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SUMMARY RECORD OF THE 8th MEETING OF THE PLATFORM FOR TAX GOOD GOVERNANCE

(Sub-group with Member States representatives)

held in Brussels on 30 November 2015 in the morning

1. OPENING

1.1. The meeting was chaired by Director-General Heinz Zourek.

2. ADOPTION OF THE AGENDA

2.1. The Chair presented the agenda of the day. Since it is the first time that the platform meets in sub-groups, the Chair explained that minutes of both meetings (with MS members in the morning, with non-MS members in the afternoon) would be shared with all participants, in order to ensure that all members are aware of the outcome of both meetings. The Chair also reminded members that the Platform meetings were held under Chatham House rules: report can be made of what has been said during the debates, but without identifying who said what.

2.2. The Chair updated members on the report of the TAXE committee that was adopted in an EP plenary session. Formally, the TAXE committee mandate was not renewed but it was agreed to give a new mandate to a new special committee with a six-month term. The Chair explained that MEPs had been given access to the Code of Conducts documents, thanks to the agreement of all MS.

3. PRESENTATION OF THE ANTI-TAX AVOIDANCE PACKAGE

3.1 The Chair introduced the point of discussion for the meeting by announcing that, early next year, the Commission will present a new anti-tax avoidance package. It will build on efforts made recently inside the EU (Transparency package of March 2015, Action Plan of 17 June 2015, Council discussions on international aspects of CCCTB) and the global efforts (anti-BEPS recommendations of the OECD). He stressed the need to ensure that the outcome of the BEPS project is applied in the most consistent way by MS; it must be implemented swiftly and in a way that brings the best possible effects while avoiding impediments to the Single Market. There are two different strains:

- BEPS within EU
- BEPS towards the rest of the world

3.2 The Commission introduced the project of the upcoming anti-tax avoidance package.

Aggressive Tax Planning (ATP) creates distortions between MNEs and SMEs, and increases compliance costs for all companies. Public opinion has created pressure on political authorities to fight ATP. The objectives of the package are the same as for the June Action Plan:

- Ensure MS receive the taxes they are entitled to;
- Ensure competitiveness of EU businesses is not put at risk;
- Secure the functioning of the Single Market and the Treaty freedoms.

There have already been results in 2015 with the Council agreement on the Directive on the exchange of information on tax rulings, proposed by the Commission in March 2015.

As announced in the 2016 Commission Work program, the Tax agenda will include an anti-tax avoidance package, an initiative on arbitration, an impact assessment on public CBCR and a revised CCCTB proposal.

The anti-tax avoidance package to be presented early 2016 aims at:

- Ensuring that BEPS agenda is clear and applied in a coherent way in the Single Market;
- Coordinating the approach amongst MS.

It will build on the BEPS outcome, the discussions in the Code of Conduct Group, Council discussions on the external dimension of the CCCTB and discussions inside the Platform on the external agenda.

The purpose of this Platform meeting is to make sure we use the best tools (hard law, soft law, coordination) at EU level and collect MS views on the best way ahead for the external agenda.

3.3 A MS stated he was not sure the Platform was the most appropriate forum to discuss this type of issue, given that it is a non-decision making forum and a lot has already been discussed in Council working parties.

3.4 The Chair replied that the Platform is having the same meeting with stakeholders in the afternoon; this is precisely the role of the Platform to be a consultative entity on good governance to help the Commission decide on a way ahead. There is a clear segregation between possible future proposals discussed with all stakeholders in the Platform and proposals tabled by the Commission that are discussed in the Council.

3.5 On the first question of the discussion paper, does the ATP have an effect on the Single Market and is action needed at EU level?, several MS stated they share the Commission analysis that a fair taxation framework is needed in the Single Market, that a common approach is preferable and that the external dimension is essential in a globalised world.

Most MS expressed their preference for a Directive (hard law) which is considered more effective, giving legal certainty and seen as the best way to ensure a level

playing field inside the EU. But some members indicated they would need a concrete proposal before taking a final position.

However, some others stated that given that tax avoidance techniques are adapted swiftly to a new environment, soft law or coordination would be more flexible and allow for a quicker response to new threats; if a hard law approach is chosen, the Directive must provide for the possibility to swiftly reply to changes. Some MS stated a coordinated approach was of course needed, but the flexibility allowed by the BEPS report must be maintained in the EU, given the differences between MS tax regimes and the different economic situation of MS. Some MS stated that given the absence of a formal impact assessment in the BEPS proposal, Commission should provide for analysis of BEPS related problems in the Single Market, especially taking into account that not all MS are OECD members. A MS made it clear that flexibility should mean having a common minimum standard with the possibility for MS to go further, but flexibility should not mean allowing MS to retain ATP features in their legislation.

Members were invited to identify the issues that should be prioritised for a common EU approach. A majority of MS cited Hybrids, CFC legislation and Interest limitation rules. Aspects defined in the CCCTB, such as exit taxation and switchover rules were mentioned by a number of MS as well.

For a small number of MS, issues such as Permanent Establishment, Arbitration, Treaty abuse and Transfer Pricing should not be subject to a Directive.

On CBCR, a MS stated that the OECD roadmap already pointed in the right direction and setting a second EU standard would not be appropriate. According to other members, CBCR to tax authorities could be implemented through an amendment to the Directive on Administrative Cooperation, Harmful tax practices are already tackled by the Code of Conduct group, while Treaty abuse and Permanent Establishment issues would be best addressed by the OECD multilateral instrument.

A MS asked how the OECD draft multilateral instrument, the EU draft CCCTB and the anti-BEPS Directive will fit together.

3.6 The Commission reminded members that the Anti-Tax Avoidance Package was not about harmonising MS Corporate Income Tax systems, but about making sure all MS incorporate appropriate rules to fight BEPS in their Corporate Income Tax system. On the issue of flexibility, Commission reminded members that a coordinated approach is needed within the EU given that we have a single market and Treaty freedoms. This means that the weakest MS will be the point used by business to engage in ATP. Hard law does not mean - per se - no flexibility. This package represents an opportunity to clarify which BEPS options are compatible with the Treaties. The multilateral instrument was cited several times, there are examples in the past (such as on the exchange of information) where the EU decided that a specific EU instrument was the appropriate instrument to implement an international standard.

3.7 The Chair also reminded members that the OECD CBCR is between tax administrations and will be part of the 2016 package. On public CBCR, DG FISMA is analysing the information collected in the public consultation.

3.8 On the external strategy, a MS stated that a coordinated approach towards third countries is essential for the EU; and reviewing the EU good governance clause which dates back to 2008/2009 is equally important, to incorporate global developments in relation to good governance standards. Several members stated that a good governance clause should be included in trade agreements with 3rd countries. A number of members were in favour of a common EU list based on common criteria with a coherent approach to replace the present compilation of national lists. A MS underlined that great progress has been made over the past couple of years in the area of tax transparency, for example with widespread agreement on the new standard for the automatic exchange of taxpayer information. Punishing jurisdictions who have committed to implement this standard may not be helpful. The same member also insisted that the issue of effective levels of taxation is a very difficult subject.”. Another member insisted on not rewarding a jurisdiction for signing an agreement that is not yet put into force or applied in practice. According to this member, if it is made very clear why a jurisdiction is on a list and how it can be de-listed, sanctions are not a problem. A MS insisted on considering effective taxation as an important criterion in the assessment of third countries.

3.9 The Chair explained that the Commission is open to developing an approach which goes further than compiling national lists; to achieve this two issues need to be considered:

- methodology on how to screen good governance in 3rd countries;
- common criteria to be used.

We also need to reflect on how best to update our common good governance criteria.

3.10 The Chair reminded members that the pan-EU list published in June had shown that jurisdictions which did not seem concerned by being listed by a number of MS showed much more concern about the pan-EU list. The Commission services will send to all MS a questionnaire on national measures applied towards 3rd country jurisdictions, covering not only listing mechanisms but also other type of measures to protect MSs' tax bases.

4. CONCLUSIONS

The Chair thanked all members for the constructive session, which opens a lot of perspectives for the Platform's future work.

A summary record of the Platform meeting will be circulated to members and put on the Platform website once approved.