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Déplacement du Medef, de l'Afep et de France industrie à Stockholm

Préparation de la prochaine présidence suédoise du Conseil de l'Union européenne

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FICHES DE POSITION

Section 1 : Environment/Climate

Introduction: In the context of the energy crisis

Since mid-2021, Europe is facing a strong energy crunch with a huge increase of energy prices on markets. If the initial reason of the surge was the rebound of the economy after two years of Covid, the crunch went stronger with the invasion of Ukraine by Russia. Europe is today facing an unprecedent crisis. The impact of the energy crisis is increasing all over Europe on two sides, the availibilty of energy volumes and the unbearable level of prices both for households and businesses of all sizes.

Regarding volumes, interesting ouputs have been managed by the European Commission such as a better implementation of the storage regulation. More regulation to reduce the risk on low gas supplies (LNG) for 2023 as well as securing storage capacities for winter 2023/2024 will be implementated with the coming Council regulation called « Enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks ».

The proposal was presented to the Energy Council of the 25 october (after validation by European Council on 21/10/22), which welcomed the main principles of the paper.

The new emergency energy measures will deal with better coordination of gas purchases via the common platform, joint tenders agrements and demand aggregation, better booking facilities for storage, and the evolution of the most used market reference (TTF). It should be formally adopted by the new exceptionnal energy council planned on 24/11. Even if the recent EU negociations agenda was strong and intensive, recent emergency measures decided are not expected to have immediate impact on energy prices.

Therefore, Members States also tries to tackle high prices with national measures to reduce economics effects. These national measures have different designs and provide different levels of support to businesses.

In this context, **the French business community is deeply concerned with the fact that the crisis could lead to economic losses and shutdows while the intra-european level playing field would be deteriored.** In addition to the crisis, access to a low carbon and competitive energy remains a key need for French businesses and industries to decarbonise the economy. The announced reform of the electricity market is thus seen as positive signal.

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CARBON BORDER ADJUSTMENT MECHANISM

1. Context and state of play

The CBAM Regulation proposal was presented on 14 July 2021 in the "Fit for 55" package, with the ETS Directive reform embedding the phasing-out of free ETS allowances.

- European Parliament: the ENVI committee is responsible for the file with Mr. Mohammed Chahim (S&D) as rapporteur. Three other commissions are associated: ITRE, INTA, BUDG and two others issued an opinion: AGRI, ECON. The ENVI draft report was published in January. The report was adopted in June.

- Council of the EU: a general approach was presented on 4 March and endorsed by the ECOFIN Council on 15 March.

- Trilogues started in July 2022 and there is still no visibility whether a political agreement is at reach by the end of the Czech Presidency.

2. AFEP - MEDEF - FI position

Main messages on the proposals

AFEP, MEDEF and FI welcome the CBAM legislative proposal, subject to strong improvements. Indeed, the CBAM should be designed in such a way that it could set the right conditions for a level playing field, reduce carbon leakage and help the EU industry to move towards green technologies and solutions, including via the appropriate financial support.

The issue of external and internal competitiveness should be granted an equal footing with the objective of a potentially standing alone additional effort of the EU in reducing its carbon emissions at the scale required to effectively mitigate climate change.

French businesses express concerns on key operational points that could lead the CBAM to have counterproductive impacts on EU industrial competitiveness and EU climate ambitions.

- **Maintain the material scope proposed by the European Commission and approved by the Council**: adding new sectors or indirect emissions at this stage would increase potential competitiveness issues and raise methodological difficulties.

- **Maintain free allowances during the CBAM ramp-up or at least during a longer period until an export dedicated mechanism can be triggered**: the phasing-out of free ETS allowances and compensation for indirect carbon costs should not happen as long as the CBAM has not proved to be working satisfactorily. These mechanisms are essential to protect European industries from carbon leakage. Therefore, free allowances must be maintained at 100% during this ramp-up. If an export dedicated scheme can be established, maintaining free allowances at a 100 % rate should be kept at least during a longer period than proposed by the EC. The solution proposed by the Council is the least worst of all, i.e. maintaining the 10 years, increasing and non-linear intensity.

Establish an export support mechanism: WTO ASCM allows for establishing an export support mechanism as long as it does not exceed the amount of ETS allowances purchased for domestic production staying on the EU market. The support could consist either in the possibility to retain the export part of ETS allowances to be surrendered each year or in a monetary compensation based on CBAM methodology to calculate embedded carbon. As a fallback, the solution adopted

by the European Parliament in plenary (export-targeted allowances being attributed to the 10 % most performing companies) is acceptable for the industry.

A mechanism to resolve the problem of the impact on downstream markets as soon as CBAM comes into force should be envisaged by the co- legislators while ensuring that it is compliant with WTO rules. Indeed, additional costs originating from the phasing-out of free ETS allowances will penalise the downstream sectorsand competitiveness of exports in geographical areas that do not have mechanisms equivalent to the EU ETS. Nonetheless, a "one-size-fits-all" solution is not adapted to all value chains. Two options should be developed : inclusion in Annex 1 (possible for some sectors), financial compensation mechanism (desirable for others)

- **Circumvention risks should be more comprehensively envisaged.** Co-legislators should in particular work on the avoidance of resource shuffling in imposing additional requirements on installation certifications. Extended list adopted by the EP in plenary is a good starting point for discussions in trilogues.

- Ensure **the smooth functioning of the system for measuring, reporting and verifying emissions included in imports:** given the complexity of measuring the carbon content of imported products, the solution of **setting a default value and thus placing the burden of proof on the importer to demonstrate that its performance is better should be supported.** The carbon content of the electricity consumed will also need to be taken into account, in particular, the distribution of the revenue derived from the mechanism. The significant economic turmoil resulting from the COVID 19 sanitary crisis, oil market **fluctuations and its impact on the carbon pricing regulatory framework should be taken into account.**

- Make the best use of the revenues from this mechanism, notably to contribute to **financing the transition for exposed economic players and households**, and offset additional costs incurred, in a manner that ensures WTO compliance, especially with regard to ASCM.

- In light of the above, **and to advance multilateral cooperation on sustainable trade,** a dialogue with third countries should continue and there should be space for cooperation, in particular during the transitional period. **In this regard, the Commission should work towards the creation of a task force/working group at the WTO, in order to determine guiding principles on the methods of calculating embedded emissions in goods and international rules on carbon pricing mechanisms.** Meanwhile, the EU should continue to coordinate bilaterally with major trading partners such as the EU under the Trade and Technology Council and the working group on sustainable steel and aluminum.

<u>Towards a real pilot phase</u>

AFEP, MEDEF and FI are in favour of testing, subject to these conditions, a CBAM. They recommend the set-up of a **real pilot** phase (and not a simple transitional phase as in the legislative proposal), allowing for theadjustment of the system and the correction of its probable weaknesses. This pilot phase must be added to the text and would allow the co-construction of a more robust system. During this phase, free ETS allowances should be maintained.

INDUSTRIAL EMISSIONS DIRECTIVE

1. Context and state of play

The revision of the Industrial Emissions Directive (IED), based on an external assessment and on stakeholder consultations in 2020 and 2021, is part of the review of EU measures in the context of the European Green Deal.

The revision proposal was published on 5 April 2022 and goes hand-in-hand with the revision of the E- PRTR Regulation (European Pollutant Release and Transfer Register). The IED revision was published alongside a revision of the F-gas Regulation which tackles fluorous gases emissions (HFCs) and other substances depleting the ozone layer. The IED proposal modifies 8 areas:

1. **Scope**: extension to the extractive industry, the production of batteries and cattle installations, adding up to 4 % of installations in number.
2. More stringent requirements for the setting up of **Emissions Limits Values (ELVs)**: member states will have to ensure that those ELVs may reach the highest standards among the Best Available Techniques (BATs);.
3. Environmental performance limit values (other than emission limit values) become binding
4. Installations will have to set up **transformation plans by 2030** (2034 for cattle installations) in order to comply with the ambition of the Green Deal concerning pollution, circular economy and net- zero greenhouse gases emissions by 2050; those plans will have to be integrated into the Environmental Management System of each installation.
5. **Energy efficiency**: a minimal level of energy efficiency will have to be reached given the new technologies available as a result of the deletion of paragraph 2 of current Article 9 of the IED ; provisions on energy audits and evolution adopted under the revision of the Energy Efficiency Directive will be integrated into the Environment Management System (EMS) of IED installations to ensure that recommendations of the energy audits are implemented. Where installations are subject to the EMS and have implemented those recommendations, the member states should not impose energy efficiency requirements.
6. **Public information is widened**: EPRTR will be revised in order to gather more environmental information (e.g. on energy efficiency and on the content of the permits) by installation, type of emission and location.
7. **NGOs will have more possibilities to interact** with the public authority in the process of granting a permit to an operator.
8. Finally, **research on more environmentally efficient technologies will be boosted** via the new “Incite” centre for innovation created by the Commission: it will enable to assess new processes and technologies; operators will be granted up to 2 years (instead of 9 months) to test emerging technologies, and up to 6 years (instead of 4 years) to implement them.

In the European Parliament, the ENVI Committee is in charge of the file. Radan Kanev (EPP, Bulgaria) was appointed as rapporteur. The rapporteur's draft report has been published on 14th November 2022. The vote in the ENVI committee is planned for April 2023 and the vote in plenary in May 2023.
In the Council, discussions have started within the working party on the environment.

2. AFEP - MEDEF - FI position

AFEP-MEDEF-FI highlight that the IED already provides an **efficient legislative framework.** It has proven to be effective in reducing industrial emissions of pollutants through a technical and participatory process involving the industry and other stakeholders. We ask for a **limited revision** that reinforces harmonisation through the member states and maintains consistency with other regulations.

We are satisfied that the **current system for drawing up BREFs (the Sevilla process) is maintained in the Revision**: the presence of, amongst others, industrial experts is an essential condition for the effectiveness and efficiency of this Directive. This system makes it possible, in particular, to adapt to changes in the light of the technical and economic considerations within each industrial sector at stake.

We **strongly support the proposal of the Commission to maintain Article 9.1 of the IED as it already stands now**, thus avoiding overlaps between the ETS Directive and the IED: no Emissions Limit Values (ELVs) for CO2 must be set for installations falling in the scope of the ETS. Indeed, ETS must remain the only relevant tool to drive greenhouse gases emissions reductions based on the operator's decision and taking into account the cost/efficiency ratios.

We also support the proposal to **boost research on more environmentally efficient techniques** via the new "Incite" centre for innovation created by the Commission and the use of **extended delays to test environmental emerging techniques**.

However, AFEP-MEDEF-FI consider the **following issues should be addressed:**

- **The extension to new sectors should be carefully analysed**, with a cost-benefit analysis considering *i.a.* the measures and political frameworks in place to address them.

- The IED mechanism can already be used to contribute to the objectives of circular economy and energy efficiency. **A clarification is necessary on the way to promoting circular economy** as this goal often depends on cooperation at value-chain level. **For energy efficiency**, companies highlight the fact that **only feasible energy audit recommendations should be implemented.**

- The new Article 27d mandates the operator to include in its environmental management system (EMS) a **transformation plan** containing information on how the installation will transform itself in order to contribute to the emergence of a sustainable, clean, circular and climate-neutral economy by 2050. We remind that **GHG reductions and circular economy are already dealt by other specific EU Regulations and consider that overly detailed precisions mentioned in Article 14a on the EMS would create an excessive reporting burden for operators and would create more delays in the authorization process**

- We think it is key to preserve a level of flexibility to set ELVs in the permits consistent with BAT-AELs. The ELVs shall be based on an assessment by the operator of the whole BAT-AEL range and not only the lowest end analysing the feasibility of meeting the lowest possible emission limit that an installation can achieve under normal operating conditions. A cost-effectiveness approach under current BAT-AELs ranges should continue and **it is key that the request in the new Art 15.3 to set permit ELVs at the strictest level of the BAT-AELS range for any installation ('default option') be reformulated as suggested above.** Indeed, each installation cannot perform at the best possible levels for each and every environmental aspect (from process optimization point of view and cross media considerations). It is the responsibility of the competent authorities to define the emissions which can be authorized based on BAT conclusions without applying 'one size fits all" formula. Each industrial installation has its own technical and applicability restrictions regarding the best available technique at stake as the specific local risks to be dealt with.

- **Environmental performance limit values** (other than emission limit values) should be guiding and remain non-binding. We believe that **the setting of binding environmental performance limit values should be left at the discretion of the member states**, once a careful assessment has demonstrated that this requirement will not lead to inconsistencies across permit conditions set elsewhere.

- The **scope of the report released in 2028** and seeking synergies between **IED and ETS**, should be clarified.

- We recall that the **general principle of informing the broader public** and the dissemination of useful information must neither threaten safety issues nor undermine the protection against unfair competition and malicious acts.

- The Commission aims to better implement and enforce rules through penalties and damage redress systems and the directive sets objectives to be achieved by the Member States to allow compensation. It must be reminded that the definition of the means to be implemented is the responsibility of the Member States and concerns in particular the legal regime for compensation for damage. However, the elements presented by the Commission in its explanatory memorandum do not justify that such a right to compensation would be lacking in the various Member States. We consider there is therefore no reason to set up such a special scheme at European level.

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REVISION OF THE EU EMISSIONS TRADING SCHEME (EU ETS) DIRECTIVE

1. Context and state of play

The European Green Deal (December 2019) defined the fight against climate change as a key challenge for the EU. The 2030 Climate Target Plan (September 2020) proposed to reinforce the 2030 greenhouse gases reduction target to 55% by 2030 compared to 1990 instead of 40 % and to reach climate neutrality by 2050 in the EU. The Regulation called "Climate Law", adopted in June 2021, confirmed this objective.

In order to align the legislation of the EU with this new ambition, the European Commission published on 14 July 2021 the "Fit for 55" package including **the revision of the EU Emissions Trading Scheme (EU ETS) Directive, and the revision of the Market Stability Reserve Regulation.** The package contains other legislative revision proposals among which the Effort-Sharing Regulation, the Directive on Energy Efficiency and the Directive on Renewable Energy, the Land Use, Land Use Change and Forestry Regulation, the CO2 standards on cars, as well as a new Regulation on a Carbon Border Adjustment Mechanism (CBAM - see the dedicated position).

The co-decision process began after the publication of the package. **At the European Parliament level**, the ENVI committee was responsible for the revision of the EU ETS with Mr Peter Liese (EPP) as rapporteur. **At the Council level**, the ETS and the MSR were dealt with by the Environment working party, reporting to the Environment Council.

The European Parliament failed to adopt the revision in its 8 June plenary session but finally succeeded to adopt the revision of the EU ETS in the plenary session on 22 June. Positive positions have been adopted on ETS : to maintain indirect costs compensations for electro-intensive companies, better reward installations at benchmark level, and monitor more efficiently the carbon market. A positive evolution has been adopted for CBAM provision included in the ETS to set a mechanism to avoid distortions for exporting activities located in the EU and in the scope of CBAM. However, the Parliament tightened the ETS CO_2 ceiling, introduced conditionalities on top of benchmarks to get free allowances, set up a very fast pace for the reduction of free allowances of CBAM activities, enlarged the scope of the CBAM and restricted the access to allowances for financial operators.

The European Council reached a common position on 28-29 June. Positive results are : a more progressive pace for the reduction of free allowances for CBAM activities, the suppression of any conditionality apart from benchmarks in the free allowances process for ETS installations, the implementation of a very responsive mechanism in case of excessive carbon price fluctuation, and the free access to allowances for financial operators in order to ensure the liquidity of the market. However, the Council did not propose any solutions for exporting activities located in the EU under CBAM

A first formal trialogue was organised in July and was followed by various technical trialogues. The second political trialogue was organised on 10th October and was not considered as successful. A consensus is still hoped before the end of 2022 but the probability of an extension of trialogues under the Swedish Presidency is no longer excluded.

2. AFEP - MEDEF - FI position

Our position in the context of the trialogue are the following:

- **On subjects dealt jointly by the ETS and CBAM legislative proposals**
  - Free allowances : we favour the Council position for the free allowances reduction pace applied to activities under CBAM (0% free allowances in 2035).
  - Exports : we support the European Parliament position which maintains 100% free allowances for export activities provided this measure is compatible with WTO rules.
  - Indirect emissions and indirect costs compensation : we favour the positions of the European Commission and of the Coundil which excludes indirect emissions from the CBAM at this stage, and which maintains indirect costs compensations for electro-intensive ETS operators.

- **On the ETS proposal**
  - Conditionality of allowances : we support the position of the Council which suppresses conditionalities on top of benchmarks for the delivery of free allowances.
  - Global ambition : we favour the the position of the European Commission and the Council setting up a reduction of 61% between 2005 and 2030 for the ETS sector.
  - Cross sectorial correction factor (CSCF) : we support the proposition of the Parliament to exclude installations at benchmark level from the application of CSCF in case it is triggered.
  - Restriction to access of allowances: we oppose the proposition of the Parliament to prevent access to allowances for financial operators as they contribute positively to the liquidity of the market.
  - Excessive price fluctuations of allowances : we favour the position of the Council which defines a significant level of free allowances to be transferred from the Market Stability Reserve (MSR)
  - Innovation Fund : we support jointly the propositions of the European Parliament to feed the Innovation Fund by 1 Bn allowances and the proposition of the Council to feed it by 750 million allowances with a smaller reduction of allowances from the ETS to be allocated to operators.

REVISION OF THE RENEWABLE ENERGY DIRECTIVE

1. Context and state of play

The revision of the Renewable Energy Directive (RED) is included in the "Fit for 55" package published on 14 July 2021, in order to align the legislation of the EU with its new 2030 and 2050 ambition. The revision introduces a new objective of 40% for renewable energy use in the EU energy mix and reinforced sustainability criteria for bioenergy use.

Council: The General Approach was adopted on 27 June 2022. The main features of the General Approach are the following:

- set up an objective of 40 % of renewable energy in the final energy consumption by 2030;
- establish sectoral flexibilities:
  - for transport: possibility to let Member States choose between an intensity target of at least 13% of renewable energy by 2030 or at least 29% of renewable energy in the final energy consumption for transport; a specific objective can be defined for the maritime transport ; advanced biofuels and biogas objectives are doubled for 2030 (4.4 % in 2030 against 2.2%) ; renewable hydrogen and associated synthesis gases objectives become optional at a rate of 2.6%
  - for industry: the share of renewable energy becomes optional with a rise of 1.1 point between 2021 and 2025 then 2026 and 2030; the share of renewable hydrogen to be used by the sector by 2030 was lowered from 45% to 35%. This share would rise to 50% by 2030.
  - For buildings: the indicative target is set by 2030 at 49% of renewable energy in the final energy consumption

European Parliament: The Plenary voted the report on 14 September 2022. The main characteristics are:

- No change compared to vote of the ITRE report on the global target which is set up at 45 % of renewable energy compared to the consumption of final energy, and to the sub-targets for industry, transport, buildings and heating;
- New amendments on biomass to distinguish primary biomass coming from trees and the use restriction of this type of biomass;
- Introduction of new additionality criteria for renewable hydrogen inside the Directive instead of setting them in a delegated Act.

It must be recalled that in the RepowerEU Plan adopted by the European Commission on 18 May 2022, the EU renewable energy target suggested for 2030 was set up at 45% of the final consumption of energy instead of 40%. A proposal for a Directive modifying the REDII Directive was also adopted the same day to integrate the changes presented in the Plan. On 14 october 2022, while reacting on the new legislative proposal of the RepowerEU Plan modifying the revision of the RED, the Czech Presidency proposed to Member States to maintain the 40% target, thus sticking to the June compromise. The Czech Presidency also proposes new flexibilities for Member States in terms of deadlines for the acceleration of renewable energies permitting.

2. AFEP - MEDEF - FI position

We welcome the new objective of 40% renewable energy consumption by 2030 as renewable energies are part of the solutions that must be implemented to meet the new EU objective of -55% greenhouse gases by 2030 (in comparison to 1990). It should especially promote investments in corporate power purchase agreements which will be key.

However, the introduction of objectives at sectoral level introduces a significant level of complexity. Clarifications should be introduced on the following topics:

- The principles of competitiveness of European companies and of technological neutrality given their climate performance should be recalled.
- The definition of « low carbon » should be more detailed especially when it comes to the use of “low carbon hydrogen”; an explanation should be given in order to better integrate “low carbon solutions” in the “Fit for 55” package as well as in the « gas package » and their interaction with the revision of the RED. More specifically, requirements for industry to use “green hydrogen” should better integrate the opportunity for industries to also use “low carbon hydrogen” given its likely better affordability in the transition phase. They should also be conditional to sufficient availability and access to competitive "green hydrogen" supply. The generic use of “clean hydrogen” to supply industry might be a good balance.
- Annex IX on usable feedstock should be enlarged to all sustainable waste and residues in order to reach the ambitious objectives of the transport sector.
- Biogas and biomethane solutions should be more incentivised, as well as carbon capture and storage/use.
- The numerous requirements on the additionality rules for renewable hydrogen seem excessive and might prevent its rise. They will incur very high conformity costs and lead to too high selling prices for this energy.
- The guarantees of origin are a positive tool, but the system should be harmonised and centralised.
- The Revision of the RED is also a good occasion to foster Power Purchase Agreements (PPAs) through the identification by member states of solutions to reduce financial risks for industrial operators (e.g.: via credit guarantees).

Section 2 : Finance

IMPLEMENTATION OF BASEL IV INTO EU LEGISLATION

1. Context and state of play

The Basel Committee's oversight body, the Group of Central Bank Governors and Heads of Supervision, endorsed on 7 December 2017 the outstanding post-crisis regulatory reforms. These reforms, known as the final elements of the Basel III framework or Basel IV, aim to promote a global standard method that no longer analyses risks on a customer-by-customer basis, but instead sets requirements according to globally observed averages.
On 27 October 2021, the Commission adopted a review of EU banking rules that aims to transpose the final elements of the Basel III framework into EU law. This "Banking Package" includes proposals for amending the Capital Requirements Regulation and the Capital Requirements Directive. The EU Parliament's Committee on Economic and Monetary Affairs (ECON) appointed Jonás Fernández (S&D, Spain) as a rapporteur for these legislative proposals. The vote in the Committee is scheduled for 4th December 2022 but could be postponed.

2. AFEP - MEDEF - FI position

We recognise the Commission's efforts to take EU specificities into account. We also emphasise the importance of the Infrastructure Supporting Factor to reduce the cost of lending for certain infrastructure projects and the SME Supporting Factor for the financing of small and medium-sized companies. However, the Commission's proposal is not yet in line with the mandate given to the Basel Committee to finalise the Basel III framework without significantly increasing overall capital requirements across the banking sector. In its *Report on the first mandatory exercise on Basel III full implementation impact*, the European Banking Authority estimates that, despite the Commission's propositions to take into account the specificities of the EU's banking sector, tier-1 minimum capital requirements (MRC) will increase by 10.7 % by 2033 – they will increase by 20 % for systemically-important institutions which include the four main banking groups in France. In fact, we are concerned that some of the propositions might have an adverse impact on the real economy.

First, the output floor penalises banks' assessment of risks. The agreement introduces a link between the standard method to calculate banks' risk-weighted assets (RWA, used to determine their capital requirements) and internal models that banks can use instead. The idea is to define a floor (the "output floor") preventing internal models from diverging too much from the standardised approach. The higher the floor, the greater the constraint on the banks using their internal models. The agreement reached on 7 December 2017 sets the floor at 72.5%, which will force banks to increase their capital levels with no basis on the actual level of risks, thus limiting their ability to fund the economy.

What's more, the lack of risk sensitivity of the revised Basel standards will lead to unintended consequences for some banking activities:

Unrated corporates – The Basel III standardised approach to measuring credit risk is particularly severe with unrated companies. The adjustments proposed in this regard are therefore very welcome. As is the case in the US, a 65% risk-weight for loans to unrated but listed corporates is granted, as long as the probability of default is below 0.5%. However, these adjustments are

proposed on a temporary basis until the end of 2032. These provisions should be made permanent.

Real estate lending – The Basel standardised approach has been built for the US model (in which banks mainly retain high-risk residential mortgages), so it is not suited for the European model (in which banks mostly detain low-risk residential mortgages). The output floor could therefore have a big impact on European banks' capital requirements. To reduce capital requirements for these low-risk exposures, the Commission has provided for transitional arrangements. For instance, banks would be able to apply a lower risk weight to the part of their residential mortgage exposures that is considered secured. However, these arrangements would only last until 2032. We think that these should be made permanent.

Hedging activities – Both large and small companies depend on banks for hedging their financial risks and specifically currency risk. Therefore, maintaining risk sensitivity for hedging instruments is of the utmost importance, and we welcome the Commission's decision to maintain the current CVA exemptions within the European framework for corporate hedging products. However, the EBA is asked to review the framework for excessive exposure and banks will have to calculate capital requirements on exempted exposures. In the end, the European Supervisory authorities might impose additional requirements on banks, which could be detrimental to companies hedging their risks. This is a point of attention.

Counterparty Credit Risks – The revision of the Standardised Approach for calculating Counterparty Credit Risk (SA-CCR) is welcome. Aligning with the US, this revision removes the 1,4-alpha factor for commercial end-users – the alpha factor artificially boosts the calculation of the RWA and therefore increases capital requirements. However, this provision is once again proposed on a temporary basis (until the end of 2029). To durably maintain the level playing field, the revision should be made permanent.

Specialised Lending – Banks in Europe play a key role in financing infrastructures or specific projects like planes. The European Commission made some proposals to reduce the adverse impact of the revised Basel III framework on capital requirements, but those proposals are not very concrete and the EBA is asked to go into further details and provide some suggestions. We welcome the European Commission's awareness of this issue, but we need concrete provisions in order to adjust the capital requirements permanently as soon as the Regulation entry of application. In particular, object and project finance are essential to address the needs in terms of investments to achieve the Green Deal objective. We call on the co-legislators to maintain a suitable regulatory framework for both object and project finance, in line with historic risk profiles, enabling to attract the financing needed to achieve climate neutrality.

Trade finance – The Commission plans an increase from 20% to 50% in Credit Conversion Factors (CCFs). CCFs are used to determine the amount of a bank's off-balance sheet exposure to be risk-weighted. This would notably increase capital requirements for technical guarantees, a traditional trade finance product widely used in the real economy. We think that this increase in CCFs should be scrapped, as it would have a strong impact on banks' practices in the trade finance business, either by increasing the pricing or by reducing exposure to those products. We urge the authorities to confirm that banks using a specific risk model (F-IRB) will be able to apply the effective residual maturity to trade finance instruments when calculating their risk-weighted assets, instead of a 2.5-year maturity.

Export finance – The CRR II requires banks to provision their guaranteed non-performing loans after eight years if the loan is covered by an official Export Credit Agency guarantee or after four years if the loan is covered by a private credit insurer. As banks cannot expect any loss on these guaranteed loans, we think that this provisioning requirement should be lifted.

Strategic equity holdings – The Commission proposes a favourable treatment for strategic equity holdings, but this would not apply to all banking groups. We think that it should be extended to all categories of banks whatever their prudential treatment.

Furthermore, amendments have been tabled in the European Parliament in order to **introduce a so-called "brown penalizing factor"** on the financing of activities associated with fossil fuels. We do **not support said amendments which could be detrimental to the transition of the EU economy**:

- A number of EU legislations (adopted or pending) already **contain stringent requirements to meet climate ambitions** (EU Climate Law) **or obligations on corporates** (Taxonomy Regulation, CSRD, CSDDD). T**here should not be additional layers of complexity** in this regard.
  - The Parliament should **not pre-empt the works of the EBA** that have been mandated by the Commission to issue a report by June 2023 to assess if, how and where (under which Pillar) ESG factors should be integrated.
  - **Credit rating agencies integrate ESG factors in their methodologies** when determining the credit rating of corporates, which affects the risk-weighting of bank exposures to these corporates.
  - The punitive capital charge envisaged will **penalize banks willing to invest in the energy transition and in companies wishing to move away from fossil fuels**, in a context where new investments are needed in particular to reduce dependency on Russian energy.
  - **Costs of financing will increase for corporates and therefore for their customers** (e.g. higher energy prices).

Overall, it is essential to avoid that measures taken for supervisory purposes to increase comparability between banks at the global level lead to a weakening of European banks. European companies must be able to rely on strong and competitive European banks. This is a matter of European sovereignty, especially since the recent financial crises have highlighted the fact that, in the event of a crisis, priority is given by banks to the financing of national companies. For the very same reason, increased requirements for EU banks should be ruled out and the application of the output floor should be restricted to the highest level of consolidation for each banking group as assumed by the Basel framework. We are grateful to the European Commission for its willingness to take into account the funding structure of the European economy. However, we encourage the European Commission to go to the end of this process. As representatives of French companies, we should be able to count on long-term visibility and rely on the possibility of long-term financing.

CAPITAL MARKETS UNION

1. Context and state of play

Given the scale of the investments needed (ecological transition, digital transition, knowledge economy, infrastructures of all kinds), financing European companies is one of the major challenges for the EU to remain an economic power that can compete with the US and China. The EU should therefore question its capacity to finance its economy in the best possible conditions in the future and help European companies to recover as quickly as possible from the dramatic consequences of the COVID-19 pandemic.

The Commission released in September 2020 a plan to achieve "A Capital Markets Union for people and businesses". This plan sets out a list of measures to make decisive progress toward completing the CMU. A new CMU package was presented in November 2021, including several proposals (the European Single Access Point and the reviews of MiFIR, AIFMD and of the ELTIF regulatory framework). The Commission is expected to put forward on December 7th 2022 a proposal to enhance the attractiveness of EU capital markets (the Listing Act).

2. AFEP - MEDEF - FI position

The creation of a CMU should enable substantial European savings to be directed towards investment – particularly long-term – and to companies of all sizes, with special attention to smaller ones. The priority should be now to create a competitive European environment considering, in particular, the impacts of the COVID pandemic. In this regard, companies support the actions put forward by the Commission but would like to draw particular attention to several points:

- **A strategy should be designed regarding the increased competition in the field of financial services** from the US and China (and perhaps soon India) and from new very powerful players (GAFA's, BATX…) which are not subject to the same rules as financial institutions.
- **Enhancing and ensuring the competitiveness of European markets should be a priority.** Competitiveness should be a key element when assessing whether existing legislation is fit for purpose and when elaborating new rules. This is all the more important given that, following Brexit, the UK is amending its financial markets legislation to gain a competitive edge. In particular, the ESAs' mandate should include considerations as regards competitiveness.
- Companies acknowledge that truly integrated and convergent supervision is needed to ensure a genuine level-playing field for all market players. Therefore, **the priority for the European Supervisory Authorities (ESAs) should be to focus on convergence.** Empowering the ESAs with direct supervision powers should be carefully assessed and envisaged only for activities and/or entities with significant cross border impacts.

In addition, **concrete actions** are needed in the following priority areas:

- **Simplifying listing rules and reducing subsequent reporting requirements to attract companies to the markets.** Multiplication of reporting requirements leads to inconsistencies and is a source of costs for companies, confusion for their recipients, and disparities between Europe and the other regional blocs. In this regard, we support the implementation of the "One in, One out" principle announced by the Commission in its 2022 Work Programme. The impact of MIFID II on research activities should also be addressed to offer SMEs better coverage by analysts. Sponsored research (research totally or partially compensated by the issuer) should be recognised as investment research as long as it is carried out according to the MiFID II and MAR rules. The Listing Act is the opportunity to improve the attractiveness of EU capital markets and companies have high expectations in this regard.

- **Promoting market liquidity and allowing pan-European banking groups to manage their capital and liquidity allocations between their various European subsidiaries.** European operators must also be able to negotiate freely with non-European counterparties without undue constraints for the latter. Without access to liquidity, European financial actors will be disqualified, as companieswill seek out counterparties offering the best price wherever they are.

- **Reviewing prudential requirements for institutional investors and constraints on the marketing of and advising on financial products.** Banks and insurance companies have a major role to play as investors and in ensuring market liquidity. Therefore, prudential and regulatory requirements (notably market Regulations such as MiFID-MiFIR) should be reassessed and a long-term strategy preserving the financing capacities of EU banks should be established and supported in front of the Basel Committee. Furthermore, there are too many regulatory obstacles to the development of securitisation and the issuance of securitisation is decreasing in the EU since 2019. Reviving the securitisation market is necessary to finance the economy. It must also be noted that the constraints on the marketing of financial products (MIF II, PRIIPS, DDA, etc.) have a counterproductive effect as they discourage investment.

- **Closing the gap for long-term investment needs.** European Pension Funds should be developed toprovide a stable financing source for long-term investments – and therefore favour the issuance of long-term debt on fixed-income euro markets. The revision of the ELTIF label should as well be encouraged as it is a vector of long-term financing, especially for SMEs. The re-examination of therules established by Solvency II in the context of the new action plan on CMU should also facilitateinsurers' capacity to finance the economy, especially through long-term investment.

- **Taking back control of EU data.** We believe that the EU should act pre-emptively and create a holistic regulatory framework for data providers to guarantee a level-playing field between EU and non-EU data providers. In that regard, clear requirements for the setting-up and authorisation of data providers are critical to keep EU sovereignty and avoid disruption in the provision of critical market data to EU professional users.

- **Making financial innovation and the financing of innovation growth drivers for the EU.** The development of new types of intermediations and the creation of potential new financing vehicles could foster innovation in the field of finance and provide new funding sources, notably for SMEs. For instance, the development of pan-European platforms bringing together debt issuers, intermediaries and investors on a single platform and managing end-to-end operations with a harmonisation of the documentation required should be encouraged.

- **Amending the General State Aid Exemption Regulation for the financing of innovation**, the criteria of which are unsuitable for long-cycle sectors (biotech, cleantech…). A European Deep Tech Initiative should also be considered to put more resources at the EU level and leverage the national approaches undertaken in that field to compete with the resources dedicated by the US and China. This initiative could also take the form of a European Strategic Fund for breakthrough innovation on the model of the American DARPA (Defence Advanced Research Projects Agency).

- **Removing national barriers to cross-border investments.** The EU needs to establish an appropriate European tax framework more conducive to investment in securities and offering a more favourable tax treatment to long-term investment. Further integration of European capital marketsand the development of capital market financing of the economy is, to a large extent, dependent on the alignment of taxation on savings and capital gains.

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CORPORATE REPORTING AND STATUTORY AUDIT

1. Context and State of play

Following the Wirecard case, the European Commission launched a **public consultation on strengthening the quality of corporate reporting and its enforcement.** The objective of the consultation was to assess the 3 pillars supporting the quality of corporate reporting (corporate governance, audit and supervision of auditors and listed companies) and discuss possible solutions. A proposal might be published during the first half of 2023. In this context, **companies fear a tightening of European regulations** or even the adoption in Europe of a law similar to the so-called "Sarbanes-Oxley" law adopted in the United States following the Enron affair.

2. AFEP-MEDEF-FI Position

- **The Wirecard affair does not call into question European legislations governing corporate reporting:** European legislations defining information obligations of listed companies and the audit of their accounts have been strengthened in recent years. Access to this information will be facilitated with the digitization of information (ESEF) and the establishment of a centralized single access point (ESAP). If the Wirecard affair raises a certain number of questions, it is in relation to the implementation of European texts in Germany, the organization of German supervision (role and powers of the market regulator - BAFIN - and the entity in charge of reviewing public companies' financial statements – the FREP) as well as the regulation of Fintech. It is important to remember in this context that **listed French companies are the only ones in Europe to use the option offered by the European Regulation on prospectus and to publish a universal registration document (URD)** and that **joint audit is mandatory in France for large groups establishing consolidated financial statements.**

- **The role and responsibilities of administrative and supervisory bodies and of audit committees should not be changed:** AFEP, Medef and FI are **not in favour of further strengthening the responsibility of the administrative bodies, supervisory or general management vis-à-vis internal control**, which would result in the publication of a statement on its effectiveness. The obligations of the audit committee have been strengthened since 2008 and the latter is already responsible, under the responsibility of the board, for **monitoring the process of preparing financial information and the effectiveness of internal control and risks management systems.** Strengthening the role of the audit committee would mean **increasing the responsibility of the board and impinging on the role of senior management**, which has primary responsibility for defining and implementing risk management policies. In addition, **neither the audit committee nor the senior management can ensure the effectiveness of the risk management systems** given the very nature of these risks, the changes permanently affecting the company, its environment and its organization (including its procedures and information systems). Requiring such a statement would increase the liability of companies in a disproportionate manner without real benefits: a standardised statement would bring no informative value to stakeholders compared to a description of the internal control systems in place.

- **The missions of the statutory auditor must not be extended:** the statutory audit must remain focused on **identifying risks of material misstatements in financial statements**, which is the central issue; the risk of fraud and the assessment of going concern are already analysed from this perspective and are detailed in the audit and additional reports to the audit committee, where applicable. An extension beyond the prism of action of the auditor consisting in formulating an opinion on the financial statements could be confusing and

increase the liability of auditors and risks for investors and would eventually run counter to the objective to reduce entry barriers on the statutory audit market. Contrary to popular belief, an extension of the auditor's mission would only increase the "expectation gap" vis-à-vis auditors by further blurring the objective of its mission. AFEP, Medef and FI are particularly **opposed to the introduction in Europe of an obligation for the statutory auditor to assess the company's internal control**, which is monitored by the internal functions more frequently, thoroughly and effectively than a statutory auditor can.

Furthermore, with a view to a possible revision of the European directive and regulation on statutory audit, AFEP, Medef and FI wish to insist on the following points**:**

- **European legislations should better integrate the notion of group**: AFEP, Medef and FI would like the **notion of group to be taken more into account in the European Audit Regulation when it is revised**, in particular when the group includes within itself several public interest entities (PIEs) - listed companies, banks and insurance companies. Moreover, when the "parent" PIE organizes a call for tenders, the "daughter" PIE should be able to rely on their parent's call for tenders in order to select their auditor. In fact, entrusting the different audit assignments within the group to the same firm must be facilitated in the first place because it reinforces the quality of the audit thanks to a better knowledge of the whole group and its problems. In addition, the proliferation of calls for tenders is costly and cumbersome to manage, both for firms and companies.

- **The resignation of the auditor should be facilitated in certain cases**: in the event of a takeover of a company, the mandate of the auditor of the acquired company continues until its term according to current regulations. Consequently, the acquiring company cannot impose the appointment of its own auditor or a member of the latter's network before the end of the mandate of the auditor in place whereas such a designation would contribute to the quality and effectiveness of the control exercised by the auditor of the acquiring company. It would therefore be appropriate when a company acquires another company, to consider the acquisition as proper grounds to allow the resignation of the statutory auditors of the acquiree company. It would also be desirable that in the event of a call for tenders and the designation of a new auditor in a parent PIE within a group, the auditors of the subsidiaries whose terms of office have not expired can resign in order to allow better management within the group.

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CORPORATE SUSTAINABILITY DUE DILIGENCE

1. Context and state of play

The Commission published in February 2022 a proposal for a Directive on Corporate Sustainability Due Diligence. The objective is to set out a horizontal framework where companies in the single market have to respect human rights and the environment in their own operations, those of their subsidiaries and those carried out by entities in the value chain with whom the company has an established business relationship, and this by addressing their actual or potential adverse impact. The proposal covers two groups of companies: (i) those with more than 500 employees and a turnover of a minimum of 150 million euros worldwide, and (ii) those who operate in high impact sectors (in line with the OECD work) if they have more than 250 employees and a worldwide turnover of 40 million euros or more. The rules will also apply to third-country companies with similar turnover in the EU to create a level playing field.

The Directive lays down obligations for companies to take appropriate measures to prevent or mitigate actual or potential human rights and environmental impacts. In addition, companies will need to adopt a transition plan to ensure that their business model and strategy are compatible with limiting global warming to 1.5 °C. Companies will also have to take this plan into account when setting directors' variable remuneration if such a variable remuneration is put in place and if it is linked to the company's business strategy, long-term interests and sustainability.

To make sure the obligations are properly fulfilled, the proposal establishes a combination of administrative enforcement and civil liability. The monitoring of compliance will be conducted by national bodies designated by each Member State. Companies will also receive support in their effort to fulfil their obligations from the Member States and the Commission. The liability regime intends to be proportionate in order to take due consideration of company measures to prevent and mitigate adverse impacts.

2. AFEP - MEDEF - FI position

French companies have been engaged for many years in putting CSR and responsible business conduct at the heart of their strategies and operations. They are eager to improve the way companies operate and call for close cooperation between all stakeholders involved to tackle this highly complex and global challenge.

Regarding the debate on the Directive proposal, AFEP-MEDEF-FI formulate the following demands:

1. **The group dimension should be recognised as due diligence policies are usually adopted by the parent company** which ensures their implementation throughout the entire group and often have more resources and leverage to manage identified risks. Therefore, the parent company, whether it meets or not the threshold, should explicitly be able to, on a voluntary basis, perform the obligations set out in the Directive (article 4 to 11) on behalf of their subsidiaries meeting the threshold.

2. **The Directive should be more explicit on the sectors covered** in Article 2.1 (b). We suggest adding an Annex listing the NACE code with 6 digits to allow companies to check whether their activity is covered by the Directive.

3. **The scope of the due diligence should be limited to upstream activities** : In order to keep the scope of CS3D feasible and realistic, downstream activities, such as the use of a product by clients or consumers, should be explicitly excluded from the scope of the directive.

4. The concept of due diligence is highly complex, and **companies alone cannot solve all the problems arising from failing States. States' responsibilities should not be transferred onto EU companies, especially on climate issues** as it is hard to conceive how companies could implement a standard of immediate results ("ensure", "are compatible") regarding a 1.5° C scenario whereas the States Parties to the Paris Agreement themselves fail to align their objectives with 1.5° C.
5. **The directive should provide for the prioritisation of adverse impacts** as per a risk-based approach, taking into account the fact that it is impossible to mitigate every single risk that may occur in supply chains.
6. **The conditions for engaging the civil liability of EU companies should be very carefully defined to avoid legal uncertainty.** EU companies shouldn't be held responsible for harm caused by their business relationships which they cannot fully control, and where many other actors in third countries are involved.
7. The publication and communication of companies' due diligence strategy should respect the **principle of materiality** and be compatible with the **preservation of trade secrets.** Companies referred to in Article 2(1), point (b), and Article 2(2), point (b), should benefit from simplified reporting obligations.
8. **Companies should be entitled to share resources and information within their respective groups of companies** and with other legal entities in compliance with the applicable **competition law.** However, they need clarity on the conditions allowing them to share resources and information while benefiting from a safe harbour. **Guidelines issued by the European Commission are the most appropriate tool to provide the necessary clarifications.**
9. **Companies should be entitled to prioritize the consultations and their actions with regard to stakeholders.** Each company should be able to determine which stakeholders are most relevant to its activities and decide how to best organize the dialogue with them. They can have thousands of stakeholders who are impacted by their activities (directly or indirectly, including in a positive way).
10. **The suspension or termination of the established business relationship should not be automatic** and, in accordance with the OECD Guidelines, should only be decided "as a last resort measure". **Alternative solutions should be envisaged**: EU companies frequently face dilemmas when operating in States in which protective laws either do not exist and/or are not enforced. Case studies could address these situations and provide guidance to EU companies, in full coherence with internationally recognised standards.
11. **Corporate governance provisions should be deleted (article 25 &26).** The subject of director's duty of care is already embedded in national law or national corporate governance codes. Therefore we share the Regulatory Scrutiny Board concerns and does not see either "*why existing sustainability strategies and corporate management practices are considered as insufficient or what in practice companies would have to do to have adequate sustainability governance practices in place".*
12. **Sanctions should be more proportionate**:
    1. The Directive does not take into account measures and sanctions that have already been imposed on companies, including by the country in which the damage occurred or in another Member State. **Articles 17 and 18 should thus be amended.**
    2. Besides, companies that have been sanctioned in relation to the Directive will no longer be able to apply for public aid (article 24). This is a disproportionate double sanction that doesn't consider neither the severity of the negative impact nor the efforts made by the company to prevent and remedy the negative impact. **Moreover, by its automaticity, this sanction does not respect the principle of proportionality of the penalty.** Finally, it could lead to serious consequences for companies which benefit from public aids to avoid bankruptcy or for their climate change transition / decarbonization programs. **We therefore suggest deleting article 24.**
    3. Finally, **sanctions shall consider applicable laws.** For example, companies shall not be sanctioned for violations of human rights which are not forbidden in the country

where they operate (e.g., China forbids unionization and companies in China shall not be sanctioned for not allowing their local employees to create a union). **Article 20 should thus be amended.**

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CORPORATE TAX REFORM : MINIMUM CORPORATE TAXATION AND NEW BASE DISTRIBUTION RULES

1. Context and state of play

At the OECD level

In July 2021, the countries of the OECD/G20 Inclusive Framework signed a declaration in favour of corporate tax reform for multinational enterprises (hereafter "MNEs"). This reform has two components: the introduction of new rules for the distribution of profit sharing among states (pillar 1) and the creation of a minimum corporate tax (pillar 2).

- *Pillar II :*

The OECD has published model rules as well as comments relating to the creation of a minimum corporate tax of 15% for MNEs. The latter is built on a country-by-country tax base -based on the IFRS accounts- and involving newly defined harmonized tax reprocessing. The international organization plans to publish by the end of the year clarifications regarding pending aspects of the reform, such as simplification measures, reporting obligations incumbent on companies and the methods of settling double taxation. The OECD maintains an entry into force in 2023.

- *Pillar I :*

While the measure initially aimed at making the tax burden borne by digital companies more equitable, for which traditional tax determination rules are considered unsuitable, the system finally adopted would concern companies in all sectors. It applies to multinational groups with a consolidated turnover of more than 20 billion euros and profitability of more than 10% (pre-tax profit/turnover). The fraction of the profit exceeding this break-even point and to be reallocated to the states, on the basis of a distribution key linked to turnover, would be between 20% and 30%.

The OECD is continuing its work to propose a multilateral convention to be signed by member-countries by mid-2023. The entry into force has been postponed to 2024.

At the EU level

Pillar 2 :
The proposal for a directive aimed at transposing the global minimum corporate tax into European law has not yet received unanimous support from the Member States.

On September 9, 2022, the French, German, Italian, Dutch and Spanish Ministers of Economy published a declaration aimed at reiterating their commitment to implement the global minimum corporate tax from 2023.

Pillar 1 :
The European Commission plans to transpose the new profit allocation rules into European law as soon as the OECD has finalized its work. In the absence of effective implementation of these rules, the European Commission has raised the possibility of resuming the work of the OECD on its behalf.

2. AFEP - MEDEF – FI Position

AFEP, MEDEF and FI support the principle of implementing fair and efficient taxation within the internal market and recognize the need for a level playing field for companies operating within the

EU while preserving the competitiveness of European companies vis-à-vis their competitors outside the EU.

On minimum corporate taxation (pillar 2):

The main concern of AFEP, MEDEF and FI is to preserve the competitiveness of European companies within the implementation framework. This concern implies that the system should be transposed by all the countries of headquarters of large international companies (including outside the European Union) even though this transposition remains optional under the terms of the OECD agreement. In this regard, the position of the United States remains a major concern since their tax system has not been reformed to implement an equivalent system: the American GILTI system, which was to be modified, remained unchanged following the adoption of the Inflation Reduction Act, the American minimum tax thus remaining calculated on a global basis and not country by country like the rules applicable within the framework of Pillar 2. European companies are concerned about potential breach of equality as a result or even possible sanctions that could be taken by the United States, like what had been implemented during the introduction of European digital taxes, if the European Union were to tax American companies under the alternative mechanism of the Under Tax Payment Rules

The **other four areas of concern** for companies are:

- **Administrative simplification with "safe harbour" measures allowing the application of the minimum corporate tax to be waived:** large European companies have many establishments which can sometimes reach more than a hundred countries in which they may not be undertaxed. To avoid any administrative overload and unnecessary costs, AFEP, Medef and FI support a permanent simplification measure allowing companies to exclude the application of Pillar 2 as soon as their tax rates determined on the basis of tax CBCRs exceed a certain percentage (above 15%).

- **Concerning the reporting obligations incumbent on companies**: the documents published by the OECD provide that each country is intended to receive not only the elements for calculating the minimum tax of its country but also those of the other countries in which the group operates. AFEP, Medef and FI consider that the transmission of all of this data is not justified and could lead to the disclosure of sensitive information to the detriment of European companies. In this context, it is essential that the data relating to the calculation of the minimum tax be centralized by the administration of the headquarter of the parent company, with the tax authority being responsible for transmitting to the countries in which the groups are established only the data concerning the entities in such countries..

- **The resolution of disputes and double taxation has not yet been addressed by the OECD and the EU.** AFEP, Medef and FI would like the methods for resolving disputes and double taxation to be dealt with and integrated into the model rules before the entry into force of Pillar 2. In this respect, an obligation of result should be imposed on the administrations through a binding multilateral process.

- **The inclusion in the scope of the Directive of purely domestic groups** (in order to avoid a challenge on the grounds of non-discrimination towards non-EU players) is difficult to accept for us as this will put a disproportionate burden on the groups concerned (mainly mid-caps): these groups will need to go through the tremendous complexity of Pillar 2 rules while they are unlikely to have a top-up tax to pay at the end of the day. A simplification solution must therefore be sought.

On digital taxation and digital levy:

The complexity of the measure adopted, in particular with regard to the relationship between the tax paid pursuant to domestic rules and the corrective measures necessary to achieve the new distribution envisaged, is particularly worrying in that it could lead companies to make substantial cash advances.

AFEP, MEDEF and FI are calling for the mechanism implemented to be greatly simplified and for the states to organize the collection of the additional tax among themselves. Only this solution could provide sufficient legal certainty to companies and avoid double taxation.

Pillar 1 must be considered as having dealt with the issue of companies in the digital sector since the system is deemed to encompass them. Any other tax must therefore be excluded.

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DEBT-EQUITY BIAS REDUCTION ALLOWANCE (DEBRA)

1. Context and state of play

As announced in its Communication on Business taxation for the 21st century, the European Commission published a proposal on 11 May 2022 to address the debt-equity bias in corporate taxation, via an allowance system for equity financing. The European Commission believes that there is an asymmetry of treatment between the deductibility of financial charges and the treatment of dividends which would create a tax incentive favouring corporate debt and increasing their risk of insolvency. The European Commission's proposed directive includes two separate and independent mechanisms: (i) an allowance on equity (a notional deduction measure), and (ii) a new interest deduction limitation (set at 15% of exceeding borrowing costs).

2. AFEP - MEDEF - FI position

AFEP, MEDEF and FI are supportive of measures that could enhance equity financing for SMEs and mid-caps. However, we believe that the proposed DEBRA Directive may have adverse consequences, in particular in the present challenging economic context. It is likely to severely impact the cost of financing for EU companies in a context of inflation, major economic and geopolitical risks, and rapidly rising interest rates. It may hinder the financing capacity needed in the private sector for energy and green transition that will need to be financed notably by debt.
In the aftermath of the pandemic crisis (which is not yet overcome), and in light of the severe consequences of the war in Ukraine, it is more than ever necessary to safeguard debt financing so as to preserve the crisis management agility and the economic stability of the EU as a whole. **We therefore oppose the proposed DEBRA Directive to the extent that the new interest deduction limitation measure should remain.**
AFEP, MEDEF and FI also do not share the analysis of the services of the European Commission and wish to nuance it as follows:

- **Debt does not meet the same constraints or the same needs as equity financing**

We consider that equity or debt financing meets both **different needs and legal and economic constraints** and that these two modes of financing are in no way substitutable. AFEP, MEDEF and FI insist that tax considerations are only one of the many constraints taken into account in a company's financial strategy. For this reason, we consider justified the differentiated tax treatment of their remuneration and are therefore opposed to any further aggravation of the limitation on the deductibility of financial costs.

The conditions for the deductibility of financial costs have now been standardised worldwide since the adoption of action 4 of the BEPS plan implemented by Article 4 of the Directive 2016/1164 of July 12 2016, laying down rules against tax avoidance practices that directly affect the functioning of the internal market (ATAD Directive). Beyond the fact that a new modification now seems difficult to envisage, any worsening of the global standard would have the effect of harming European investment by increasing the cost of credit.

- **The observation that companies are over-indebted is not correct**

The evolution of the debt of non-financial companies must be nuanced and assessed with regard to the company's strategy. Changes in corporate debt must be assessed net of the cash at their disposal. Along with the increase in their debt, large French companies have also seen their cash flow increase. Given the weak interest rates over this period, it is unlikely that the deductibility of financial costs is the main explanation for the evolution of corporate debt. It is therefore simplistic

to deduce from the evolution of indebtedness that companies are too indebted without taking into account their strategy, for example in terms of investments or external growth. Regarding recent developments, it should first be noted that at the height of the crisis linked to the pandemic, some companies were able to resort to additional financing as a precaution.

The analysis of corporate debt must also take into account the nature of the debt and distinguish bank debt from market debt.

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PAY TRANSPARENCY DIRECTIVE

1. Context and state of play

On 4 March 2021, the European Commission presented a proposal on pay transparency titled **Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms**.

The initiative aims at tackling the persisting inadequate enforcement of the fundamental right to equal pay and ensuring that this right is upheld across the EU, by:

- establishing pay transparency measures
- facilitating access to justice for those experiencing pay discrimination

At the Council, a general approach was reached at the EPSCO Council on 6 December 2021.

At the European Parliament, the joint draft report from the EMPL-FEMM Committee was adopted on 17 March by the committees and on 5 April in the plenary. Trialogues started just before the summer. After three trialogue meetings (30 June, 6 and 27 October), no agreement has been reached: the aligning of positions between the institutions will be difficult to achieve.

2. AFEP - MEDEF - FI position

We **fully agree on the need to reduce the gender pay gap and fight pay discrimination**; paying men and women differently for performing the same work or work of equal value is illegal. AFEP-MEDEF-FI work actively in France to promote equal pay and the feminization of companies.

However, we consider that the Directive would lead to additional costs and administrative burden on businesses without addressing the root causes of the gender pay gap. Indeed, the Directive focuses on obligations of transparency of remuneration while they are not the only tool that will advance equal remuneration for women and men, and more generally for equality between women and men. The situation needs to be assessed objectively, looking at the multifactorial causes of gender inequality and the gender pay gap: it may occur due to many objective factors, including above all gender segregation in labour markets, as well as gender stereotypes, unequal distribution of household and care duties etc…

Most of the transparency measures are problematic as they are very detailed and prescriptive:

They do not leave adequate flexibility to member states to implement it in a way that takes account of the national context and existing measures on pay transparency. French legislation has changed significantly in recent years and France has already adopted some of the most ambitious measures – the *Base de Données Economiques Sociales et Environnementales* or BDESE, collective bargaining and Equality Index - among EU countries, as shown by Eurofound which classified these measures according to their complexity, richness of data, rate of coverage and degree of transparency**.** There is a risk that these obligations overlap with the French equality index provisions - which work well, and which companies have barely "taken in".

This should in particular be taken into account in the Articles where the Directive proposal is too prescriptive on the data that can be communicated to employees and employee representatives of the same entity.

Regarding privacy, additional modifications should be made to the text, as the proposed Directive may constitute an invasion of the protection of privacy even with a limitation of the disclosure of information allowing the identification of an individual worker to worker representatives. The dissemination of personal information to persons belonging to the same entity constitutes an infringement of the right to privacy.

Finally, the Directive does not adequately respect national social partners' competencies, their autonomy and prerogatives on gender equality, and especially gender pay gap: this is problematic as it jeopardizes the role they are already playing at sector and enterprise level.
During the trialogue discussions, the presidency should therefore aim for a final agreement which is as close as possible to the Council's position.

More precisely we are in favour of:

- defining the definition of category of workers in accordance with national law, collective agreements and practices, to take into consideration the transparency measures already in place in several Member States and the processes implemented by the employers. It should laso be sufficiently big so to ensure protection of individual's information
- if worker's representatives or other organizations might be informed or consulted in accordance with national practices, the prerogative should remain with the employer, or at least allow for flexibility to respect national social dialogues and practices.
- leaving to the social partners the definition of the gender-neutral criteria without imposing a list of criteria to be included. More flexibility could be added to these paragraphs ;
- leaving the Member States more leeway to put in place regulatory systems aimed at guaranteeing professional equality between women and men, while respecting the national legislative contexts and the organization of social relations in each State ;
- maintaining the threshold of companies with more than 250 employees when it comes to the reporting obligation (Art. 8) and the joint pay assessment (Art. 9), as stated in the Commission's proposal and in the Council's general approach. If this exception is not included, SMEs will have to bear heavy administrative burden and financial costs, with little effect on reducing pay differences; an alternative could be to introduce a suspension of application of these Articles, inspired by the Directive on improving gender balance among directors of listed companies, where, before the implementation deadline, equally effective requirements and enforcement measures have been already taken in that Member State (see recital 45 and Article 12 of the Directive) ;
- leaving to the Member States the prerogative to regulate the issues of compensation, legal proceedings, legal and judicial costs, and penalties ;
- expand the safeguards provided for by Regulation (EU) 2016/679 to be ensured in relation to the entire Directive, with obligations that do not go against the right to protection of privacy -which must not be called into question. The possibility opened up by the text is an invasion of privacy in that it allows the communication of personal data relating to the remuneration of an individual to employee representatives who may belong to the same company. This moreover goes against the rules in place in some Member States.

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RULES TO PREVENT THE MISUSE OF SHELL ENTITIES FOR TAX PURPOSES

1. Context and state of play

On 22 December 2021, the European Commission presented a proposal for a Directive aimed at preventing the misuse of shell entities for tax purposes.

The proposal plans to identify European companies with no or little substance based on a self-assessment by the company based on three cumulative criteria (collection of at least 75% passive income, cross-border nature of the income and outsourcing of the company's day-to-day operations and decision-making on significant functions). When the company does not meet one of these criteria, it would be required to provide a declaration of substance unless it demonstrates that the existence of the entity does not bring any tax advantage to the group. In the event of insufficient substance, the company would be deprived of the conventional advantages as well as those provided for in the European Directives (reduction/abolition of withholding taxes in particular). The project provides for an application from 1 January 2024.

Work within the Council is continuing in order to find a compromise text between the member states.

2. AFEP - MEDEF - FI position

AFEP, MEDEF and FI continue to consider that the **proposed Directive is superfluous, disproportionate to the objective sought and unsuited to business life.** In addition, the **vagueness of the project exposes companies to strong legal uncertainty.**

- **The notion of substance is a recurring tax issue already apprehended by judges and existing anti-abuse measures.** Action in this area is neither useful nor relevant since case law already incorporates the notion of “economic substance” and assesses it *in concreto*.

With regard to companies, **member states already have significant arsenals of national and European "anti-abuse" measures and receive a great deal of information transmitted by companies that are insufficiently exploited by the tax authorities** (CBCR, beneficial owners, obligations to transmit information through the DAC Directive…). In addition, the introduction of the global minimum corporate tax (Pillar 2) completes this arsenal: the effective corporate tax rate must be at least 15% in each country of establishment. Otherwise, additional tax will have to be paid by the company.

If AFEP, MEDEF and FI share the objective of fighting against fraud and its negative effects on their members, an **impact assessment work should examine the existing anti-abuse rules and demonstrate precisely why they do not grasp the situations referred to by the Commission. An improvement of the existing systems would be timelier than creating yet another Regulation that would weigh on European companies.**

The mechanism is **insufficiently targeted and disproportionate to the objective sought.** It places the entire burden of proof on companies and covers legitimate situations. Structures, although having little or no material resources, may have an economic objective and be set up for a non-tax reason (organization and rationalization of the group, activity of shareholdings management, horizontal integration, legal obligations, etc.). It is therefore essential to include in the **reading grid "the search for a tax objective" which cannot be reduced to a simple tax differential at the level of the group (or even the beneficial owners).**

- **The project is unsuited to the real life of companies**: the criteria to assess the substance and the cases of exceptions provided for in the project do not integrate the practical reality of companies, such as, for example: requiring shareholders to be residents of the same member state as the entity whose substance must be demonstrated in order to benefit from an exception; not taking into consideration the need to pool services within the group (internal subcontracting); or the use of shared premises. It is therefore proposed to **focus the safeguard clause on the economic or legal rationality of the company whose objective is other than fiscal.**

In addition, a solution specific to acquisitions should be introduced: the case of entities without substance "inherited" from major acquisitions must be dealt with. The dismantling of these situations can sometimes be legally complex or even costly. In this case, companies should be excluded from the system as soon as they provide proof that they have taken the necessary steps to dissolve the entity in question from the date on which they became aware of it.

The provisions of the Directive have the potential to disrupt the normal course of business and create barriers to cross-border flows. For instance, there is no time limit set for tax authorities to confirm whether there is substance or not. Businesses may have to wait for months for a tax certificate. A possibility to demonstrate substance upfront (even before the tax return) should be provided.

- **Certain terms of the proposal are imprecise and raise questions as to their scope** (for example, "members staff", the relationship between Articles 7 (*Indicators of minimum substance for tax purposes*) and 9 (*Rebuttal of the presumption*).

The tax consequences of the lack of substance must be specified: the wording of Article 11 (*Tax consequences of not having minimum substance for tax purposes in other than the Member State of the undertaking*) does not seem to be in line with the preamble. In general, the question arises as to what will be the impact of the proposed Directive on the application of tax treaties with third countries.

- The sanction **is disproportionate**: a sanction of 5% of the entity's turnover may far exceed the taxable income. The sanction should vary according to the type of situation (e.g., the sanction cannot be the same for simple mistakes made in good faith versus intentional non-reporting).

The administrative constraints imposed by the European Union in tax matters in less than 5 years have been multiplied and become disproportionate. AFEP, MEDEF and FI would like this proposal for a Directive to be withdrawn and are calling for reforms that support the attractiveness of European territory and the competitiveness of European companies.

SUSTAINABLE FINANCE

1. Context and state of play

A renewed sustainable finance strategy was presented in July 2021 to provide the policy tools to ensure the transition of businesses towards sustainability in a context of recovery from the impact of the COVID- 19 crisis.

The first Taxonomy reporting focused on eligible activities and the two climate objectives has been published in 2022 for the financial year 2021. The Commission will publish during the first quarter of 2023 the complementary Delegated Acts defining the technical screening criteria to assess substantial contribution of economic activities to the four remaining environmental objectives. The Commission is also expected to publish a report on the extension of the taxonomy in the coming months (defining criteria for neutral and harmful activities).

2. AFEP - MEDEF - FI position

Companies agree that a long-term vision contributes to ensuring the sustainability of their activities. In this regard, climate change is one of the major risks companies have to manage. French companies already take into account ESG factors and most of them have adopted climate targets and implemented low-carbon investments as mentioned by the French Business Climate Pledge in addition to the European and national reporting Regulations for greenhouse gas reporting.

- **Finance the transition and focus on environmental issues**

Finance can contribute to helping companies in their transition towards a more sustainable economy. A taxonomy can be a good tool for this purpose, but **it should be dynamic and evolutive**, and take into account the specificities of business sectors**. The priority should be to implement the climate objectives** (mitigation and adaptation to climate change) and the four remaining environmental objectives. The result **of the implementation of those objectives should be analysed before adding new or stricter requirements. Companies** are not in favour of an extension of the Taxonomy to significantly harmful **activities, as it goes against the positive approach stated in the Taxonomy Regulation**. Furthermore, it is also necessary to encourage the mobilization of public funds by strengthening the possibility of state aid and by opening up European funds more widely to all the technologies covered by the taxonomy.

AFEP – MEDEF – FI urge the EU to reaffirm that the Taxonomy Regulation is not a list of mandatory investments. Companies' proposals **to ensure the financing of activities that contribute to the objectives of the taxonomy** would be to:

- **to recognise efforts of companies and activities aimed at aligning with the taxonomy**;
- ensure that the definition of these criteria **complies with the principle of technological neutrality as well as the EU acquis** (alignment with existing EU legislation, consistency in definitions…);
- **supplement the climate delegated acts to extend the scope of eligible activities,** to include activities that are part of a value chain (up and downstream).

- **Involve** companies in the development of the EU Taxonomy

Corporates should be **directly involved in all discussions and all policy-making stages** on sustainable finance to **avoid unnecessary additional burdens** (irrelevant scope, inappropriate calibration of reporting requirements) and **discuss the adequate level of requirements**, especially regarding disclosure of strategic and confidential information (opportunities, forward-looking

information) which could be detrimental to EU competitiveness. **The due process to determine technical screening criteria should be improved to**:

- companies (in particular activities not yet covered by the Taxonomy) to contact the EU Platform on Sustainable Finance to provide direct input.
- Ensure that all economic sectors are consulted regarding the definition of the technical screening criteria.

- **Build high-quality sustainability reporting standards to ensure a level playing field**

A proportionate, efficient and harmonised sustainability reporting framework with an international reach is key to enabling the successful implementation of the sustainable finance plan. Companies support the development of a European framework to promote Europe's vision of sustainability. To avoid that EU companies have to comply with several standards when they operate worldwide (see also our dedicated paper on non-financial reporting), Europe must now **address the challenge of mutual recognition and obtain recognition of equivalence** of the future European Sustainability Reporting Standards by the International Sustainability Standards Board and the US Securities and Exchange Commission. Furthermore, European institutions and authorities should **pay close attention to competition issues and to the need for ensuring a level playing field between EU companies and third- country companies.** Europe should also incentivise all other G20 partners to adopt sustainable finance policies and practices through discussions on the inclusion of climate and environmental considerations in international trade agreements with the EU.

- **Improve corporate governance through soft law**

Whilst supporting the idea that corporate governance can become more conducive to sustainable finance, we consider that **any evolution in terms of corporate governance would be better dealt with by soft law** (see also our fiche on Corporate Sustainability Due Diligence Directive).

- **Establish a robust and transparent regulatory framework for sustainability ratings**

Sustainability rating agencies are not sufficiently transparent when it comes to the methodological and conceptual choices they make when they produce their ratings. Investors and other stakeholders are therefore not in a position to make truly informed decisions and to fully understand the underlying parameters of ESG ratings. To improve this situation, French companies call for the **adoption of a legal framework imposing minimum transparency requirements on ESG rating agencies.** As a second step, ESG rating agencies should be subject to a **regulatory registration and oversight regime** in which ESMA could play a role and which could be inspired by the one governing credit rating agencies.

- **EU Green Bonds Standard**

The EU Green Bond Standard (EU GBS) has the potential to play an important role in stimulating the issuance of green bonds in the EU. The European Commission published its proposal for the Standard last summer. In this regard, we insist on the following points:

1. The co-Legislators should focus on creating a voluntary standard for green bonds and not extending the scope of the regulation to other types of instruments such as sustainability-linked bonds or other bonds marketed as sustainable.
2. The EU GBS should avoid duplicating existing requirements or add requirements that discourage the development of the EU green bonds market. In particular, the proposal should:
   -Not add to the requirements of the Taxonomy Regulation.
   -Not introduce provisions related to the distribution of financial products that are not appropriate in the context of corporate financing transactions.
   -Allow flexibility to incorporate in the fact sheets and allocation and impact reports information that will be made public under the CRSD.

3. The standard should ensure that eligible bonds maintain their designation until maturity, even in case of changes to the Taxonomy criteria.
4. We support the flexibility pocket included in the Council's General Approach.
5. The proposal should not set up neither a parallel contractual liability regime nor a parallel civil liability regime in the EU GBS, in addition to the one already established in the Prospectus Regulation.

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VAT: E-INVOICING/E-REPORTING AND FUTURE OF THE VAT SYSTEM

1. Context and state of play

On 4 October 2017, the EU Commission proposed a series of fundamental principles and key reforms, notably regarding the VAT definitive system **for intra-EU cross-border trade.** The purpose of this initiative was to pave the way for the creation of a genuine single EU VAT area for the internal market **based on the principle of taxation in the Member State of destination. The introduction of the definitive VAT system has been planned as a gradual two-step approach (goods as a first step and services as a second step).** Since 2018, discussions remain at a complete standstill due to fundamental divergences between member states (with some member states advocating for comprehensive reform, while others favour only improvements to the existing system).

On 19 October 2021, the Commission issued its work program for 2022: it plans a modernisation of the VAT reporting obligations and e-invoicing rules, VAT treatment of the platform economy and single EU VAT registration. This initiative should be presented on December 7th 2022.

2. AFEP - MEDEF - FI position

AFEP, Medef and FI believe that a modernisation of VAT is necessary within the EU, as indirect taxation remains highly fragmented and complex at the EU level (even though it is under a harmonised matter).

As regards specifically to the VAT definitive system, we continue to believe that the EU Commission's initiative to reform the VAT system is a unique opportunity for businesses and member states to ensure that the new system is simpler, more efficient, less prone to fraud, and promotes cross-border trade and economic growth across the EU.

If changes are necessary, it is nonetheless essential that any change to the current system leads to an unambiguous improvement of the current state of play for European businesses and other stakeholders.

More generally, businesses would like to draw attention to the following areas:

- **A major concern for EU business relates to the proliferation of unilateral measures from member states in the field of mandatory e-invoicing and e-reporting**, which is expanding at a worrying pace. **We call for the Commission to urgently work on the coordination of such measures in order to avoid a fragmentation of reporting requirements across the EU.** For instance, it is crucial for businesses that member states enable the interoperability of the different e-invoicing/e- reporting systems across the EU. This should be dealt with as a top priority at the EU level: VAT is an inherently European tax and the fight against VAT fraud would be effective when the action of member states is coordinated. The need for a simple EU VAT system at the operational level implies harmonised implementation regimes and criteria in all member states. **We would like the EU Commission to carry out this work without waiting for the eventual adoption of the VAT definitive system or any other proposal in the field of VAT. The solution envisaged must be unique for intra-UE transactions and should preserve the operation of existing systems pertaining to domestic transactions.**

- **Legal certainty in the area of VAT is essential for the proper functioning of business**: legal certainty regarding intra-EU operations is becoming more and more unstable as the number of specific conditions and criteria introduced by member states increases. This trend is also due to the expansion of anti-abuse measures: the quick fixes adopted at the

end of 2018 are a recent example of such a trend. Although they aimed at harmonization, they have in fact introduced more complexity and obligations for businesses.

We welcome the initiative of the Commission as regards VAT dispute prevention and resolution which will be a central element for EU businesses in order to increase legal certainty and VAT neutrality and stand ready to provide any feedback on policy options and technical aspects.

- While obligations are becoming ever more burdensome (and costs are increasing accordingly) with the fight against fraud, good faith companies are nevertheless not adequately protected from the consequences of such fraud (e.g., Carousel fraud). Therefore, more targeted anti-fraud measures should be favoured so that compliant companies may not be overly burdened.

We call for the presidency of the Council of the EU to take these recommendations as part of its programme.

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Section 3 : International

WTO REFORM

1. Context and state of play

The absence of major multilateral agreement conclusion since the signing of the Trade Facilitation Agreement in 2013, distortive practices by emerging non-market economy countries and the growing defiance of the US against the WTO have put the organisation in a severe legitimacy crisis and made a large reform inescapable.

The prospect of the reform remains however largely uncertain. The priority, for now, is achieving concrete outcomes such as the trade and health initiative, the fishery subsidies negotiations and agriculture negotiations.

During the MC 12 in June 2022, Ministers committed to work on a major reform of the WTO regarding all its aspects, with concrete proposals submitted by the next MC either at the level of individual committees or within the General Council. One of the announced objectives is to restore a fully-functioning dispute settlement system no later than 2024.

2. AFEP - MEDEF - FI position

French companies support the European Council and the European Commission's endeavour to pave the ground for an overarching WTO reform as well as its main proposed directions. We call on the French and the EU authorities to continue putting pressure on the US and other main partners to agree on a reform agenda.

The EU should prioritise WTO/plurilateral reforms aimed at bringing a concrete fix to the most obvious failures of the WTO institutional/legal framework. It is also urgent to engage in concrete discussions on a reform of the WTO appellate body's procedures to respond to US criticism without undermining the key features of this institution.

In the same way, **the WTO reform should first target the development of substantive disciplines to better regulate global trade to tackle unfair competition by emerging economies**: a better framing of industrial subsidies such as export credit (including in a climate-friendly perspective) and of SOEs practices, services, investment and intellectual property-related rules to fight against forced technological transfers or discrimination against foreign investors. We welcome the EU proposal to work on disciplines ensuring competition neutrality, especially vis-à-vis SOEs.

Thirdly, French companies welcome the notion of a "more gradual approach" to development including an effective modulation of special and differential treatment to developing countries that would rebalance trading relationships with emerging economies. In some instances, the phasing-in of commitments granted to emerging economies should come along with a symmetrical phasing-in of market access in developed countries. Moreover, the status of developing countries should be assessed regularly so that it reflects the reality of fast-changing economies such as China.

More generally, WTO negotiating procedures should be urgently adjusted to depart more often from the "single undertaking" logic and use plurilateral agreement with or without the MFN principle, to unblock substantive negotiations that could be supported by a critical number of members without the need for a global consensus.

These negotiating priorities should however not overshadow the need for systemic changes in WTO trade policy and institutional setting. French companies call for a more significant shift toward a "21st century" trade agenda in WTO negotiating initiatives:

- substantive rules on e-commerce as promoted by the joint statement on the side of the 11th Ministerial Conference, including a permanent prohibition on import duties applied to electronic transmission, basic principles on data transfer and access to source codes, facilitation of e- commerce as such and determination of applicable jurisdiction;
- relaunch of EGA negotiations, possibly using a more flexible format, and including environmental services directly linked to EG production or delivery. Both market access and rules/non-tariff barriers should be negotiated at the same time;
- modernisation of TRIPS agreement (enforcement and adjustment to the digital economy);
- work on the investment facilitation mechanism, with an additional effort by more advanced members on investment liberalisation (pre- and post-establishment) in conjunction with negotiations on trade in services;
- support the implementation of multilateral agreements to eliminate tariffs and export restrictions on strategic products such as medical devices, for example by updating the agreement on pharmaceuticals;
- opening discussions on core TSD disciplines ensuring a better link between trade and sustainable development goals to reflect Parties' best achievements in preferential agreements and avoid that SD issues give way to overreaching interpretation by DSM.

To improve the WTO monitoring function, notification procedures under ASCM or TBT committees should be strengthened and better monitored, notably with the imposition of rebuttable non-compliance presumption in case of intentional lack of notifications. By the same token, the Trade Policy Review Mechanism (TPRM) should leave more room for manoeuvre for the secretariat to investigate Members' domestic policies and flag non-compliance with WTO rules. Case of grave breaches of WTO disciplines found in the context of TPRM should be conducive to sanctions, under the supervision of the General Council and the DSM.

French companies call for an overall institutional strengthening including an increase in the secretariat's staffing and initiative range and a streamlining of existing committees.

French companies also recommend a larger opening towards businesses' views and concerns. In addition to businesses' input in TPRM, the committees' negotiating process should be enriched with the private sector's views and suggestions. A concrete proposal could be the set-up of advisory groups on the side of the main WTO committees. By the same token, subject to appropriate filters, such as refusal by members to trigger consultations under the DSM or representativity criteria, businesses associations should be given access to the DSM, at least in the form of institutionalised "*amicus curiae*" briefs to DSM panels, even when they are not.

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PROTECTING EUROPE FROM ECONOMIC COERCION

1. Context and state of play

The past four years have seen EU companies extensively exposed to economic pressure by third countries either directly aiming at obtaining a policy change by the EU and its member states – for instance, coercive measures decided by China against Lithuania – or directed against other countries with large side-effects on EU companies such as US extraterritorial sanctions against Iran or US export control measures with a blocking effect on EU end products to be exported in targeted countries. So far, the EU has been lacking legal tools deterring third countries to resort to such economic pressure. In this respect, the existing "Blocking Regulation" has proven recently ineffective in protecting EU companies against the US latest extraterritorial sanctions.

To remedy the situation, the European Commission adopted and published on December 8, 2021, a proposal for a Regulation aiming at protecting the EU and its member states against economic coercion, currently discussed in the Council and the European Parliament.

The INTA Committee adopted its report on 10th October 2022. In the Council, the text is still under discussion and a common approach has not been reached yet.

In parallel, after the publication of the communication "the European economic and financial system: fostering openness, strength and resilience" the European Commission has announced the adoption of a legislative initiative toward the revision of the Blocking Regulation now expected for 2023.

2. AFEP - MEDEF - FI position

AFEP - MEDEF – FI, while maintaining a strong inclination for free trade and the opening of EU and foreign markets, support the strengthening of the EU strategic autonomy, with an enhanced capacity to shield EU companies against undue economic pressure by third countries.

As a result, French companies are advocating for a swift adoption of the proposed Regulation on the protection of the EU and its member states from economic coercion on the one hand and are urging the European Commission to rapidly submit a proposal for an ambitious overhaul of the Blocking Regulation as originally scheduled on the other hand.

Anti-coercion instrument

- As institutional aspects are concerned, the Commission should remain the key player for the adoption of decisions on the determination of a coercive behaviour as well as for the adoption of countermeasures. As envisaged by the Council's Legal Service (CLS), decisions on the determination of a coercive behaviour could be preceded by a mandatory opinion of the Council, from which the Commission could depart only after communicating grounds for not following the Council's recommendation.

- The material scope should go beyond third country measures aimed at influencing political actions by EU institutions or states and cover a large set of extraterritorial measures such as secondary sanctions, at least to the extent they are affecting strategic sectors for the EU economic sovereignty (see sectors flagged in the foreign investment screening Regulation) or the capacity of the EU to ensure a full diplomatic/consular protection of its citizens abroad.
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- While complying with international public law and maintaining them as a last resort option, the procedural path toward the adoption of EU countermeasures could be simplified with fewer recurring consultations/negotiating attempts with third countries imposing coercion, and with the addition of clear deadlines to increase the efficiency and deterrent effect of the instrument as proposed by the INTA committee. When these countries have been offered a possibility to withdraw coercive measures and/or negotiated by the time of the EC investigations or after their behaviour is found coercive, there is no need to repeat the consulting process.
- By contrast, consultation with stakeholders should be improved by the time of investigations and before the adoption or revision of EU countermeasures, by more strictly limiting exemptions to consultation and introducing closed-door hearings. Prior impact assessment of countermeasures should also explore the likeliness of disproportionate reaction by third countries, especially when considering a review of existing countermeasures.
- The scope of EU countermeasures (both sectoral and individual) should remain as wide as proposed by the EC to give the EU a large choice for a tailor-made and proportionate response.
- Provisions on the recovery of damages in case of EU measures against specific natural or legal persons(Article 8) should be beefed up to be acted upon: the right to seek damage should be open each time an individual countermeasure meets the requirement set in the proposed Regulation (and not based on a specific decision) and Article 8 should be more specific on the type of assets to be considered for legal actions as well as on rules to determine the competent jurisdiction within the EU. In parallel, the legislators should also consider the option of a compensation fund as also referred to in the INTA report that could be funded by EU tariff countermeasures and/or the seizure of assets of natural/legal persons targeted by individual EU countermeasures.

Revision of the Blocking Statute

- Depending on the state of play regarding the anti-coercion instrument and especially if it is finally not possible to include extraterritorial measures in its scope, the EC should propose a “countermeasures” pillar as the main aspect of the Blocking Regulation deterrence.
- In parallel, the administrative burden implied by the “blocking” provisions should be eased with regard to companies’ specific situation and exposure on foreign markets, either by establishing block exemptions or facilitating the grant of authorisation to apply extraterritorial measures (automatic request for authorisation and/or tacit authorisations). No economic operator should be placed in front of contradictory legal obligations.
- The procedures for compensation should be improved if not possible in the anti-coercion instrument either by the set-up of a compensation fund or new substitution/sub- rogatory mechanisms in judicial procedures under Article 6 and punitive damages. The penalties should be harmonised across member states.

Additional measures

- The EU should set up at the top level of EU institutions a “resilience office”, i.e., an interservice team able to detect coercive measures, collect information and coordinate appropriate and consistent responses. This task force could also act as a specific EU interlocutor for the OFAC and the Chinese MOFCOM (and other offices), to exchange on sanctions, embargoes and export control regimes;
- The EU should adopt concrete measures to promote trade in euros, reinforce the international role of the Euro, engage politically and technically to create a digital euro and, in parallel, set up a public financial institution to keep payment channels open with third countries sanctioned by foreign international partners, but not by the EU;

- The EU should design a comprehensive strategy to shield EU companies' core sensitive data against mandatory communication to third countries' authorities as it currently happened under the Chinese Cybersecurity Law, the US Cloud Act or other foreign legislation. This may be achieved through a new instrument on sensitive data transfers, which could be built into the EU digital legislative agenda, within the EU Blocking Statute and under international agreements with third countries. The EU could for instance request large exemptions to data transfers in the context of the future EU-US agreement on judicial cooperation (based upon the EU e-evidence regime) to exclude business secrets from the reach of mandatory transfer to US judicial authorities.

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PRIORITIES FOR NEW TRADE NEGOTIATIONS

1. Context and state of play

In July 2022, 15 Member States transmitted a joint letter to the incumbent Presidency (namely the Czech Republic) in a bid to prompt a more dynamic agenda on EU trade negotiations, noting that, for the last two years, the EU trade policy had been focused on the adoption of EU unilateral instruments such as the IPI or the anti-coercion regulation.
In her State of the Union address to the European Parliament on 14 September, the president of the Commission, Ursula von der Leyen, has announced an effort toward the conclusion of several bilateral agreements, based on shared values with trading partners as well a supply security objective with respect to energy and raw materials: trade agreements with Chile, Mexico, Australia, Indonesia, and India and investment facilitation in Angola.

2. AFEP-MEDEF-FI Position

French companies support the proposal by the European Commission to initiate a more active trade negotiation agenda in line with other EU policy objectives such as the EU industrial strategy, Fit for Fifty-Five package or the ongoing revision of the Energy policy (REPowerEU and energy emergency measures) and the inclusion of sustainable development objectives into EU trade policy. The update of EU trade negotiation agenda should also take into the current geostrategic, sanitary, and economic context, which have sparked major disruptions in global supply chains at the expanse of EU companies.

As a result, the EU trade policy should allow for a combination of industrial relocation on EU territory for selected segments of strategic sectors and value chains, of closer trade relationships with trusted partners for the same sectors and value chains, and a broader diversification of trading partners for non-sensitive products or items.

As regard to strategic sectors such as energy and raw materials, French companies support the rapid conclusion of FTAs with the individual countries listed by Ursula van der Leyen, subject to number of conditions attached to the security of supply chains and to other trade considerations.

First of all, **energy and raw materials chapters included in these FTAs should effectively build up the securitization of EU supply chains,** especially when EU companies have made substantive investments in concerned countries, by purchasing mining facilities or processing factories and/or taking sharing in local companies : the EU should make sure that these chapters entail provisions against export prohibition and/or local content/processing requirements that would impede importations or processing in the EU of critical raw materials. Ideally, the EU should seek pre-establishment, establishment, and investment protection commitments to guarantee these strategic investments, but mere FTAs should at least secure the two first types of commitments (such dismantlement or reduction of JV requirements and/or equity caps on the top of market access).

Besides, such priority agreements should also meet EU other offensive and defensive interests with targeted countries. While securing EU supply chains for energy and raw materials is a key objective, there must be a balancing test with other EU objectives in terms of market access and the removal of non-tariff barriers in other sectors as well as EU sensitivities in agri-food sectors for instance.
The set-up of this priority list should not preclude either the launch or the relaunch of FTAs with other countries with a view to consolidating the network of trade preferences, giving EU companies access to a larger range of suppliers. This should further protect EU companies against the brutal closing of specific country of supply or the congestion of specific trade and logistic routes.

Meanwhile, EU companies still need to open new markets abroad, especially in emerging economies.

French companies are therefore suggesting further exploring the relaunch of negotiations with major ASEAN economies such as Thailand and Malaysia as well as the feasibility of trade and investment facilitation agreement with targeted additional African countries and/or regional communities.

In parallel, **the EU should continue to support the revival of the WTO** after the positive outcome of the MC 12. While the revised TCE will most likely only cover only some member states following the decision by France, Germany, the Netherlands, Poland and Spain to unilaterally withdraw from the treaty, the EU should relaunch a more ambitious agenda of negotiations of bilateral investment protection.

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EU-US RELATIONS

1. Context and state of play

The EU-US Summit of 15 June 2021 set a joint agenda for EU-US cooperation with the set-up of the bilateral Trade and technology Council (TTC). In parallel, the EU and the US have made important progress in key areas and achieved important results in long-standing disputes: all litigations are halted on a compromise approach and the two sides have since put in place discussion forums to find a long-term solution on aircraft subsidies and overcapacities/carbon footprint in the steel and aluminium sectors (setting the basis for "a global arrangement on sustainable steel and aluminium).

Two TTC's ministerial-level meetings already took place on 29 September 2021 and 16 May 2022, setting the work plan and targeting deliverables for the different working. The next ministerial-level meeting is scheduled on 5 December 2022 in Washington DC

Despite these positive signals, the focus of the US administration on a "worker-centred trade policy" and industrial relocation has determined a revival of Buy American Policy and a reluctance to engage in proper trade negotiations (the relaunch of WTO or significant bilateral or plurilateral trade agreements). Moreover, local content requirements as well as other protectionist measures included in the Inflation Reduction Act (IRA) climate package has triggered new trade tensions between the US and the EU.

2. AFEP - MEDEF - FI position

The trade relationship with the US should continue to favour a strong cooperation, both on bilateral issues as well as on the multilateral front while preserving the EU own interests in the context of US protectionist-minded policies.
Our three organisations continue to support welcome the moves done during and after the 2021 EU-US Summit to find a settlement to ongoing bilateral trade disputes and rebuild a strong bilateral trade cooperation agenda.

Truces reached on aircraft subsidies, member states' digital services taxes and steel and aluminium disputes have been long expected by French companies and are a significant step towards an improved bilateral trade relationship. While the **Biden Administration has shown its commitment to achieving a successful outcome in the OECD negotiations on corporate taxation**, it remains important that the US concretely engage in the mid-term negotiating path sketched out in the two other settlements (discussions on a new framework for WTO compatible aircraft subsidies and a global arrangement on sustainable steel and aluminium) and do not limit cooperation on these two issues in a short-term confrontation with China, based on information exchange. In this respect**, French companies are requesting that both sides agree on concrete deliverables** both on sustainable steel and aluminium and on aircraft subsidies.

The **crisis triggered by the Russian military aggression** against Ukraine has changed the priority order in the TTC agenda: the EU and the US should put more emphasis on critical supply chains with a greater look at metals and rare earth and assess the level of cooperation achievable, depending on the level of mutual trust. The same goes for export control and investment screening. Otherwise, French companies support discussions on many critical issues such as regulatory standards on emerging technologies like **Artificial Intelligence, climate change technologies** and **carbon content measurement**, **cybersecurity and data governance** and global trade challenges. On all these items, the EU should insist that a consistent approach is taken with parallel discussions provided for under the arrangements for settling bilateral trade issues (for instance on industrial subsidies or carbon content measurement) and that the cooperation is not limited to confronting

China. On other issues such as **foreign direct investment screening** or export control or other aspects of digital technologies, we underline that bilateral cooperation should not pre-empt the EU internal legislative process.

While they remain a strong priority on the **bilateral cooperative agenda**, discussions on clean technologies are now clearly hampered by the US protectionist twist under the IRA. Therefore, both sides should now explore any possibility to exempt EU products from the US local content requirements before digging in the other items, such talks taking place either under the working group 2 or the dedicated taskforce set up in October.
Only when this spat has been remedied, both parties should resume discussions on a common approach on product carbon content and carbon border measures On that front, even before reciprocal exemptions or harmonised taxation basis, the EU and the US could set the stage for a common approach to calculating product carbon content, data collection and verification methods.

The transatlantic cooperation on **climate change** could also focus on common standards for low-carbon technologies to ease bilateral trade in this promising sector and make sure that a potential resumption of EGA negotiations would rely on ambitious technical standards and prevent further dumped or too heavily subsidised environmental products.

As far as the **digital economy** is concerned, the **absolute priority should be the adoption of a new bilateral mechanism allowing for personal data transfers between the EU and US territories** after the invalidation of the Privacy Shield by the CJEU in July 2020. In this context, it is worth considering whether the EU and the US could also reach a larger deal on competition standards for the digital sectors, especially if the EU DMA and the anti-competitive investigations by the US Department of Justice end up converging on new approaches for regulating dominant digital platforms activities.

Regarding a more traditional approach, **French companies continue to support discussions on regulatory cooperation** as envisaged under the EU negotiating Directives adopted to enforce the Juncker-Trump plan, and, in particular, discussions over the mutual recognition of testing conducted by both Parties' respective conformity assessment bodies. While not explicitly referred to in the EU negotiating Directives, we would also welcome the expansion of existing sectoral mutual recognition agreements or the conclusion of new ones in the field of medical devices, pharmaceuticals, and chemical products.

The EU should continue to engage the US in reinvesting in the WTO starting with talks on the WTO reform, which is a priority issue for businesses. These discussions should aim at comforting the multilateral trading system (both for its operative rules and renewed trade disciplines) and examine how to unblock the Dispute Settlement Mechanism (DSM) situation (see PP on WTO reform). In the same way, the EU should also attempt to relaunch trilateral discussions with the US and Japan on reshaping trade relationships with China on key issues such as industrial subsidies and steel and aluminium overcapacities, and forced technology transfers and cyberthreats and other aspects of unfair competition. Such discussions are key elements in building up the Global arrangement on sustainable steel and aluminium.
Certain aspects of the Biden planned trade policy call for cautiousness and possible unilateral reaction by the EU in coordination with other countries. The emphasis on reinforced Buy American/America measures including a massive procurement/investment plan reserved for American companies, as well as the willingness to initiate GPA renegotiations to expand existing carve-out imposes exploring whether the recently adopted IPI should be used to contemplate investigations into the US procurement markets, at least to incite the Biden administration to lower the level of US protectionist measures. On a short-term perspective, the EU should maintain a strong line on IRA protectionist measures. In the event discussions under the TTC should not result in waiving local content requirements at the benefice of EU companies, the EU should explore, possibly in coordination with other trading partners, available responses from WTO dispute settlement procedures to reciprocity measures.

EU SANCTIONS AGAINST RUSSIA

1. Context and state of play

In response to the war of aggression launched by Russia against Ukraine, **the Council has adopted eight sanction packages targeting Russia between 24 February and 5 October 2022**, in close coordination with G7 countries and other like-minded countries such as Singapore or South Korea.

EU sanctions now consist in a large range of political and economic measures that had never been deployed against a single third state at once and nor at such level of restrictions: individual sanctions against Russian natural or legal persons with a freezing of assets, financial restrictive measures against Russian public institutions (Russian Federation and Russian central bank), major Russian banks subject to a disconnection from SWIFT and/or a ban on transactions, limitation or ban against import or exports covering a wide spectrum of key commodities (oil, coal, gold, steel, rubber, wood cement, luxury goods, seafood and spirit) and key technologies (notably semi-conductors, aircraft, chemicals), other restrictions to trade and investment (prohibition against EU investment in Russian sovereign funds and in the energy sector; ban on Russian bidders in EU public procurement procedures), ban on the overflight of the EU territory, the access to EU ports and EU land roads for Russian hauliers and prohibition against Russian media involved in Russian government propaganda.

COREPER adopted on 5 October an 8th sanction package prompted by President Putin statement on 21 September confirming the holding of referendums toward the annexation of Eastern and South-eastern Ukrainian territories and announcing a mandatory draft of the Russian male population as well as ongoing consideration for a potential use of tactical nuclear weapons in the conflict.

The new package includes a legal mechanism meant to allow the Council to impose a price cap on Russian oil, consisting in a prohibition for EU vessels to carry Russian oil above a set price as well as for EU insurance companies to insure such operations. New measures also extend individual sanctions to 30 new natural persons and 8 new legal persons, enlarge the scope of EU export ban on semi-conductors, radio equipment and specific chemicals while they prohibit the import of Russian steel semi-finished products, jewels and other manufactured goods. They also edict a ban on being members of Russian companies’ boards of directors for EU nationals. They also prohibit providing architectural, legal, and engineering services. Crypto assets, for their potential to facilitate sanctions circumvent, are newly targeted: the threshold set as part of the ban on providing wallet, account or custody services of crypto assets to Russian residents, is removed, regardless of the total value.

We are now vigilant on the **consequences of sanctions** circumvent for EU operator.

In this frame, the case of Turkey is very worrying since this country has a custom union with the EU. Ankara does not apply sanctions against Russia (plane travel, energy purchases, anchorage of Russian yachts in its waters...). Russians have been, for six months, the first foreign buyers of real estate in the country -Turkish nationality is accessible to anyone acquiring a property worth more than 400,000 US Dollars. Conditions are now gathered for Turkey to become a hub for circumventing financial sanctions and accessing Western value chains.

An additional challenge is to prevent Russia from buying European goods from the Turks that would go through the Turkish market in application of the Customs Union and its location in the value chains. The EU and the US authorities have publicly declared this situation was not acceptable. US Treasury in particular, represented by Deputy Secretary of the Treasury Wally Adeyemo, has warned Russian bankers this summer, threatening them with secondary sanctions if they helped Russia evade sanctions.

2. AFEP-MEDEF - FI Position

French companies are supportive of the EU efforts to put an end to the aggression war against Ukraine, including through the comprehensive sanction framework developed since last February and are committed to strictly comply with EU sanctions.

Nonetheless, French companies have so far met several enforcement issues for which concrete solutions should be found:

- **G7 countries** are making best efforts to coordinate their respective sanctions against Russia and to adopt similar measures. However, the design of such measures remains sometimes quite different from a jurisdiction to another and poses "cross-compliance" issues for EU companies with a nexus to the US or the UK for instance. **Therefore, French companies call for an increased effort to further harmonize the different sanction sets not only on targeted individuals or sectors but also in designation features.**
  - In this regard, we remain particularly attentive to the utmost necessity of a close coordination between the EU and the EU. Indeed, US legal framework authorises sanctions against non-U.S. persons that provide goods, services, or other support for Russia's military industrial complex. In the event the US would sanction foreign governments or major financial institutions outside Russia, in countries which our companies hold activities, the compliance effort from economic operators would be undermined and the very objective of sanctions compromised. This is a key element to find the right balance between what we can do to prohibit Russia from conducting this war together with the need to maintain a high quality coordination with our partners outside the West (most of them have not taken any sanctions against Russia).
- The **implementation of sanctions across Member States** still varies much, with significant discrepancies notably on the scope of exemptions and derogations for humanitarian, medical and alimentary purpose (in case of road and seaborne freight). This is very true in the case of custom offices in Eastern Europe. Individual companies regularly face diverging interpretations, including within a single Member State, when port authorities are left with the final decision. As Commission's Q & A have no legal binding effects in this respect, **French companies call for Council's guidelines to achieve more harmonization on sanction enforcement.**

- The **continuous expansion of individual sanctions** raises the issue of determining the exact notion of "control" over an asset or a company by targeted natural or legal persons for the purpose of freezing assets. The Council issued guidelines in 2018 and the Commission has produced Q & A but companies still struggle to apply the notion in concrete terms. French companies suggest two measures to remedy the situation:

  a. **Further clarify the Council's guidelines** mentioned above, with much more precision on the modalities for verifying the existence of a control situation

  b. **Move toward a system of "non-control" statement** by companies with which EU companies are likely to have transactions, that would be in line with the shift in the burden of proof adopted in the 7th sanction package. In concrete terms, **only the declarant would be regarded as liable for a breach of individual sanctions if a control situation is identified by competent enforcement authorities.**

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Section 4 : Digital

ARTIFICIAL INTELLIGENCE

1. Context and state of play

The European Commission published on 21 April 2021 a proposal for a Regulation establishing a harmonised regulatory framework on AI.

In the Parliament, the co-rapporteurs of the IMCO and LIBE committees presented their draft report on 20 April 2022. Compromise amendments and political negotiations are ongoing. The vote in plenary is expected to take place in late 2022 or early 2023.

For the Council, the Slovenian, French and Czech presidencies presented several compromise versions. The general approach has now been finalised and should be discussed at the Coreper level on November 18th, in view of the TTE Council of December 6th.

2. AFEP - MEDEF - FI position

It is vital to build a European ecosystem in favour of innovation and AI that is respectful of European values.

AI has become an area of strategic importance and a key driver of economic development. It is a lever of competitiveness and growth for enterprises and the general European economy, but also of employment with the creation of jobs requiring various skills. It can also bring solutions to many societal challenges. It is a priority to encourage companies to foster innovation and adopt AI.

- Regarding the AI Act:

The priority is to avoid any over-regulation that impedes innovation. Regulation should not answer to baseless fears.

For that, it is essential to have:

- clear and precise definitions, especially for AI and high-risk systems, for more legal certainty;
- a consistent Regulation compatible with other European texts (GDPR, Machinery Directive, Data Act, etc.);
- proportionate obligations adapted to innovation.

French companies appreciate that this proposal retains a risk-based approach and focuses on the most sensitive/risk-proven aspects of AI and proportionate/non-discriminatory requirements, while other aspects are left to self-regulation.

However, the **difference between high-risk and non-high-risk systems is key.** Indeed, this qualification could create a gap between different AI applications and be a source of important constraint and liability for companies.

On the one hand, the numerous requirements before putting in place an AI system (quality and conformity assessments for example), especially when it is categorised as “high risk”, are complex for a company and as a consequence could hamper innovation. In this respect, the choice to model requirements imposed before and after the placement on the market on the existing safety of products Regulation is very questionable, especially for AI systems belonging to Annex III that are

not connected or incorporated in a specific product. In particular, the obligation to undergo heavy conformity assessment procedures and run complex quality management systems might prove a deterrent for many IA innovations.

On the other hand, the possibility for the European Commission to adapt the list of “high-risk” AI systems
could bring legal uncertainty. The very large scope of the definition of AI can be also legally challenging.

Therefore, we consider that: i) it is important to ensure that the regulatory intervention is proportionate and precise compared to the real AI capacity; ii) in sensitive sectors, there are already strong regulations protecting consumers and users and already covering a large part of the problems attributed to AI (i.e. non-discriminatory rules…).

Besides, some obligations are very restrictive, even disproportionate and impracticable for a company. Thisis particularly the case with the obligation to use free-of-error datasets (Art 10). While there is a need to strengthen data learning, it is not possible to guarantee that there are no errors at all in the datasets. For this Article, consistency with the Data Governance Act and the Data Act should be ensured. Another example would be the requirement of systematic human supervision (presence of an operator) in the presence of autonomous machines, while the applicable regulatory text on machinery is based on a risk analysis that, in the end, determines the necessary protective measures (technical or organisational).

-Regarding AI in innovation and trade:

Data is a major issue for business and - if the data can contribute to the development of SMEs and start-up companies – also brings value to companies’ activities. For this reason, and to ensure full respect of intellectual property rights and trade secrets, a general obligation of free access and reuse of data shouldn’t be required from economic players. An intervention of the European lawmaker is therefore not necessary for these issues. Only voluntary data sharing between businesses should be encouraged via contractual mechanisms.

AFEP, MEDEF and FI:

- support the setting up of an IPCEI of the “European cloud ecosystem” which would build reliable and secure data infrastructure for Europe, thereby strengthening the EU digital sovereignty and facilitating the development of AI;

- regarding the trade aspects of AI, recommend that the EU negotiating position in the next FTAs pays close attention to intellectual property protection, notably to avoid mandatory disclosure of algorithms and to the facilitation of licensing procedures. Conversely, in the field of manufacturing AI applications, the EU should promote international standardisation to ease cross-border interoperability, so that EU-originated solutions can be deployed at a larger scale;

- recommend the use of "regulatory sandboxes" to foster innovation. This consists of offering AI operators an opportunity to test, under real conditions, the safety and efficacy of their technologies by temporarily releasing them from regulatory constraints;

- concerning liability, companies supported the European Parliament’s JURI initiative report from October 2020 on the liability regime for AI calling for great caution in imposing new requirements and liabilities on AI system providers or users as proposed in the draft regulation. Indeed, horizontal, and sectoral legislations exist and need to be taken into account so as not to impose too much legal complexity on manufacturers, software and digital service providers, in particular with the use of presumption of liability or non-conformity.

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EU DATA STRATEGY AND DATA ACT

1. Context and state of play

Among the objectives put forward by the European Commission in its data strategy published on 19 February 2020, the Data Act is particularly important. This proposal was published on 23 February 2022 and intends notably to facilitate and support both B2G, B2C and B2B data sharing, as well as enable cloud service customers to switch providers efficiently. The proposal is currently being discussed in the European Parliament (ITRE, JURI, LIBE and IMCO committees) and the Council (TTE). The lead committee ITRE is aiming for a vote in February or March 2023 and the Czech presidency for a partial compromise text or at minimum for a progress report in December.

2. AFEP - MEDEF - FI position

French companies welcome both the European Commission's data strategy and the Data Act proposal as tools toward a strong and competitive European data-driven economy, with harmonised regulation for all economic players based in or operating within the EU. Data is a major issue for companies, especially for those with international activities, and global trade mostly draws on data flows. Data can contribute to the development of SMEs and start-up companies but more generally also brings value to companies' activities.

Developing data storing and processing facilities in the EU is a key element in fostering EU autonomy and technological strategy. Therefore, EU-wide initiatives need to be encouraged, whether in the shape of industrial alliances or through other types of projects, such as Gaia-X. In turn, these projects can be fertile soil for the emergence of Important Projects of Common European Interest (IPCEIs), as in the case of Gaia-X, which will lead to the launch of an IPCEI in the coming months, thereby boosting European global competitiveness and innovation in the field of data and cloud.

If **regulatory interventions** should remain limited, it is however essential to **encourage companies to share their data** to encourage innovation, particularly data gathered from industrial AI. Fair competition in the access of data, interoperability and the possibility of switching between cloud services need to be strengthened to avoid vendor lock-in and give a chance to competitors. Special attention should be paid to supporting SMEs and more traditional sectors to become active players in the new data-driven economy.

However, this text raises **questions regarding its scope, the definition of data and products covered as well as the framework for the sharing of data**.

- **The scope and definitions are very broad and vague**, especially when it comes to data and products covered, data holders and users. Consequently, the obligation to share data generated by IoT with users (consumers or companies) seems to be unlimited. That could result in very heavy obligations and even a risk of distortion of competition for companies holding data. It is fundamental for businesses to ensure full respect of intellectual property rights and trade secrets and confidentiality of their commercially sensitive information, especially regarding third parties.

First, companies propose to address B2C and B2B data sharing in two separate chapters or sections since the objectives sought and issues are fundamentally different. Indeed, in the first case, the Data Act enables to give consumers a better control on their personal data.

Concerning B2B data sharing (directly or in accordance with the right to share data with third parties), companies propose to (i) exclude any dissemination of commercially sensitive information (such as product design-related data and data covered by IP rights) to avoid IP infringement risks and retro-engineering phenomenons, (ii) specify that trade secrets must only be shared with the ***consent of the trade secret holder****, (iii) define the product design-related data as the one which has*

to be excluded from any sharing or dissemination and (iv) ensure that only data already accessible to the data holder is to be covered.

- The Data Act obligations **do not reflect the level of work and investment of the manufacturers.** This text needs to be rebalanced to protect European design know-how from non-EU retro-engineering and copying threats and adjusted to preserve the right innovation incentives. The Data Act would oblige manufacturers to provide data access to all users free of charge. This would ignore investments and costs borne by the industry.

*Companies propose to (i) preserve the **free-of-charge principle** for the sharing of data with **non-professional users**. In B2G situations, this principle must be only reserved **for "public emergency"** situations but not for the to vague notion of "public interest" and both situations should be better defined. **In B2B situations, financial incentives must be preserved** and data access, where relevant, should therefore be subject to a **fair financial compensation** (ii) specify the nature of compensation agreed between holder and recipient of data **through a fair contract**.*

- This text will bring **new obligations** and it seems to be very hard for companies to **comply with all other related horizontal or vertical texts** (GDPR, open data, free-flow of non-personal data, data governance act, European data spaces, sector-specific data sharing such as Mobility or Open Finance framework, etc.).
Companies therefore propose (i) to improve its articulation notably with the GDPR to avoid putting into question the privacy by design principle and (ii)to maintain consistency with the wording of the Regulation in regards to the using of data for profiling purposes. These two points will preserve the security of data and the objective of innovation of the Data Act.

- The Regulation should clearly state **the absence of responsibility of the original data holder** for the use that may be made of the data provided to users or third parties.
Companies therefore propose to clarify the liabilities of different parties (data holder/user/third party) (i) regarding cases with several users or alternatively several data-holders as well as related liability to precise that the user should turn to each of the manufacturers or related service providers with whom it has a contractual agreement and (ii) to state the absence of responsibility of the original data holder for the use that may be made of the data provided to users or third parties.

- Finally, the Data Act should apply long enough after its data of entry into force so to allow for adaption of the market, and only to products placed on the market and data generated after the date of its application (no retroactivity).

Regarding the EU data strategy in general :

- Support for the EU supply for data infrastructures should **not come along with location requirements** in the EU except for security and public exemptions.
Companies want to keep the possibility to determine the jurisdiction under which their data will be processed and/or stored according to their own industrial strategy. In this regard, the EU should rather prioritise rules facilitating data transfers from third countries, with equivalent regimes and simplified rules for both personal and non-personal data.

- Ultimately, the EU should seek convergence on international standards, particularly to develop interoperability between services and to strengthen cybersecurity. Companies must be able to trust in a data economy through a better confidentiality and protection of personal and non-personal data, digital identities, general contract law, the flexible use of general business terms and the protection of trade secrets in networked structures in a secure IT environment. Harmonised and transparent security standards and certification schemes should therefore be established to strengthen the Digital Single Market. On the one hand, companies must be able to hold themselves to security standards. On the other hand, market access should be curtailed for companies which do

not fulfil these standards. Coordination activities within CEN, CENELEC and ETSI in Europe, as well as ISO and IEC at a global level, provide the framework for sharing trilateral technical solutions in the context of standardisation.

Section 5: Strategic autonomy

STRATEGIC AUTONOMY AND INDUSTRIAL POLICY

1. Context and state of play

Since the publication of the update on the EU industrial strategy on 5 May 2021, the European industrial policy has been greatly deepened - but at the same time had to face many challenges.
Today, amid multiple major crises, EU industrial policy has the potential to be an efficient and reliable tool to face the challenges of EU strategic autonomy, particularly with regards to strategic dependencies.
Notably, the Commission announced on 14 September 2022 the future publication of a Critical Raw Materials Act ("CRM" Act) for Q1 2023, aiming among other things at strengthening and preserving our supply and value chains which depends on critical raw materials.
French companies welcome the fact that this issue is increasingly considered by the Council, in particular through the Competitiveness Council, especially with regard to critical raw materials and the strategic issue of semiconductors and batteries.

2. AFEP - MEDEF - FI position

French companies welcome the update of the new industrial strategy published by the European Commission and its resulting initiatives. This solid foundation can help to reinforce the European industrial sovereignty, especially in the context of the response to the consequences of both the Covid-19 crisis and the Russia/Ukraine conflict.

The introduction of the notion of strategic elements in the European industrial policy must from now on serve as a basis for defining the EU strategic autonomy.

Although the concept has been increasingly debated since the first consequences of the COVID-19 crisis, the EU's strategic autonomy remains a difficult subject to grasp precisely. However, thanks to the strategic dependency analyses proposed by the Commission, it is now possible for the EU to target and identify the real strategic sectors. AFEP, MEDEF and FI are convinced that these data can be used as a compass to determine and reinforce European strategic autonomy.

This compass could thus be mobilised at the heart of the Commission's various initiatives, strategies, and legislative proposals as well as in the Council's general approach. **We welcome the principle of the proposal of Single Market Emergency Instrument**, while remaining vigilant to the proper inclusion of companies in the framework of this regulation and to the scope of the measures taken through the mechanism. AFEP, MEDEF and FI welcome the Commission's support of the co-construction principle which recognises the companies' role in the definition and the implementation of the industrial policy, as well as the announcement of future alliances and IPCEIs.

In order to provide the means to achieve these ambitions and to build a true European strategic autonomy, French companies support priority areas that they would like to see strengthened:

- **The role of the Competitiveness Council should be reinforced** and include the issue of strategic autonomy linked to industrial strategy, especially in monitoring the development of the ecosystems. The Swedish Presidency should keep industrial policy at the top of the Competitiveness Council's agenda and strengthen the dynamic introduced by precedent Presidencies.

- **Deepen the methodology of the innovative initiative on industrial dependencies launched by the Commission**: the need for new legislative, regulatory or financial tools must be anticipated. We welcome the new in-depth study of strategic dependence provided by the Commission and encourage the latter to extend the examinations to all strategic sectors and to broaden the analysis to include data that is even closer to the economic reality and political reasons for these dependencies, such as feedback from the field or taking into account the political strategies of third countries ("America First", "Made in China 2025"). The setup of the Commission's Observatory of Critical Technologies should be accelerated in order to identify dependencies and risks of future technological dependencies and efficiently **support the development of technologies at the interface between the civil, defence and space industries**, (e.g. artificial intelligence, cloud and quantum computing) by creating synergies between EU programmes (such as Horizon Europe, European Defence Fund, EU Space Programme, European Innovation Council, InvestEU, and other sectorial instruments). In this perspective, French companies welcome the announce of a "CRM" Act and will support its development during the Swedish presidency, to address **the industrial needs regarding strategic metals and raw materials that are necessary for the green and digital transition** as well as to **reinforce the resilience of the European economy.**

- **These analyses must also be able to guide strategic decisions on the supply and resilience of our strategic value chains.** No option should be left off the table. An effective policy mix could allow, for example, to diversify suppliers, favouring the most resilient ones, building up robust stocks, and intelligently locating critical production units on European territory. This includes a strategic approach regarding critical raw materials, supported by the Council, and to be developed in the CRM Act

- **As the Commission rightfully stresses, the role of industries and businesses in improving resilience and reducing dependencies and associated risks is crucial.** French businesses are ready to answer the call and participate actively in working groups or expert groups along the lines of the Industrial Forum. Moreover, **it seems to us urgent that a structured dialogue with the institutions be set up** to deal with the impacts of the Russia/Ukraine conflict and, if necessary, to set up sectoral forums to ensure the widest and most exhaustive sharing of information possible.

- **Accelerate IPCEIs**: in front of the massive stimulus investments announced by the United States and China, the French companies suggest making massive use of IPCEIs in strategic areas such as health, semi-conductors, raw materials or low-carbon industry, with EU budget support and simplified procedure.

- **In order to ensure the coherence of European policies, the industrial strategy, in the light of the objective of strategic autonomy, must necessarily be articulated in good intelligence with other cross-cutting policies, i.e., trade, competition, energy and environmental policies.** For over a decade, the issues of reindustrialization and energy policy have been carefully separated, whereas they are intimately linked. There will be no return of a resilient industry without a very strong increase in electricity production to feed the robotization and digitalization of our productive sector. That's why the European industrial policy must integrate the objectives of decarbonization of the economy into its strategic orientation.

- **Market integration between EU countries** should be revived and accelerated, as the single market is one of our biggest strengths. Suppressing barriers to the emergence of European actors, including differences in national standards/regulations that contribute to segmenting products (goods, services) markets and factors markets, can be one of the main areas of progress to be taken up by the Council via its Competitiveness Council.

- **Start-ups and SMEs must be allowed to reap the benefits** of increased support to accelerate their digital transition, the adoption of the Industry 4.0 model and facilitate their sustainable growth. SMEs also benefit from sectoral initiatives and "proof of concept" development for data sharing within secured European data space.

- Finally, the EU as a whole should not only build on all the strengths of its talented and well- educated workers and entrepreneurs but also **ensure that adequate investments are made in support of the upskilling and reskilling of the workforce**, to remain competitive and resilient.