



Council of the
European Union

Brussels, 5 July 2024
(OR. en)

11959/24

LIMITE

FISC 154
ECOFIN 839
ONU 90

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Position of the European Union and its Member States for the second substantive session of the Ad Hoc Committee to draft terms of reference for a UN Framework Convention on international tax cooperation (New York, 29 July to 16 August 2024)

Position of the European Union and its Member States for the second substantive session of the Ad Hoc Committee to draft terms of reference for a UN Framework Convention on international tax cooperation

(New York, 29 July to 16 August 2024)

The European Union and its Member States refer to the common position of 25 April 2024 that was presented as a general statement during the first substantive session in New York. This position outlines our guiding principles for a UN Framework Convention on International Tax Cooperation, which we also want to see reflected in the Terms of Reference for this Framework Convention.

We acknowledge the efforts of the Bureau and its Chair in preparing the draft terms of reference for the second session of the Ad Hoc Committee (AHC). We particularly acknowledge the substantial work involved in preparing the draft terms of reference, which can provide a basis for our negotiations.

Our approach is based on the desire to promote an efficient and effective process at the UN level in the area of international tax cooperation that will help us to promote stability and certainty within the international tax architecture. In this context, the terms of reference for a UN Framework Convention on International Tax Cooperation are crucial to clarify and determine the future work, including high-level commitments and procedural rules. Additionally, we hope that the AHC will strive to build bridges, find common ground, and foster mutual understanding. In general, there is a need for greater clarity in the terms of reference on the procedures that will be followed by the intergovernmental negotiating committee similar to what has been done in other UN processes. In addition, we believe that clarity about the nature of the Framework Convention as an international treaty would enhance the common understanding of the process. We reiterate the importance of consensus-based decision making. As far as the terms of reference include legal obligations or specific political commitments, the decision making process should clearly be reflected. With the objective of achieving a universally accepted result, promoting effectiveness and safeguarding the stability of the international tax architecture, we strongly advocate in favour of a consensus-based decision making process in respect of the negotiation and adoption of the text of the Framework Convention and its protocols.

We believe it will be critical to ensure that the discussions and the associated work on the issues are as complementary and coordinated as possible with the ongoing work at other international fora. We should avoid inconsistencies or undermining that work, or inadvertently creating new issues and/or mismatches. Both the commitments in the Framework Convention including any commitments in respect of potential early protocols should avoid conflicting content with topics already under negotiation in other international fora, or those where there are already internationally agreed standards. Throughout its work, the intergovernmental negotiating committee should consider potential synergies and leverage the existing tools, strengths, expertise and complementarities of the multiple institutions and processes involved in tax cooperation at the international, regional and local levels.

We express concerns regarding the reference to the simultaneous development of early protocols in the terms of reference. In this regard, we recall the wording used in the report of the Secretary General on Promotion of inclusive and effective international tax cooperation at the United Nations, which stated: “If there is sufficient agreement on certain action items, some of these protocols could be negotiated at the same time as the framework convention.” This option was merely suggested as a possible course of action and should be reflected as such in the draft terms of reference.

In this respect, we reiterate that no early protocol should be discussed until the negotiations on the Framework Convention are concluded. Once they are, only a limited number of early protocols could be developed, within a reasonable timeframe. The timeframe to be required for the negotiations of these protocols should depend on the number of protocols and on the subjects they cover. A single deadline for finalising all protocols is not feasible. These protocols should focus on areas with the broadest consensus, avoiding controversial topics. It is therefore appropriate to first assess the suitability of certain topics to determine which ones should be subject to further analysis.

Therefore, we believe that the principal decision on development of protocols, as well as the decision regarding their substance, number and timing, should be taken by the intergovernmental negotiating committee.

It should be kept in mind that developing protocols while the Framework Convention is being negotiated would place excessive demands on Member States' resources.

The commitments in the terms of reference should be high-level, illustrative, and complementary to already existing commitments. Therefore, we would suggest including domestic resource mobilization, capacity building and fostering tax compliance.

Considering the lack of a common understanding of certain concepts referred to in the draft terms of reference among UN Member States to date, there is a need to outline clearly these concepts in the terms of reference.

The terms of reference should reflect that they do not prejudge the outcomes of the negotiating committee and should clarify that the work of the negotiating committee should be based on substantive technical analysis before starting to work on any potential measures in a targeted and efficient manner. In addition, other instruments besides protocols should be explored (e.g. best practices or soft law).