstly, an increase in the taxation on large businesses through a renewal of the “surtax” on corporate tax, an increase in pension contributions for businesses and employees and an increase in household income taxes, along with the first payments to businesses pursuant to the “tax credit for competitiveness and employment” (CICE).

The new path presented by the Government in the Finance Act for 2015 revealed a significant discrepancy with the initial forecast: rather than falling, the public deficit will have risen in 2014 (4.4% of GDP), hence a new increase in the public debt. The fact that the reduction in the deficit has ground to a halt is worrying given that France is still far from meeting its European commitments, in terms of both headline and structural deficit. Although initial efforts to moderate expenditure have contributed to slowing its increase, they also owe much to the historically low interest rates on sovereign borrowings, as a result of an accommodating monetary policy and “financial fragmentation” with the Eurozone, i.e. the reluctance of investors to buy bonds from the so called “Southern” EU member states. The fall in tax revenue is the main source of the deficit: while the deterioration in the economic situation has undoubtedly had an impact, with growth in GDP at just 0.4%, compared with an initial forecast of 0.9%, it is worth looking at the economic impact of the massive increases in mandatory contributions (+3.4 percentage points of GDP between 2010 and 2013) which, by all accounts, have weakened the tax base.

A slight reduction in the deficit is expected in 2015, with the deficit falling to 2013 levels, and a trajectory pointing to a total deficit of less than 3% of GDP in 2017. However, this prediction is based on the assumptions of 1% growth in 2015, 1.7% in 2016 and 1.9% in 2017, indicating a greater increase than potential growth (1.3%) for these last two years, which appears optimistic given the weak national and European environment.

AFEP takes the view that pursuing the strategy of reducing deficits is crucial, and the only way of ensuring national economic sovereignty and intergenerational equity. Efforts to rationalise public expenditure must continue and intensify through the swift adoption of a strategy and measures applicable to the State, social security and local Government. With regards to mandatory contributions, the measures set out in the “Pact of Responsibility and Solidarity” should be fully implemented by 2017 in accordance with the commitments given by the Government. In order to ensure that the provisions are fully effective, they must not be watered down, corrected, or undermined by contradictory measures such as increases in local or sectoral taxes. More generally, AFEP would emphasise that policies aimed at fostering business competitiveness should be integrated into all decisions and also affect all businesses, regardless of their size.

Company law & corporate governance

1. Context and issues

2014 was marked by a number of developments in the area of corporate governance and company law. The Committee on Corporate Governance (Haut comité de gouvernement d'entreprise) took office for the first time, and its activities are presented in its annual report published in October 2014. Similarly, the discussions held within the AMF (French Financial Markets Authority) on the transfer of assets will provide an opportunity to clarify the corporate governance code on the role of the AGM when a transfer of assets results in radically changing the face of a company. On the other hand, a number of regulations have given cause for concern to businesses. As expected, Florange Act creates some

difficulties with investors and voting consultancies, who unanimously defend the principle of “one share, one vote”, and are opposed to any defence against takeover bids. Furthermore, AFEP has concerns about the proliferation of proposals for legislation which runs counter to the simplification movement to which members of parliament have indicated their commitment. Finally, proposal for a European Directive revising the Directive on shareholders’ rights contains a number of provisions which, if adopted, will lead to the transfer of certain decision making powers from the Board to the shareholders’ AGM.

2. Achievements and developments in 2014

In order to prepare for the AGMs in 2014 and to support the implementation of the shareholders’ vote on pay policies (“*say on pay*”), the guide was updated in January 2014 to include guidance on applying the corporate governance code. More details were provided to ensure clarity and transparency in the information presented to investors. As the AMF has found, **almost all companies have implemented the recommendation in the code** and 90% of companies have drafted a specific paragraph about “*say on pay*” in the relevant document. The vote was concluded without difficulty with an average approval rate of 92%, which demonstrates the effectiveness of “soft law”. The guide was updated for a second time in December 2014, in co-operation with businesses and the authorities, in order to take into account the clarifications sought by the Committee on

governance issues such as independent administrators or the variations in the pay for executive directors, thus facilitating continuous improvements in practice.

Furthermore, AFEP has published a number of documents on supporting businesses with **preparatory work for the AGM**. AFEP has drawn up a comparative table of the voting policies advocated by the main proxy advisors and a table on the attendance fees allocated to the administrators of SBF 120 companies. A survey of the performance conditions applicable to various components of pay along with a survey on *"say on pay"*, specifying the approval rate whether the company is controlled or not, have been distributed. Following the AGMs, AFEP produced a survey of its members offering an overview of the highlights and trends in the votes on resolutions. Finally, AFEP supported the Committee in preparing a statistical study on the application by SBF 120 companies of corporate governance principles.

In light of the expected difficulties of upcoming AGMs with **proxy advisors and investors** with regards to the application of the **Florange Act** – which entails the automatic granting of a double voting right for registered shares and strengthening the powers of the Board during public offering periods – AFEP has held a number of meetings during the final quarter of 2014 with their representatives in order to obtain clarification on their position and expectations with regard to the drafting of resolutions.

With regards to simplification, AFEP supports simplification measures and advocates that they should

not be limited to the existing provisions and should also serve to hold back the tide of new texts drawn up in the absence of consultation, or where consultation with businesses is insufficient. AFEP has concerns about certain initiatives which run counter to the simplification movement. Such texts relate to corporate social responsibility, the bill on the duty of care applicable to parent companies and contracting companies, which creates an almost conclusive presumption of responsibility for damage caused by subsidiaries and subcontractors, and the proposals for the protection of SMEs and midmarket companies, which complicate the management of groups.

Positive measures include the **law on simplification** of the business environment which provides for a delegation of authority by order to reduce the minimum number of shareholders in unlisted private companies. A bill introduced by the Senate also includes useful provisions such as the use of technology at AGMs for unlisted companies, a modification to the rules on shareholder abstentions at AGMs which will no longer be counted as No votes, and the rationalisation and simplification of the rules on blackout periods for share options and bonus shares. Although the text is unlikely to be adopted in its current state, AFEP asks that these provisions be reproduced in subsequent texts.

Finally, with the extended application period for the law authorising the Government to take measures to simplify and secure the business environment, AFEP responded to a Chancellery consultation on the draft order on the rules governing regulated agreements, with the objective

of integrating the recommendations set out in the AMF report on AGMs.

AFEP participates in AMF discussions on the **transfer of significant unlisted assets** by a listed company. The objective of the AMF is to determine whether the existing provisions should be strengthened in stock exchange law, company law, or *soft law*. A majority of the working group favoured a modification to the AFEP-MEDEF code, given that the application of the “*comply or explain*” rule offers flexibility and adaptability to issuers, the AMF will need to specify the level of information expected on these operations. With regards to the cumulative administrative and criminal sanctions in relation to the stock market, AFEP submitted proposals to the AMF with a view to achieving greater clarity on the role of the AMF in the criminal justice system.

At a European level, the year was marked by the proposal for a Directive revising the **shareholder rights Directive** which covers a number of important issues for businesses. AFEP has brought together a number of organisations representing European issuers in order to propose shared amendments to the proposition from the Commission, in particular with regards to the following issues:

- The requirement for intermediaries to offer businesses the possibility of identifying their shareholders. AFEP takes the view that this provision as sought by the issuers needs work. Firstly, this provision will not cover intermediaries outside the European Union. Secondly, some countries, including Germany, are in favour of

thresholds above which the identity of shareholders would be required, which runs counter to the initial objective of the proposal.

- The rules applicable to proxy advisory firms: This is an important point of progress which will facilitate better regulation of the activity of such firms.
- The provisions on “*say on pay*”: AFEP advocates that the Directive should be limited to specifying the principle of the shareholders vote on pay, leaving Member States with a choice between an *ex ante* or an *ex post* vote, which may be either a consultation or a binding vote. The Commission proposal includes a binding vote every three years on pay policy (*ex ante* vote) and a consultative vote each year (*ex post* vote). This highly detailed provision, inspired by English law, gives rise to a number of problems, particularly in relation to the identification of the executives concerned, the introduction of a pay equity ratio, and the unsuitability of the provision with regards to the recruitment of new executives.
- Approval of transactions with the parties bound that represent more than 5% of the company assets, along with those likely to have a significant impact on profits and turnover: this text is a particular cause for concern and could paralyse the functioning of groups. France is not alone in its criticism of the Commission proposal. Under the influence of European issuer organisations, work in the Council has now allowed for greater flexibility.

AFEP has responded to two ESMA consultations on the measures for the application of the Directive on market abuse with a particular impact on insider lists, the

dissemination of inside information and transactions made by persons discharging managerial responsibility over company securities. Furthermore, a letter has been sent to the AMF in order to draw their attention to the most worrying positions taken by ESMA in its consultation document on alternative solutions open to Member States and regulators in order to limit the additional constraints to which businesses are subjected.

3. Outlook for 2015

At a national level, 2015 should be marked by the adoption of the law on growth and business which should include some governance issues, with regards in particular to the limit on the number of corporate positions held and more strict regulation of defined benefit private pensions schemes, even though these issues are already dealt with in *soft law*.

Another draft law on economic transparency was announced for Spring 2015, with provisions on corporate social responsibility. Following the failure of the national inter-professional agreement, the issue of employee representatives on company boards may be relaunched by the Government, to extend the scope of the

companies covered. In this regard, AFEP would argue that the representativeness of employees on the board should include the possibility to include employees from foreign subsidiaries. The reform of contract and tort law, for which a delegation of authority to the Government has been provided for, will be implemented following a consultation period over the course of the first quarter.

With regards to corporate governance, the Committee on Corporate Governance should focus on the themes set out in its annual report, in particular, the integration of employee representatives designated under the new law, the number of positions held by non-executive board members and the rules applicable to multi-annual variable pay.

At a European level, AFEP will continue to follow the work on the adoption of the Directive revising the shareholders' rights Directive, particularly in light of the European Parliament vote, and the adoption of the Directive on women on boards quotas, which has been blocked at the Council up to now, as well as the adoption of level two measures in the regulation on market abuse which is then expected to be integrated into the AMF General Regulations.

Company law and corporate governance

■ Corporate governance rules drawn up by businesses and professionals offer a number of advantages:

- in many cases, they are more ambitious than the law;
- ethical issues are integrated and take the form of ethics codes, the corporate governance code and the integration of environmental and social risks;
- they may be international in scope, covering the sphere of activity of the companies in question;
- they empower the actors in question to take responsibility;
- they are sensitive to the realities of business and evolve more easily than laws and regulations (the AFEP-MEDEF code is revised every three to four years on average);
- the “comply or explain” principle underpinning corporate governance facilitates adaptation to diverse situations.

■ **Professional regulation** has proven to be effective: the recommendations in the AFEP-MEDEF code are followed up rigorously, as found in the report by the Committee on Corporate Governance. In its 2014 annual report, the AMF once again found *“improvements in terms of the information provided and the development of practices, some of which have attained the status of alternative regulation”*.

Almost all businesses are applying the recommendations on:

- Board members;
- attendance fees and making available distribution rules;
- inclusion of the participation rate in Board meetings;
- establishment of committees (audit, pay and appointments);
- number of positions which may be held;

- individual pay for each Executive Board member, with the use of standardised tables, and the criteria for determining variable pay;
- option pricing and performance measures;
- capping severance and non-compete compensation.

■ **The Committee on Corporate Governance** is now an essential player in the field of corporate governance. The Committee has a dual role:

- monitoring the application of the code:
 - responding to requests on interpretation, i.e. questions from boards, which are not published save in the situations set out below;
 - investigations on its own initiative, either on the foot of current affairs or on the initiative of the Committee itself, particularly upon reading reference documents or notices of AGMs.

Companies that decide not to follow the opinion of the Committee must report and give reasons for this in their annual report. Shareholders shall be fully informed of the investigation and the response of the company.

Furthermore, the Committee has published a guide for the application of the Code to support companies in drafting their annual report/reference documents, with the last update being in December 2014.

- Proposals for revising the code: The code has been revised six times since the first report (Viénot 1995). Although the code should not be revised more often than necessary, the Committee is expected to draw up proposals based on their experience and following consultation with the stakeholders (investors, AMF, etc.).



Financial Affairs

1. Context

At a European level, the first European semester 2014 was marked by intense legislative activity, with the Council and the Parliament seeking to see through as many initiatives as possible (banking union, audit, markets in financial instruments, etc.). The outgoing Commission sought to present some last proposals close to its heart as quickly as possible (banking structural reform and IORP II in the financial field). Some progress was made during the second semester on legislation not adopted under the previous legislature and work has begun in the new Commission on a “Capital Markets Union”.

This legislation is mainly aimed at ensuring financial stability and strengthening market regulation, financial

products and players. However, towards the end of the previous term, EU institutions displayed greater concern and commitment to strengthening the long term financing of the economy.

At a global level, we would emphasise that the International Integrated Reporting Council (IIRC), with the assistance of major audit firms, has been making great efforts to secure the adoption by legislators and regulators of a sophisticated and detailed framework for **integrated reporting**, including more detailed **financial and non-financial reporting**, thus widening the scope of mandatory controls.

In **France**, certain audit firms see this project, along with initiatives in the area of **social and environmental reporting**, as an opportunity to develop their business and increase their turnover.

2. Issues for companies

With the multiplicity of rules adopted and envisaged at a European level, consideration should be given to their **combined impact** on businesses and how they will be funded. Even the stability of the system is at play, for example, whether reduced financial intermediation should lead to the development of the shadow banking system. The initiative of the Commission with its **Green Paper on the long-term financing of the European Economy** and upcoming work on the **Capital Markets Union** offer opportunities to develop a common vision on the European economy, to ensure the coherence of public policy and that greater account is taken of European

interests. However, it remains to be seen how these initiatives will be implemented.

European regulation and certain initiatives taken at national and/or international level give rise to a number of challenges for businesses:

- Possible **difficulties in relation to financial instruments and hedging transactions** related to a sometimes insufficient understanding of the impact on the real economy and factors contributing to crises, as well as unfavourable policy on investment in assets and securities (tax, inappropriate liability rules, prudential rules);
- attention should instead be focused on market transparency, the continued expansion and depth of **reporting and auditing constraints** with an impact on businesses, despite the simplification measures expected from the French and European legislators;
- the **European dogma on competition** may, unless services are adapted, affect the quality of certain services needed by investors – statutory audits in particular. This dogma is expressed through mechanisms that limit the choices of businesses, without taking measures to develop services, for example, obligatory rotation of audit firms;
- the **multiplicity of rules applicable in an international environment**.

Such **constraints** impact the **cost** of doing business, **performance** and/or understanding of third parties, and there is a risk that businesses will be required to take unnecessary measures in the area of **liability**, and

communicate sensitive information, in particular to outside players, or may be left at a **disadvantage** in terms of **competing** with foreign competitors.

3. Achievements and developments in 2014

In 2014, the European institutions committed to finalising the **banking union**, in particular in relation to **resolving** banking crises. The Council and the Parliament have adopted legislation on the single resolution mechanism (SRM), bank recovery and resolution (BRRD) and deposit guarantee schemes (DGS). The European Central Bank has begun to step into its role as the single supervisor of the Eurozone banks with the publication of the results of stress tests on 128 European banks. The institutions are now focused on the implementation of all the legislation on the banking union.

Although priority has been given to the banking union, this is far from being the only area of activity.

The final adoption in early 2014 of the European reform on **statutory audit** marks **real progress** compared with the Commission proposal. The main point of innovation is the introduction of the principle of mandatory rotation of audit firms. This provision is less restrictive than initially planned, with a total possible period of 24 years for joint audits, compared with an initial period of 9 years. However, its application is likely to lead to a deterioration in the quality of audits on large companies, due to insufficient appropriate audit offer for this segment and the absence of measures to develop such services. Overall, AFEP has succeeded in securing the



adoption of **pragmatic solutions**, involving limited costs which are compatible with the organisation and functioning of businesses, management and the audit committee: the role of this committee has been strengthened, but its organisation has been maintained, and the content of audit reports determining the scope of the statutory auditor's functions is now more balanced. The ban on large firms providing major public-interest entities any service other than statutory audit has fallen by the wayside, along with the evaluation approach to internal auditing and risk management.

2014 also marks the completion of the revision of the rules governing markets in **financial instruments** (MiFID Directive and MiFIR Regulation). These texts meet most of the expectations expressed by AFEP on the regulation of high frequency transactions, the conditions for the intervention of non-financial counterparties on derivatives and CO2 quotas. However, although the scope of transparency obligations has been widened to all systems for the execution of orders and financial instruments, such progress, given the stakes involved, is insufficient for two reasons: the delay in setting up a European post-negotiation consolidated database and the lack of complete transparency pre-negotiation. The following key points of these two texts are worth mentioning: the creation of a category of organised negotiation systems reserved for debt instruments and derivatives; the introduction of a non-discriminatory principle of access to order execution systems, the clearing houses and indicators used for negotiation and compensation, and the introduction of the possibility for

national authorities to limit their investment in commodities.

A less ambitious text has also been adopted on **PRIIPs/Packaged Retail and Insurance-based Investment Products**. Following the requests made by AFEP, and reiterated by the European Issuers association, the regulation no longer covers corporate shares and bonds. The inclusion of company corporate shares and bonds would have had major consequences for businesses, as it would have involved a series of obligations that are difficult to comply with, along with an independent liability regime.

The outgoing Commission introduced two proposals for the first semester 2014.

At the end of March 2014, the European Commission adopted a proposal to revise the directive on the **institutions for occupational retirement provision** (IORP II). The proposal is designed to meet four main objectives: improve pension fund governance and risk management; strengthen the transparency of the information provided to members and beneficiaries of funds, by promoting a level playing field at European level; facilitating cross-border activity of funds; and encouraging funds to make long-term investments. In accordance with the requests made by AFEP, the scope of the revision does not cover **the rules on solvency** of pension funds, which could only be covered at a second stage.

The Commission also published a proposal on **banking structural reform** in January 2014. In line with the

adoption by US regulators of the Volcker rule in December 2013, to come into force by 2015, the European initiative includes a ban on proprietary trading from 2017 onwards, and the possible separation of potentially risky activities (market making, securitisation and derivatives other than foreign exchange and interest rate hedging derivatives eligible for compensation). The European legislative proposal concentrates on banks with a systemic or significant impact. Following a mandatory evaluation of the competent supervisors, they will be granted the power to take decisions on the separation of activities into a separate legal entity, where the thresholds to be adopted by the Commission have been reached, or owing to specific circumstances, such as a threat to financial stability necessitating systemic risk prevention, financial tensions or bankruptcies. National derogations from separation obligations will be possible under certain circumstances, if the Commission certifies that the Member State has taken equivalent measures.

The proposal for a **European financial transactions tax** has been a cause for concern for businesses right throughout the year. Positive steps have been taken in the negotiations between the 11 participating Member States in 2014, with a progressive reduction in the tax base to shares and certain derivatives. However, little progress was made on key issues such as the residence principle and the allocation of revenues. However, the declaration of the authorities at the beginning of 2015 in favour of a wider tax base and lower rates undermines this development and may be welcomed by other States.

4. Outlook for 2015

At a European level, 2015 is likely to be an important year, as the Commission will need to choose which financial issues to focus on during its period in office. The British Commissioner, Hill, with responsibility for financial stability and financial services, who is more liberal than his predecessor, intends to focus on the implementation of the significant volume of legislation adopted over the past few years. The Commissioner also intends to take a business-friendly approach and not to introduce burdensome regulation.

The European Commission has indicated that it intends to establish a “**Capital Markets Union**”. This concept involves, first and foremost, the development of non-banking financing in Europe, in light of the limitations to banking credit in Europe due to banks scaling down their balance sheets. In particular, a more diversified, competitive and resilient banking system will be developed in order to respond better to long-term financing needs. The concrete measures the Commission intends to take are not yet widely known, apart from the proposal to develop high quality securitisation. In February 2015, a Green Paper was published to launch the consultation and discussion period on the content of the Capital Markets Union.

AFEP will of course contribute to the consultation. In order to stimulate the non-banking financing and to significantly develop capital markets, existing market regulation needs reform. The following objectives should be emphasised: simplify regulation currently dissuading

companies from market access, develop insurers' and pension funds' investments in the real economy, bring together tax incentives to finance business and long-term projects and avoid penalising investment in the real economy (e.g. FTT).

AFEP will continue to emphasise the impact of the **financial transactions tax (FTT)** on business financing. If negotiations were progressing owing to the impetus of the French President, the **undesirable effects** of a FTT for **non-financial businesses** should be emphasised, i.e. costs passed on by the banks and significant effects on business transactions (transactions on derivative contracts, hedging transactions, intragroup transactions, recourse to market making activities on equity and debt securities, or even foreign exchange spot transactions, etc.). Raising awareness of the negative impact for the entire economy in the countries affected is of major importance in this debate.

With regard to the **structural banking reform**, the important issue for non-financial businesses on the separation of certain banking activities – market making in particular – is to ensure that the reform does not affect the issuance of securities, the conditions for bank lending and counterpart activities, in particular hedging transactions.

AFEP will also closely monitor the follow-up measures taken by the Commission on the Maystadt report on **international accounting standards** and the consultation on the implementation of the IAS regulation. In this regard, and as part of the EFRAG reform already under way, AFEP will continue to put forward three major demands: better representation of private stakeholders despite the reluctance displayed by the Commission and Member States; strengthening the conditions for the adoption of IFRS and the possibility for the EU to modify the standards in clearly defined cases.

In France, AFEP will take steps to ensure that the application of the European reform on statutory audit does not lead to a deterioration in the quality of auditing services or give rise to excessive constraints for businesses and executive or supervisory boards, particularly with regards to services other than auditing.

For all the issues addressed, the need to promote **long-term approaches** and to maintain the **conditions for business financing** will continue to guide the action taken by AFEP. While strengthening the security of markets and financial players is crucial, it should not serve to erode the competitiveness of businesses or prevent a return to sustainable growth.

Work, jobs & social protection

1. Context and issues

Employment has remained a central concern in 2014, marked by a significant increase in the number of job seekers (181,000 during the first 11 months and +5.8% over the course of one year). The reforms undertaken in the area of labour and employment policy with the implementation of the Securing Employment Act, an increase in the number of jobs schemes for young people and intergenerational contracts (state subsidised) have not been sufficient to prevent the rise in unemployment, owing to sluggish growth. Excessive regulation largely explains the failure of internal staff mobility provisions and measures to preserve employment voted in the Act, with only six agreements signed under the latter.

Labour relations have been characterised by tensions around the **personal account for occupational risk prevention** and the discussions on the **implementation on the Pact of Responsibility**. A number of discussions have already led to the signature of branch agreements including commitments on hiring new employees and developing apprenticeship programmes.

2. Achievements and developments in 2014

A number of important inter-professional negotiations have been held throughout the year, including negotiations on unemployment insurance and the modernisation of labour relations. AFEP submitted proposals as part of both negotiations, to ensure closer involvement of large companies in the drafting of these structural reforms on the development of the labour market.

An agreement was concluded in March on **unemployment insurance** (UNEDIC: National Professional Union for Employment in Industry and Trade). A number of new measures have been introduced, including rechargeable rights to unemployment insurance designed to provide a financial incentive for returning to work, a longer period of deferral before receiving benefits, a reform of the part-time back to work allowance and the rules on benefits for temporary workers, and the creation of a social contribution on working older employees (over the legal retirement age). Although the new deal will generate €400 million in savings, this is insufficient to restore the financial balance of the UNEDIC owing to the accumulated deficit of €22 billion, in the absence of structural reforms on the duration of benefits and the qualification period.



Negotiations on the **modernisation of labour relations** began in October. The objective pursued by businesses was to improve the capacity of employee representation bodies (IRP) for adaptation, to simplify both the functioning of the IRPs, through merging the various bodies, and the consultation/negotiation obligations and to introduce better regulation on recourse to expert opinions, in order to make labour relations a source of competitiveness. The negotiations ended in failure in January 2015, with a majority of unions refusing to merge the current IRPs into a single body as proposed by employer organisations.

Following the Labour Conference held in July and the report by COPIESAS (a special committee on employee savings), a discussion between employer and employee organisations on **employee savings** was initiated in December. The **profit-sharing bonus (created in 2011) was abolished** in the Social Security Funding Act, as requested by AFEP which also supported the modulation of the specific tax on employee savings, based on the length of the fixed savings period in order to encourage long-term savings.

With regards to legislation, the **Professional training, Jobs and Social Democracy Act** of 5th March 2014 is an accurate rendering of the National Inter-professional Agreement (December 2013) signed by social partners. This law reforms funding for professional training, introduces greater transparency to the funding of trade unions and employer organisations, with the abolition of deductions from company professional training funds to finance such organisations and the creation of a dedicated fund for this purpose. The law also includes provisions on the certification of works councils accounts. A number

of proposals drawn up by AFEP have been adopted, including the abolition of the compulsory tax of 0.9% allocated to the company training plan, and, instead, the creation of a 0.2% contribution for the funding of the individual training account held by each employee. However, AFEP has expressed its reservations about the governmental reform on apprenticeship financing which diminishes the options open to businesses in financing higher education institutions, with greater powers given to the local authorities (regions). Having noted the drastic fall in the uptake of apprenticeships in 2013 continuing into 2014, the Government has partly reneged on this reform with the Amending Finance Act.

The first step in the **Pact of Responsibility** was adopted in July as part of the Amending Social Security Funding Act with a reduction in employer contributions on salaries of less than 1.6 times the minimum wage, equivalent of a total reduction in labour costs of €4.5 billion. The Government has indicated that the reduction in employer family contributions will be extended to all salaries below 3.5 times the annual minimum wage in 2016, equivalent of an additional reduction of labour cost of €4.5 billion. However, the latter has not been included in the Act, as advocated for by AFEP, in order to allow sufficient time for businesses to anticipate this evolution.

Despite the Government's stated ambition to simplify the business environment, a number of parliamentary initiatives have been voted this year that increase the complexity businesses are dealing with. AFEP has acted in order to limit the negative impact of such initiatives. As an example, the **Internships Act** adopted in July has strengthened the obligations on the employer, with

mandatory registration of interns on staff registers, introduction of paid holidays for interns, and access to the company canteen. Most importantly, a limit has been introduced to the number of interns that can be taken on by a company at any one time, which is likely to make it even more difficult for young people to secure an internship, thus making it more difficult for them to access the jobs market. Similarly, although the **Combatting unfair competition Act** pursues the legitimate objective of fighting fraud with regards to posted workers, it goes beyond the European requirements of the Directive with the introduction of joint liability of contracting companies and subcontractors in all the economic sectors

AFEP has contributed to the report by Michel de Virville on the implementation of the **personal account for occupational risk prevention**, voted in the Pensions Reform Act. While the report led to the adoption of some improvements, particularly with the focus on work positions, rather than on individual monitoring of employees, the provision remains particularly burdensome for the companies affected in terms of identification of the jobs covered, managing employee files, not to mention the risk of litigation in the event of disputes with employees or the administration on the actual exposure to occupational risks. The employers' contribution will undoubtedly be subject to increases with the progressive scaling up of the law. The response of businesses to these difficulties has resulted in the Government deciding to postpone to 2016 the implementation of 6 out of 10 exposure risks, i.e. the risks whose evaluation is the most complex.

With regards to **private pensions**, AFEP has continued to

discuss with the Government on the issue of the mechanisms which need to be put in place in order to guarantee employees' pension rights, should a company fails to meet its obligations. While the initial governmental proposal set a short deadline for compliance - a major burden for the affected companies - consultation led to an extension of one year to draft the order. The proposals introduced by the business community have also facilitated the establishment of a timeline for the transposition of the European Directive proposed by the French authorities to the Commission, based on a deadline for the implementation of the Directive, a minimum guarantee, a cap per beneficiary and a large range of solutions in relation to the details of guarantees.

AFEP has continued to advocate for a revised tax and social security framework for a portable career-long private pensions regime, in accordance with the European Directive adopted in 2014. The need to revise the current framework is even greater given the parliamentary amendment to the Social Security Funding Act introducing a heavier tax burden on private pensions and in light of the announcement by the Government of their intention to revise the Growth and Activity Bill based on the recommendations made by the dedicated administrative committee to which AFEP submitted proposals.

As a follow-up to the "Youth and Enterprise" (see sidebar) initiative in 2013, 60 AFEP member companies took measures with a view to securing **access to jobs for young people**, upon completion of a apprenticeship programme or a Masters degree. The initial results are encouraging.

A working group of company Presidents was also set up to pursue more in-depth discussions on the labour market and to draw up proposals.

3. Outlook for 2015

Following the failure of the discussion between employer and employee organisations **on the modernisation of labour relations** in early 2015, the Government indicated that they would meet with the social partners to study the outcome of the negotiation. A draft law might be introduced based on the recommendations set out in the Government green paper. The business community will closely follow the initiatives taken by the Government in this area, given the crucial impact of rationalisation and simplification of procedures in terms of improving the quality and effectiveness of social dialogue.

Discussions between social partners on compulsory supplementary pensions should begin in March in a highly fragile budgetary context, in particular with the expected exhaustion of the AGIRC (Fund covering managerial and executive staff) reserves by 2017. While the agreement from March 2013 instituted a moderate increase in the contractual contribution rates, along with indexing pensions below the rate of inflation, any new rise in contributions would have a negative impact on employment and should therefore be excluded. Priority should be given to identifying savings by postponing the retirement age in order to ensure the sustainability of these supplementary pension regimes.

In terms of legislation, 2015 will be marked by the **debate in the Parliament on the Growth and Activity Bill**, which

includes a number of measures affecting companies, including a reform on Sunday and night work legislation, which is not sufficiently ambitious, a change in the Securing Employment Act, a reform on the employment tribunal procedures as well as a section on employee savings to which amendments will be added. AFEP is working with the rapporteurs and Members of Parliament to make some improvements to the Bill, in particular in relation to employee savings schemes.

On 1st January 2015, two new individual rights for employees will be introduced: with the individual training account, each employee will be entitled each year to 20 hours of training towards a qualification, up to 150 hours, with an option for employers to make additional contributions. Employees will not lose their rights if they move to a new employer or become unemployed. The **personal account for occupational risk prevention** will also come into force on 1st January for 4 risk factors out of 10 in total (night work, shift work, repetitive work, work in a hyperbaric environment): businesses must draw up a prevention sheet for affected employees above the average annual thresholds, although this may only be required by employees from January 2016 onwards. To support the various sectors in drawing up instructions, Michel de Virville will deliver a progress report in summer 2015, to which AFEP will contribute. Christophe Sirugue, Member of Parliament, and Gérard Huot, who manages a SME, have also been tasked with drawing up proposals for the simplification of the provisions, and ensuring legal certainty and the prevention of sources of litigation and co-ordination with business prevention policies.

With regards to **defined benefit private pensions**, by

June, the Government must present the order transposing the Directive on the protection of pension beneficiaries in the event of employer insolvency. In anticipation of the Commission's response to the comments submitted at the end of November 2014 by the French authorities, AFEP is continuing to work with the Minister for Social

Affairs to find solutions that do not penalise businesses with excessive constraints or deadlines. AFEP also closely follows any possible modifications to these provisions as part of the Growth and Activity Bill, regarding performance and the rules on how quickly annual pension rights are acquired.

AFEP's commitment to youth employment with the "Youth and Enterprise" programme

In 2013, 60 AFEP companies committed to the "Youth and Enterprise" initiative to strengthen measures for youth training and employment and to promote collective initiatives for hiring people on apprenticeship programmes, access to jobs for young university graduates and hiring young people. One year after the launch of this programme, AFEP published the initial results.

■ Apprenticeship towards employment: a youth recruitment portal

To encourage the hiring of young people trained by businesses as part of an apprenticeship programme, an innovative portal was launched, at www.engagement-jeunes.com, where young people can post their CV in a database accessible to other recruiters, other large groups, mid-market companies, SMEs job offers and apply. To date, approximately 100 businesses have activated an account with the website, including 57 SMEs/ mid-market companies. 2,327 young people on apprenticeship programmes have been invited by their employers to activate an account, and 1,634 have done so. Company mentors can leave a comment about the candidates. In total, 2,283 jobs have been made available to young people in 100 companies.

■ Access of young university graduates to the job market: guidance towards employment with "Booster"

Given the gaps between the needs of businesses and the skills of candidates, particularly for graduates from certain university courses, the business community took the initiative to launch the "Booster" programme. This initiative is designed to facilitate access to jobs for young graduates of Masters programmes and to help them in their search for their first job, by making them aware of the expectations of businesses. Booster includes several phases: meetings at universities with young graduates, an interview preparation day provided by the companies, and interviews with the companies if suitable jobs are available. Eight AFEP businesses have participated in this initiative launched in March 2014 as a pilot programme in partnership with Aix-Marseille, Paris-Est, Créteil, and Pierre and Marie Curie universities. In 2015, an objective has been set to support 1,000 young people in accessing stable jobs in companies.

In 2015, AFEP will also partake in FACE, a Foundation for action against exclusion, by supporting the **video CV** initiative.



Competition, consumers & intellectual property

1. Context

At the French and European levels, the year was marked by the adoption of a number of regulatory texts on competition, consumers and data protection. Although positive developments have taken place in the field of intellectual property, new constraints have emerged in other areas.

European Union legislation, although designed to protect consumer-citizens, including legislation in the pipeline (the proposal for a European Regulation on data protection, the European Commission consultation on the White Paper entitled "Towards more effective EU merger control.") or final (Directive on certain rules governing actions for damages under national law for

infringements of the competition law), imposes a greater burden on businesses without achieving a satisfactory balance in the context of a globalised economy characterised by ever-increasing competition between geographical areas. Conversely, consensus was quickly reached amongst Member States on the proposal for a Directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, designed to protect business research and innovations. A first reading of the text in the European Parliament will take place during the second quarter of 2014.

In France, AFEP has taken a number of measures on the heels of the decrees adopted pursuant to the Consumer Law of 17 March 2014 related to: class actions, which entered into force on 1st October 2014, and on the transparency of information published on payment terms, which is currently being drafted. AFEP has pointed out the company's expectations with regards of the Draft Law on growth and activities introduced by the Minister for the Economy. In the field of intellectual property, AFEP supports the efforts of the authorities to establish a Unified Patents Court.

2. Issues for companies

Competition, consumers and intellectual property are major issues for the competitiveness of businesses and must be dealt with in a legally sound manner.

At the European level, AFEP has sought to strengthen the competitiveness of European businesses in relation

to other areas in the world, where there is often a greater focus on pragmatism. Therefore, it was important to partly limit the scope of the Directive on **antitrust damages actions**, which entered into force on 25th December 2014, and to ensure that the White Paper on merger control rules does not result in an excessive burden on the **acquisition of minority interests**. AFEP also pursued this objective throughout its exchanges with the authorities on the proposal for regulation on the **personal data protection**. In fact, parliamentary discussions were focused either on the need to protect citizens or on the importance of limiting the activities of social networking sites, but little attention has been given to the particular needs of businesses in terms of their relationships with employees or clients. Following the constraints imposed by the European Parliament on businesses (administration, consent procedures, sanctions, etc.), Member States are now also taking burdensome measures (one-stop shop, greater responsibility for those responsible for data processing and subcontractors, etc.). Penalty rates are extremely high, at up to 5% of worldwide turnover if parliamentary recommendations are adopted for the upcoming trialogues. It is also with regard to competitiveness and a more secure framework for R&D, that AFEP also supported the Directive on **trade secrets** when proposed by the European Commission, as well as before the Council and Parliament. AFEP is also supporting the development of a **unified court in Europe**, with the seat of the Court of First Instance in Paris.

In France, AFEP has advocated for **pragmatism** in drafting

various regulatory texts including the decrees adopted pursuant to the Consumer Law, the first of which covers **class actions** published on 24th September 2014 and the other on the **transparency of reporting on company payment terms**, which is currently being drafted. More generally, AFEP has pursued its work in order to improve **inter-company relationship**, on business relationships, delays and payment terms, sharing research and skills, etc.

3. Achievements and developments in 2014

At the European level, the main achievements for business are in the field of state aid and the proposal for a Directive on trade secrets.

In May 2014, the European Commission adopted two major pieces of legislation on **state aid**: the new General Block Exemption Regulation (GBER) and the new regulations on state aid for research, development and innovation (RDI). AFEP co-operated with various business organisations (BDI, Industry Club and MEDEF) to make their voice heard by the Commission on state aid for RDI. As a result, the Commission has dropped the net additional cost calculation method for evaluating the proportionality of individual state aids as a general rule, but it is now limited to the alternative scenario of projects not in receipt of aid. With regards to the **Directive on antitrust damages actions** agreed on 24 March, the work of AFEP and various other national and European organisations resulted in a limitation on the binding effects of the decisions of the national competition authorities (NCA). If an NAC finds a breach of competition law, this presumption will only be conclusive in that

Member State. In other Member States, such a finding will have the status of prima facie evidence.

The text on the protection of **trade secrets** was adopted by the Competitiveness Council of Ministers of 26 May 2014. Positive points include the choice to define trade secrets in accordance with international agreements on intellectual property (TRIPS). In accordance with the recommendations by AFEP, it has also been specified that the commercial value can be either real or potential. However, other positions adopted by the Council create difficulties. The list of means for the unlawful acquisition of trade secrets has been shortened, with theft, bribery, deception and breach of a confidentiality agreement now excluded. The conditions for ensuring confidentiality in legal proceedings have been relaxed with the creation of a “confidentiality club” composed of one person from each party, their lawyer and the court officers (particularly the clerk), which increases the risk of trade secret leaks. The start date for calculating the limitation period is no longer specified, making implementation considerably more complex. In their discussions with MEPs in the run up to the reading of the text in early 2015, AFEP has sought to highlight the importance of maintaining the definition of trade secrets and improving certain aspects of the proposal. AFEP has also emphasised to have a start date allowing for calculation of the limitation period and to lead this period from 3 to 6 years. The Directive must be transposed soon into national law with full effect.

At the national level, under the decree on **class actions**, only the County Courts (Tribunaux de grande instance)

will have territorial jurisdiction. This measure should help to avoid dispersal of class actions across the country and facilitate earlier uniformity in case law, and better administration of justice. With regards to simplified class actions, efforts to inform plaintiffs of the outcome are left to businesses only. Conversely, a number of provisions remain unsatisfactory. In this new and complex type of litigation, the fast-track appeals procedure has been confirmed despite the fact that class actions cannot systematically be deemed to be “urgent” or “easy” cases. The order of the pre-trial judge on difficulties that have arisen in the implementation of the judgment on liability may not be appealed, and the rules on participation in the class action remain vague. Pursuant to the same Law, discussions have been held with the authorities throughout the year on a draft decree on **company transparency on payment terms**. There is no agreement yet on the most appropriate way of defining late payments in relation to the payment terms. The government wishes to publish information based on the cash outflows to suppliers and cash inflows from clients, whereas companies recommend an information based on the account balances, to limit the complexity and heaviness in the preparation of the information.

4. Outlook for 2015

At the European level, AFEP will reiterate to the European Commission the importance of avoiding complexity in the acquisition of non-controlling minority shareholdings. AFEP will continue to press the issue of data protection with the Member States, who intend to close this matter

by June 2015, in particular on the reduction of the rate of penalties and the revision of consent procedures. The objective in relation to the Directive on trade secrets will be to minimise modifications to the text during the upcoming reading by MEPs. In addition, the Afep will seek to emphasise to the Commission the importance of harmonisation in relation to patents, and, more generally, the certification process, which entails an increasingly vital competitive dimension for European businesses.

In France, during the examination of the competition issues of the draft law relating to growth and activity, Afep shall highlight the need to strike a balance between

the necessary competitive vitality and an overly intrusive approach for businesses (structural injunctions). The Government may implement different initiatives in relation to class action in the health, discrimination and data protection fields. Businesses will reiterate the need to conduct an impact assessment of the action carried out before considering an extension. The association will continue to monitor the draft decree on transparency in relation to payment deadlines which comes under a wider intention to **improve inter-company relationship** in order to boost the competitiveness of the companies and improve their capacity to export within the context of a better structured ecosystem.

Environment & Energy

1. Context

In France, the summer of 2014 saw the bill on the energy transition for green growth be presented. This presentation followed the nomination of Ségolène Royal, in April, as the Minister for Ecology, Sustainable Development and Energy. Prior to this presentation, **AFEP**, during the first quarter of 2014 and in collaboration with the *Cercle de l'Industrie*, had presented the governmental authorities with the recommendations of the working group of presidents on energy, chaired by Jean-Pierre Clamadieu, President of the Executive Committee of Solvay, so as to encourage them to include favourable arrangements for business competitiveness in their work. The bill on biodiversity was adopted by the Council of Ministers on

26 March. Following a year in which work was suspended, the taskforce for modernisation of environmental law was re-launched through the creation of seven themed working groups, at the beginning of the autumn. In parallel, the laws on simplification have enabled regional experiments to be launched in particular for the purpose of a single environmental authorisation and a project certificate aiming to formalise the key steps in upstream administrative decisions, in order to secure investment. The Committee on Environmental Tax suspended its work in summer 2014 following guidelines issued by the Ecology minister in regard to “punitive” taxation. Transposition into French law of the provisions for auditing energy efficiency as laid out in the “energy efficiency” Directive was completed by the end of 2014.

At a European level, 2014 saw a plethora of leading initiatives be introduced, amongst which was the adoption of the new “package on air quality”, providing for a revision of the Directive on national emission ceilings, as well as a proposed Directive on reducing pollution from medium-size combustion plants. Subsequently, the Commission adopted its new “climate and energy package”, under the 2030 framework, which contains, , a proposed Directive introducing “stability reserve for the ETS market” from 2021 in order to integrate the 2 billion allowances considered as surplus at the end of 2020 and to rectify the allowance average price. Numerous other texts on energy and climate were also adopted by the Commission, notably the new guidelines on state aid relating to the environment and energy, which significantly modify the national systems. The other texts adopted

relate to the energy security strategy, the list of ETS sectors subject to carbon leakage for the 2015-2019 period, a communication on energy efficiency and a consultation on carbon leakage linked to the ETS system for the 2021-2030 period. On 23 and 24 October, the European Council defined the European objective of reducing greenhouse gas emissions under the 2030 framework, to the 1990 levels, in order to position Europe for the Paris Conference of Parties in December 2015 (COP 21).

In terms of AFEP's proactive initiatives, 2014 was characterised by the launch of a preparatory mission in crew of a Sustainable City Institute, in order to implement place pilot projects for sustainable cities in France in 2015 and the working group on the circular economy chaired by Jean-Louis Chaussade, the Managing Director of Suez Environnement.

2. Issues for companies

Energy prices and energy supply security were the major subjects in **national and European policies** in 2014, a year characterised by the Ukraine crisis. Nonetheless, the multitude of European texts on energy published in 2014 demonstrates the difficulty of dealing with this issue in an appropriate and consistent manner at European level, given the sovereignty of Member States on the choice of their energy mix.

The economic actors' wishes to be informed in advance of the **new European 2030 energy and climate framework** – in particular concerning the ETS system – have been

taken into account by the Commission. The objective is to be better prepared for “low carbon” investments. However, on the initiative of DG Climate Action, the implementation modalities of an extended carbon signal before the 2021-2030 period was not subject to an overall reform, but rather of sequential legislative projects. These introduced significant uncertainty into the legislative process. The “*back-loading*” measure was adopted in 2013, independently from the “market stability reserve” system presented in early 2014, while the increase of the allowance average price could only be possible if temporary withdrawal allowances were transferred to the market stability reserve or were cancelled.

In the context of the **UN Conference in Paris on climate change** (COP 21) in December 2015, the Foreign Affairs Minister, Laurent Fabius, the future president of the conference, chose to entrust Laurence Tubiana with preparing the international negotiations. **AFEP** and *Cercle de l'Industrie* member companies wanted to play a role as a “source of proposals” vis-a-vis the governmental authorities by supporting the implementation of a “business dialogue” before COP 21 and continuing afterwards. **AFEP** also chose to support the “**Business Climate Summit**” organisation, initiated by Global Compact France and *Entreprises pour l'Environnement*, by contributing to the international support for the event which is planned for 20 and 21 May 2015, in particular with the *World Business Council for Sustainable Development (WBCSD)* and the *International Chamber of Commerce*.



At a national level, the Government's desire to simplify environmental legislation, in order to avoid "punitive" taxation and to promote "environmental solutions" implemented by pioneering companies appeared to, a priori, correspond to the requests made by the economic actors. The accumulation of new regulatory measures and exceptions - which are plentiful in the environment field - under the principle of "silence from the authorities for two months means agreement" does nonetheless call for caution, as declarations of intent are not always followed by action.

3. Achievements and developments in 2014

Considering the **bill on energy transition** for green growth, the adoption of this bill by the National Assembly in October enabled positive evolutions compared to the text adopted by the Council of Ministers: the integration of competitiveness objectives into the national economy, the greatest technological neutrality in defining clean vehicles, the nationwide testing of single authorisation for classified facilities, and the integration of energy-intensive companies which consume large quantities of gas in the public transport network tariffs (TURPE). In the context of the bill being examined by the Senate, the association stressed the need to consider the aim of reducing greenhouse gases as a priority objective at a global level and the need for a regulation and tax framework which is favourable to France's attractiveness for those industries exposed to carbon leakage. Other issues were also highlighted, with the aim of promoting the development of energy performance projects, in

which the time of return on investment is under 10 years, or to encourage facilities for solid recovered fuel. In addition, the association also pointed out that capping the total authorised nuclear capacity at its current level – without including the capacity linked to the new EPR – could be problematic when the new EPR enters into operation. To conclude, **AFEP** underlined the significant risks of increase of the contribution to the public electricity service (CSPE), linked to the different provisions laid down in the bill.

In relation to European level efforts, the most significant text concerning energy prices is the Commission guidelines on state aid in terms of environment and energy, adopted by the Commission in April. The text adopted provides for electricity taxes, linked to the development of renewable energy, to only be capped at 4% of the gross added value for moderately electricity intensive businesses and at 0.5% of the gross added value for electricity intensive companies. In this context, the European Commission considers that the current capping conditions for the CSPE in France is not in line with the guidelines given the existence within the CSPE of, in addition to a "renewable energy" component, "cogeneration", "non-interconnected zones" and "social tariff" components. It is therefore the entire CSPE capping system, by site and in accordance with the added value level, that may be called into question not only for the future but also for the past. The risks for economic actors are potentially very significant, which led the Association to alert the French public authorities. The objective was to achieve an acceptable solution, by

the end of June 2015, for both the European Commission and the economic actors, modelled on the rapid transition that took place in Germany to comply with the new European rules.

The other important theme is about the **2030 climate and energy objectives** which were adopted by the European Council in October 2014. These objectives seems ambitious, in particular in relation to the additional efforts expected from the economic actors under the ETS directive: the climate objective for 2030 for the EU is -40% less in 2030 compared to 1990 (excluding project mechanisms) with more significant efforts for those actors subject to the ETS directive (3/5th of the efforts) than for other sectors (2/5th of efforts), given that the non-ETS objective still needs to be shared between all Member State. A European objective of at least 27% of the renewable energy consumed between 1990 and 2030 and an objective to improve energy efficiency from 27% in 2030 (instead of the 30% initially requested) have been decided on, without obligations at state level. The objective of 10% of electrical interconnections was also adopted with a target of 15% envisaged for 2030. Given these mid-term objectives, the economic actors were happy to welcome the renewal, for the 2014-2019 period, of the list of sectors exposed to carbon leakage and those benefitting from free allowances up to the best 10% of performance in their sector. They were, however, concerned by the debate on the market stability reserve which, in late 2014, focused on bringing forward the implementation of this reserve by 2017 and filling the reserve with back-loaded

allowances, and will therefore not be placed back on the market.

In terms of combatting local pollution, the work of the Council has made it possible to achieve positive developments concerning the proposed directive on medium-size combustion plants (MCPD). Furthermore, the Council adopted the idea of cancelling uniform emission limits at a European level in the case of zones with high levels of local pollution, in order to enable Member States to set these limits according to the characteristics of each site, in accordance with the principle of subsidiarity. One area of concern remains: stricter emission limits than in recent French decrees in relation to large combustion plants.

4. Outlook for 2015

At an international level, AFEP calls for the Governments of G20 countries and certain developing countries as well as representatives of international companies in different geographical areas and from different sectors to engage into a dialogue with one another, by means of meetings before COP 21 which will continue afterwards, with the aim of harmonising “carbon” policies globally. The main expectation of the economic actors for the Paris conference will be the establishment of international commitments for after 2020, in order to achieve harmonised efforts to control greenhouse gas emissions among the major emitting countries.

2015 will be a decisive year with a review of European policies by the **new Commission**. Late 2014 was

characterised by the will of the Commission, in particular of First Vice-President Timmermans, to abandon the proposed directive on national emission ceilings and to critically examine the “circular economy package” published in July 2014.

Early 2015 should offer an opportunity for the Commission to present a communication on “**Energy Union**”, based on the current treaties. A new proposal for legislation is due to be published in early summer by the Commission concerning the **ETS system in the 2021-2030 period**, with one of the most controversial points being the carbon leakage risk and the risks of redirecting investments outside of the European Union.

At a national level, an important challenge relates to the capacity of public authorities to incorporate the

simplifications and improvements in the field of environmental law which have been detected under the modernisation taskforce, in particular concerning public consultation, a subject which has come to the forefront since the Sivens drama. The first quarter of 2015 should also offer an opportunity to identify pilot locations in France for **sustainable urban development projects** on a significant scale, which will make it possible to illustrate to the international community the **capacity of French companies to create solutions for sustainable cities** which are resource-efficient and which provide services and contribute to the quality of life for its inhabitants and users. The conclusions of the **AFEP** working group on the **circular economy** will also be presented as part of the *Business Climate Summit*.

Building a range of services for sustainable urban development

Reason for the urgent need to develop pilot sites

Many AFEF companies – Alstom, Bouygues, Compagnie de Saint-Gobain, Eiffage, Gdf-Suez, JC Decaux, Lafarge, Michelin, Orange, Peugeot, Renault, Schneider Electric, Suez-Environnement, Total, Veolia, Vinci – in partnership with other organisations – Advancity, COSEI, Edf, Egis, RATP, SNCF, Syntec Ingénierie, Vivapolis – have taken measures over the past years with a view to **developing a range of French services focused on sustainable development, both for France and for export**. Proposals in this vein have been drawn up within AFEF.

■ The following three aspects are essential to successfully build a global French offer in this area:

- The development of a competitive and distinctive range of services at international level;
- The implementation of physical and virtual pilot projects on sites in France with innovative, top-performing and sustainable urban development, to demonstrate the capacity of French players – public and private, large companies and SMEs – for designing and implementing such solutions;
- Communication and promotion of the services at international level.

■ Advantages of pilot sites:

- Demonstrate the implementation of new technologies, the combination of a range of existing technologies and the contribution of innovative services;
- Demonstrate the capacity in France for innovative design of collaborative multi-function solutions: housing, business, services, transport, energy, etc;
- Draw up overall objectives in partnership with the client (consumption per person converted into CO₂ emissions or kWh consumed), thus offering measurable advantages, and taking performance evaluation beyond sector-based

measurements (such as measuring kWh/m² for a building or consumption of a tramway, or even a percentage of waste recycled);

- Work in active cooperation with the client.

■ Significant improvements in performance associated with pilot sites:

- A significant reduction in wasted heat, energy, water, transport, non-recovered waste, etc.;
- Emergence of businesses generating innovation and local jobs;
- Leveraging the expertise of French businesses, both large and small;
- Combatting climate change;
- Improving well-being in urban areas (quality of life);
- Preparing towns and cities for development in urban planning, towards greater density and reduced use of transport.

■ Challenges in relation to implementation:

- The need for clients to draw up single combined contracts, rather than separately or on a piecemeal basis;
- More complex projects, as business models are currently lacking focus on the circular economy;
- The need for public contracting authorities to draw up overall performance objectives;
- The need for an interface between the client and the various operators;
- Grouping operators for each pilot site into integrated consortiums, assigned to build operating pilot site in the long-term. A consortium should not only work towards improving the real estate value, but also towards ensuring performance in relation to the circular economy once the project is up and running.

Corporate Social Responsibility

1. Context

AFEP member companies have, for several years now, integrated social responsibility challenges (CSR) into their strategy. They implement a number of policies and actions to increase the positive impact and limit the negative impact of their activities. CSR, which is a factor in competitiveness, enables the businesses to respond to society's needs in a sustainable way thanks to social and environmental innovation and constant interaction with the actors involved in their ecosystem.

The French legal framework is undoubtedly one of the most ambitious frameworks in the world. While they recognise the usefulness of this framework, companies are also keen on being able to carry out their CSR

activities in a way that is adapted to their work and in a stabilised normative framework.

Throughout 2014, AFEP's work was guided by the attempt to balance the legislative and regulatory texts at both a French and European level; to represent businesses within the national CSR platform, which, one year after being set up, has already enabled detailed debates to take place, as well as to enhance the taking into account of the businesses' point of view in drafting national and international frameworks and guides.

2. Issues for companies

The large French companies are amongst the most advanced in terms of the use of preventative and remedial measures, enabling them to manage the social, societal and environmental risks of their activities (see box). Their approaches are now facing the problematic juncture between the public governance of states and the private governance of companies and between hard law and soft law.

Companies fear the legalisation of relations between stakeholders, which would not be in line with the damage prevention objectives they are seeking to achieve. For this reason AFEP does not support the adoption of law proposals (PPL) submitted to the Parliament on the duty of care. AFEP considers that the introduction of a presumption of quasi-irrebuttable responsibility in a badly defined field, would lead to the legalisation of relations between parties without contributing to the objectives being met in terms of damage prevention. The approach

of this proposal - which has not been adopted by any other state - is not the right answer for a delicate subject which calls for different solutions such as reporting on due diligence measures, improving OECD National Contact Points, mechanisms for non-judicial remedies, and, as the case may be, the introduction of an obligation to set up an average basis of disclosure obligations.

3. Achievements and developments in 2014

At the French national level, AFEP has actively participated in the work of the **“CSR platform”** which is an innovative space for ongoing dialogue between all stakeholders. Even though difficulties in understanding the economic world may remain, AFEP contributes to promoting an ambitious and constructive vision of CSR, recalling the need for a stable and predictable legislative and regulatory framework which takes into account the operational reality.

In order to enable companies to better understand the role of the **French National Contact Points (PCN) for the implementation of the OECD guidelines for multinational enterprises**, and the way in which they work, on numerous occasions AFEP invited its Secretary General and President. These discussions made it possible, in particular, to clarify the scope of the notions of “due diligence” and “business relations”, and to present good practice in the implementation of the OECD guidelines by large French multinational groups.

AFEP also contributed to drafting the **Afnor guide on verifying social and environmental information**.

This guide focused on ensuring that independent third parties in charge of verifying social and environmental information act in accordance with the regulatory framework.

The **professional standard applying to statutory auditors relating to the provision of services linked to CSR information** has also been set up in order to introduce flexibility for companies who should have the option to limit the scope of the information covered by the services, or to emphasise that there is a need for specific professional skills to be recognised in the CSR field.

At a European level, AFEP companies have welcomed the adoption of the **European Directive on disclosure of non-financial information**. This text harmonises the transparency requirements which large companies listed in the European Union will be subject to. The companies support **greater transparency on “due diligence” measures**, which they will carry out in accordance with the OECD and UN guidelines (conduct codes; CSR charters; alert procedures; contractualisation of responsible purchasing practices; mapping CSR risks; evaluating suppliers and sub-contractors; corrective action plans; CSR audits carried out by independent third parties). In addition, the directive replaced the obligation for businesses to provide **financial and tax information** for each country, with a more thorough and co-operative European system. Although the companies support action carried out to combat tax fraud in a co-ordinated international context, they believe that the publication of certain “gross” economic data (turnover, workforce, profit or loss, tax paid), without taking into account the

economic and tax environment in which the companies are evolving, would lead to incorrect judgments and would undermine the businesses in relation to their competitors and the tax authorities of third countries.

At an international level, AFEP outlined its position on the “**integrated information framework**” proposed by the IIRC (International Integrated Reporting Council). Although the framework is voluntary in terms of its application and may help companies to take into consideration the main consequences of their actions, the companies pointed out that its application or a voluntary reference to this framework, would entail **obligations**, some of which are **excessive**. The application of certain key elements of the integrated information framework (measurement of assets and the creation of value, information connectivity) entails **major conceptual difficulties** and would result in disproportionate costs for companies, without a guarantee that the information published would be relevant and reliable.

AFEP regrets that French (and European) companies still do not have an international **fair level playing field** which would enable them to compete on a sound basis with those companies that are less concerned with complying with international CSR norms, and which would make it more difficult for products manufactured in a manner that does not comply with these international standards to be sold on the European market.

4. Outlook for 2015

AFEP will work to constructively support parliamentary debates on proposed legislation relating to duty of care

obligations for parent companies and the companies placing orders, by emphasising that the companies are in favour of transparency in relation to “due diligence”, which they implement in accordance with the OECD and UN guidelines. AFEP will continue dialogue with the national contact point in order to promote the contribution it makes to resolving potential difficulties in companies’ respect of OECD guidelines.

AFEP will also make suggestions regarding the **transposition of the European Directive on disclosure of non-financial information into French law**, most likely in relation to the bill on transparency in economic matters announced by the Minister for the Economy, and will continue to actively participate in the CSR platform where this issue will also be debated.

In addition AFEP will contribute to the drafting of **guidelines for the prevention of corruption in commercial transactions for French companies** proposed by the ‘Service Central de Prévention de la Corruption’ (SCPC - Central Corruption Prevention Department). This training and support approach is welcome. It is nonetheless important to ensure that the concepts used are sufficiently defined and that the recommendations can be adapted to the size or activity of the company.

Finally, to improve the extent to which **CSR is taken into account in international commerce**, AFEP intends to emphasise its point of view regarding CSR at the Multi-Stakeholder Forum, set up by the European Commission, as well as in its contact with the OECD.

Due diligence measures implemented by large companies

In order to prevent and manage the social, societal and environmental risks of their activities, large companies both in France and overseas implement numerous processes which they explain in their management reports or specific reports. Non-financial rating agencies evaluate these efforts and practices.

■ Social, environmental and ethical codes of conduct and charters:

- approved at the highest level of the business;
- disseminated and applicable to all employees;
- publicly accessible;
- accompanied by procedures to evaluate local practices and anonymous ethical alert measures.

■ Contractualisation of CSR ethical and compliance efforts:

- responsible purchasing policy;
- supply chain management policy;
- code of conduct for suppliers and sub-contractors;
- obligations for leading suppliers or sub-contractors to comply with social and environmental requirements of the group;
- communication of these requirements to second or third tier suppliers;
- prohibition of sub-contracting without prior authorisation.

■ Risk identification and evaluation:

- supply chain management mapping;
- identification of suppliers and sub-contractors depending on significant risk factors such as: product or service family; country of supplier or sub-contractor; sales or service volume;
- prioritisation of evaluations to be carried out.

■ Evaluation of suppliers and sub-contractors:

- documentary and questionnaire-based audits;
- on-site audits, social and environmental audits;
- selection or granting of tenders in accordance with CSR evaluations.

■ Corrective actions plans:

- awareness-raising and training, with the support of local NGOs, as required;
- monitoring suppliers and sub-contractors in the case of non-compliance;
- requirement to remedy the identified shortcomings;
- break down of contractual relationship in the case of grave violations or refusal to make progress.

Numerous **collective initiatives** have also been set up in order to **pool CSR analyses** carried out amongst suppliers or sub-contractors, with the aim of achieving broader objectives, carrying out **thorough audits** in a more efficient manner and putting in place **corrective measures** (the **Global Social Compliance Programme** for the retail sector, the **Business Social Compliance Initiative** for an ethical supply chain, the **Social Clause Initiative** which brings together 20 companies working to improve working conditions and to monitor suppliers in a responsible manner, the **Joint Audit Cooperation**, bringing together telecommunications operators, and **Together for Sustainability**, launched by chemical groups for a sustainable supply chain).

Afep & Europe

1. Context

2014 was characterised by the renewal of the Parliament, the Commission and the European Council Presidency and changes to the European political structure.

Against a backdrop of growing dissatisfaction with the European Union and the economic crisis, a large number of new MEPs were elected following the elections of 22-25 May. For the first time the “Spitzenkandidaten” (the candidates presented by the major European political parties) campaigned individually to access the post of President of the Commission. Despite this initiative, the participation rate was the lowest ever registered (42.54%). On the one hand, the conservatives of the European People’s Party won the relative majority of the seats, led

by Jean-Claude Juncker, the now President of the European Commission. On the other hand, the populist parties on the right and left won many seats. Nonetheless, a coalition between conservatives, liberals and socialists enabled the college to be approved. Juncker Commission took office as of 1 November 2014.

President Juncker, a supporter of a Europe which is *“more ambitious on big things, and more modest on small things”*, has restructured the Commission around six project teams, each of them led by a vice-president. This new structure also intends to stop the “silo” approach, a method often questioned by economic actors. The vice-presidents are responsible for co-ordinating the Commissioners and filtering the legislative initiatives. Their true political weight is still uncertain and will depend, to a large extent, on their personalities as well as their relationships with the Commissioners of their team. President Juncker also appointed a new First Vice-President, Frans Timmermans. Timmermans is a key figure who manages a broad portfolio including improving European legislation, inter-institutional relations and the rule of law, and is supported by a significantly improved Secretariat-General.

Along with the European Parliament and Commission, the European Council has also been renewed with Donald Tusk, from Poland, taking office as the President of the Institution from 1 December, replacing Herman Van Rompuy.

Following these institutional changes, French influence has decreased both in the European Parliament (the

number of MEPs from populist parties is equal to the number of MEPs from conservative and socialist parties in certain committees which are important for business) and the European Commission (for example, among Commissioners' Heads of Cabinet, four are German and just one is French).

2014 was also characterised by strong pressure from independence movements in Member States, in particular the Scottish referendum in September (which ended in failure for those in favour of independence), the presence of Flemish nationalists in the Belgian Government in October, and the "yes" vote (non-legally binding) on Catalan independence in November.

In order to communicate its priorities for the next five years to the new European Commission and Parliament, AFEP drafted a document entitled **"Help Europe Win the Global Race"** and presented it to European stakeholders (see below).

2. Challenges for companies, achievements and developments

Given the institutional changes, the outgoing Commission used the final months of its mandate to propose its last legislative texts: the 2030 climate and energy package, air quality, business secrets, banking structural reform, shareholder rights and pension funds. In 2014, negotiations were completed under both the Greek Presidency (1st quarter) and the Italian Presidency (2nd quarter) which resulted in important developments corresponding to the expectations of businesses: non-financial reporting,

damages in antitrust cases, packaged retail insurance-based investment products (PRIIPs), state aid reform, and the European Council conclusions on the 2030 climate and energy package.

Throughout 2014 AFEP worked to support the development of a regulatory environment which would encourage business competitiveness. It supported the texts along this line (reform of state aid, protection of trade secrets, managing the list of exposed sectors in the framework of the ETS system) and also worked to amend those texts which could have increased the regulatory burden. These potential burdens relate, in particular, to business financing (tax on financial transactions, banking structural reform), their competitive environment and their relations with their clients and suppliers (consideration of minority shareholdings in the context of merger control, data protection reform), their production and investment activities (2030 Climate and Energy package, introduction of a market stability reserve for CO2 allowances, air quality) or their obligations in terms of corporate governance (shareholder rights).

AFEP developed and improved its links with the new European institutional actors. Many meetings took place, in order to enlarge AFEP's European network and to contribute to informing decision-makers of all political backgrounds and all nationalities of the association's priorities.

3. Outlook for 2015

Early 2015 has been characterised by the Commission's first major initiative: the Juncker plan, which complements

the budgetary responsibility and structural reform objectives to help Europe exit the crisis. The Commission's 2015 **work programme**, while narrower in scope than normal, contains **important initiatives**: the package on the digital single market, the energy union, the capital market union, the strengthening of the economic and monetary union and the fight against tax evasion.

Throughout 2015, key legislative reforms are due to be completed, such as on **data protection**, the **protection of trade secrets**, **air quality** (medium-sized combustion plants), **shareholder rights** and **gender balance** in boards of directors.

The future of the **financial transaction tax** remains uncertain, although the new French position may move negotiations forward. In addition the Commission announced its intention to **withdraw a series of texts** which were not likely to result in an agreement. These texts relate to directives on national emission ceilings (2nd component of the air quality package), waste and energy taxation. The **environmental texts** have led to a tug of war, in particular regarding air quality, contributing to making the Commission's work more difficult. The Commission has committed to pursue its work on a

common consolidated corporate tax base (CCCTB) by launching new approaches which will be presented in a communication in the future.

Moreover, energy and climate issues will be high on the political agenda with two major events; at the European level the revision of the ETS Directive announced before the summer and at the international level the organisation of the COP21 conference to be held in December in Paris with the aim of reaching a binding international agreement on climate change.

Europe will be particularly focused on three Member States where the situation is of concern, in different ways: Greece where elections in late January brought the extreme left to power, the United Kingdom where a win by conservatives or UKIP in the May elections would undoubtedly lead to a referendum on leaving the European Union and France which must urgently address its public finances and carry out structural reforms.

Throughout 2015 AFEP will continue to strengthen its links with the new MEPs and the new Commissioners, in particular through targeted meetings with the Presidents of member businesses.

Help Europe Win the Global Race

To exit the economic crisis, European solutions should entail serious macroeconomic adjustments as well as, more than ever, restoring economic competitiveness. To “**help Europe win the global race**” the European Union should address the following five challenges:

■ **reform and deepen the internal market to support business competitiveness:**

- make the European companies’ competitiveness the guiding principle for future reforms of the internal market;
- build an integrated vision of the fundamental policies of the internal market: fundamental freedoms, competition, intellectual property and the business environment;
- simplify the regulatory environment for companies to promote their development, assess the cumulative effect of the existing legislation and the impact on new measures on competitiveness before creating any new rules and guarantee “zero additional administrative burdens” for businesses;
- introduce a tax framework fostering the competitiveness of European businesses;

■ **integrate the requirements of competitiveness and financing in climate, energy and environment policies:**

- engage work on the “Climate and Energy package for 2030” in a coherent and structured schedule, taking into account the result of international negotiations on climate change in 2015;

- set cost-effective targets for air quality;
- encourage financing of the energy and ecological transition;
- improve governance and transparency for the technological models used by the Commission for the design of public policies (e.g. GAINS, PRIMES);

■ **improve the financing of the economy:**

- allocate resources primarily to productive investment, preserve banking maturity transformation and better organise alternative sources of financing;

■ **facilitate access to third country markets:**

- pursue an aggressive policy for access to third country markets.

■ **modernise European economic governance:**

- encourage Member States to carry out reforms and to comply with the Eurozone rules;
- transform the economic governance of the Eurozone.

The activities of Afep in 2014

Presidents' information meetings

Jacques Attali

President of PlaNet Finance France

Nicole Bricq

Minister for Trade

Harlem Désir

State Secretary in charge of European Affairs

Mario Draghi

President of the European Central Bank

Christian Eckert

State Secretary for the Budget

Laurent Fabius

Minister of Foreign Affairs

Geneviève Fioraso

Minister for Higher Education and Research

Pierre Gattaz

President of MEDEF

Angel Gurría

Secretary General of the OECD

Jean-Pierre Jouyet

Secretary General of the Presidency of the Republic

Bruno Le Maire

Member of Parliament (Eure)

Philippe Martin

Minister for Ecology, Sustainable Development and Energy

Didier Migaud

President of the Court of Audit

Pierre Moscovici

Minister for Economy and Finance

Jean Pisani-Ferry

Chief Commissioner for Strategy and Forecasting

François Rebsamen

Minister for Labour, Employment and Social Dialogue

Ségolène Royal

Minister for Ecology, Sustainable Development and Energy

Michel Sapin

Minister for Finance and Public Accounts

Meetings with public authorities and key economic figures

Amra Balic

Managing Director of BlackRock

Jean-Luc Barçon-Maurin

Head of the Legal Department for Taxation at DGFIP

Zineb Bennani

Head of Governance Research and Engagement at Mirova

Pierre Bollon

Delegate General of the French Asset Management Association (AFG)

Valentine Bonnet

Business Governance and Deontology Manager at AFG

Jean-Louis Bühl

Head of Social Data Simplification and Harmonisation Unit at the Ministry for Social Affairs and Health

Stéphane Eustache

Deputy Head of Unit

Elisabeth Humbert-Bottin

Director General of GIP-MDS

Jean-Nicolas Caprasse

Director of ISS Europe (Institutional Shareholder Services)

Catherine Salmon

Head of Governance Research of ISS Europe

Pierre Ducret

Deputy Director General for Sustainable Development at the Deposits and Consignments Fund and President of CDC Climat

Isabelle Falque-Pierrotin

President of the French Data Protection Authority (CNIL)

Mathias Moulin

Deputy Director of Protection of Rights and Remedies at CNIL

Margot Fröhlinger

Principal Director of Patent Law and Multilateral Affairs at the European Patent Office (EPO)

Laurence Gates

Delegate General of the French Committee for World Skills

Daniel Vatan

Technical Consultant for Apprenticeship and work-linked training at the Ministry for Labour, Employment, Professional Training and Social Dialogue

Jean-Christophe Gracia

Deputy Director for Civil Affairs and Seals in the Ministry of Justice

Cyril Noël

Head of the Public Law Office in the Directorate for Civil Affairs and Seals of the Ministry of Justice

Alain Lacabarats

President of the Social Chamber of the Court of Appeal

Pierre Bailly

Laurence Pecaut-Rivolier

Advisors

Bruno Lasserre

President of the French Competition Authority (ADLC)

Frédéric Versini

Europe Advisor

Cédric Laverie

Manager for Corporate Governance of Amundi

Bénédicte Legrand-Jung**Amadis Delmas**

Directorate General for Labour

Marie Anne Jacquet**Denis Lebayon**

Directorate for Social Security

Jacques Menthonnex

Colonel in charge of Adapted Military Service (SMA)

Pierre Pelouzet

Inter-business Relation Mediator

Jean-François Pilliard

Delegate General of IUMM (union des industries et de métiers de la métallurgie)

Antoine Foucher

Director of Social Relations at MEDEF

Charles Sarrazin

Head of Financial Stability, Accounting and Governance
Office at the Treasury Directorate

Vincent Perrotin

Deputy Head of Office at the Treasury Directorate

Alexandre Saubot

Negotiator of MEDEF for Inter-professional Negotiations
on Social Dialogue

Jean-Dominique Simonpoli

Director General of the Association Dialogues

Olivier Sivieude

Head of Tax Monitoring Office at DGFIP

Bastien Llorca

Sub-director of Tax Monitoring Office

Maylis Souque

Secretary General of the French National Contact Point
(PCN) for the Implementation of the OECD's Guidelines for
Multinational Enterprises

Carla Topino

Associate Vice President, European and Emerging Markets
Policy at Glass Lewis & Co

Boris Vallaud

Head of Cabinet of the Minister for Productive Recovery

Michel de Virville

Master of the Court of Auditors
Hardship Department

Working groups and consultations

Taxation

Taxation update

- Fiscal committees
- Finance bill for 2015
- Finance Amending bill for 2014 (1) and (2)
- Foundations of taxation - Positions and proposals
- Information mission of the National Assembly on the tax credit for competitiveness and employment
- Mission of the Directorate General for taxation on “general headquarters”

Direct taxation

- Financial and hybrid charges - Draft policy
- Research and sub-contracting tax credit - Financial impact and proposals of companies
- Research tax credit - Information leaflet
- Innovation tax credit - Information leaflet
- Comparison of the effects of ending the family contribution versus a CICE increase
- Tax on high income - Draft policy
- Buyback by a company of its own shares - Draft policy
- Application modalities for the measure to increase paid-up capital with due and payable debts - Draft policy
- Deductibility of financial costs linked to slow-moving inventory - Draft policy
- Financial contribution to corporate Value Added Tax and consolidation modalities for turnover - Draft policy

Indirect taxation

- Waste taxation - Recent work of the Committee for Environmental Taxation
- Internal consumption tax (TIC) and energy-intensive facilities - Draft certification

Taxation of savings and financing of the economy by individuals

- Reform of the capital gains of individuals - Draft policy
- Performance actions - Preliminary draft on growth and business
- Holding companies - Preliminary draft policy
- Seconded employees - Difficulties in applying tax exemption to revenue from premiums from work abroad

Relations between taxation authorities and businesses

- “Transfer pricing” declaration - Mock-up and draft policy
- Measures to simplify business procedures - Drafting of proposals
- “Let us hear it once” programme - Simplification measures proposed by the authorities
- Balance statement on corporation tax - Consultation draft
- Accounting record files - Monitoring of the implementation of this new obligation
- Communication between businesses and the taxation authorities - Legal department of the DGFIP and the taxation monitoring department
- Tax on company vehicles - Simplification measure

European and international taxation

- Negotiation of international conventions - Convention difficulties and taxation problems at a local level
- Conference on the current situation and schedule of negotiations and renegotiations for taxation conventions by the DLF
- France/Kuwait Convention - Difficulty in applying Article 10 of the taxation convention on fees
- Non-cooperative dependent and associated territories

Company law, securities law and corporate governance

Company law and corporate governance

- Revision of shareholders' rights Directive
- European Commission consultation on cross-border mergers and divisions
- Choice of governance formula
- Presence of employees on the Boards of Directors
- Update of the Afep-Medef Code application guide
- Multi-annual variable remuneration
- Draft legislation on company law

General meetings

- European harmonisation of general meetings and transactions with securities
- Preparation of 2015 general meetings (double voting rights and increasing the powers of the Board)
- Report on 2014 general meetings
- Meeting to exchange views with proxy advisors and investor representatives

Securities law

- Simplification of company law and securities law
- Consultation with ESMA on implementation measures of the market abuse regulation
- "Florange Act" - Provisions on takeover rules
- Amending the general regulations of the AMF, following the "Florange Act"
- Accumulation of administrative and criminal penalties

Miscellaneous

- Proposal for a law on protection of business secrets
- CPCS consultation on guidelines to prevent corruption

Financial affairs

Finances

- Separation of banking activities

Regulation of financial markets

- ESMA project - Alternative performance measures
- Electronic reporting formats - ESMA consultation

External audit

- Reform of legal audit: compulsory rotation and selection of audit companies
- Application of the European audit reform in France

Information & communication

- Meeting on the preparation of the Afnor guide on mandatory CSR monitoring
- Integrated reporting

Work, employment and social protection

Supplementary pensions schemes (transposition of the European Directive on guaranteeing the rights of retired people)

- Meetings with the Directorate for Social Security
- Meetings with businesses

Young people and businesses

- Implementation and launch of the "Alternance" portal

Draft law on professional training, employment and social democracy

Cost of labour

- Reduction in family contribution/CICE

Economic and social database

- Examination of circular project
- Setting up

Inter-professional negotiation of the quality of social dialogue

- Preparation of Afep proposals
- Promotion of trade union approaches

Sunday work (Draft law on growth and activity)

- Preparation of Afep proposals

Personal account of prevention of hardship

- Recommendations of Michel de Virville
- Setting up

Competition, consumer affairs and intellectual property

Competition

- RDI state aid
- Commission white paper- merger control
- PPL simplification - measures on competition
- Structural injunctions
- Marcon draft bill - Measures on competition

Consumer affairs

- Electronic billing/payment periods
- Payment periods
- Consumption law - future applicable decrees
- Draft decrees on implementing group shares
- Draft law on health (group shares)

Intellectual property

- Trade secrets: Directive proposal
- Data protection
- Unitary patents: Central division in Paris
- Patents and standards

Environment and energy

Environment

- Storage facilities for non-hazardous waste - draft ministerial regulation
- Risk management in classified facilities for environmental protection, subject to authorisation
- Report on greenhouse gas
- Carbon leakage post 2020 - European Commission consultation
- Circular economy: Working groups of Presidents
- Pricing of ETS registers for 2014 - Consultation
- Market Stability Reserve and list of companies exposed to carbon leakage
- Amendment of general requirements applicable to wind turbines
- Financial guarantees: consultation of amending decision
- Bill on biodiversity
- Project certification experimentation
- "Waste" taxation: work of the CFE

- Guidelines on environment and energy state aid
- Modernisation of environment law and areas for simplification
- Preparation of the Sustainable City Institute - Steering Committee
- Preparation of the environmental conference of October 2014 on COP 21
- Release of waste statute - Draft decree
- Climate contribution - Draft application decree
- Fluorinated GHGs - Draft decree
- Draft national environment health plan for 2014 - 2018
- Air quality
- National ecological transition to sustainable development strategy 2014 - 2020

Energy

- Energy audit - Draft decree
- Energy efficiency certificates
- Prospective scenarios for energy, climate and air for 2035 - Participation in information and steering committee
- Energy supply security - Commission draft communication
- Energy transition bill

Corporate social responsibility (CSR)

- Results of CSR reporting questionnaire
- Afnor guide on verifying social and environmental information published by companies
- Draft bill on the duty of care of parent companies and companies placing orders
- Businesses and human rights
- Integrated reporting
- Consultation of the European CSR strategy
- International Standard on responsible purchases
- Preparatory meeting for the November 2014 CSR conference at the French economic, social and environmental council
- Transposition of the Directive on the publication of non-financial information

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