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

Held in Brussels on 14 December 2018

Opening

The meeting was chaired by Valère Moutarlier, Director DG TAXUD. The chair asked to adopt the agenda and to discuss under AOB of the future working programme of the Platform.

1. Adoption of the Agenda

1.1 The agenda was adopted with the following items: presentation of the new reimbursement process, state of play of the EU listing process, Code of Conduct for withholding taxes.

2. Presentation of the reimbursement system

2.1 A presentation of the new reimbursement system was shown and shortly explained.

2.2 A new AGM website has been created to invite to meetings organised by the European institutions and to reimburse attendees' expenses. To access AGM an EU-account has to be created. It is important for the meeting organisers that all attendees accept or reject the invitation to ensure a proper planning of the event. If an expert is entitled to reimbursement of expenses they will receive an e-mail asking the expert to enter the relevant details.

2.3 The Chair explained that new reimbursement system is actually a transition from a paper system to an online system. The presentation and other information will be made available. The attendees have still some time to familiarise themselves with the new procedure.

3. State of Play of the EU listing process

3.1 The Chair provided an update of the state of play of EU list, reminding that this topic was already discussed at the Platform on previous occasions. The Conclusions adopted by the ECOFIN Council resulted in a list of 17 non-cooperative jurisdictions for tax purposes, i.e countries that did not commit to address the deficiencies identified, but also a much longer annex with committed jurisdictions. The Chair considers this result as a major achievement, in particular for the Code of Conduct Group and the Estonian Presidency that managed the process. The result is also a clear breakthrough to operationalise the External Strategy on fair taxation of the European Commission. The Chair underlined that the screening process leading to the EU list was an objective exercise, based on a clear set of criteria and on the request to enter into a dialogue with the EU. The Chair also pointed out that that the EU list

exercise has not duplicated the work done by the OECD, as all the information made available by the OECD was taken into account. The Chair concluded by inviting to the attendees to give their opinion on 1) the outcome of the screening exercise, 2) the defensive measures which are included in the Council Conclusion and 3) the next steps with regard to the EU List, in particular the monitoring process.

Outcome of the screening exercise

3.2 An NGO welcomed the establishment of the EU list and the fact that the Channel Islands and Crown dependencies were taken into account in the listing exercise. The NGO stated that it would be useful if all EU Member States were also examined against the same criteria and asked whether countries for which no economic data were available will be considered for the screening. The NGO also requested to clarify how the jurisdictions facing adverse situations (natural disasters, refugee crisis, etc.) have been handled.

3.3 Another NGO was satisfied that the 'black list' did not result in an empty list, but only if combined with the 'grey' list of committed jurisdictions. The NGO questioned the criteria of the EU list and asked whether it is fair to include certain countries lacking the capacity to implement the standards required. The NGO pressed the Member States for more transparency with regard to the commitments undertaken by jurisdictions. Such transparency may help local civil society in the countries concerned to put pressure on their governments. On this last point, the Chair committed to raise the issue with the Chair of the Code of Conduct Group.

3.4 The Chair stated that the jurisdictions without economic data are a concern and that the European Commission may take this element into account for the next phase. With regard to the screening of the EU Member States, the Chair clarified that Member States are under constant scrutiny and that the same criteria applied for screened jurisdictions are already implemented in EU legislation. This reflects the appetite of the Member States to change but also the pressure from the Commission and external factors. The Chair welcomed the transparency that was given to the process and pointed out that the same criteria apply for hurricane countries but they only were given more time to commit to address deficiencies.

3.5 A Member State commented on the establishment of the EU list as a great achievement, based on clear criteria. It emphasized that there is not grey list but a list with jurisdictions which have shown a willingness to cooperate. It also stressed that the jurisdictions have been treated equally but that specific situations have been taken into account. The Member State also agreed to stand ready for more transparency.

3.6 A labour representative stated that the EU list includes only minor tax havens. However, the EU-list criteria are much better than the OECD's ones. The labour representative asked to involve the European Parliament for the monitoring process and to clarify the role that national parliaments and the Platform may play in the next phase.

3.7 An NGO stated that it is not clear what the commitments for criterion 2.1 and 2.2 exactly mean and asked Member States to comment on some declaration made by their finance ministers in the margins of the last ECOFIN.

3.8 The Chair replied that the listing process was objective and underlined that only the EU has obtained commitments by countries with no or very low corporate income tax. The EU listing process consolidates the ongoing global efforts to tackle unfair tax practices. The Chair also explained that the commitments have been assessed positively only when they fully addressed the issues identified in a consistent way. The Chair also stressed that Member States have to work on their national lists and how to coordinate them with the EU list.

3.9 A Member State elaborated that it would have not been fair to disclose information during the dialogue/negotiation process and that the process could actually have been harmed. The greatest achievement of the exercise is the commitment of many jurisdictions, as the screening process aimed at asking jurisdictions to align to international standards.

3.10 Another NGO welcomed the list and agreed with comments made by other NGOs.

Defensive measures

3.11 The Chair expressed disappointment at the lack of ambition of the defensive measures agreed upon. A report will be done for the administrative and legislative measures Member States may implement and the state of play will be evaluated. However, it has also to be underlined that EU funds will no longer be channelled through listed jurisdictions. Furthermore, the EU pushes for tax good governance clauses to be included in the agreements with third countries.

3.12 An NGO warned about the objective of defensive measures, explaining that it should not affect development cooperation as it may be read in a passage of the Council Conclusions establishing the EU list. In this sense, coherence should be assured for channelling of EU funds. The NGO also declared to expect only some member states to apply countermeasures.

3.13 Another NGO finds that sanctions and defensive measures are necessary but believes that cutting EU-funds would be a too blunt instrument since not everyone is benefitting from harmful tax measures. Other NGO's also expressed the concern of linking EU-funds to the EU-list. The NGO would also like to see which EU-funds will be linked to the EU-list. The NGO also does not see public CBCR as a sanction. Overall, the NGO is disappointed about the level of commitment of EU Member States on defensive measures.

3.14 A business representative asked to clarify the relation between countermeasures and double tax treaties.

3.15 Another business representative asked whether the free movement of capital was taken into account in the screening exercise, in particular in relation to substance requirements.

3.16 An academic association pointed out that case law already says that the lack of transparency in jurisdictions may justify restricting the free movement of capital.

3.17 A NGO warned that if aid for development is suspended, some jurisdictions will ask for support from other international partners.

3.18 A labour representative mentioned that, along with sanctions, a set of incentives should also be envisaged for compliant jurisdictions and that the spectrum of countermeasures should also cover access to public procurement. Furthermore, a coherent policy should be developed to accompany transitions from job linked to the financial sector in certain jurisdictions to other sectors.

3.19 A business representative asked Member States about their intention to introduce the list in their national legislation.

3.20 The Chair confirmed that the treaty freedoms were always taken into account and respected. Commenting on developing countries, the fact that the timeline for certain criteria was extended by one year is already a measure that takes into account the specific situation of developing countries. In addition, the Chair invited the Member States to come forward with the legislation they already had or will implement relating to the defensive measures against jurisdictions on the EU list.

3.21 A first Member State explained that the current countermeasures linked to its national list foresee additional documentation requirements. However, the administration is open to further examine additional defensive measures.

3.22 A second Member State intervened pointing out that the administration is evaluating how to implement the consensus reached at EU level on defensive measures.

3.23 A third Member State stated that the debate on the alignment between the national and the EU-list is still ongoing, as the two lists are based on different criteria.

3.24 The Chair concluded that for the credibility of the list the countermeasures applied and the monitoring of the commitment undertaken will be essential. The European Commission will push on this matter as much as possible, insisting on conditionality of good tax governance practices whenever possible for legal proposals. Furthermore, the new good tax governance clause should be introduced in all the agreements with third countries.

3.25 A labour representative asked whether the Commission would consider implementing tax clauses on fair taxation and transparency in bilateral trade agreements in order to promote tax good governance. The trade union noted that the French economist Gabriel Zucman advised using trade agreements as a deterrent against tax havens.

Next Steps

3.26 Only an NGO intervened under this point, appealing for more transparency in the monitoring process and urging that the adoption of the list must be not followed by a quick de-listing process.

3.27 The Chair invited a representative of the European Parliament's (EP) PANA Committee to debrief on the outcome of the plenary vote of the report on Panama Papers.

3.28 The EP pointed out that the report as adopted provides a clear outcome, even though many amendments have been introduced into the initial text (e.g. no reference is made to the introduction of a minimum tax rate anymore). The EP representative also commented that the EP sees the EU-list as a good first step but regrets that the list only targets jurisdictions outside of the EU. EP PANA Report calls for the Member States to be assessed for this purpose. The EP calls on Member States to consider defensive measures targeting final users and to subject commercial relations to the disclosure of beneficial ownership. The EP also welcomes the work of the Code of Conduct Group but invites the European Commission to evaluate this work closely. It also invites the European Commission to use Art. 116 (TFUE) providing for the use of qualified majority when the functioning of the internal market is threatened.

3.29 The EP representative also announced that a new special committee might be established and a new permanent sub-committee might start to operate by 2019.

3.30 A labour representative stated that it would welcome a permanent committee and reminded that the European Parliament wishes to have a role in the monitoring phase of the listing process.

3.31 Another NGO welcomed the adoption of the report and called for full transparency for the monitoring process.

3.32 The Chair concluded on this point saying that the European Commission will adopt soon its formal position in line with its agenda.

3.33 The Chair invited a representative of the OECD to give his view on the outcome of the list and to update on the ongoing development in the area covered by the list.

3.34 The OECD took note of the list and explained that the commitments taken by the jurisdictions will increase the membership in the international fora (Global Forum on transparency and Inclusive Framework on BEPS). The OECD also informed that a first report on automatic exchange of information has been released, and a more complete report will be published in 2018. Furthermore, the new terms of reference of the Global Forum require the availability and exchange of beneficial ownership information. The OECD also clarified that initially 15 countries were at risk to be put on the G20 list but that they have been provided with technical assistance and 14 of them were able to align to the required standards. This aspect is coherent with the fact that the G20 wanted to use the list as a last resort option. Lastly, the OECD informed that an informal group comprising of the Global Forum and Inclusive Framework members, working together with the EU Code of Conduct Group and the European Commission will be established to discuss the issues related to jurisdictions with very low corporate income tax and economic substance.

3.35 The Chair concluded by enumerating a number of issues that will be open for further discussion, namely the de-listing and monitoring process, the countermeasures, the future evolution/geographical scope of the exercise and the new criteria to be applied.

4. Code of Conduct on withholding taxes

4.1 DG TAXUD presented the Code of Conduct on withholding taxes published on the 11th December 2017 as follow up of the 2015 Capital Market Union Action Plan. The Code aims at simplifying administrative procedures in the area of withholding taxes for cross-border investors. The code is a joint effort with DG FISMA in order to bring together financial and tax competences in the area and have a balanced approach. The Commission Expert Group on barriers to free movement of capital chaired by DG FISMA listed nine best practices in the area and on the basis thorough discussion has followed within the framework of a DG TAXUD-led Fiscalis 2020 project group. The Code covers 3 main areas of managing WHT procedures:

- 1) Simplification: User friendly forms to request tax reliefs and go to digital;
- 2) Timing: quicker handling to refund WHT;
- 3) Wider entitlement to WHT relief, including access without intermediaries in the source country.

4.2 DG TAXUD clarified that the Code represents a baseline to see the impact on the ground and invited the member of the Platform to participate to a public hearing to be held on 30th January 2018 on this topic.¹

4.3 A business representative commented welcoming the Code as a useful step forward, in particular for small shareholders. It also welcomed the fact that the digitalisation of the beneficial ownership is taken into account.

4.4 Another business representative pointed out that relief at source for withholding taxes is not always the best practice, but it is nonetheless easier compared to a request of tax refund.

4.5 A professional organisation asked DG TAXUD to comment on how the technological transition was taken on board, in order to avoid failing in the implementation phase.

4.6 An NGO remarked that some of the pragmatic solutions advanced by the code could also be useful for simplifying the determination of permanent establishment and asked DG TAXUD to consider extending the scope of the code also to this area.

4.7 DG TAXUD replied explaining that WHT refund is the area in which major progress can be envisaged in the short term and that it will keep track of the issue of technological transition and digitalisation as part of the wider process of monitoring the code's implementation in the Member States.

5. AOB

¹ https://ec.europa.eu/info/events/finance-180130-simpler-withholding-tax-procedures_en

5.1 The Chair asked to discuss the programme of the second part of the mandate of the Platform. This should provide for a balance between internal and external topics. The Chair asked to communicate ideas by end of January 2018 but also to provide initial inputs during the meeting.

5.2 An NGO listed the following topic of interest: analysis of harmful tax regimes, digital taxation, resource mobilisation for developing countries, BEPS/ATAD impact on MS and the new challenges after BEPS.

5.3 Two business representative mentioned digital taxation, new procedures to make business more easily, how to use tax to help growth.

5.4 The Chair also announced the provisional dates for the two next Platform meetings in 2018, respectively, on 21 March and 27 June 2018.