



SPECIFIC INSTANCE

Café Sirène – Starbucks Coffee in France

1st June 2021

Final Statement of the French National Contact Point

The NCP notes that company Café Sirène/Starbucks Coffee France is now compliant vis-à-vis OECD's recommendations on taxation. The NCP notes and regrets the lack of dialogue between Café Sirène/Starbucks Coffee France and the association I-boycott. The NCP recommends that it improves its publication of information in order to remedy failures it noted in this regard with respect to the OECD Guidelines.

The French National Contact Point for the Implementation of the OECD Guidelines for Multinational Enterprises ("NCP" here after) was referred on 22 November 2019 by the French association I-boycott with a specific instance concerning Starbucks Coffee France.

The referral was reformulated in 2020, resulting in the extension of the initial evaluation phase. The NCP accepted the referral on 14 May 2020. I-boycott and Starbucks Coffee France accepted the good offices of the NCP on 22 May 2020 and 2 June 2020, respectively. The NCP met with the parties separately in June and in November 2020 and proposed them to meet together. After interacting with the parties separately, the NCP found that Starbucks Coffee France did not wish to meet with the complainant. The NCP put an end to its good offices and moved to the conclusion phase of the referral. This statement closes the proceedings. The NCP will follow up on its recommendations.

The French NCP is a tripartite body for the non-judicial grievance mechanism for the implementation of the OECD Guidelines for Multinational Enterprises. Its purpose is to contribute to solving issues raised to it through its good offices, mediation and conciliation. It shall endeavour to examine issues raised as soon as possible, if possible within 12 months of receipt of the specific instance. It shall publish its decisions on its website.

1. Presentation of the Specific Instance

The referral was brought to the NCP by a French non-governmental organization, I boycott, a non-profit association recognized as of general interest. Its aim is to "raise awareness, inform and support consumers in their desire for responsible consumption". In June 2016, it launched a campaign that it calls "*benevolent boycott*" ("*boycott bienveillant*") targeting Starbucks Coffee and its tax practices in France ([here](#)), calling on Internet users to stop consuming products sold by Starbucks Coffee France until the company communicates on its tax policy. I-boycott felt that it had not received a satisfactory response following its campaign, so it decided to refer to the French NCP in order to engage in a dialogue with Starbucks Coffee France. The complainant relies on this campaign in the referral.

The complainant considers that the French company would not comply with several recommendations of the OECD Guidelines on Disclosure, Consumer Interests and Taxation (Chapter III, VIII and XI). The original referral, filed on 22 November 2019, concerned the Company as a subsidiary of the



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American Starbucks Coffee Corporation. The reformulated referral on 30 March 2020 concerns the Company as a subsidiary of the Mexican Alsea Group and their relationships with the Starbucks Coffee Corporation. According to the complainant, the French company, first as a subsidiary of the American group Starbucks Coffee Corporate, then as a subsidiary of the Mexican group Alsea, would not publish enough information about its organization, operation, taxation of its activities in France, intra-group transfer prices and the licensing agreement between Starbucks Coffee and Alsea. According to the complainant, consumers would not have enough information on the company's taxation in order to be able to make "an informed choice" in their purchase acts. According to the complainant, the transfer prices charged by Starbucks Coffee France would contradict to the arm's length principle recognized by the OECD Guidelines.

During the initial assessment, Starbucks Coffee France sent two letters and press releases to the French NCP on the matter referred to in the referral. In particular, it informed the French NCP that since 28 January 2019, the Company has been 100 % owned by a company governed by Spanish law, which is itself a subsidiary of a Mexican group, Alsea, a company listed on the Mexico Stock Exchange. As a result, it was not in a position to answer questions prior to that date.

The [Initial Assessment Statement](#) includes the company's response to the referral.

The Initial Assessment Statement contains in the annex the list of the recommendations of the Guidelines referred to in the referral. ➔ Cf. [NCP Statement of 10 July 2020](#)

2. Procedure followed by the NCP in accordance with its Bylaws

Taking into account the health guidelines for the prevention of Covid 19, meetings between the parties and the NCP as well as its internal meetings took the form of video-conferences and call-conferences.

Under its Bylaws, the NCP shall endeavor to carry out an initial assessment of a referral within 3 months after the acknowledgement of receipt of the matter, but additional time may be granted if it is necessary to collect the information necessary for an informed decision (art. 26). The NCP shall endeavor to examine the issues raised as soon as possible, if possible within 12 months after the receipt of the specific instance (Art. 31). The Bylaws also provide for the possibility of hearing experts (Art. 27¹). In the framework of this procedure and as indicated in the initial assessment statement, the NCP heard the French Directorate-General for Public Finance ("DGFIP") and consulted the OECD Secretariat's Centre for Tax Policy and Administration who provided information on current practices in relevant areas of tax policy.

◆ 1st step: Admissibility and initial assessment of the referral (December 2019 to July 2020)

The NCP acknowledged receipt of this specific instance on 29 November 2019. It found its formal admissibility on 3 December 2019 and begun its initial assessment. The NCP informed the three NCPs concerned by the referral. The Company acknowledged receipt of the referral on 20 December 2019. At its meeting on 14 January 2020, the NCP decided to accept the referral, and informed the Company on 22 January 2020. The Company sent two letters to respond to the referral on 13 and 28 January 2020. In particular, it informed the NCP of changes in the capital structure of Starbucks Coffee France which

¹ Art. 27: "Where the issues raised merit further examination, the NCP shall offer its good offices to help the parties involved to resolve them by providing a forum for dialogue. During its good offices and the examination of the specific instance, the NCP shall consult with these parties and, where appropriate, according to the cases examined, the NCP shall: Seek advice from competent authorities, and/or representatives of the business community, worker organizations, other non-governmental organizations, and experts; (...)."



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occurred in January 2019 following its acquisition by the Alsea Group². At its meeting on 4 February 2020, the NCP considered that these changes had an impact on the initial specific instance. It therefore invited the complainant to reformulate it. In accordance with its Bylaws, it decided to extend the referral initial assessment period. The complainant reformulated its referral on 30 March 2020. The NCP continued the initial assessment. The five supportive NCPs were kept informed of these decisions.

At its meeting on 14 May 2020, the NCP considered that the issues raised by the referral as reformulated merited further consideration in order to contribute to the effectiveness of the Guidelines. It decided to accept the referral and offer its good offices to Starbucks Coffee France and I-buycott. I-buycott and Starbucks Coffee France accepted them on 22 May 2020 and 2 June 2020. The NCP informed the supportive NCPs. The complainant signed the commitment to respect confidentiality and trade secrecy on 28 January 2020 and then on 6 June 2020 in order to incorporate the reformulation of the referral.

The NCP adopted a draft initial assessment statement on 22 June 2020 and consulted with the parties that submitted their comments as well as with the five supportive NCPs. It adopted the [Initial Assessment Statement](#) on 10 July 2020 ([here](#))³ and published it on 22 July 2020. The referral was notified to the OECD ([here](#))⁴.

◆ **2nd step: Good offices of the NCP (June 2020 to February 2021)**

The NCP began its good offices with the complainant's hearing, I-buycott, on 30 June 2020 in the form of a video-conference. The Company indicated that its hearing could take place after the publication of its accounts for 2019, delayed by the health crisis.

In the meantime, the NCP heard the Directorate-General for Public Finance (DGFIP) on 12 November 2020 in the form of a video-conference.

It heard the Company on 19 November 2020 in the form of a video-conference. On that occasion, it sent to the NCP a tax regularity certificate issued by the DGFIP on 25 June 2020 and gave its consent for the complainant to be informed. During this hearing, the NCP invited the company to engage in a direct dialogue with the complainant. At its meeting on 10 December 2020, the NCP decided to continue its good offices until the company's response and the publication of its 2019 accounts. The complainant was informed of these developments on 11 December 2020.

On 11 January 2021, the company informed the NCP that its accounts closed as of 31 September 2019 were in the process of being published by the Registry of the Commercial Court and that its accounts

² It concerns the sale of 100 % of the capital of certain subsidiaries of the Starbucks Coffee Group and, more specifically, the acquisition of 100 % of the capital of the French company by a Spanish company, a subsidiary of the Mexican group Alsea, and the existence of a licensee agreement between Starbucks Coffee and Alsea which covers the activities carried on in France on behalf of Starbucks Coffee.

Alsea press release on the development of the Starbucks brand in France, 27 December 2018:

https://www.alsea.net/uploads/en/documents/general_documents/alsea_signs_the_contract_for_the_development_of_the_starbucks_brand_in_france.pdf

Alsea press release on the development of the Starbucks brand in the Netherlands, Belgium and Luxembourg, 25 February 2019:

https://www.alsea.net/uploads/en/documents/general_documents/closing_sbux_benelux_25feb19.pdf

³ Dedicated page: <https://www.tresor.economie.gouv.fr/tresor-international/pcn-france/circonstance-specifique-starbucks-coffee-en-france>

Press release EN: <https://www.tresor.economie.gouv.fr/Articles/2853c35e-038b-4608-99c0-86d804a60278/files/c45c49a5-5ace-44a2-81b9-97e4f222a0db>

Initial Assessment Statement: <https://www.tresor.economie.gouv.fr/Articles/2853c35e-038b-4608-99c0-86d804a60278/files/f0492d09-e8a9-42a5-b188-b35420fa7c2c>

⁴ <http://mneguidelines.oecd.org/database/instances/fr0032.htm>



for the 4th quarter of 2019 would be handed over a little later. It stated that it had cooperated in good faith in the proceedings and did not wish to engage directly with the complainant. At its meeting on 12 January 2021, the NCP took note of the impossibility of holding a direct dialogue between the parties. It decided to continue its good offices for a few more weeks in order to have the Company's accounts. The Secretariat informed the complainant of these developments on 21 January 2021 and then organized a video-conference on 26 January 2021 to review the situation. The complainant noted the company's refusal to meet with it in the framework of the NCP's good offices.

At its meeting on 11 February 2021, the NCP noted that the company's accounts for the 1st, 2nd and 3rd quarters of 2019 had been published on the *Infogreffe* website. It decided to end its good offices and to move to the conclusion phase of the proceedings.

Since the OECD Tax Centre hearing, scheduled since the initial assessment, could not be organized before February 2021, it was postponed to March 2021. The parties were informed of these decisions on 15 February 2021.

◆ 3rd step: Conclusion of referral (February to May 2021)

The NCP consulted the OECD Secretariat's Centre for Tax Policy and Administration on 9 March 2021 with the participation of the OECD Secretariat's Centre for Responsible Business Conduct. The OECD points out, however, the role of the Secretariat to "*serve as a central point of information for NCPs that have questions on the promotion and implementation of the Guidelines*"⁵ is limited to providing information of a general nature on the Guidelines and does not extend to interpreting the Guidelines in specific cases". At its internal meeting on 9 March 2021, the NCP instructed the NCP Secretariat to prepare a draft final statement. The draft final statement was adopted by the NCP on 4 May 2021. The NCP then consulted with the parties and the five supportive NCPs. The complainant validated the draft statement without making any specific remarks and expressed the hope that Starbucks would ensure compliance with the NCP's recommendations. The NCP took into account the comments received from Café Sirène France and the Spanish NCP. The NCP adopted the final statement on 1st June 2021, which it issued on 7th June 2021, after have been forwarded for information to the parties and supportive NCPs. The NCP Secretariat notified the statement to the OECD in order to update the NCP database ([here](#)).

◆ Coordination with foreign NCPs

The initial referral raised issues about the relationships between the French Company, two entities of Starbucks Coffee Group in the Netherlands and the United Kingdom and with the American Group. The referral as reformulated also concerns the relations of the French Company with the Alsea Group and a Spanish subsidiary. As these countries adhere to the Guidelines, the French NCP coordinated its work with their respective NCPs.

The French NCP informed the U.S., British and Dutch NCPs of the referral on 23 December 2019 and informed the Spanish and Mexican NCPs at the beginning of April 2020 following the reformulation of the referral on 30 March 2020. It coordinated its action with the five NCPs throughout the proceedings. The NCPs agreed on 27 May 2020 that the French NCP would lead the referral as it concerns a French company and its activities in France (see § 3 "coordination of NCPs" of the initial assessment statement). The French NCP Secretariat regularly updated the five supportive NCPs on the progress of the proceedings and organized several coordination meetings in the form of video-conferences. The

⁵ See Abstract, IMPLEMENTATION PROCEDURES OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES, "II.5. In discharging its responsibilities, the Committee will be assisted by the OECD Secretariat, which, under the overall guidance of the Investment Committee, and subject to the Organisation's Programme of Work and Budget, will: a) serve as a central point of information for NCPs that have questions on the promotion and implementation of the Guidelines".



supportive NCPs were consulted on the draft initial evaluation and draft final statements. These drafts have been translated into English by the NCP Secretariat to allow for such consultation, which has led to a certain delay in finalizing the statements.

This coordination is in line with the practice of the French NCP and [the OECD Guide for NCPs for coordination when handling specific instances](#)⁶. The French NCP thanks the British, Dutch, Mexican, Spanish and U.S. NCPs for their support.

3. Substantive analysis of issues raised about the effectiveness of the OECD Guidelines

In the course of its good offices and exchanges with the parties, the NCP gathered information providing a better understanding of the activities carried out by Starbucks Coffee France on behalf of Starbucks Coffee in France. Several issues raised by the referral are covered by fiscal secrecy and business secrecy, which may have limited information to both the NCP and the complainant. The French Company provided only a few written documents to the NCP (two letters, two Starbucks press release and one tax regulatory certificate). As the referral raises tax issues, the NCP announced since the initial assessment that it would consult with experts from French Tax Administration and the OECD Secretariat's Centre for Tax Policy and Administration to gather information to help inform its understanding. These consultations are provided for in NCP's Bylaws. Parties and supportive NCPs were informed about these consultations.

The Starbucks Coffee France Company recalled during the proceedings that the referral took place after a change in its capital structure. This includes the sale of 100 % of the capital of certain Starbucks Coffee's subsidiaries and the acquisition of 100 % of the French Company's capital by a Spanish company, which is a subsidiary of the Mexican group Alsea, and the existence of a licensee agreement between Starbucks Coffee and Alsea Groups. This licensee agreement covers Alsea's activities in France, Spain, Portugal, Belgium, the Netherlands and Luxembourg, on behalf of Starbucks Coffee. However, some Starbucks Coffee entities in Europe remained within the group, including those in charge of the storage and roasting of coffee in Italy and the Netherlands. Furthermore, the French company indicated that it could not respond to the situation prior to the transfer to Alsea, i.e. before January 2019. The referral raises issues concerning three chapters of the Guidelines: disclosure, consumer interests and taxation.

At the end of the proceeding, the NCP takes stock of the following with regard to the issues raised by the referral:

■ Disclosure (Chapter III)

The complainant calls into question the publication of inadequate and insufficient information, according to it, by the French company, first as a subsidiary of Starbucks Coffee, then as a subsidiary of Alsea concerning its organization, operation, intra-group transfer prices, the licensing agreement between Starbucks Coffee and Alsea and its tax transactions. According to the referral, much of the essential information provided for in the Guidelines is lacking (Articles 1⁷, 2c, 2e, 3a and 4 of Chapter III).

During its hearing by the NCP, Starbucks Coffee France gave explanations of its mode of operation. It

⁶See "[Les PCN et l'OCDE](#)" www.pcn-france.fr and [here](#)

⁷ Paragraph 1 mentions "*on all material matters regarding their activities, structure, financial situation, performance, ownership and governance*".



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indicated that it operates in France in 3 ways: as operator of 65 stores (so-called “salons”) with its own employees (+ 4 stores by June 2021), as a franchisor of 35 stores and as a concessionaire of 81 stores at airports and train stations (under the framework of contract under English law). The company indicated that all these stores had to comply with a strict specification defined by Starbucks Coffee Corporation.

Starbucks Coffee France reported redesigning its website in September 2020. It now indicates that the Company is part of Alsea under the “[Terms of Use and Legal Notices](#)” tab at the bottom of the homepage. Also, the company indicated that its website does not contain financial information but that its accounts are accessible on *Infogreffe*. The Company stressed that it does not consider itself subject to the French legal requirements on non-financial reporting. In addition, it informed the NCP that it had changed its corporate name for “*Café Sirène France*”. The NCP notes that Café Sirène is a simplified corporation (“SAS”) and that Article L. 225-102-1 of the French Commercial Code does not apply to such companies. Therefore, Café Sirène is not legally required to issue an extra-financial performance declaration.

The NCP notes that Starbucks Coffee France’s website does not contain information on the company’s governance (III.1) or on “*the financial and operating results of the enterprise*” (III.2.a). It notes that since September 2020 its [website](#) indicates that the Company is a subsidiary of Alsea. However, the website does not contain information on the nature of the relationships between the Company, Starbucks Coffee Corporation and Alsea SAB, for example on the licensee agreement, the specifications set by Starbucks or the franchises. The NCP also notes that Starbucks Coffee France’s website does not include any elements on corporate tax policy, such as the commitment to follow best practices recommended by the OECD regarding intra-group taxation. In addition, it is not indicated whether the Company is consolidated by a third entity or not, what entails consequences in terms of financial and non-financial reporting obligations depending on the country where the parent company is located. The website does not include any information about the Company’s “*ownership*” (III.1). Moreover, its website does not contain “*material information on party related transactions*” (III.2.e) which, in the case at hand, would cover transactions between Starbucks Coffee France, Alsea and the Starbucks Coffee Group under the above-mentioned licensee agreement and specifications. The content of the licensee agreement is covered by business secrecy.

The NCP notes, however, that the Company’s annual accounts, which describe the company’s financial position and results, are available on “[Infogreffe](#)” the Commercial Court website. However, the access and visibility of this information should be improved. The NCP notes the Company’s name change to Café Sirène effective as off from 1 January 2021 and that the Company retains “Starbucks Coffee France” as its commercial name.

The NCP understands from hearings that any company is free to transmit to the NCP and publish elements of its tax policy. The NCP notes that private initiatives are emerging to highlight corporate “tax responsibility” as part of their policies or commitments for CSR and sustainability.

Some information is available on the websites of ALSEA Group and Starbucks Coffee Group. Information on Starbucks Corporation Group financial situation is available on the [Group’s website](#) and information on Alsea SAB Group structure is available on [Alsea’s website](#). On the other hand, it seems that Alsea SAB website does not include information on the group’s and its subsidiaries tax policy nor on the consideration of good practices recommended by the OECD (BEPS).

➔ *It appears from these factors that Starbucks Coffee France does not fully comply with Recommendations 2a and 2e of Chapter III of the Guidelines concerning respectively the disclosure on financial and operating results and on “party related transactions” which would cover its relations with Alsea and Starbucks Coffee. The NCP also notes that the Company only partially complies with recommendation 3a of Chapter III which states that “Enterprises are encouraged to communicate additional information that could include: a) value statements or statements of business conduct*



intended for public disclosure including, depending on its relevance for the enterprise's activities, information on the enterprise's policies relating to matters covered by the Guidelines". The NCP notes that the Company is only partially in compliance with Chapter III recommendation 4 which states that "Enterprises should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist. The standards or policies under which information is compiled and published should be reported".

■ Consumer Interests (Chapter VIII)

The complainant considers that transparency on the taxation of activities carried out in France on behalf of Starbucks Coffee is one of the elements on consumer interests covered by recommendations 2⁸ and 4⁹ of Chapter VIII. According to the complainant, if the company assumed its responsibility for transparency and consumer information, consumers should then have more information on the company's taxation in order to be able to make an informed choice in their purchasing acts. The complainant considers that knowledge of a company's tax contribution in France is likely to guide consumer purchasing decisions. It supports this claim by the number of participants in its so-called "benevolent boycott" campaign (33 826 to 29/03/2021). The complainant further states that the company would commit "a wrongful omission" vis-à-vis the consumer by refusing to respond to consumer demands on its corporate tax situation in France and that the company would adopt "unfair behavior" towards the consumer as well as its competitors.

Chapter VIII of the Guidelines states that enterprises should "*provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information on the prices (...)*" (VIII.2). In particular, the commentary on Consumer Interest in Chapter VIII state that "*Further, many consumers are increasingly interested in knowing the position and activities of enterprises on a broad range of economic, social and environmental issues, and in taking these into account when choosing goods and services*" (§ 82), that "*It should be noted that what is considered to be "sufficient" can change over time and enterprises should be responsive to these changes*" (§ 85) and that "*Business conduct is increasingly considered by consumers when making their purchasing decisions*" (§ 86).

During the proceedings, the Company did not respond directly to issues raised by the referral on consumer interests. It indicated that it conducts its activities within the strict specifications set by Starbucks Coffee and under the licensing agreement between Alsea and Starbucks Coffee.

The NCP assumes the hypothesis that, since the Company belongs to Alsea, the prices charged by Starbucks Coffee France are integrated within the above-mentioned licensee agreement and specifications framework set by Starbucks Coffee Group. Prior it joins Alsea, the prices would have been set as part of intra-group transfer prices. The French Company's website – as well as those of its above-mentioned business relationships – does not appear to contain information on these elements which are likely to affect the prices charged in France. Information available on Starbucks Coffee France's website and explanations provided by the Company during the proceedings do not constitute "*accurate, verifiable and clear information that is sufficient*" within the meaning of the Guidelines to enable consumers to make informed purchasing decisions.

→ The NCP considers that the Company does not provide consumers with "accurate, verifiable and clear information that is sufficient to enable consumers to make an informed decision, including

⁸ It states that enterprises should "**2. Provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information on the prices and, where appropriate, content, safe use, environmental attributes, maintenance, storage and disposal of goods and services. Where feasible this information should be provided in a manner that facilitates consumers' ability to compare products**".

⁹ The states that enterprises should "**4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair**".



information of the prices” of the products it sells. The Company does not comply with recommendation 2 of Chapter VIII.

→ Nevertheless, the complainant did not provide evidence that the Company would have or would have had a “deceptive, misleading, fraudulent or unfair practice” within the meaning of recommendation 4 of Chapter VIII in relation to its tax policy and business structure.

■ Taxation (Chapter XI)

Several tax issues raised by the referral are covered by tax secrecy. The NCP understands from hearings that any company is free to forward to the NCP elements of its tax policy but that it remains free not to do so.

The complainant questions the taxation of activities carried out in France on behalf of the Starbucks Coffee Group. According to him, the Company would not comply with the OECD recommendations¹⁰ due to the alleged absence of corporate tax payments in France for several years. According to him, this is due to transfer prices used within the Starbucks group, notably on coffee, and to the licensing agreement between Starbucks Coffee and Alsea. The complainant states that transfer prices practices within the Starbucks Coffee Group was explained by a decision of the European Commission of 2015¹¹ and by a judgment of the EU General Court of 2019¹² concerning a preliminary agreement on prices (“tax ruling”) concluded in 2008 between the Netherlands and Starbucks Manufacturing Emea BV, a Starbucks Coffee group’s entity, which, in particular, roasts coffee.

During its discussions with the NCP, the Company informed the NCP that it respects the General Tax Code in France and that it transmits tax information required by competent authorities, notably the country-by-country reporting. The Company confirmed that it is subjected to corporate tax but that it does not contribute due to the absence of net profits. The company indicated that it is pursuing an investment strategy in France which, for the time being, does not allow it to generate profits. In addition, the Company’s activities are strongly impacted by restrictions imposed by the health situation caused by the COVID 19 pandemic.

During the initial assessment of the referral, the Company informed the NCP that, following a procedure with French tax administration, the latter issued a certificate of tax regularity dated 25 June 2020. The Company forwarded this certificate to the NCP in November 2020. The NCP notes that, as of that date, the Company is in compliant notably with respect to corporate tax. As part of the NCP’s good offices,

¹⁰ Recommendation 1 of chapter XI: “It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate. Complying with the spirit of the law means discerning and following the intention of the legislature. It does not require an enterprise to make payment in excess of the amount legally required pursuant to such an interpretation. Tax compliance includes such measures as providing to the relevant authorities timely information that is relevant or required by law for purposes of the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm’s length principle”.

¹¹ Decision (EU) 2017/502 of 21 October 2015 on State aid SA.38374 (2014/C ex 2014 NN) implemented by the Netherlands in favor of Starbucks (OJ 2017, L 83. p. 38).

<https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX%3A32017D0502>

On the European Commission’s investigation and its decision: see also

https://ec.europa.eu/commission/presscorner/detail/en/IP_14_663 and

https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5880

¹² On 24 September 2019, the General Court of the European Union annulled the Commission’s decision of 21 October 2015 (‘The Commission failed to demonstrate the existence of an advantage in favour of Starbucks’).

See GCEU Press Release: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-09/cp190119en.pdf>

Judgment of the General Court: [CURIA - Documents \(europa.eu\)](https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-09/cp190119en.pdf)



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the Company accepted that this attestation be forwarded to the complainant, who took note of it. In addition, the Company invited the NCP to consult its Q1-Q2-Q3 2019 annual accounts, which were published in December 2020. The NCP notes that Annex 1 of these accounts indicates in the part devoted to accounting audits of significant facts for the Company: “*On 21 December 2018, the company entered into an agreement with the French tax administration concerning the accounting verification in progress at the end of the fiscal year, covering the years 2008 and prior as well as the years 2009 to 2017. In March 2019, the company accepted the proposal of the French tax administration to conclude the ongoing verification, and accepted the tax consequences of EUR 955 887 of corporate taxes and EUR 359 898 of supplementary CVAE¹³. All financial consequences of the accepted adjustments were recorded in the accounts for the year. Consequently, the accounting verifications for all the years concerned are closed after the end of the financial year of 30 September 2019*” (source: Annex, Chapter 1, § 1.2 page 11).

The referral questions the link between the OECD Guidelines for Multinational Enterprises, which refer to compliance with the “*letter as spirit of tax laws and regulations*” of the country in which enterprises operate, and the OECD Transfer Pricing Guidelines. The NCP conducted hearings. The NCP notes that the Guidelines for Multinational Enterprises incorporate the principle of arm’s length into the establishment of transfer prices. The arm’s length principle means that transfer prices applied to the exchange of goods and services by entities within the same group must correspond to the price of markets between independent companies. It notes that the arm’s length principle is explained by the OECD Transfer Pricing Guidelines¹⁴. These Guidelines have been revised and enriched as part of Actions 8 to 10 “*Aligning Transfer Pricing Outcomes with Value Creation*” of the OECD Base Erosion and Profits Shifting Project (“BEPS”)¹⁵. “These Guidelines fall under the so-called “soft-law”. It is up to States to integrate these standards, guides and good practices into their tax regulations and tax control processes. The OECD is not empowered to monitor its proper application by companies or States. However, the OECD organizes “peer reviews” of the States participating in the BEPS Project. However these peer reviews do not concern transfer pricing but other aspects of BEPS. Today, more than 125 states are participating in the BEPS Inclusive Framework.

The NCP questioned whether OECD Standards were taken into account in the “spirit and letter” of French tax legislation. It notes that [Article 57 of the General Tax Code](#) is the legal basis for the tax administration to establish recalls in respect of transfer pricing, in particular by characterizing an abnormal act of management or renunciation of revenue. It notes that Article 223 quinquies B of the General Tax Code states in particular that “*I. – Legal persons established in France 1° Of which the annual turnover excluding tax or the gross assets shown on the balance sheet is greater than or equal to EUR 50 million, shall subscribe a declaration, by electronic means, within the period of six months following the deadline laid down in 1 of Article 223. I bis – The declaration shall contain the following information: 2° Specific information concerning the company: c) a presentation of the method(s) for determining transfer prices in accordance with the arm’s length principle, while indicating the principal method used and changes made during the financial year*”. Beside, it notes that the French Tax Administration takes into account the Guidelines and good practices established by the OECD and the BEPS in its verification’s exercises. For example, corporate tax control incorporates the verification of the arm’s length principle of intra-group transfer prices via several analytical techniques based on the methodology proposed by the OECD¹⁶. In addition, France makes country-by-country reporting mandatory. Finally, the tax administration is exclusively competent to exercise tax control of a particular

¹³ Contribution on the added value of enterprises

¹⁴ OECD Transfer Pricing Principles for Multinational Enterprises and Tax Administrations 2017, <https://www.oecd.org/fr/fiscalite/prix-de-transfert/principes-de-l-ocde-applicables-en-matiere-de-prix-de-transfert-a-l-intention-des-entreprises-multinationales-et-des-administrations-20769723.htm>

¹⁵ <https://www.oecd.org/fr/fiscalite/beps/actions-beps.htm>

¹⁶ [OECD Transfer Pricing Principles for Multinational Enterprises and Tax Administrations 2017](#) and [PDF](#)



company. This exercise of control is covered by fiscal secrecy. In the case at hand, the NCP is not competent to carry out the Company's tax control as expected by the complainant.

→ *The information submitted by the company revealed that it obtained the issuance of a tax certification by the Directorate-General for Public Finance after having been subject of tax verification concerning several years. The NCP deducts from the accounts closed on 31 September 2019 and published that this verification included notably corporate tax liability. At the date of the said certification, the Company therefore complies "with the letter and spirit of France's tax laws and regulations" which incorporate the standards established by the OECD concerning transfer pricing.*

4. Conclusion

Starbucks Coffee France, now Café Sirène, cooperated in the good offices proceedings of the NCP. However, it preferred not to dialog directly with the complainant; Café Sirène choose to rely on the NCP's good offices. It provided the NCP and the complainant with information certifying its current situation vis-à-vis French tax Administration. The NCP note that the company Café Sirène / Starbucks Coffee France is now compliant vis-à-vis OECD's recommendations on taxation. However, Café Sirène reserved most of its explanations, mostly orally, to the NCP's attention. The NCP notes that the complainant indicated that it was considering relaunching its campaign against the Company. It noted that Café Sirène is surprised that despite the NCP's good offices, the complainant decides to relaunch its campaign, mainly focused on alleged tax non-compliance.

The NCP noted failures to comply with the OECD recommendations on disclosure and it invites the Company to consider the following recommendations in order to comply with the Guidelines:

RECOMMENDATION 1: In accordance with recommendation 1 of chapter III, the NCP recommends that Starbucks Coffee France "ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance". In accordance with recommendations 2a 2c and 2nd of Chapter III, the NCP also recommends that Starbucks Coffee France disclose "material information on: on its financial and operating results ", "the structure of the group of enterprises and intra-group relations" and "related party transactions". In particular, the NCP recommends that it communicate more about the company's relationship with Alsea SAB and Starbucks Corporation, as well as about the licensing agreement between Alsea SAB and Starbucks Corporation, while respecting business secrecy.

RECOMMENDATION 2: In accordance with recommendation 3a of chapter III, the NCP recommends that Starbucks Coffee France provide information on its taxation, which is addressed in the Guidelines in Chapter XI. This could involve a commitment to take into account the OECD's recommendations and benchmarks on international taxation, for example in the form of a code of good conduct.

RECOMMENDATION 3: In accordance with recommendation 2 of Chapter VIII, the NCP recommends that Starbucks Coffee France "Provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information" of its products. This will make it possible to communicate on transactions with related parties whose costs are likely to be included in product prices. Thus, the company could, as far as possible, refer to the existence of the licensee agreement, the use of franchises, the specifications and transfer prices, while ensuring compliance with legal obligations relating on the one hand to business secrecy and, on the other hand, to fiscal secrecy.



NON OFFICIAL TRANSLATION

RECOMMENDATION 4: In accordance with recommendation 1 of chapter XI, the NCP recommends that Starbucks Coffee France continue to "comply with both the letter and spirit of tax laws and regulations of" France "by making timely payment of their tax liabilities".

The NCP noted that the complainant thanked it for its support during the procedure and stated that "we hope that Starbucks will ensure that your recommendations are respected."

The NCP closes the referral. The NCP will follow up on its recommendations about disclosure by the end of 2021.

The NCP thanks the parties for their participation in the proceedings.

It invites supportive NCPs to forward this Statement to the Company's business relationships within the Alsea Group and Starbucks Coffee Corporation.

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