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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	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) - EU statements

Delegations will find in the Annex, for information, the statements delivered on behalf of the European Union and its Member States during the second substantive session of the Ad Hoc Committee to draft terms of reference for a UN Framework Convention on international tax cooperation in New York.

STATEMENT ON BEHALF OF THE EUROPEAN UNION AND ITS MEMBER STATES

**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)

General statement, 29 July 2024

Dear Chair, Vice-Chairs, Distinguished Delegates, Colleagues,

I have the honour to speak on behalf of the European Union and its Member States.

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.

As Hungary, the Member State exercising the Presidency of the Council, we are pleased to strengthen this message by stating on behalf of the Member States that we are indeed interested in supporting this process constructively.

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).

**Statement (explanation of vote) on behalf of the European Union and its
Member States at the closing of the second substantive session of the Ad-hoc
committee negotiating draft terms of reference on a UN Framework Convention
on International Tax Cooperation**

I have the honour to speak on behalf of the EU and its Member States. The Candidate Countries North Macedonia*, Montenegro*, Albania*, Ukraine, the Republic of Moldova, Bosnia and Herzegovina* and Georgia align themselves with this statement.

We would like to thank to the Chair and the Secretariat for their efforts throughout these proceedings. We also extend our gratitude to all negotiating partners for the fruitful dialogue and active engagement.

The European Union and its Member States approached these negotiations in an open and constructive spirit, fully committed to facilitating an inclusive, efficient and effective process at the UN level in international tax cooperation. Our overarching aim is to promote the stability, certainty and coherence of the international tax architecture.

Over the past three weeks, we have found these discussions extremely valuable, not only for advancing the text of the Terms of reference but also for deepening our understanding of the diverse interests and concerns of other UN Member States. This process provided us with opportunities to seek common ground while addressing differing needs and perspectives.

Given that the committee's objective is to lay foundations for negotiations on a truly global tax framework convention, we believe that inclusiveness and transparency are essential cornerstone of this endeavour. Regrettably, we believe that the proceedings of this committee have not fully achieved the levels of transparency and common understanding necessary for open and effective negotiations in view of achieving consensus.

** North Macedonia, Montenegro, Serbia, Albania and Bosnia and Herzegovina continue to be part of the Stabilisation and Association Process.*

We recognise the progress that has been achieved. However, we regret that the final draft Terms of Reference text does not adequately reflect our key points of concern, despite our constructive approach and sincere readiness to compromise. While we entered these discussions with an open and a collaborative spirit, the outcome fails, regrettably to address critical concerns that we have raised consistently and repeatedly, in particular as regards the need for broad consensus support in order to ensure the inclusivity and effectiveness of a Framework Convention. To function effectively and sustainably, we also need to ensure that the Framework Convention takes account of work on international tax cooperation that continues in other fora.

We welcome that language on the imperative of promoting human rights has been included in the text.

Having engaged in good faith negotiations up until the very end of this session, our group has tabled a number of amendments on critical elements we feel are still lacking, regrettably, from the draft Terms of Reference. This includes on the high-level nature of the commitments to be included in the draft Terms of Reference, on safeguards for taxpayers – protecting for example their right to be heard and to good administration – and on protocols, where we believe further careful consideration is merited of the substantive areas to be addressed.

As a result, our group has decided to abstain on the Terms of reference. This decision also illustrates our common position of constructive engagement and cooperation at the United Nations.

We remain committed to engaging constructively in the following work towards developing the Framework Convention and its protocols. We believe there is a strong opportunity to jointly deliver on a Framework Convention and related protocols that ensures the broadest possible support, coverage and effective implementation.

I thank you.