Association française des entreprises privées
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Obligation for companies to publicly disclose their business and tax information (public CBCR) Do not expose the European industry!

On 15 November 2015, the G20 adopted the "*Base Erosion and Profit Shifting*" plan (BEPS). One of its actions provides for the introduction **of an obligation for large companies to disclose to the tax administration of the country where their headquarters are located a large number of data concerning their locations worldwide** (including turnover, profit before tax, corporate tax, number of employees). This obligation, the "*Country by Country Reporting*" (CBCR), should enable administrations to check the correlation between the activity in a country, the profit allocated to it and the corresponding tax.

To date, 39 countries, including 20 member states, have pledged to exchange data between tax administrations by signing "*the Multilateral Agreement between the competent authorities regarding the exchange of country by country reporting*".[1] **One of the requirements under this international convention is that the confidentiality of data exchanged between administrations is preserved.**

On 12 April 2016, the European Commission published a draft directive that requires European companies to publish similar data. In France, the draft law on "*transparency, fight against corruption and modernisation of the economy*", as adopted by the National Assembly, plans to introduce an identical provision.

Large French companies want to draw your attention to the fact that the publication of these data would be extremely damaging for the competitiveness of European companies:

- **Publishing these data would end the reciprocal exchange of information provided by BEPS/OECD work.** Not only would European companies be the only ones to publish their data, but the administrations of third countries would not transmit the information about their businesses to the EU member states' administrations. This risk was highlighted by Pascal Saint Amans (who is in charge of international negotiations on the subject in the OECD framework): "*It is out of question that this information be made public. Otherwise, the consensus on the principle and content of CBCR would not be achieved. It is also clearly stated in the report. One cannot exclude that the EU takes a different position in the framework of its draft directive. However, a publication of information solely at European level is likely to disadvantage EU companies in relation to their American or Asian competitors.*"[2]
  Robert Stack, US Treasury Deputy Assistant Secretary for international tax affairs also confirmed that "*the United States will not share CBCR with foreign authorities who choose to make the reports public*".[3]

- **This unilateral publication will lead European companies to lay bare in front of their competitors and business customers** by disclosing their industrial and commercial strategy through the communication of sensitive information not available to this day to the public:

[1] Australia, Austria, Belgium, Bermuda, Canada, Chile, China, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, India, Ireland, Israel, Italy, Japan, Liechtenstein, Luxembourg, Malaysia, Mexico, Netherlands, New Zealand, Nigeria, Norway, Poland, Portugal, Senegal, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland and United Kingdom.
[2] CMS Tax Conference, Westin Paris, 4 February 2016; AFEP's own translation.
[3] International Tax Review, 15 March 2016.

- **European companies will be easier targets for potential buyers:** the purchasers outside the European Union will have indeed crucial information to refine their strategy of acquisition or takeover.

- **European companies will lose markets and / or suffer downward pressure on their margins, which will result in a reduction of their investments and will have a negative impact on employment.** In many countries, including within the European Union, multinational companies may have only one establishment or sometimes a single customer. In this situation, the publication of CBCR data makes their overall business strategy and the income generated transparent to their foreign competitors.
  Even assuming that the company has several subsidiaries/businesses within the same country, changes from one year to the other of published data will easily show a new market obtained, commercial difficulties or successes.

- **European companies will lose control over their business strategy.** In fact, the business strategy of a company on the same product can differ by country: for instance, in one country a product may be considered as a premium product and in another as a mid-range product. The publication of CBCR data will reveal this strategy through the communication of turnover and profits for each country. This will lead to downward pressure on their margins. The pricing of products is at the heart of the companies' commercial strategy: disclosure will prove extremely damaging in most industrial sectors.

- **The publication of CBCR data also represents a major risk for public finances of the member states where multinationals' headquarters are located.** Indeed, in most cases it will highlight overrepresentation of profits and employees for the entities of the group located in the headquarters' country compared with the turnover corresponding to sales in this country only. How will national authorities be able to justify to third countries the gap between the turnover in their territory and profit therein affected by companies compared to the same elements in the emerging countries? (e.g. CBCR provides the number of employees by country without specifying their qualification level).

Large French companies are sounding the alarm about the dangers of exposing their commercial data to the world. The EU was still in 2015 the first location of the world's largest multinationals (143 of the largest 500 multinationals located in the EU, 126 in the US, 100 in China; see attached map). This rank is threatened, although it demonstrates the strength of the European economy and the pride of its companies.

For this reason, the EU should not pass a legislation which leads to communicate data about its companies to their competitors worldwide.

Therefore, we call upon the EU member states and the Members of the European Parliament to oppose that this project.

The fight against aggressive tax planning is already provided by the CBCR exchanged between tax authorities under BEPS now implemented in the EU through Directive 2016/881 amending Directive 2011/16 as regards mandatory automatic exchange of information in the field of taxation. The publication of similar data threatens its existence as well as the commercial and industrial strategy of the European multinational groups.

About AFEP

Since 1982, Afep is the association which brings together large companies operating in France. The Association is based in Paris and Brussels. Afep aims to foster a business-friendly environment and to present the company members' vision to French public authorities, European institutions and international organisations. Restoring business competitiveness to achieve growth and sustainable employment in Europe and tackle the challenges of globalisation is Afep's core priority. Afep has 112 members. More than 8.5 million people are employed by Afep companies and their annual combined turnover amounts to €2,600 billion.

Afep is involved in drafting cross-sectoral legislation, at French and European level, in the following areas: economy, taxation, company law and corporate governance, corporate finance and financial markets, competition, intellectual property and consumer affairs, labour law and social protection, environment and energy, corporate social responsibility.

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