

PACTE ACT MONITORING AND EVALUATION COMMITTEE

Summary of the first report

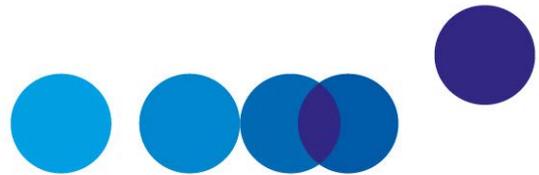
President

Gilles
de Margerie

Rapporteur

Adam Baiz





SUMMARY

This first annual report by the committee evaluating the Act No. 2019-486 of 22 May 2019 on the growth and transformation of companies, aka the PACTE Act, provides an update on its implementation and consequences.

Almost all of the regulatory measures that had to be adopted to implement the law have been adopted. A number of important administrative projects are under way, for example for the unique register, which is expected to be completed in 2023. Most of the measures became applicable between the date of promulgation of the law (23 May 2019) and the end of the first half of 2020. It is therefore, in most cases, too early to have the facts and figures to describe them and, still less, to assess their consequences.

Two of the four capital operations envisaged in the law took place, with the restructuring of La Poste's capital and, more generally, the reorganisation of the public finance hub, as well as the privatisation of La Française des Jeux. The absolutely exceptional circumstances encountered by La Poste's activities during and after the period of lockdown imposed by Covid-19 do not, to date, make it possible to identify precisely the consequences of these capital transactions on its public service missions. The most we can say at present is that La Poste's equity has been strengthened.

The measures to improve the financing of the French economy were also implemented in a completely unexpected context, with additional savings in the first half of 2020 estimated at more than €80 billion and significant volatility in the equity markets. Under these conditions, assessing the impact of the various articles of the law concerning savings would be a largely theoretical exercise, given the scale of the movements observed.

The implementation of the provisions on corporate governance and employee participation does not appear to have been substantially disrupted by the crisis, nor does the implementation of the provisions on simplifying and modernising the regulatory framework. The emergence of several dozen "Companies with a mission" (more or less equivalent of the B-corps in the USA) is noteworthy, as well as the development of "raison d'être" (a purpose) around social and environmental issues.

From next year, as indicated in the methodological report published at the end of 2019, the committee plans to take over the new stages of the Competitiveness and Employment Tax Credit (CICE) evaluation as well as the switch to reduced social security contributions, as required by Article 221 of the law.

This summary of the First Report of the Monitoring and Evaluation Committee for the PACTE Act proposes to highlight the most significant evidence available at this stage for each of the 23 themes.

Theme 1 – Unique online business creation platform and register

Reform

By 2023, the PACTE Act provides for the setting up of a unique online business creation platform, replacing the six current networks of business formalities centres, and the establishment of a unique general register that will centralise and disseminate information on businesses online. In order to define its scope and operational procedures, an interministerial task force on the simplification and modernisation of business formalities and public reporting requirements was created by decree on 3 July 2019.

Initial findings

According to the French Directorate-General for Enterprise, a first version of the platform will be put into operation in January 2021, but it will be necessary to wait until January 2023 for its full implementation. Decree No. 2020-946 published on 1 August 2020 in the *Official Journal of the French Republic* designates the INPI (French Industrial Property Institute) as the operator of this future platform.

Theme 2 - Individual companies with limited liability

Reform

Since 1 October 2019, the PACTE Act has simplified the conditions for Individual companies with limited liability (*Entreprises individuelles à responsabilité limitée – EIRL*), notably by allowing individual entrepreneurs to create an EIRL without any designated professional assets, and by making it optional to use a professional to appraise assets over 30,000 euros.

Initial findings

Although there has been an acceleration in the number of EIRLs created since the implementation of the reform (+55% in the monthly flow), EIRLs remain marginal among the 2.3 million individual entrepreneurs (2%), and their growth is not as strong as that of micro-entrepreneurs and simplified joint-stock companies. In this respect, the experts interviewed emphasise that EIRLs continue to suffer from the existence of multiple competing legal forms for self-employed people, the administrative complexity of declaring and updating designated professional assets, and the obstacle that the separation of EIRL assets can pose when it comes to getting a loan.

Theme 3 - Simplification of thresholds

Reform

Since 1 January 2020, the PACTE Act has grouped or raised thresholds for the payment of social security contributions, and reduced the legal obligations that these thresholds represent for employers. With only three main thresholds now (11, 50, and 250 employees), various obligations have been reduced, such as the establishment of internal regulations, the contribution to the National Housing Assistance Fund (*Fonds national d'aide au logement*) or the provision of catering facilities. The method for calculating the workforce, which determines whether or not social security thresholds are exceeded, has now been harmonised: for a given year N, the workforce (for social security purposes) is calculated as the average number of employees per month in calendar year N-1. The law also stipulates that a workforce threshold is only considered to have been crossed when it has been reached for five consecutive years; conversely, falling below a workforce threshold for a single year immediately exonerates the employer from the obligations in question.

Initial findings

The monitoring and evaluation of the reform is dependent on the implementation of the *Déclaration Social Nominative*, the new-format social-security declaration for employers, which will only be able to provide 2019 data in 2021. It will then be necessary to evaluate the effects of the reform on the evolution of businesses' workforces, and to assess possible circumvention strategies in light of the costs of exceeding a social security threshold. Given the rules on the time for which a threshold must be exceeded, monitoring will have to be carried out for more than five years.

Theme 4 – Law of security interests

Reform

The PACTE Act authorises the Government to issue ordinances within two years to implement the necessary legal measures to simplify the law of security interests and enhance its effectiveness. Following on from the 2006 reforms, this reform will aim in particular to remove provisions that are difficult to read, obsolete, missing or difficult to interpret.

Initial findings

In 2019, the Civil Affairs and Seals Directorate of the Ministry of Justice launched a consultation with legal professionals, economic players and academics. A preliminary draft ordinance will also be submitted for consultation, with adoption scheduled for early 2021. Once the measure is in force, the effects of the reform will have to be assessed, notably on the basis of data from the Banque de France, on the financing capacities of economic players and on the risks of seizure and litigation.

Theme 5 - Retirement savings

Reform

From 1 October 2019, the PACTE Act introduced a new retirement savings plan (PER), available at individual, collective and industry level and designed to replace existing schemes on the market. Products that existed prior to the law will no longer be marketed as of 1 October 2020. The law also facilitates the portability of savings, capital withdrawals and horizon-based management. For example, it provides that the transfer from one savings product to another is free of charge if the product has been held for 5 years. It authorises capital withdrawals for savings built up through voluntary contributions or employee savings schemes, and makes it possible to withdraw funds for the purchase of a principal residence when the contributions come from employee savings schemes or voluntary contributions from savers. It also stipulates that by default, each saver taking out a retirement savings contract will be offered horizon-based management.

Initial findings

According to data from the Fédération française de l'assurance (FFA), as at 30 March 2020, i.e. six months after they began to be marketed, the new PERs account for €7.8 billion of assets under management and more than 788,000 savers. However, the majority of these new PERs are the result of the transformation of old PERs, which - for comparison purposes - amounted to over €235 billion, with over 13 million savers. According to an OpinionWay survey (March 2020), 41% of respondents were aware of

the new PERs at that time, and less than a third were aware of their benefits. According to the same survey, 30% of holders of a collective PER stated that they preferred a lump-sum payout, 25% preferred payment of an annuity, and 16% preferred a combination of the two. The remaining respondents stated that they did not yet know how to access their collective PER on their retirement. Data from the DREES and the DARES will be used in the coming months to refine these analyses on pension assets under management and early release behaviour.

Theme 6 - Green and solidarity-based finance

Reform

Since 1 January 2020, the PACTE Act has required that each life insurance product must have at least one socially responsible, solidarity-based or green investment unit, and all three from 2022. This unit must comply with certain criteria regarding its composition and labelling. The PACTE Act also requires that retirement savings products offer at least two investment profiles, one of which must include a solidarity-based fund.

Initial findings

According to an FFA survey conducted at the end of 2019 with a panel of 21 players, representing 90% of the total value of French insurers' units, all the insurers surveyed meet the requirements of the PACTE Act as of 1 January 2020 thanks to the listing of units of account backed by an SRI-labelled support. The survey reveals that support actions have helped this development. In addition, assets under management in labelled life insurance funds have seen very strong growth since the end of 2018, even if their share remains limited within the life insurance sector. At the end of 2019, on the basis of the survey conducted, assets under management in responsible, green and solidarity-based unit-linked life insurance policies amounted to nearly €25 billion, compared with €7 billion at the end of 2018. Given that there may be a double label, this total can be broken down into: €25 billion in SRI-labelled assets (compared with €5.4 billion at the end of 2018); €1.1 billion in Greenfin-labelled assets (compared with €540 million at the end of 2018); €810 million in solidarity finance assets, including around €700 million with the Finansol label (compared with €270 million at the end of 2018). As a reminder, life insurance assets under management at the end of 2019 amounted to €1,788 billion, of which €397 billion (or 22%) was invested in unit-linked contracts.

Theme 7 - Life insurance

Reform

Since its promulgation on 23 May 2019, the PACTE Act has aimed to increase the mobility of life insurance towards new retirement savings plans, notably through tax exemptions. It also strengthens the insurer's information obligations, for both euro and unit-linked contracts, both before and after the contract is concluded. This information concerns in particular the amount of the surrender value, the guaranteed return or past performance (gross and net of fees). And in order to direct savings more towards corporate financing, the PACTE Act also extends the list of financial instruments that may be eligible for life insurance contracts.

Initial findings

According to the FFA's latest available data, assets under management in life insurance policies totalled €1,748 billion in April 2020, a level equivalent to the amount in April 2019 (€1,745 billion), one month before the implementation of the reforms brought about by the PACTE Act. Compared with the maximum level reached in December 2019 (€1,788 billion), there was a decline of 2.2%, which could be due to low interest rates and the subsequent erosion of yields on euro fund life insurance contracts, which account for 80% of life insurance assets under management. This rate of return has steadily declined, from 3.4% in 2010 to 1.8% in 2018 and to less than 1.5% in 2019 according to initial estimates. In addition, the number of contracts transferred (known as "Fourgous") fell sharply in 2019, from 174,300 contracts converted in 2018 (and €5.6 billion transferred) to almost half that in 2019, with the proportion invested in unit-linked contracts remaining stable. The amount collected in premiums in February 2020 was €1.5 billion, approximately half the amount collected in February 2019. In March 2020, net inflows turned negative, at a level not seen since the second half of 2011, with €9 billion in deposits and €11.2 billion in withdrawals. In total, from January to July 2020, there was an outflow of €5.2 billion. This can be compared with net inflows of €17.3 billion over the same period in 2019. While total life insurance assets under management remain high compared with other savings products, the combination of low interest rates and uncertainties related to the crisis seems to have increased the attractiveness of regulated savings accounts at the expense of life insurance.

With regard to the obligations of readability and advice, the French Prudential Supervision and Resolution Authority (ACPR) reminded insurers of their obligations regarding their duty to provide advice, including on the risks inherent in unit-linked contracts, and reminded policyholders to take into account all the objectives they wish to pursue as well as the duration of their holding when making their decisions.

Theme 8 - Raising funds by issuing tokens

Reform

Under the terms of the PACTE Act, players wishing to raise funds by issuing digital tokens (through Initial Coin Offerings or ICOs) may apply for a permit from the *Autorité des marchés financiers* (AMF). While this permit is optional, it is essential in order to be able to approach the general public. Similarly, in the secondary market, digital assets service providers (DASPs) may be authorised and placed under AMF supervision. In particular, DASPs involved in the custody or buying and selling of digital assets must register with the AMF, with the assent of the ACPR. In addition, the PACTE Act stipulates that banks must put in place objective, non-discriminatory and proportionate rules to govern the access of token issuers that have obtained AMF approval to the deposit and payment account services that they run.

Initial findings

One year after the adoption of the PACTE Act, around ten permit applications have been filed with the AMF; only two applications resulted in a permit being granted. Similarly, around ten DASPs have submitted a registration application and two DASP players have applied for an optional permit. Although it is still too early to draw conclusions, given the time it takes to prepare and process permit applications, the ICO dynamic in France (and worldwide) does not seem to be picking up, after the craze observed up to 2017. In that year, nearly 130 million euros were raised in France, compared with nearly 80 million in 2018, and 11 million in 2019. The reasons most frequently cited to explain the evolution of the ICO market are: fluctuations in several crypto-currencies, competition from crowdfunding, and the risks of hacking for ICOs; and money laundering and terrorist financing for DASPs. Moreover, these risks have increased with the Covid-19 crisis, due to the widespread use of payments in crypto-currencies (PwC, June 2020), which is likely to reinforce the reluctance of banking institutions to open bank accounts for ICO holders and DASPs.

Theme 9 – SME Personal Equity Plans

Reform

Since 1 July 2020, the PACTE Act has allowed partial withdrawal of funds from an SME-Personal Equity Plan (PEA-PME) after 5 years without closing the Plan. Before the 5-year mark, withdrawal is possible under certain conditions (dismissal, early retirement, disability, etc.). In addition, various debt instruments (equity securities, fixed-rate bonds, etc.) can now be held in an SME Personal Equity Plan, subject to certain ceilings. Since 23 August 2019, the SME Personal Equity Plan ceiling has also been raised from

€75,000 to €225,000, while the standard Personal Equity Plan (PEA) ceiling has been maintained at €150,000.

Initial findings

After a dip in 2018, SME Personal Equity Plans picked up again in 2019, with €1.4 billion in assets under management (compared with €1.1 billion in 2018) and 86,900 securities accounts (compared with 82,700 in 2018). However, the number of SME Personal Equity Plans remains marginal compared with standard Personal Equity Plans, which had assets under management of €96.1 billion at the end of 2019. In the context of the current crisis, these figures are declining, with €79.4 billion in assets under management for Personal Equity Plans and €1.2 billion for SME Personal Equity Plans at 31 March 2020. The number of securities accounts has also been reduced, to 4,934,000 for standard Personal Equity Plans and 88,300 for SME Personal Equity Plans (Banque de France, March 2020).

Topic 10 - Opposition to patents

Reform

The PACTE Act creates a new opposition procedure before the National Institute of Industrial Property (INPI), for patents granted since 1 April 2020, as an alternative to the judicial route. Opponents to a patent have 9 months after its grant to file their opposition. In addition, the PACTE Act requires the examination of inventive step in the examination phase of a patent application at the INPI, the lack of inventive step becoming a ground for rejection. It also creates a provisional patent application before the INPI for a period of one year.

Initial findings

According to the latest feedback from the Directorate-General of Enterprise and the INPI, filings have fallen slightly since the end of March 2020, at the start of the public health crisis, and have resumed their usual pace since June. Accessible since 1 April 2020, only one opposition procedure has been filed to date, notably due to the fact that the opposition period is 9 months after the grant of a patent. The future dynamics will be assessed in the light of the 20 or so similar procedures in Europe and a patent opposition rate generally below 6%. At a cost of €600, the new procedure appears to be a cheaper and less time-consuming alternative to civil proceedings before the courts. It is, however, only possible within 9 months of the grant of a patent. The effects of the new opposition procedure and those of the inventive step examination will have to be assessed, particularly in view of the number of patents filed by SMEs, which is still four times lower in France than in Germany.

Theme 11 - Aéroports de Paris

Reform

The PACTE Act authorises the sale of all or part of the 50.6% stake held by the State in Aéroports de Paris (ADP), either on the financial markets or through a call for tenders. This sale would go hand in hand with the implementation of a 70-year concession, separating the ownership of the land, which would revert to the State, from the operation of the business. In addition, the State will establish certain operating obligations relating to the appointment of ADP executives, advertising and competitive bidding requirements, possible modifications to airport facilities, and the transfer of assets or the creation of security interests in respect of those assets.

Initial findings

Although the shared-initiative referendum did not succeed, the privatisation of the ADP group is not expected to take place before 2022, according to a government announcement (June 2020). This decision to postpone *sine die* comes in the context of the current crisis and market volatility (ADP shares lost 52% of their value between 5 February and 1 September 2020). In addition, between June 2019 and June 2020, ADP's total traffic fell by 88%; since the beginning of 2020, the group's traffic is down 57.5%, representing 48.2 million passengers handled.

Theme 12 - La Française des jeux

Reform

The PACTE Act specifies the scope of exclusive-rights lottery games (draw games, instant games, scratchcard games, etc.). Above all, it authorises the transfer to the private sector of the majority of the capital of the company La Française des Jeux (FDJ), and provides for the establishment of an independent administrative authority to monitor and regulate the sector. In addition, it maintains FDJ's monopoly (for a period of 25 years) for face-to-face sports betting.

Initial findings

Following an initial public offering on 7 November 2019, the majority of FDJ's capital was transferred to the private sector on 21 November. The company has since been listed on Euronext. The State's share in the capital has fallen from 72% to 21.9%. The share of individual and institutional shareholders rose from 9.6% to 58.9% (including nearly 47% for the 500,000 individual savers); the share of veterans' associations rose from 13.4% to 14.8%, while that of employees and former employees fell from 5% to 4.4%. With €1.826 billion in securities sold, this transaction represents the largest IPO

in France since the 2008 financial crisis. The Autorité Nationale des Jeux (ANJ) has succeeded the Autorité de Régulation des Jeux en Ligne (Arjel) as the national regulatory authority, pursuant to Decree No. 2020-199 of 4 March 2020. The ANJ takes over and extends the prerogatives of its predecessor Arjel, those of the Ministry of the Budget over lottery games and sports betting, and those exercised jointly by the Ministry of the Budget and the Ministry of Agriculture over the face-to-face horse racing betting network (PMU). Each year, FDJ and PMU must submit to the ANJ for approval their gambling programmes for the following year, their action plan against excessive gambling and gambling by minors, as well as their action plan to combat fraud and money laundering. Above all, the operation of each game is subject to prior authorisation by the ANJ, which has enhanced control and sanctioning capacities.

Theme 13 - ENGIE

Reform

Under the PACTE Act, the rule laid down in Article L.111-68 of the Energy Code, according to which the State must hold one-third of Engie's capital, is replaced with an obligation for the State to hold at least one share in Engie's capital. The Act also alleviates the constraints imposed on GRTgaz by the provisions of Article L.111-49 of the Energy Code, since GRTgaz's capital must now be majority-owned - and no longer wholly-owned – by Engie, the State or public-sector companies or bodies.

Initial findings

To date, no change in the State's shareholding in Engie or in GRTgaz has been notified.

Theme 14 - La Poste

Reform

While La Poste's capital remains entirely State-owned, the French PACTE Act authorises the State to withdraw from majority ownership. In addition, Decree No. 2020-622 of 20 May 2020 provides that La Poste and its subsidiaries entrusted with a public service mission, such as La Banque Postale, are subject to economic and financial supervision by the State as provided for in the Decree of 26 May 1955.

Initial findings

The new public financial centre was created on 4 March 2020. The transaction was carried out in two stages: the Caisse des Dépôts et Consignations (CDC) became the majority shareholder of the La Poste group (increasing its balance sheet from €400 billion to €1,000 billion) and immediately sold its stake in CNP (approximately 41%) to

La Poste; La Poste then sold this stake to its subsidiary La Banque Postale (LBP). LBP thus becomes the majority shareholder of CNP Assurances, replacing CDC, with a 60% stake. LBP remains a subsidiary of La Poste, which is now controlled by CDC. CDC now holds 67.1% of the La Poste group's capital, compared with 26.32% prior to the transaction. The French State's stake rose from 73.7% to 32.9%. La Poste remains responsible for four public-service missions: (a) universal postal service; (b) contribution, through its network of contact points, to regional planning and development; (c) transport and distribution of the press; and (d) accessibility of banking services. An analysis of the potential impact of the reorganisation of La Poste's capital on its public-service missions will have to take into account the exceptional circumstances that occurred in 2019 (bad weather, labour unrest) and 2020 (lockdown due to the pandemic), as well as the strengthening of the Group's equity made possible by the operation. The next report should provide initial evidence on these subjects.

Theme 15 – Fund for Innovation and Industry

Reform

The Fund for Innovation and Industry (FII), launched on 15 January 2018, consists of a set of assets worth €10 billion endowed to Bpifrance. Currently, the Fund is made up of €1.6 billion in cash from the 2017 disposals of Renault and Engie assets and €8.4 billion in public shareholdings in Thales and EDF. This fund aims to promote breakthrough technologies such as artificial intelligence, nanoelectronics and energy storage. The PACTE Act provides for the gradual replacement of these securities by the proceeds from the sale of public shareholdings. The 10 billion euros of assets will not be spent but invested with the objective of generating an estimated annual return of between 200 and 250 million euros. The proceeds will be used to finance disruptive innovation support schemes, in the form of grants, repayable advances or loans.

Initial findings

In terms of governance, the Innovation Board has been established and is responsible for setting the policy direction for the use of FII income. It has published a first report covering the period 2018-2019. Decisions relating to the FII are taken by the Board of Directors of EPIC Bpifrance following advice from the Innovation Board, based on proposals from the General Secretariat for Investment. In terms of financial management arrangements, four financial agreements have been concluded, with Bpifrance Financement for the Deep Tech action plan (4 October 2018); with the Ministry of Economy and Finance for the Nano 2022 plan (12 February 2019); with Bpifrance Financement for the *Grands Défis* (1 March 2019); with the ANR for the *Grands Défis* (24 September 2019); and with Bpifrance Financement for the Batteries

plan (7 August 2020). The FII's annual net revenues were €276.5 million in 2018 and €259.6 million in 2019. As of 31 December 2019, 250 million had been programmed (indicative programming) for each of the years 2018 and 2019, with actual commitments made of €47.4 million and €95.2 million respectively, and disbursements of €35.7 million and €74.9 million. In terms of allocation, the funds are divided into seven programmes: four components under the "Deep Tech" framework; the *Grands Défis*; the Nano 2022 Plan; and the Batteries Plan. A total of 245 million of commitments have been programmed for the Batteries Plan in 2018 and 2019, representing 49% of the total commitments programmed over the period. The four Deep Tech components total €85 million of commitments programmed for the 2018 and 2019 financial years, while the *Grand Défis* account for €120 million and the Nano Plan €50 million. Finally, in terms of transparency, the report of the Innovation Board presents the modes of action (selection criteria and process) selected for the Deep Tech plan and the *Grand Défis*. The Impact Committee plans to make an initial assessment of governance, financial management methods, fund allocation and transparency in its 2021 report. In particular, it will examine the appropriateness of disposals of shareholdings with a view to achieving an annual return of €250 million.

Theme 16 - Protection of strategic sectors

Reform

For activities likely to harm the interests of national defence, contributing to the exercise of public authority or likely to undermine public order and public security, the PACTE Act provides for the powers of the Minister for the Economy in connection with foreign investment in France to be strengthened, notably by consolidating the possibilities of injunctions, precautionary measures and sanctions. In addition, the equity threshold triggering control of a foreign direct investment in France is lowered to 25% (compared to 33% previously). Provisionally, until the end of 2020, this threshold is set at 10% for listed companies. The decree relating to foreign investment in France were published in the Official Journal of the French Republic on 1 January 2020, while the measures applicable to authorisation applications came into force on 1 April 2020.

Initial findings

On the basis of applications submitted for foreign direct investment in France, the Treasury Department will be able to monitor each sector, investor country, amount, type of investor (financial, industrial, etc.) and French geographical area. In addition, the PACTE Act provides for the annual publication by the Minister for the Economy of the main statistical data relating to the government's supervision of foreign investment

in France. This report will also make it possible to assess the extent of the controls carried out and the origin of the investments concerned.

Theme 17 – Profit sharing

Reform

Some companies have employee savings schemes which entail paying each employee a bonus linked to the company's performance or representing a share of its profits. The PACTE Act contains financial incentives: in particular, since 1 January 2019, the *forfait social* (lump-sum social security payment) has been abolished on amounts paid out under the profit-sharing scheme for companies with fewer than 250 employees, as well as on all employee savings payments for companies with fewer than 50 employees. The PACTE Act also includes measures to facilitate the implementation of an agreement (standard forms posted online, standard agreements negotiated at industry level), measures to provide companies with security once the agreement is in place, and measures to facilitate the day-to-day use of a profit-sharing agreement.

Initial findings

According to data from the French Financial Management Association (AFG, April 2020), payments into employee savings and collective retirement savings schemes for 2019 reached €15.5 billion (up €325 million compared with 2018): €5.4 billion in profit-sharing (up 3.5%); (c) €2.9 billion in voluntary payments (stable); and (d) €3.3 billion in matching contributions (up 3.4%). With a positive net inflow of nearly €500 million, assets under management stood at €144.8 billion at the end of 2019. The number of participants increased slightly to 10.9 million (+2%). The number of companies equipped with an employee savings scheme has risen sharply, with 378,000 companies equipped with a company or individual savings plan (PEE or PEI) (+11%). In addition, most of the savings are invested in equities via employee shareholding (38%), equity funds (12%) and mixed funds (comprising several asset classes: equities, bonds and money market). Diversified funds amount to €89 billion (+13% year-on-year) and represent 62% of assets under management. In addition, more than 15 billion euros were redeemed by savers in 2019 (+10% compared with 2018). The good performance of the markets in 2019 also encouraged savers to realise their capital gains, particularly in employee share ownership where redemptions increased by 21%.

Theme 18 - Employee share ownership

Reform

The PACTE Act contains several measures relating to employee share ownership. In particular, since 21 August 2019, it authorises employers to unilaterally decide to offer financial securities to their managers and employees. The lump-sum social security contribution is 20% when the company makes payments into the company savings plan (subject to a uniform allocation) and 10% when the company matches the contribution made by the beneficiaries of the company savings plan. The PACTE Act also contains measures relating to the election of employee shareholder representatives. Furthermore, it authorises a partner (natural person or legal entity) selling their shares to share a portion of the capital gain from the sale with all employees of the company whose shares are being sold.

Initial findings

According to data from the French Association of Financial Management (AFG, April 2020), employee shareholding funds represent 54.7 billion euros in assets in 2019 (+19% compared to 2018). This increase is likely to be explained by the good performance of the markets at the end of 2019. Despite a 5% increase in gross inflows, employee shareholding funds posted a negative net inflow of €2.3 billion over the year, due to redemptions amounting to nearly €5.4 billion (+21%). The total amount subscribed by employees of companies listed in the SBF 120 (collective employee shareholding transactions carried out) amounts to 3.37 billion in 2019 (Source: Eres, 2020). Forty operations were carried out by 36 SBF 120 companies. While this amount is slightly lower than in 2018 (€3.43 billion), it is the second highest amount since 2012. In addition, the amount of dividends paid to employee shareholders in 2019 is estimated at around €620 million. When available, data from DREES and DARES will make it possible to consolidate and complete these different metrics.

Theme 19 - "Company with a mission"

Reform

The PACTE Act makes three main changes applicable immediately. First, it enshrines in the Civil Code the jurisprudential notion of social interest and the consideration by companies of the social and environmental issues inherent in their activity. Second, it recognises the possibility for companies to include a "raison d'être" (purpose) in their articles of association. This raison d'être sets out the principles that the company adopts, and intends to allocate resources to enforce, in the course of its business. Finally, it creates the status of a "company with a mission": on the basis of a voluntary commitment, any company incorporated as a "company with a mission" enters a purpose in its articles of association and entrusts a monitoring body with the task of verifying the achievement of its objectives and the adequacy of the resources

committed. Decree No. 2020-1 of 2 January 2020 on companies with a mission sets out the disclosure rules in this area and the regime applicable to the independent third-party body responsible for monitoring the company's performance of the mission it has assigned to itself.

Initial findings

In the absence of a systematic information-gathering system, an examination of public announcements shows that some sixty companies have a *raison d'être*, and nearly half of them have included it in their articles of association (or are in the process of doing so). An examination of their wording already reveals a predominance of social issues (reduction of inequalities, inclusive growth, etc.), followed by environmental issues (reduction of environmental impact, financing of ecological transition, etc.), and to a lesser extent, issues related to governance and the economy. Companies with a mission, for their part, must declare their status to their commercial court clerk's office, provided that they meet the conditions to qualify for this status; an independent third-party body is responsible for monitoring and, if necessary, certifying them. To date, based on public announcements, the number of companies with a mission is estimated at around twenty. The following can be cited, in very diverse sectors of activity: Danone (food processing), MAIF (mutual insurance), Groupe Rocher (cosmetics), Sycomore (asset management), la Camif (e-commerce), Faguo (textiles), etc. In addition to the number of companies involved, it will be necessary to assess the practical details of their implementation and the possible effects on their governance and performance. The emergence of standards of objectification can already be noted with regard to the formulation of the *raison d'être* and the monitoring of the resources committed. In particular, in accordance with the government's commitment, it will be necessary to monitor the implementation of a *raison d'être* in the companies financed or monitored by the Agence des Participations de l'État and Bpifrance.

Theme 20 - Sustainability Fund

Reform

The PACTE Act created the sustainability fund when it was promulgated on 23 May 2019. This is a new foundation status and a new shareholder vehicle that can collect the equity securities (shares or corporate units) of one or more companies irrevocably transferred free of charge by its founders. The articles of association of the sustainability fund must be drawn up in writing. They determine in particular the name, purpose, registered office and operating procedures of the sustainability fund. Pursuant to Decree No. 2020-537 of 7 May 2020, the *Contrôle général économique et financier*

(CGEfi) is designated as the administrative authority in charge of monitoring sustainability funds.

Initial findings

To date, we are not aware of the creation of any sustainability fund. As the declaration of sustainability funds will have to be made at the Prefecture, statistics may eventually be drawn up based on data from the Ministry of the Interior. It should also be possible to collect tax data from the General Directorate of Public Finance. Based on case studies and surveys, it will be necessary to monitor, in addition to the number of economic sustainability funds created, the volumes and nature of the securities sold, as well as the values recorded in the articles of association.

Theme 21 - Employee directors

Reform

The PACTE Act provided, upon its promulgation on 23 May 2019, that all companies, mutual insurance companies, unions and federations with more than 1,000 employees must have at least two employee directors on their Board of Directors (or Supervisory Board), whenever this Board includes at least 8 non-employee directors (compared to 12 previously). Under certain conditions, this does not apply to companies whose main activity is to acquire and manage subsidiaries and shareholdings ("holding companies"). In addition, in listed companies, where the shares held by the company's employees represent more than 3% of the company's share capital, the directors representing the employees are now elected by the shareholders' general meeting. In addition, employee representatives may, at their request, during their first year of office, benefit from management training to help them fulfil their duties.

Initial findings

As the PACTE Act obliges companies to include directors representing employees or employee shareholders in their articles of association, statistics on employee directors may be drawn up from the trade and companies register. Pending the last general meetings (before December 2020), recent statistics have been established by the firm Ethics & Boards for companies listed in the SBF 120. These statistics show that employee representatives represent 8.8% of directors as at 30 April 2020, compared with 8.2% a year earlier. This rises to 10.7% if employee shareholder representatives are also included. As at 30 April 2020, of the 102 companies in the SBF 120 subject to the PACTE Act, 50, or 49%, were in line with the requirement regarding the number of employee representatives on the board. The remaining 52 are not yet compliant. Among them: (a) 17 passed a resolution at their 2020 AGM allowing the appointment

of 1 or 2 employee representatives within 6 months of the AGM; (b) 30 companies had not yet published their AGM notice by 30 April 2020; (c) 5 companies did not have a resolution allowing the appointment of employee representatives. As of 30 April 2020, nearly 41% of SBF 120 compensation committees had at least one employee representative or one employee shareholder representative. It should be noted that within companies, the average size of boards remains stable, indicating that there has been no circumvention strategy overall. In addition, 34.8% of employee representatives were women as of 30 April 2020, compared to 37.8% in 2014 and 2015.

Theme 22 - Payments database

Reform

The PACTE Act, in transposition of the European e-Invoicing Directive, requires the transmission of invoices in electronic form for contractors and subcontractors authorised to receive direct payment for contracts concluded by the State, local authorities and public establishments. In addition, as part of the dematerialisation of public procurement set out in the plan for the digital transformation of public procurement (2017-2022), invoicing via the single portal "Chorus Pro" is compulsory for large companies and public entities (since 1 January 2017), for medium-sized companies (since 1 January 2018), for small and medium-sized enterprises (since 1 January 2019), and for micro-enterprises (since 1 January 2020).

Initial findings

Two reports, from the Economic Observatory of Public Procurement (*Observatoire économique de la commande publique*) and the Observatory of Payment Terms (*Observatoire des délais de paiement*), will soon make it possible to assess for the year 2019 the number of public procurement contracts and the corresponding amounts, the share of SMEs holding these contracts, and the payment terms. To date, it already appears that the mandatory use of the invoicing portal has increased the number of exchanges. Almost 45.6 million electronic invoices were issued in 2019, compared with 27.4 million in 2018, mainly by SMEs. It should also be noted that there is a persistent debate on the definition of payment terms. Indeed, the deadlines for inter-company payments are defined from the date of issue of the invoice and the date stipulated in the contract, while for the public sector they are defined from the date of verification of the service provided, which can be a source of incomprehension and uncertainty for companies holding public contracts.

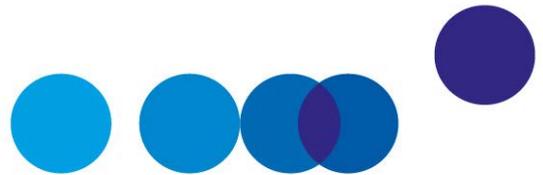
Topic 23 - Certification of accounts

Reform

The PACTE Act raises the thresholds for legal certification at the European level. From now on, only companies meeting two of the following three conditions will be obliged to have their accounts certified by a statutory auditor: a balance sheet of at least €4 million; a turnover excluding tax of at least €8 million; and a workforce of at least 50 people. In addition, companies which control other companies will be obliged to appoint a statutory auditor for the group formed by the parent company and its subsidiaries if that group exceeds the thresholds for appointment, irrespective of the obligation to draw up consolidated accounts. These obligations are applicable as from the first financial year ending after the publication of the Decree of 24 May 2019.

Initial findings

While waiting for the first statistics on the years 2019 and 2020, a report by the Inspectorate-General of Finance (2018) highlights three key results that will need to be monitored over time: (a) certification constitutes a proportionally higher burden for small businesses; (b) with an average billing amount of €5,511 per year, companies above the French thresholds and below the European thresholds spend 0.17% of their annual turnover on certification, compared with 0.02% for companies above the European thresholds; (c) with regard to recovery rates, legal certification does not seem to have a significant impact on the reliability of the tax base, and the effect of the presence of an auditor on the ability of small businesses to finance themselves has not been proven.



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Gilles de Margerie, General Commissioner

Editorial Director

Cédric Audenis, Deputy Commissioner General

Editorial secretaries

Olivier de Broca, Sylvie Chasseloup

Press contact

Matthias Le Fur, Director of the Publishing/Communication/Events Department

+33 (0)1 42 75 61 37, matthias.lefur@strategie.gouv.fr