

Written contribution from Luxembourg in response to the call for written comments on the Bureau's Proposal for the Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation circulated on 7 June 2024

21 June 2024

- *Luxembourg refers to the common position on behalf of the European Union and its Member States 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 convention.*
- *Our comments are 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 reliability 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 governance structure to guide future work, including high-level commitments and procedural rules. Additionally, we hope that the Ad Hoc Committee (AHC) will strive to build bridges, find common ground, and foster mutual understanding.*
- *In general, there is a need for greater clarity on the procedures that will be followed by the negotiating committee in the terms of reference, similar to what has been done in other UN processes.¹ Luxembourg reiterates the importance of consensus-based decision making and this should clearly be reflected in the terms of reference. Consensus should be required in the negotiation and adoption of the text of the framework convention and its protocols, as well as for the work of the Ad Hoc Committee, with the objective of achieving a generally accepted result.*
- *Luxembourg wishes to underline that developing early protocols in parallel to the negotiation of the framework convention remains an open issue to be further discussed by UN Member States. Furthermore, 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: “If there is sufficient agreement on certain action items, some of*

¹ Cf. UNGA Resolution 72/249 on an International legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, paragraphs 17-19.

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. **Luxembourg expresses reservations about the suggested obligation in the terms of reference to develop protocols.** The principled decision thereon as well as the decision regarding their substance, number and timing should be taken by the intergovernmental negotiating committee as appropriate. Should the reference to early protocols be maintained in the terms of reference, we strongly prefer that only a limited number of early protocols be developed and that this is done after the negotiations of the framework convention are concluded. Therefore, we propose the following amendment to the draft terms of reference: “Early protocols on a small number of specific priority areas could be developed after the negotiation of the framework convention.”

- If the AHC considers that reference to early protocols is appropriate, the timeframe to be foreseen for the negotiations thereof should be reasonable and should depend on the number of protocols and on the subjects they cover. There should not be a single deadline for finalising all substantive protocols. The topics of protocols should focus on areas with the broadest consensus and agreement, therefore, least controversial topics, avoiding issues that are already under negotiation or those with internationally agreed standards. Therefore, it is appropriate to first conduct an assessment and discuss an exhaustive analysis of a small number of issues and prioritise certain topics over others.
- The proposed timeline in the zero draft terms of reference, which suggests that the intergovernmental negotiating committee should begin negotiating the early protocols, while also starting negotiations of the framework convention, will place excessive demands on Member States’ resources.
- **Throughout its work, the intergovernmental negotiating committee should avoid duplicating the work of other relevant forums. It 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.**
- The commitments mentioned in the zero draft should be high-level, illustrative, and complementary to already existing commitments.
- Considering the lack of a common understanding of certain concepts of the draft terms of reference among UN Member States to date, there is a need to delineate these concepts

in the terms of reference, for instance ‘tax-related illicit financial flows’. Guiding notes on this or other unclear concepts or topics should be prepared for the second session of the Ad Hoc Committee.

- *The terms of reference should reflect that they do not prejudice 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).*
- *Luxembourg expresses its concern with respect to item "Approaches and time frame for negotiation", specifically point 19 in the draft terms of reference. Full engagement and continuity of representation by Member States throughout the negotiation might prove to be difficult to ensure for small Member States with limited human resources.*
- *Luxembourg continues to stress the need to ensure a transparent and comprehensive process of drafting the terms of reference. All UN Member States should be able to take informed and well considered decisions and to anticipate the next steps as well as the content of the framework convention. Therefore, and taking also into consideration the complexity of the discussions, Luxembourg reiterates the importance of adequate and inclusive working methods that allow for hybrid participation of all UN Member States’ tax experts.*
- *Finally, Luxembourg recommends that the terms of reference reflect the consultation process with all stakeholders. Stakeholders should include representatives from the private sector as they may experience significant impacts under the framework convention.*
