



JTPF/005/2019/EN

Brussels, 21 March 2019

SUMMARY RECORD
by the Secretariat

54th Meeting of the **EU Joint Transfer Pricing Forum (JTPF)**
7 March 2019, Brussels (BE)

1. Introduction, adoption of the agenda and documents adopted under written procedure

The Chair welcomed the members and informed them that the October 2018 Summary Record (doc. JTPF/014/2018/EN) had been adopted under the written procedure. The Agenda (doc. JTPF/001/2019/EN) was adopted.

2. Information by the Secretariat on achievements and open issues

After briefly summarising the achievements of the JTPF during this mandate, the Secretariat presented a summary of the achievements over the past few years and went through some key pending topics:

- The main achievements took place in the area of administrative cooperation, anti-tax avoidance, state aid and tax dispute resolution.
- The matters that are still on the table involve the external dimension and in particular, the EU list of non-cooperative jurisdictions and the Directive on the Digital Services Tax (now, curtailed to Advertising Services). Reference was also made to the Fiscalis Project Group on a Standing Committee for the Directive on Dispute Resolution Mechanisms.
- Unfortunately, not enough progress was achieved on the Digital Tax Package as a whole, the Common Consolidated Corporate Tax Base proposal whilst a lot is left to do in the field of tax certainty.

3. Discussion of the Note on the results of the Questionnaire on the future of the JTPF (doc. JTPF/003/2019/EN)

The Secretariat presented the results of the Questionnaire on the future of the JTPF, including its view on the questions. The presentation was then followed by an overview of the points made on this topic during the pre-meetings. The Secretariat also invited the JTPF members to discuss how they saw the Commission's role in future policy and strategy in transfer pricing within the EU.

The Chair for Member States outlined the main achievements of the JTPF since it was set up, focusing on the work regarding the functioning of the Arbitration Convention, the Code of Conduct on Transfer Pricing Documentation and the Report on Low Value Adding Intra-Group Services. It was mentioned that one of the main drivers behind this work has been the objective for increased tax certainty, a reduction of tax disputes and Mutual Agreement Procedures. Although consensus was not always easy, detailed discussions led to valuable output. Summarising the input received by Member State representatives, the JTPF Co-chair noted the broad support for renewing the mandate as a broad forum that works on the basis of consensus. However, the Co-chair also suggested improvements; to be more flexible through using sub-groups and workshops (that could also meet virtually) and by limiting the number of full plenary meetings. Some Member States pointed out to the necessity for meeting in a Member State-only format if it were to discuss policy matters on hot topics in the area of transfer pricing. Some Member States reportedly supported the view that they could alone discuss and try to coordinate their position on topics under discussion in international organisations, such as the OECD. Areas for future work could include initiatives to reduce the number of Mutual Agreement Procedures, for example by encouraging bilateral Advance Pricing Agreements, cross-border dialogue, etc. Additional areas of work could also involve issuing guidance on the implementation of the Directive on Dispute Resolution Mechanisms. Finally, it was noted that communicating the output of the JTPF's work could be improved. In this context, the Co-chair asked the Secretariat to ensure that the reports agreed during the last mandate be communicated the Council, like all preceding reports.

The Chair for Non-Governmental Members started with mentioning why the JTPF's work has been especially valuable, i.e. it is the only forum which puts together on equal footing Member States, the business, academia and civil society. The resulting bottom-up approach to identifying relevant topics and reaching consensus on these topics was seen as particularly valuable. The stability of membership has allowed continuity in the composition and output of the group across mandates. The Non-Governmental Members did not see a tension on the question of whether the JTPF should work on policy or practical arrangements. They did in fact explain that some of the practical work that the JTPF performed in the past led to policy changes. As an example, they referred to the work on transfer pricing documentation and low value-adding intra-group services. However, it was recognized that the way the JPTF is set up makes it difficult to react quickly to policy changes. A possible improvement could be sought by dividing future work in two pillars: (1) Advisory role functioning on a more agile basis (in small working groups) with no need for consensus; and (2) Technical work on practical arrangements producing consensus-based output. While recognising the limitations of the JTPF in interpreting existing EU law, the Non-Governmental Members were interested in discussing the practical aspects of the application of existing EU law. In this respect, the work of the JTPF would not be binding on the Commission.

The discussion continued with interventions by individual members that touched upon the following topics:

- The possibility to have a forum similar to the VAT Committee, but on the application of the direct tax directives;
- Coordination among Member States on the practical application and interpretation of the OECD Transfer Pricing Guidelines;
- The opportunity for the JTPF of exploring areas beyond the current OECD Transfer Pricing Guidelines, since the principles would most probably be revised soon;
- The importance of practical aspects and their impact on policy making;

- Possibility of foreseeing EU legislation in the area of transfer pricing that would reduce the number of different interpretations across Member States and numbers of disputes in particular due to double taxation;
- Need for enhancing tax certainty through guidance: technical work may not appear very high-profile but is very important;
- Simplification of the transfer pricing work for small and medium multinational enterprises.

4. Discussion of the Draft Report on the use of the PSM within the EU (doc. JTPF/002/2019/EN)

The Secretariat briefly introduced the draft Report. The two Co-chairs summarised the input by the Member States and Non-Governmental Members. On both sides, there was general agreement on the document, subject to a number of drafting suggestions. It was noted that there could have been room for more descriptive examples and more work going beyond what is foreseen in the OECD Transfer Pricing Guidelines but, in view of the time limitations, a satisfactory result was achieved.

The discussion continued with a paragraph-by-paragraph analysis of the draft Report. Most of the drafting suggestions were editorial and were accepted by the group without comments.

The Chair concluded that the Report, with the suggested drafting amendments, was agreed by the Forum. Formal approval was given by written procedure after incorporating some minor additional modifications suggested by the members of the JTPF.

5. Presentation of the Note on the completion of the JTPF work programme 2015 - 2019 (doc. JTPF/004/2019/EN)

The Secretariat, as on previous occasions at the end of each mandate of the JTPF, prepared a summary of the output over the past mandate and briefly presented the document to the group.

6. Any other business

The Secretariat thanked Member States for updating their Transfer Pricing Profiles for the JTPF website on Europa.

The Secretariat invited Member States to send their annual statistics on MAPs under the EU Arbitration Convention and APAs for 2018. The MAP and APA templates will be sent by email to the Member States.

The Secretariat thanked all the members for their excellent work during the mandate, thanked the two Vice-Chairs and also Mr Bruno Gibert, the Chair; emphasising how important and valuable his work has been for Transfer Pricing and Dispute Resolution in the EU; not just during this mandate but throughout the more than 16 years during which he held the chairmanship of the Forum.

7. List of participants

From the Member States, Belgium was not present. From the Non-Governmental Members, the representatives of BDI and Financial Transparency Coalition were absent. The OECD, EP and the UN were not represented.