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SUMMARY RECORD OF THE 7th MEETING OF THE PLATFORM FOR TAX GOOD GOVERNANCE

held in Brussels on 24 September 2015

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.

2.2. One member asked for a point to be added under agenda point 6 "Any other business": the European parliament press release of 22 September on the TAXE Committee hearing of five finance ministers. This request was accepted by the Chair and the agenda adopted. A copy of the press release was distributed to members.

3. DISCUSSION ON THE AMENDED FUTURE WORK PROGRAMME OF THE PLATFORM

3.1 The Chair stated that after a first discussion on the 10 July PF meeting, the Commission services had tried to integrate comments received in a new version of the PF Work program (WP). Basically, two points were added: one on good governance support to developing countries, and one on other issues related to the tax environment for business relating to the creation of the Capital Markets Union.

3.2 The new version was presented by the Commission. Under good governance support to developing countries, the PF could discuss and identify any action to build administrative capacity in those countries. Under the same heading, it could also contribute to defining a common approach for the negotiation of Double Tax Conventions with developing countries. This point is particularly relevant in the context of the BEPS action plan where certain bilateral treaty aspects are discussed. The other point relates to the creation of the Capital Markets Union which is part of the Commission's top priorities; tax has been identified as a key aspect of the Commission strategy. Issues such as withholding tax relief for individuals and other tax border obstacles could be discussed.

3.3 A MS member underlined that the present WP covers every area of the Commission Action Plan for fair and efficient corporate taxation in the EU. Some MS members stated that the Platform WP covered points that could be better addressed in other fora. A MS proposed to change the wording of the WP, in order to clarify, especially

towards third countries, the role of the PF that is more advisory than decisional. This request was backed by some other MS members. A MS member referred to the proposal for a "BEPS directive" which he thinks should be discussed in the Platform and hence, added to the work program.

3.4 Some non-MS members stated that the US have a tax code which allows companies to leave profits abroad and untaxed for a long period (deferred tax). In this respect, they asked whether the EU was planning to take action against such structures. A non-MS member questioned the applicability of a common approach towards negotiations on Double Tax Convention with developing countries;. On transparency, some members stated that both companies and tax administrations should increase tax transparency. A non-MS member stated that the first version of the work program, discussed during the previous meeting, was well balanced and asked why the Capital Markets Union had been added; the same member asked why the platform should discuss a better tax environment for business and not a better tax environment for workers or young people. He also asked for more time to reflect on the new version of the WP.

3.5 On the role of the Platform, the Chair made it clear that there was no link between the work in the Platform and the work in the Council: the Platform is an advisory body that the Commission can use to feed into the proposals it drafts in the framework of its right of initiative. The Commission's proposals are then discussed in the Council; there is no intention to discuss within the Platform questions that should be discussed in the Council. On the US company tax issue, the Chair replied that the information to be discussed in the Platform was not limited to one source and that members willing to address this issue might submit a proposal to be discussed in the Platform. On the pan EU list, the Chair reiterated that the Commission retains its prerogative to publish what is already in the public domain; the pan EU list was simply the result of a consolidation of Member States' lists, which are publicly available. On the Capital Market Union point of the WP, the Chair stated that it was added because tax can be an issue for the CMU. The Platform secretariat will circulate the existing drafting suggestions and welcome other member's contribution by 15 October. The PF secretariat will then circulate the final version.

4. CORPORATE TAX TRANSPARENCY

4.1 The Chair introduced the topic: while public CBCR for companies is high on the agenda of many stakeholders and the European Parliament, CBCR reporting of companies to tax authorities is being discussed in the context of the G20/OECD BEPS Action Plan. As a follow-up to its March transparency package and June Action Plan for fair and efficient corporate taxation in the EU, the Commission launched an impact assessment. A public consultation on this topic was launched during the summer, DG FISMA will present the first results to the PF members.

4.2 DG FISMA has received 422 answers, 50% from individuals, 50% from NGOs, companies, etc. The complete analysis is on-going. The first results can be summarised as follows: replies have been segmented in 3 groups:

- Individuals: the EU should be at the forefront and possibly go beyond international initiatives, but this does not necessarily require public CBCR
- NGOs and trade unions: the EU should be at the forefront and require public CBCR of tax information.
- Businesses: G20/OECD BEPS Action 13 action plan, requiring companies to make CBCR to tax authorities should be implemented in the EU but should not go beyond the new international standards – no public disclosure.

DG FISMA presented the Discussion paper¹ which is part of the consultation strategy and contains questions not addressed in the public consultation.

4.3 A non-MS member asked how answers will be weighted given the fact that they are highly polarised. Another non-MS member expressed concerns about the questionnaire: a test panel should be organised for future consultations in order to make sure that the language of the questionnaire is not biased. Reference was made to a letter from US Congress members to the US Treasury administration, challenging the right of the US Administration to implement CBCR; according to this member, the risk that the US does not implement CBCR should be taken into account in the impact assessment. Another non-MS member said a survey of companies on CBCR had been made according to which only 15% of the panel would object to CBCR, and some would actively support a public CBCR as a way to show their contribution to society. On CBCR between tax administrations, the same member also mentioned that some countries will not receive the information for different reasons; with a public CBCR, no such restrictions would apply. The same member also suggested that the EU should be at the forefront on public CBCR because the purpose of CBCR is larger than tax issues: it is aimed at raising people's awareness to understand the role of MNEs in society in terms of investments, job creation, development etc., as well as at highlighting the impacts of governments' tax policies. It was also stated that the EU must find a way to oblige US MNEs to provide for CBCR concerning their activities inside the EU. According to a non-MS member, public CBCR is very useful to detect BEPS: by analysing information disclosed in CBCR for banks – such analysis would be facilitated with a common electronic

¹ Discussion paper on Corporate tax transparency available on the Platform [webpage](#)

reporting format – some issues have been detected and have triggered their direct engagement in dialogues with banks. Another non-MS member asked if some objectives of the CBCR could not be achieved by other means such as the directive on exchange of information. The view was also expressed by a non-MS member that for banks, disclosing geographical location does not say much about the bank's strategy, while for other types of companies, disclosing this type of information might give an advantage to competitors that are not submitted to CBCR. Another non-MS member expressed the view that if the purpose of CBCR was to ensure that companies pay their tax where the activity is carried out, then CBCR should be limited to tax authorities who levy taxes. A non-MS member stated that the EU should not go further than OECD requirements on CBCR as it would put the EU at a competitive disadvantage. The EU should at least allow for the OECD scheme to develop over a number of years before considering further unilateral move. On the CBCR template, one non-MS member expressed concerns about the risk of multiplication of CBCR models and suggested that a single model would be needed in order not to inflate compliance costs.

4.4 The Chair concluded on this point by saying that the EU already has CBCR for banks and for extracting industry that fit different purposes. The positive aspect of a public consultation is that it allows for all legitimate interests to be expressed. Members who want to complement this debate with written contributions were invited to send them to the Platform secretariat by 15 October.

5. EFFECTIVE TAXATION: COST OF TAX AVOIDANCE

5.1 The Chair introduced two presentations on tax avoidance, one on the UNCTAD world investment report 2015, the other one on the Commission Staff Working Document part of the Action Plan².

5.2 The first presentation on the UNCTAD report referred more specifically to Chapter 5 which proposes 10 guidelines for coherent international tax and investment policies. The non-MS member making the presentation, called for the EU to make an impact assessment for all BEPS action points and for an EU level report using the kind of methodology used in the UNCTAD report.

5.3 The second presentation was made by the Commission services and concerned the Commission Staff Working Document part of the Action Plan for fair and efficient corporate taxation in the EU. The conclusion of this presentation is that the EU should seek to replace the current system of distributing taxable profits and create a more stable allocation rule (e.g. CCCTB); take measures to close loopholes and fix issues in the current system based on separate accounting, arm's length pricing and bilateral tax agreements and improve the current way of working together at EU level on tax issues by reforming the governance structure and improving the overall exchange of information.

² The powerpoint presentations are available on the Platform [webpage](#)

5.4 Following the presentations, a non-MS member stated that everyone agrees there is improper behaviour from both companies and Governments leading to BEPS. If rules are changed as a result of the G20/OECD BEPS actions, companies and governments will change their behaviour. In this respect, he gave the example of the new proposed rules on Permanent Establishments (PEs) which will lead, according to this member, to the creation of a high number of PEs in the world but not in the EU, and ultimately to further tax evasion. He also gave the example of the new rules on Patent boxes which will make them even more dangerous since with the new requirement on substance, the activity will be shifted together with the taxable basis. It was also stated that if rules are changed to allow for taxation where sales take place, this will be harmful for MS with a positive trade balance. Another non-MS member stated that with differences of more than 20 points in terms of Corporate tax rate between two MS, it was difficult to have a fair tax system inside the EU. It was also stated that with the historical trend towards a decreasing Corporate income tax, the tax burden is shifting more and more towards individuals.

5.5 The Chair concluded that discussion showed we are already having a debate on BEPS inside the Platform. The Commission services' presentation showed that the Commission also has its own analytical approach. It is important when dealing with tax issues to carefully measure the foreseeable effects before making a decision.

6. PROMOTING TAX GOOD GOVERNANCE IN THIRD COUNTRIES

6.1 The Chair introduced the Discussion paper on External Strategy for Effective Taxation³ stressing that the external dimension is crucial for effective taxation as outbound profit shifting must be prevented. The publication of the pan EU list has received more attention than national lists and has triggered a very encouraging movement towards the updating of the situation and increased dialogue with the jurisdictions most particularly targeted. Tax good governance considerations have become much more prominent in our bilateral relations. We have identified a first set of measures which include re-examining our own set of criteria to judge tax good governance and adjusting them to our priorities in the tax agenda and to the latest international standards. We also have to be more consistent in the interpretation and application of these criteria and identify common tools to promote good governance with both defensive measures (such as the lists applied by some of our MS) and incentive measures as we try to apply in our relations with developing countries. This Platform is a good forum to discuss ideas in all these fields. After the publication of the lists, DG TAXUD had a very constructive meeting with the ambassadors of the 30 jurisdictions featuring in the annex to the Action Plan. They were informed that the PF secretariat had asked information to MS in order to update the situation at 30 June 2015.

6.2 Several MS expressed their satisfaction that the Commission will update the pan EU list and refrain from using the term "uncooperative" in the update; one of them confirmed that the pan EU list had more impact than the national ones, giving the example of a listed jurisdiction being back at the negotiating table after 2 years of

³ Doc: Platform/15/2015/EN

refusing to do so;. A number of MS shared the analysis in the discussion paper in relation to the need to clarify and update the criteria (Automatic Exchange of Information, add the level of taxation). According to another MS, abuse means artificiality and low rate is not an abuse; for some small MS or for some regions that are badly situated or have a small market, given the EU rules on state aid, the tax rate is often seen as the only incentive left to attract business; in his view, it is premature to discuss tax rate or tax level with third countries if it is not a criterion inside EU; according to this member, the OECD does not seem to have taken this route either in its BEPS project . Another MS member noted that we should be very careful to not undermine international work and jeopardise the excellent progress on tax transparency that we've made in recent times. A non-MS member argued that the OECD is not a global body, it is limited to its members⁴ - this member supports the creation of a global body to deal with tax issues. For another member, agreeing on a common set of clear criteria is a good starting point to send a clear message towards third countries on what they have to fulfil and what are the consequences if these criteria are not met. A non-MS member stated that if the tax level was to be considered as a criterion, criteria on the tax base must be assessed too: according to this member, the lowering of the tax rate is often linked to the broadening of the tax base.

6.3 On DTC with developing countries, some MS felt it will be too difficult to reach an agreement on this topic, while others think even though this will require efforts, it is worth trying, keeping in mind that DTC are a MS competence. For a non-MS member, achieving a common EU approach on DTC with developing countries will be difficult, given that the approach differs between MS. It was mentioned that the EU could look at what could be offered to those countries in terms of exchange of information or assistance in tax collection, there are MS that already offer this type of opportunities in their DTC. A non-MS member stated that some third countries consider that they gave away too much when they negotiated their present DTC – as a result, they would be willing to re-negotiate more favourable DTC; developing countries do not want mandatory arbitration as they fear they would lose out ; many DTC aim at reducing or avoiding WHT which is often the most effective way of raising revenue for a developing country. For all these reasons, it was suggested that the EU should agree on a common set of principles.

6.4 On BEPS, some MS expressed the view that MS reactions to the OECD BEPS outcome must be observed prior to discussing this topic in the Platform, while others ask for a discussion to know how far the BEPS project should be advanced in the EU. A non-MS member stressed that taxation must be embedded in a business model: where does the EU want to go politically and economically; whether we want to be a highly competitive economy or the main support to developing countries implies totally different measures at the tax level. If taxation is based on real activity, there will be much less concern on outbound profits if the EU tax system is attractive; otherwise the activity will shift outside the EU.

⁴ 34 Member countries in 2015 according to the OECD website.

6.5 COM stated that effective taxation and low taxation are notions and criteria that are currently used by a number of MS; the more coherent we are in applying BEPS in the single market, the more coherent we should be in our assessment of the third countries; internal and external dimensions are linked. The EU cannot limit itself to a BEPS inside the EU, the external dimension of BEPS equally needs to be discussed in order to set priorities. The BEPS output is a minimum standard, members are free to go further and apply more stringent rules; for instance the EU might consider the tax level. About the list, COM stated that even with the current approach of consolidating the information using a cut-off date, it needs time to confirm the information published is accurate, complete and valid; therefore it is not possible to update the list each time a MS changes its national list. Regarding criteria COM recalled that on transparency and exchange of information, we already had clearly defined straightforward standards monitored by the OECD Global Forum, the only point for discussion is whether or not we should raise the standard to Automatic Exchange of Information. On Harmful Tax Measures, the criteria of the Code of Conduct are well known, the main remaining question is whether we should also consider low or zero taxation. The debate has been re-launched by the June Action Plan. On the question of the DTC, COM emphasized a DTC is the outcome of bilateral negotiation between a MS and a third country. At the same time, the EU can provide inspiration for negotiations with developing countries. The Chair concluded on this point by stressing that the discussion on tax good governance in third countries is an essential element of the Platform Working Program.

7. ANY OTHER BUSINESS

A non-MS member asked for the European Parliament press release on corporate taxation dated 22 September to be circulated and discussed. This press release followed a TAXE Committee meeting with 5 MS's Ministers of Finance. A PF member stated that in the present situation MS were competing with each other in order to attract tax bases; in his view, CCCTB would be a good solution to this issue. Another member stated that he did not see anything disastrous in this press release. The Chair pointed out that this document expressed the view of some MS Minister of Finance and not the official position of the European Parliament.

8. CONCLUSIONS

The Chair thanked all members for the constructive session, which opens a lot of perspective 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.