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

held in Brussels on 10 July 2015

1. OPENING

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

2. ADOPTION OF THE AGENDA

2.1. The Chair explained that the two main points of the day were the future of the Platform (PF) to be discussed in the morning, and the list for the afternoon. He asked if any member wanted to add a point under "Any other business". It was not the case, and the agenda was adopted without any further comments from the delegates.

2.2. The Chair reminded members that the summary record of the March meeting was approved under silence procedure. No further comments by delegates.

3. UPDATE ON RECENT AND FUTURE DEVELOPMENTS

3.1 Since the last PF meeting, two major initiatives have been taken by the Commission, which will set the agenda in corporate tax for the coming years.

3.2 In March, the Commission issued its Tax Transparency Package, for more cooperation between Member States (MS) in corporate tax. This package contains two main elements: a proposal for the Automatic Exchange of Information on tax rulings; and the exploration of Country by Country Reporting (CBCR) for companies. A public consultation on CBCR, launched by DG FISMA, is on-going until 9 September 2015. The Chair wholeheartedly invited all PF members to participate in the consultation. The Chair will invite DG FISMA to present the results of this consultation to the Platform, probably at our next meeting on 24 September.

3.3 In June, the Commission adopted its Action Plan for fair and efficient corporate taxation in the EU. It contains measures for the short and longer term to improve corporate taxation in the EU and puts the emphasis on fighting tax evasion, creating more business friendly tax systems and promoting growth-friendly taxation.

The Common Consolidated Corporate Tax Base (CCCTB) will be re-launched in a phased approach, with consolidation in the second phase. The Action Plan proposes temporary cross border loss compensation until consolidation has been introduced.

4. DISCUSSION ON THE FUTURE WORK PROGRAMME OF THE PLATFORM

4.1 The Chair reminded members that the original idea for the creation of the PF was to help the Commission in drafting its report on the follow up of the two Recommendations of 6 December 2012¹.

4.2 In the future, the Commission will require PF members' contribution on different issues. The Chair presented the document circulated to members called "Draft Work Program 2015-2019"² and asked members for comments.

4.3 Several members expressed their views on the draft Work Program:

- **On the CCCTB**, some non-MS members expressed the view that a full CCCTB (including consolidation) would be the ultimate solution to many problems, both on effective tax issues and double taxation issues. However, given that it is difficult to find an agreement at EU level, a full CCCTB is still far away. Scepticism was expressed on the likelihood of consensus amongst MS on cross border loss compensation. Another non-MS member stated that it was sub-optimal to have a different system for big and small companies.
- **On CBCR**, a non-MS member stated that the European Parliament had voted for mandatory public CBCR for all sectors. Several non-MS members clearly stated they were in favour of mandatory public CBCR. One MS member and a non-MS Member argued that while enhanced transparency was generally to be encouraged, there were circumstances in which it might not be in the wider public interest and careful analysis of the pros and cons was needed. Concerning the public consultation launched by DG FISMA on CBCR, a non-MS member explained that it is very difficult to give answers that will be clear for the Commission, and that this might lead to bias in the analysis of the answers. This member will provide the Commission with written comments and invites all PF members to answer this consultation.
- **On BEPS-related issues**, several non-MS members remarked that US and India seemed sceptical about the OECD BEPS project. The EU seems to be willing to take the lead, but this could reduce economic growth in Europe if the EU is the only one to apply BEPS. The PF and the Commission should make an impact assessment on the implementation of BEPS rules in the EU. On the other side, it was argued that unilateral reactions to BEPS by Courts or national parliaments are the worst possible outcome, so the Commission should try to bring coherence within the EU.
- A non-MS member offered to present the UNCTAD World Investment report at a next Platform meeting, as it presents a balanced equation between investment and the need to fight tax evasion. Another non-MS member mentioned the data in the Commission Staff Working Document (SWD) annexed to the Action Plan and suggested that the PF should invite an expert on tax avoidance and/or the use of tax havens to present these data.

¹ C(2012) 8805 and C(2012) 8806

² Platform/14/2015/EN

- On **arbitration**, it was generally agreed that an EU solution is very important, not only for business but for tax administrations as well. One non-MS member was of the opposite opinion however: since there are no figures on cases of double taxation and the PF is a forum on tax evasion, this subject should not be discussed.
- On **common tax audits**, a non-MS member stated that it is a very interesting subject, but the questions of resources in tax administrations should be discussed, not only in terms of staffing but also in terms of training and IT equipment.
- Several non-MS members insisted on carrying over work on the **impact of EU tax policy on developing countries** from the former Work Programme. This subject was never discussed in previous meetings and should interest DG DEVCO as well.
- Some MS members stated that the Platform is a group where stakeholders and MS give their input on general tax issues but where individual cases should not be presented. They confirmed that arbitration was an important topic for MSs as well.
- One MS member argued that the PF was not the appropriate forum in which to take forward work on compliance with good governance standards and the development of any EU list. The recently published Action Plan had noted that further work in this sphere should be undertaken by the Code of Conduct group.

Following the "tour de table", in which members stated their **priorities** amongst the subjects presented in the draft work programme,

1. Arbitration

2. Transparency

3. CCCTB, and

4. Impact of the EU Tax policy on developing countries

came out first.

4.4 **Arbitration** was linked by several non-MS members to what they call "the post-BEPS era" where the application of anti-BEPS measures may increase the scope for tax disputes. The Chair stated that it is important for the EU to have a common approach, in order to ensure that BEPS recommendations do not conflict with the Treaties and other fundamental EU rules. The Single Market and a partial monetary union influence the choice of solutions to BEPS issues in the EU. He made it clear that the Commission does not intend to step back from its coordination role, although MS ultimately decide. The Commission Action Plan clearly states that MS should consider broadening the Code of Conduct's mandate. On a possible impact assessment of BEPS, little can be done by the Commission at this stage.

The Commission stated that on BEPS, it has always been focussed on helping the OECD to get the best possible outcome. The June Action Plan already aims to

address post-BEPS elements. The Action Plan has identified different fora (Code of Conduct Group, PF, JTPF) to address future issues. The Commission proposed to have a point on the agenda of the next PF meeting on the presentation of both the UNCTAD report and the Commission SWD followed by a debate.

Concerning the public consultation launched by DG FISMA on **CBCR (transparency)**, the Chair encouraged all members to reply. He stated that should a stakeholder encounter problems in replying, written comments can still be very useful for the services that will analyse the replies.

The Chair stated that the Commission is working on a new proposal for the **(C)CCCTB**. However, an impact assessment will have to be made. Hence this new proposal is foreseen in the course of next year. The Chair also stated that, although the present version of the CCCTB has already lead to lengthy discussions in the Council, things have evolved in the past few years. Solutions have been found in record time to double non-taxation situations in the Parent-Subsidiary Directive or concerning a quick reaction mechanism for VAT. Moreover the Commission President has referred to the CCCTB as a major priority in his agenda.

On the **impact of the EU Tax policy on developing countries**, the Chair clarified that this remains an important dimension of the future work of the Platform.

- 4.5 On the **working methods**, one non-MS member pointed out that the mandate of present members expires in April 2016 and asked whether it would be extended for the future.

The Chair explained that the Commission will launch a new call for applications later in 2015, or at the beginning of 2016. Since the scope of the PF's mandate has increased, the membership criteria will change. As for the present members, the Commission will examine applications received in the light of the criteria, and choose the new members. There will be no scope for grandfathering.

Another non-MS member raised concerns about the new structure of sub-group meetings, which will be held in addition to plenary meetings.

The Chair stated that, according to his experience with advisory committees, variable geometry is an advantage. It allows groups to dig deeper in one field and then report to the whole group in a plenary meeting. The possibility to have PF subgroups will allow for more frequent meetings and for different groups to work on different matters in parallel. Everything discussed in subgroups will be made available on the PF website, unless specific and stated reasons prevent it. The plenary agenda will also contain a point "State of Play in the different sub-groups", so that a group can present a report on its work to the plenary.

The Chair made it clear that the sub-groups would be chaired by the Commission and that the report of the different sub-groups would not have any formal status other than representing the work done in a sub-group.

The Chair concluded that the experience with the PF on the follow up of the two 2012 Recommendations was encouraging. Given that the area of reflection on corporate taxation has increased, the PF is a good forum for the Commission to receive reactions from stakeholders. There is a cross-cutting expertise in the PF that is not available in other fora. The Action Plan contains areas of activities for the

short, medium and long term. We have to identify the tasks for the Platform, the timetable and the tools. The Chair also confirmed that the impact of tax policy on developing countries will remain a dimension in the work of the PF.

- 4.6 For the future, the draft Work Programme had identified the right priorities. There are three main categories for the future: **exploratory**: discussion not related to already well identified initiatives such as general discussion on figures or developing countries; **consultation**: on new initiatives for which the Commission has to launch a public consultation or an impact assessment and needs targeted input; **monitoring/assessment**: for instance on the pan-EU listing process or the outcome of anti-abuse measures. There will be no duplication in the PF of work done elsewhere, and no point on the agenda can interfere with legislative work in Council.

5. PAN-EU LIST OF THIRD COUNTRIES

- 5.1 The Chair recalled that Member States had been asked for information on their existing listing systems in the Platform and it had been agreed in the Platform to make the national lists public. This publication was linked to the June Action Plan, as part of the solution to address BEPS outside the EU. The College added a list of most frequently listed jurisdictions as an annex to the Action Plan.

The Chair underlined that this is not an EU list, but a collection of MS lists. The information has been consolidated and published without any assessment by the Commission services. He also stressed that this is not an exercise to compete with the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. He noted that the list has triggered a debate with third countries and Member States, proving that the subject is of interest and that an EU approach has an impact.

The Chair asked Member States to send their updated national lists, to allow Commission services to do a technical update of the pan-EU list. He also asked that Member States send a contact person for the listed countries to engage with, as some of the listed countries had informed the Commission they wanted a discussion with listing MS. The Chair also informed members he would invite the ambassadors of the 30 countries listed in the annex of the Action Plan later that month (i.e. before the end of July), and asked MS whether they would be interested in a separate workshop for MS and listed countries.

- 5.2 Several MS members stated that the list was useful to stimulate discussion. Some pointed out, however, that publication of the list in its current form has been presented in the press by some as a new EU blacklist (rather than a list of jurisdictions on MS national lists) and by others as a definitive list of noncooperative jurisdictions, given its title. It was also argued that the title does not reflect the commitment of some of these jurisdictions to enhanced global standards, notably in the context of the OECD Global Forum. Some MS members asked for a reflection on how to best address the issue of transparency, how to update the list to correct the inaccuracies and how to change the title of the list.

The list published by the Commission, based on information obtained in January, also did not reflect the up-to-date position in some MS. Some MS members therefore asked for an urgent update to the Commission list to correct the inaccuracies and a change to the title of the list.

One MS member said that some of the 30 countries listed in the annex of the Action Plan are committed to applying the Automatic Exchange of Information (AEOI), but that the list might now make it harder for them to have the legislation on AEOI passed in their national parliaments. He said that the list can damage bilateral relationships for both governments and businesses. Some MS members asked for the list to be withdrawn.

Conversely, other MS members were very positive about the list. They pointed out that all the reactions to the publication of this list show how effective an EU list could be. They regretted that the current pan-EU list must be based on MSs' national list, which are drawn up using different criteria and applied in different ways. A number of members suggested that the Commission should establish a new list, discussed and endorsed by MS. Several MS members see the present list as an interesting starting point for a common EU approach, although others noted that this was an area of MS competence. Some MS members warmly welcomed the fact that the publication of the list had prompted third countries, which previously did not want to discuss DTAs, to actively seek engagement on this issue now. A number of MS members said that the list can be very useful for smaller MS who do not always have enough weight on their own to influence third countries on tax good governance issues.

- 5.3 A non-MS member declared strong support for the pan-EU list and expressed surprise that there needed to be any discussion, given the fact that the publication of the lists was one of the major points of consensus within the PF. The solution to the inconsistency of the different national lists is simple: we have common criteria agreed in the Council and published in Recommendation C(2012)8805, and we should have a common list based on these criteria. This non-MS member pointed out that it is not a question of transparency for the sake of transparency, but a matter of jurisdictions making money from tax avoidance. A non-MS member said that MSs with no blacklists should not be invited to workshop between MS and the listed jurisdictions.
- 5.4 The OECD observer intervened to express its support for the work of the Commission on tax evasion and aggressive tax planning. It is willing to cooperate with the Commission on the list. However, he underlined that members of the OECD Global Forum are worried about the status, the legal nature and the title of the list. The external perception differs from the explanation given in the meeting, the Commission should reflect on the communication linked to the list. The criteria used (i.e. transparency, information exchange and harmful tax measures) should be explained more clearly. Many Global Forum members are surprised that jurisdictions rated as "largely compliant" by the Global Forum are on the list. In the OECD, exchange of tax information and harmful tax practices are treated in two different fora, because lack of consensus in the area of harmful tax measures was holding back progress on the transparency and information exchange agenda.
- 5.5 The Commission concluded by setting out the next steps on the list, including what is required of Member States:
 1. MSs should provide a contact point to the Commission, which can be passed on to the listed jurisdictions.
 2. TAXUD will hold a meeting with ambassadors of the 30 most frequently listed jurisdictions

3. MSs will be asked to provide feedback on the idea of a workshop for MSs and the listed jurisdictions.
4. MSs will be asked to send their updated national lists to the Commission, so that an online technical update of the pan-EU list can be done.
5. The title of the list will be considered in the update.

The Commission said that it would send an email to all MSs with a clear deadline to **submit the revised lists, the contact points and the feedback on the idea of the workshop.**

The Chair concluded by pointing out that, since 2008, Tax Good Governance inside EU has been built on three pillars:

- Transparency
- Exchange of Information
- Absence of Harmful Tax Measures.

This approach was adopted by the European Council in 2008 and validated again as recently as June 2015 in ECOFIN.

In terms of the list, the Chair confirmed that the Commission does not want inaccurate or outdated information. As such, the Commission relies on the quality of the information submitted by MSs. The Chair repeated again there is no competition between the EU and the OECD. However, the OECD Global Forum rating is on transparency and information exchange, while the EU good governance standards also comprise the avoidance of harmful tax measures.

In terms of procedure, the Chair explained that the list was published following a debate in the College of Commissioners, and as such it was a political decision to publish it. Any decision to modify it must be taken at the same level. The Commission will do a technical update of the list online, with the updated information provided by MS.

6. 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.

The next meeting (plenary) should take place on 24 September 2015.