Brussels, 29 May 2017

Re: Business messages in view of the forthcoming joint committee vote on public Country-by-Country Reporting

Dear Member of the European Parliament,

You will soon vote on the draft report by co-rapporteurs Ms Evelyn Regner and Mr Hugues Bayet on the proposal on Public Country-By-Country Reporting by amending Directive 2013/34/EU ('Public CBCR').

This is a **proposal with very serious implications for European businesses as well as for investment within Europe.** At a time when Europe is trying to build a Capital Markets Union and boost growth and jobs, we recommend that legislators focus on these high-level objectives and ensure that European capital markets remain attractive for companies and investors.

Businesses support transparency and the objective to fight tax fraud and evasion. Tax authorities, under BEPS Action 13, will receive all information needed to determine whether companies meet their tax obligations in all the jurisdictions where they operate. Tax authorities are best equipped to do so as they master complex tax laws and understand the various situations of companies.

We are seriously concerned that the Commission's proposal would put **EU companies at a competitive disadvantage** towards their competitors and business customers and damage the **attractiveness of the EU as an investment destination**, ultimately undermining the European economy.

In the context of the vote in the Parliament and of the future legislative debate, associations representing companies would like to emphasise their main concerns regarding this legislative proposal, which would:

1. **Undermine the competitiveness of European industry and its attractiveness as an investment destination**

Disclosure to the public of commercially sensitive information, would allow competitors and business clients to work out profit margins and other important business information unveiling companies' industrial and commercial strategy. Publication of such information would help competitors engage in unfair competition with EU companies and make European companies easier targets for acquisitions. Competitive disadvantage means less markets, less investment and less employment.

This was recognised by the French Constitutional Court that on 8 December 2016 ruled that the provision of the so-called Sapin II law, introducing a public CBCR, was unconstitutional as it disproportionately restricts the freedom to do business. Article 16 of the EU Charter of Fundamental Rights contains a comparable provision that guarantees the company's "freedom to conduct business in accordance with Community and national laws."

Public CBCR would also negatively impact the attractiveness of the EU as an investment destination, which runs directly counter to the CMU's objectives. Non-EU headquartered companies, particularly those that are privately held, would be hesitant to enter or expand their operations in the EU if doing so required them to publicly disclose sensitive commercial information which their home jurisdiction does not require them to do. The adverse competitive consequences of these disclosures, particularly those regarding non-EU activities, could be substantial. Without an EU presence, these firms would be less likely to acquire securities of EU issuers – to the detriment of the EU capital markets; infrastructure investment would decline, economic growth would be less robust, and EU residents would lose.

2. Undermine international tax co-operation

Public CBCR would undermine the agreement reached at the international level (OECD BEPS Action 13) on the automatic exchange of CBCR information among tax authorities. To date, 57 countries (including 25 Member States), have agreed to exchange data between tax administrations. Certain third countries may refuse to exchange tax information if CBCR information were to be made public, as this international agreement was reached under the condition that the confidentiality of information exchanged is safeguarded. For instance, the US have already made it clear that they would not exchange CBCR reports with tax administrations of countries that have implemented public CBCR.[1]

3. Lead to erroneous interpretation and unjustified reputational damage

A proper assessment of companies' tax positions requires deep expertise and knowledge not only of domestic and international tax laws and accounting standards, but also of the legal structure of the company group, of the nature and structure of the transactions between the group's different entities and the history of its tax assets and liabilities. The information disclosed under Public CBCR would be insufficiently comprehensive to provide a full understanding of companies' activities, the inevitable result would be inaccurate comparisons, erroneous interpretations, and wrongful accusations against European companies. A direct consequence would be the correlative impact on time and energy to contain the reputational damage instead of focusing on the real business and long-term value creation.

Given the great potential of Public CBCR measures to damage the competitiveness and attractiveness of European markets as investment destination, we plead the European Parliament to reconsider its report and reject the Commission's proposal.

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[1] As affirmed by Robert Stack, US Treasury Deputy Assistant Secretary for international tax affairs, "the United States will not share CBCR with foreign authorities who choose to make the reports public" (International Tax Review, 15 March 2016).

We hope that you can take these concerns into account when voting on this report at the upcoming joint committee vote.

We remain at your disposal to discuss further.

Yours sincerely,

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ABOUT ORGANISATIONS

Global & European associations:

The European Confederation of Directors Associations (ecoDa) is a not-for-profit association founded in December 2004 under the laws of Belgium. Through its national institutes of directors (the main national institutes existing in Europe), ecoDa represents approximately 55,000 board directors from across the EU. ecoDa's member organisations represent board directors from the largest public companies to the smallest private firms, both listed and unlisted.
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The Association of European Chambers of Commerce and Industry (Eurochambres) represents over 20 million businesses in Europe – 98% of which are SMEs – through members in 43 countries and a network of 1700 regional and local Chambers.
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EuropeanIssuers is a pan-European organisation representing the interests of publicly quoted companies across Europe to the EU Institutions. Our members include both national associations and companies from all sectors in 14 European countries, covering markets worth € 7.6 trillion market capitalisation with approximately 8000 companies. For more information, please visit www.europeanissuers.eu
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National associations:

ASSONIME is the Association of the Italian Joint Stock Companies representing around 450 companies from all sectors, including more than 100 listed companies. Established in 1910, its goal is the creation of a healthy macroeconomic and regulatory environment with a strong commitment to opening markets and promoting European integration.
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Afep AFEP – French Association of Large Companies
Since 1982, AFEP brings together large companies operating in France. 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 120 members. More than 8.5 million people are employed by Afep companies and their annual combined turnover amounts to €2,600 billion.
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ANSA
L'Association Nationale des Sociétés par Actions regroupe des sociétés par actions cotées ou non cotées et des cabinets d'avocats. Son action s'inscrit depuis sa création en 1930 dans le même champ de compétences: le droit des sociétés, le fonctionnement des marchés boursiers, le régime des valeurs mobilières et la fiscalité de l'actionnaire et de haut de bilan.
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The Federation of German Industries (BDI) is the umbrella organization of German industry and industry-related services. It speaks for 36 trade associations and more than 100,000 enterprises with around 8 million employees. Membership is voluntary. 15 organizations in the regional states represent the interests of industry at the regional level. As the voice of business, it draws attention to the implications of economic policy for society. The thought that guides our action: BDI is there for business – and business is there for people.
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Confidustria is the main association representing manufacturing and service companies in Italy, with a voluntary membership of more than 150,000 companies of all sizes, employing a total of 5,440,125 people. The association's activities are aimed at guaranteeing the central importance of companies, the driver's of Italy's economic, social and civil development. By representing companies and their values at institutions of all levels, Confindustria contributes to social well-being and progress, and from this standpoint guarantees increasingly diversified, efficient and modern services.
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Deutsches Aktieninstitut represents the entire German economy interested in capital markets. Its approx. 200 members are listed corporations, banks, stock exchanges, investors and other important market participants. Deutsches Aktieninstitut has offices in Frankfurt am Main, Brussels and Berlin.
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FEB As the voice of business in Belgium, FEB works towards establishing a framework to support entrepreneurship and defends the interests of over 50,000 small and large companies at federal, European and international level. FEB's initiatives cover all aspects of companies' economic, social, legal and tax-related activities at federal, European and international level. FEB represents its member federations and companies in their dealings with public authorities, trade unions, the media, academia and NGOs, is legally authorised to conduct negotiations and submit opinions on the behalf of companies, performs studies, launches joint initiatives with other employer organizations, drafts a communication policy.
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The Federation of Austrian Industries (IV) is the voluntary and independent representation of interests of the Austrian industry and its related sectors. Since 1946 the IV has taken part in all legislative processes as a recognised partner of politics. A federal organisation, nine regional groups and the IV-office in Brussels represent the issues of its currently more than 4,400 members in the manufacturing sector, credit and insurance sector, infrastructure and industry-oriented services in Austria and Europe. The Federation's members represent more than 80 per cent of domestic manufacturing companies.
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MEDEF (Mouvement des entreprises de France) is the largest representative business organisation in France, representing 8.5 million employees. 95% of its member companies are SMEs. It defends and promotes business of all sizes and sectors. MEDEF is involved in lobbying vis-à-vis decision-makers at local, regional, national, European and international levels, in order to ensure that the point of view of business is taken into account. Legally empowered to negotiate on behalf of business with government and trade unions, MEDEF conducts all the major cross-industry negotiations. It mainly focuses on fostering a vibrant job market and social protections that are modern and cost-effective. In partnership with other actors, it launches concrete initiatives and encourages stakeholder dialogue. It promotes the interests of business internationally by mobilizing its efforts in favour of competitiveness, innovation and training, along with other business organizations all gathered within BusinessEurope or the B20 Coalition. MEDEF is also involved in WTO and OECD activities.

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