



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

(Sub-group with organisations representatives)

held in Brussels on 30 November 2015 in the afternoon

1. OPENING

1.1. The meeting was chaired by Director-General Heinz Zourek for the first part and subsequently by Valère Moutarlier. Due to train network problems, some representatives could not reach Brussels.

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.

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 Conduct documents thanks to the agreement of all MS.

2.3. A member welcomes the extension of the TAXE committee mandate that will allow for further investigations into tax avoidance practices in the EU.

3. PRESENTATION OF THE ANTI-TAX AVOIDANCE PACKAGE

3.1 The Chair introduced the point of discussion. Some MS are eager to have BEPS implemented quickly in their national legislation, while other MS prefer to wait for a common approach. There are two different strains:

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

During the course of next year, Commission will table:

- the Anti-Tax Avoidance Package (ATAP) in early 2016 which will cover both strains of BEPS, including an External Strategy for Effective Taxation;
- a revised CCCTB proposal which should be presented in the second half of the year;
- an initiative on arbitration;
- in addition, there is an ongoing impact assessment on public country-by-country reporting (CBCR) driven by DG FISMA which might lead to a further initiative.

The external strategy will propose ways to promote the enhanced good governance standards, with two guiding lines: defensives against BEPS and helping developing countries.

The purpose of the present meeting is to receive the opinion of Platform members as part of the consultation process on the ATAP package and make sure we use the best tools (hard law, soft law, coordination) at EU level.

3.2 A member stated we cannot let each MS implement the OECD BEPS measures on its own, this would lead to total chaos. The implementation of BEPS needs to be coordinated by the Commission in order to be applied in a way that conforms with the treaties. A member said that, given the urgent need to apply BEPS at EU level in order to avoid uncoordinated national applications, a soft law approach should be considered. A member argued that soft law can be applied more quickly and has proven its efficiency, for example in the Transfer Pricing area amongst others. Another member agreed that soft law might represent a useful way forward, and a dynamic must be created between soft law and hard law. According to another member, tax issues should be examined in the perspective of the single market, investments, growth and jobs. The same member stated that there is a need for an EU impact assessment, since the OECD BEPS contains virtually no impact assessment. The same member went on to say that it is not only certain companies' behaviour that should be questioned, but also certain governments' behaviour. In addition, specific tax regimes should be questioned in terms of their impact on jobs, growth and the functioning of the single market and this should be highlighted and challenged in analyses made by the Commission. In this regard, he was of the opinion that the modified nexus approach would render patent boxes regimes more harmful, because of the risk that research activities will be shifted to other countries to benefit from the preferential tax regime, thereby distorting the single market. It might induce MS which had, up to now, resisted introducing such regimes to introduce them in their legislation. The same member stressed that a uniform implementation of BEPS rules is essential for businesses, both within and outside the EU.

3.3 It was also stated by one member that the EU should go further than the OECD proposals in order to address issues left open due to a lack of agreement between OECD members. A member stated that tax competition is the root of the problem, solutions to reduce tax competition must be found as financing is needed for infrastructure as well as for the purpose of addressing different types of crisis (financial, refugees,...). In addition, equal treatment and fairness is fundamental in tax matters; spontaneous collaboration between MS does not function as evidenced by the Lux Leaks scandal and the TAXE committee report, hence there is a need for binding rules. The same member suggested that the composition of the renewed Platform should include representatives of SMEs in order to allow their views to be

better represented. It was stated that it might be useful to agree on a document defining fairness and tax competitiveness. Such a document might be useful for discussions at political level. In addition, it was stated by a member that going beyond BEPS rules to close unaddressed loopholes could undermine the competitiveness of the EU tax systems and might affect business location. It was also stated that history has shown that a Directive was the most appropriate way to promote common rules between MS.

- 3.4 According to a member, CFC is an area where no agreement was reached in the OECD (some countries do not even have CFC rules). As a result it should be addressed under the CCCTB, but not in the ATA Package. Another member stated that, given that stability in the tax area is key for business, CCCTB offers the right solution. The vast majority of companies try to allocate profits honestly. However, if a MS offers an attractive tax regime, it is normal companies want to benefit from it.
- 3.5 CBCR was mentioned as one example where hard law is needed, as no company will report voluntarily if it fears being the only one to disclose information. On CBCR, a member stated that the EU should go further than the BEPS proposal. Given its good track record on this issue with the public CBCR for banks and for extractive industries, the EU should go for public CBCR in all sectors.
- 3.6 According to this member, the EU also has a role to play towards developing countries on exchange of information. Mandatory arbitration is major source of concern for developing countries; therefore a different approach should be followed inside and outside EU. On dispute resolution, a member asked if the Commission could not issue its proposal earlier than summer 2016, given the increasing number of unresolved disputes. Some members asked what is envisaged on joint tax audits.
- 3.7 On relations with 3rd countries it was said that the EU should use a "carrot and stick" approach: we should include good governance tax clause in all our international agreements and help jurisdictions currently relying too much on tax avoidance to find other sources of jobs and revenues. On sanctions, public procurement should be used as retaliation measures towards tax avoiders by not allowing tax avoiding companies to be awarded public contracts. On good governance standards towards 3rd countries, a flexible approach should be adopted, the new standard on Automatic Exchange of Information for instance, should not be made compulsory for developing countries. We should also reflect on possible ways to use the EU power to help developing countries get access to exchange of information.
- 3.8 Commission reminded members that it backs its proposals with analysis and justifications; this will also be the case for the ATAP package. The Commission is very committed to CCCTB, but we cannot wait for the approval of a new proposal by the Council to address the urgent problems of base erosion and profit shifting; appropriate solutions need to be found in the meantime.
- 3.9 The Chair also explained that a choice has to be made between implementing OECD anti-BEPS measures in each MS individually, or at EU level in a more coordinated way. A competitive environment in the EU means offering simpler tax systems, less open to artificiality, easier to manage for business; this is a good investment for the future. The ATAP package for early 2016 is meant to be an effective solution to address BEPS issues between now and the adoption of the CCCTB. The measures

that are clear and do not conflict with the treaties can be applied in a coordinated way (soft law), while on more problematic measures, MS and the Commission will have to work together. Certain points are not in the OECD BEPS but have been identified in the framework of the CCCTB discussions as relevant aspects for consideration in the ATAP package, such as Exit taxation, switch over, or General Anti-Abuse Rules. On other issues, BEPS proposals have been considered too restrictive and the Commission has decided to go further (tax rulings). As the guardian of the Treaties, the Commission will also ensure that its proposals are compatible with the Treaties and the *acquis*. On the issue of hard law vs soft law, the Commission will take into account what can be done according to the Treaty and the ECJ case law. The Commission also reminded the members that if voluntary cooperation of MS does not function, there are other legal bases than art 115 that can be considered and the EP is inviting the Commission to explore these.

3.10 On arbitration, the consultations have shown that the convention's scope is too restricted, and that it does not always deliver results in a timely manner; the Commission will reflect on ways to improve the situation. On joint audits, the Commission informed the members that a FISCALIS project has been launched with a view to identifying practical obstacles for such audits. On the question of including good governance tax clauses in our international agreements, the Commission explained that, although it may be problematic in some instances, such clauses are systematically part of the negotiation with our international partners. Regarding the particular situation of developing countries and the need to provide them with adequate assistance, the Commission concluded by saying that the issue is part of the external dimension of our tax agenda.

4. CONCLUSIONS

The Chair thanked all members for the constructive session.

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