

May 2019

AFEP's 10 Initiatives for an Attractive, Competitive and Sustainable Europe



The European Union enters this year into a new political cycle, with the election of the European Parliament, the new Commission and the President of the European Council. The French Association of Large Companies (Afep), which represents 115 of the largest French companies, is seizing this opportunity to propose 10 priority initiatives for the next five years.

Afep supports European integration, which allowed companies to benefit from the single market, an indispensable engine of their growth. However, companies have also had to face dramatic regulatory inflation over the last decade, both at national and European level. This inflation, while helping to ensure financial stability and better protection for consumers and investors, has also created new barriers to the development of European companies and degraded their competitiveness compared to that of their main competitors from the US and emerging countries.

Companies are calling for a paradigm shift: business regulation should no longer focus solely on stability or the protection of consumers and investors, but must also **become a tool for competitiveness both internally and externally, and live up to current transformations, particularly in terms of climate change.**

This is why we are calling on the European Union to set **three goals** for the next five years:

- Enhance the European territory's attractiveness to encourage and sustain investment and employment in Europe;
- Act in favour of European economic interests beyond the borders of the Union to ensure a level playing field with our major economic partners;
- Provide companies with the conditions for them to invest in low-carbon technologies in Europe to achieve the revolution of climate neutrality by 2050, by integrating all related policies, including environmental and trade policies.

We call on the European institutions to take into account the competitiveness of European companies in the legislation they wish to adopt and to ensure that legislation does not constitute barriers, but tools for competitiveness. This paradigm shift is absolutely necessary for the European Union to remain a global economic power and an engine of global growth, and to create more jobs.

(N.B. : the numbering of the initiatives does not imply a priority order)



ENHANCE THE EUROPEAN TERRITORY'S ATTRACTIVENESS TO ENCOURAGE AND SUSTAIN INVESTMENT AND EMPLOYMENT IN EUROPE

Initiative 1: Ensure More Efficient and Stable Financing of the Real Economy in the Long Term

■ Companies' priorities and constraints should be better integrated into the development of **financial market regulation** in order to make European markets more attractive and thereby **push forward the Capital Markets Union**. It is essential that the effectiveness and relevance of existing and new regulation are no longer evaluated solely on the basis of financial stability and investor protection.

■ It is necessary to **create a long-term investor status**, by developing a regulatory environment that fosters long-term investment. This is essential in order to meet the long-term financing needs for infrastructure and R&D, in particular to address investment challenges for energy transition and the fight against climate change.

■ Seeking to create a supranational employee shareholding system harmonising all the rules, including tax and social rules, would be difficult to achieve. However, Europe must **at least aim to a harmonisation of the rules deemed essential by companies such as discount and matching contributions and encourage mutual recognition mechanisms of existing national regimes**. This would both strengthen the stability of the shareholding that companies need to innovate and invest, and facilitate the participation of employees in the capital of their company on advantageous terms, while developing a sense of belonging to the company regardless of the country in which they are located.

Initiative 2: Ensure That European and Foreign Investments Are Well Protected in the EU

■ The dismantling of bilateral investment treaties between Member States following the Achméa judgement calls for the establishment of **a renewed framework for the protection of intra-EU investments during the next legislature**. A pure and simple referral to the national courts is unsatisfactory as it would lead to increasing duration and costs of the proceedings and to deteriorating the legal protection of investors.

■ There is a need to **rapidly develop a legislative framework or an interstate agreement of substitution at European level, based on arbitration**. This framework should, firstly, grant investors **rights equivalent to those guaranteed under bilateral treaties**, and secondly, establish an **effective and impartial system of dispute resolution**, independent of host states and accessible to all companies. It should thus reaffirm the **right to compensation in the event of direct and indirect expropriation**. Companies want first and foremost that solutions based on **arbitration** continue to be explored. It could be a **European Court of Arbitration or pre-existing arbitral bodies such as the Permanent Court of Arbitration**. Should this kind of solutions not be possible, the option of a **European investment court**, modelled on the Unified Patent Court or a specialised chamber of the Court of First Instance, could be explored.

Initiative 3: Take the Lead to Define the Tax Rules That Will Allow Europe to Be Attractive and Its Companies to Remain Competitive

■ The convergence of tax rules must continue, but **from now on in a perspective of attractiveness of the European territory and of competitiveness of its companies**: the American tax reform must bring about a wake-up call in an international context of increased tax competition.

■ **Work on the Common Consolidated Corporate Tax Base must succeed** to allow European companies to compete as well as their foreign competitors: a common tax system that encourages innovation and investment is essential. **This convergence must also concern the corporate tax rate.**

■ **Europe must act as an international tax legislator**, in the face of the OECD in which Member States are advancing in a disorganised manner.

Initiative 4: Modernise Corporate Reporting by Integrating Competitiveness Issues

■ European companies are facing an **increasingly complex and costly regulatory environment that places them in an unfavourable position** compared to their competitors which are not subject to the same amount of regulatory obligations, particularly in terms of reporting.

■ Europe must **embark on a major exercise to simplify information, reporting and compliance obligations, taking into account technological development**: this is about revising the different texts in a coordinated and coherent way and eliminating the obligations made obsolete by technological evolution. Regulators must also take into account this evolution in their supervisory practices in order to reduce the administrative burden for companies, while identifying and controlling risks.

■ It is necessary **to develop a single non-financial reporting standard under the leadership of the European Union**. The EU must position itself forcefully in the discussions between prescribers and standard setters, involving companies, to defend the European vision and values in this area. **Materiality must remain the guiding principle of non-financial information to avoid constant and endless development of new reporting obligations and injunctions.**

■ Europe must **make the Directive on non-financial reporting applicable to third-country companies**. Third-country competitors, which sometimes disrespect European social and envi-

ronmental standards, should be required to comply with these standards and the same reporting obligations as EU companies, once they operate in the European market and exceed a certain turnover threshold.

Initiative 5: Preserve the Positive Contribution of Companies to Society, Without Replacing the States

■ **Corporate Social Responsibility issues are at the heart of the concerns of Boards of Directors**. However, due to the extreme complexity of the challenges related to globalisation as well as climate change, governments tend to require companies to carry out social and societal missions that they are not able or that they do not want to assume anymore. However, **companies must not be diverted from their primary purpose of generating value and making profit, even if they must integrate their development in a complementary approach by contributing to the collective well-being.**

■ **A Recommendation on companies' long-term value creation** could be drafted to acknowledge this evolution towards the creation of value in the long term whilst considering the interest of all stakeholders of the company. There is no need to consider a European directive or regulation, since most corporate governance codes in Europe already include these principles at the heart of the missions of Boards of Directors. A recommendation to Member States could allow national codes to converge.

2.

ACT IN FAVOUR OF EUROPEAN ECONOMIC INTERESTS BEYOND THE BORDERS OF THE UNION TO ENSURE A LEVEL PLAYING FIELD WITH OUR MAJOR ECONOMIC PARTNERS

Initiative 6: Better Defend European Interests in International Trade Relations

■ The EU needs a **comprehensive trade and economic strategy**, especially with respect to its two main partners, the United States and China, **to reduce the competitiveness gap between these countries and the EU, to maintain a level playing field between EU companies and their US and Chinese competitors, and to ensure a stronger EU influence on world markets.**

■ The EU must **continue its efforts to open up third-country markets** through the negotiation of trade agreements in priority areas for EU companies and the adoption of level-playing-field rules at the multilateral and/or bilateral level, in particular to correct the distorting policies of its main trading partners.

■ The EU trade policy must **equip itself with unilateral tools for gaining/restoring market access**, particularly in the area of public procurement (“IPI” initiative) in the face of barriers such as the “Buy-American Act” or **for guaranteeing respect for intellectual property**, including in the case of **online sales of counterfeit products** on platforms located in third countries.

■ The EU must also be able **to counter the restrictive effects for companies of US and Chinese initiatives vis-à-vis third countries, for example by introducing positive conditionalities in past partnership agreements with these third countries.** The EU must also **safeguard its companies from the effects of extraterritorial legislation adopted by its trading partners.**

■ Finally, the EU needs to further **protect the strategic interests of its economy and companies.** The **swift implementation of the Foreign Direct Investment Screening Regulation** should be a first step towards a more integrated approach to screening at Community level.

Initiative 7: Adapt Merger Control to the Challenges of Globalisation

■ **Merger control must take into account distortions of competition in third countries.** The takeover of European companies by third-country companies should be analysed in particular with regard to the **status of the latter** (state-owned companies) or **aid/subsidies received in their country of origin.** The Commission must first collect specific information. To this end, EU trade agreements with third countries must require transparency of subsidies and state aid.

■ **The Commission’s relevant market analysis must consider not only global competition, but also potential future competition in time horizons consistent with the economic reality (beyond 5 years).** The aim is to build a more dynamic and long-term approach to global competition that takes into account both the well-being of the consumer and the economic reality faced by European companies.

■ **The Commission must support its decisions by taking better account of the impacts in areas other than competition** (competitiveness, employment, international trade, etc.), according to transparent and fair procedures. **Interservice consultation should be strengthened from the notification stage and should not only concern the draft decision; it should fully involve in DG COMP’s investigation the relevant Commission Directorates-General**, in particular DG GROW, DG TRADE, and DG EMPL. To ensure this process, **the Merger Regulation needs to be amended to take into account in the competition analysis the significant positive contributions of mergers to adopted European policies**, similar to the precedent existing in the European texts encouraging IPCEIs.

Initiative 8: Build a European Union Tax Diplomacy to Better Defend European Companies

■ European companies are increasingly confronted with the protectionist tax practices of third countries. Bypassing tax treaties, claiming an increasingly important share of the profit of European companies: the practices of source States are developing to increase the share of tax of European companies on their territory. These protectionist practices are at the expense of companies but also of tax revenues of European countries.

■ The Member States' isolated reactions to these widespread practices are often not very effective. **The European Commission must be able to coordinate a concerted defence of the companies against these practices in order to weigh all its weight to stop them.**



PROVIDE COMPANIES WITH THE CONDITIONS FOR THEM TO INVEST IN LOW-CARBON TECHNOLOGIES IN EUROPE TO ACHIEVE THE REVOLUTION OF CLIMATE NEUTRALITY BY 2050, BY INTEGRATING ALL RELATED POLICIES, INCLUDING ENVIRONMENTAL AND TRADE POLICIES

AFEP supports the Paris Agreement which lays down a political objective of climate neutrality for States. This objective, unprecedented in the history, means that greenhouse gas (GHG) emissions must be cut down to the level of the absorption capacity of natural (forest, biomass) and artificial (removal technologies) sinks.

First of all, the European Union must show its ability to deliver on its climate and energy targets by 2030 (40 % GHG reduction, 32 % of renewable energy, 32.5 % energy efficiency) through the effective transposition of the newly adopted Energy Union package and the implementation of an efficient governance ensuring that national policies are on track.

To reach climate neutrality by 2050, the EU and the Member States must set the right conditions, involving the society as a whole, beyond the economic players and public authorities. These cumulative conditions must rely on an integrated and systemic approach. They include: pursuing the modernisation of the energy system which is still the main source of emissions today; changing society behaviours to tap the potential of emission reductions in transport, building and agriculture; developing circular economy and progress beyond the sole CO₂ criteria. Moreover, the two high-priority conditions are: **passing the low carbon investment “wall”, and removing competition distortions outside the EU**, in particular through international trade agreements.

Initiative 9: Pass the Unprecedented Low-Carbon Investment “Wall”

■ **Company leaders at the highest level should be urgently associated to the European institutions’ and Member States’ work, in order to assess the needs and pave the way for the necessary investments** in the middle and long term, at French and European level, in line with the climate neutrality objective, for instance through regular meetings in a dedicated discussion forum.

■ **The EU funding policy of R&D&I must be adapted to the identified investment needs, while calibrating all European funding programs to match the funding capacity of the main competing regions in the world (USA and China in particular), and promoting a strong ambition for both energy source decarbonisation and energy storage.**

■ Those investments should embed complementary solutions addressing environmental issues, which are more challenging to measure but equally strategic for the balance of our societies. It is therefore fundamental to take into account **company long cycles of investments, enabling them to integrate upstream environmental criteria (eco-design, impacts on water resources, biodiversity, raw materials, workers’ and public health)** and promote dialogue between all concerned players.

Initiative 10: Remove Competition Distortions Outside the EU

■ **A shared diagnosis must be established at EU level to: (i) objectively identify the interactions between international trade flows and GHG emissions (measurement of import and export emissions), and (ii) then understand the conditions under which climate-related disciplines in trade international agreements can be an incentive for third countries to reduce their emissions, especially through investments in low-carbon technologies, while ensuring a level playing field between emitting and competing countries.** The European Commission should be encouraged to launch a study or a communication on this issue.

■ The EU should assess the opportunity to create **an annual barometer of the EU carbon footprint including emissions of EU imports** and of the emission reductions of the planet resulting from the EU exports of low carbon solutions. This would allow to evaluate whether emission reductions within the EU lead to increase the emissions outside the EU. If so, protection measures of the affected sectors should be taken.

TOOLBOX

to Improve the Quality of European legislation

■ Conduct impact assessments on the compromise amendments of the European Parliament

In order to ensure that the European Parliament's reports are prepared on **the basis of transparent, complete and balanced evidence**, an **impact assessment on the compromise amendments** negotiated between the European Parliament's political groups should be mandatory before a vote in the parliamentary committee. These assessments would ensure that **policy makers and stakeholders are aware of the economic, social and environmental effects** of the policies discussed. They would improve European legislation, by informing policy makers of the potential ramifications of their legislative work, improving the transparency and legitimacy of contributions and reflections, and clarifying the texts.

■ Strengthen inter-service consultations

The procedure used within the European Commission to obtain formal advice from other Directorate-Generals when drafting a legislative proposal needs to be strengthened, in order to **make consultations systematic and transparent**. The response period of the normal procedure (from two to three weeks) should be extended, the use of the 48-hour «fast track» procedure limited and clearly justified, and the **feedback and opinions of the consulted services made public**.

■ Make the governance of the techno-economic models used before the impact assessments of the European Commission more transparent

There is a need to **improve the governance and transparency** of the techno-economic models managed by third parties and used by the Commission for the design of public policies and the setting of large quantified targets (e.g. PRIMES from the National Technical University of Athens for energy, GAINS from IIASA for non-CO2 emissions, etc.), by allowing at least **national experts and experts from impacted activities, as well as other stakeholders, to consult and participate in their updating**. **The working process between the Commission and the different parties should be formalised and made public**. In the long run, it would be desirable **to endow the European Commission with its own model**.

About AFEP

Since 1982, Afep brings together large companies operating in France. The Association, based in Paris and Brussels, 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 has around 115 members. More than 8 million people are employed by Afep companies and their annual combined turnover amounts to €2,600 billion.

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 and trade.

Contacts

Jérémie Pélerin - j.pelerin@afep.com

/ +32 2 219 90 20

Justine Richard-Morin – j.richard-morin@afep.com