

Thank you for the opportunity to provide comments on the zero draft of the Terms of Reference (ToRs).

Estonia's 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. We hope that the work of the Ad Hoc Committee (AHC) will strive to build bridges, find common ground, and foster mutual understanding.

In general, there is more need to clarify the procedures that will be followed by the negotiating committee in the Terms of Reference, as it has already occurred in the past for other UN processes.¹ We reiterate 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 UN Framework Convention on International Tax Cooperation and its protocols, as well as for the work of the Committee, with the objective of achieving a generally accepted result.

We stress that developing early protocols in parallel to the negotiation of the framework convention remains an open issue to be further discussed by the UN Member States. Furthermore, we want to recall what is stated in the report of the Secretary General on Promotion of inclusive and effective international tax cooperation at the United Nation, namely: "If there is **sufficient agreement on certain action items**, some of these protocols **could** be negotiated at the same time as the framework convention." Clearly, this was only indicated as a possible option, not as something compulsory and therefore, should also be so reflected as such in the draft ToR. Estonia strongly prefers a limited number of early protocols to be developed after concluding the negotiation of the framework convention itself. In this light, we propose to change the relevant language of the draft ToR, as follows: "Early protocols on a small number of specific priority areas should be developed **after** the negotiation of the framework convention."

We recommend that the negotiation of any such protocols be completed within a reasonable timeframe after concluding the negotiations of the framework convention. The timeframe that has to be foreseen for the negotiations of early protocols clearly depends on the number of protocols and on the subjects these protocols will cover. There should not be a single deadline for finalising all substantive protocols.

Protocols to be adopted under the Framework Convention should concern issues that require widespread multilateral coordination among Member States that cannot otherwise be achieved than through legally binding instruments; and have some level of commonality among a sufficiently large number of Member States so that the issues can be effectively and

• ¹ Cf. Numbers 17-19 of 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.

efficiently addressed through a common approach. In this sense, it would be appropriate to first discuss an exhaustive analysis of a small number of issues and prioritize some issues 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. Negotiating early protocols would also not support the inclusiveness of the process. States would require significant resources to participate in multiple negotiations at once. It is not realistic to expect that five protocols (as listed in paragraph 14 of the zero draft ToR) could be negotiated at the same time as the convention, especially given the technical assistance needs identified by a number of states at the first session of the AHC.

Throughout its work, the intergovernmental negotiating committee should avoid duplicating the work of other relevant forums and consider potential synergies and the existing tools, strengths, expertise and complementarities available in 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. Therefore we would suggest adding domestic resource mobilization, capacity building and fostering tax compliance as commitments in the Terms of Reference.

Considering the lack of a common understanding of certain concepts of the draft ToR among UN Member States to date, there is a need to delineate these concepts in the ToR, 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 Committee.

The ToR should reflect that they do not prejudge the outcomes of the negotiating committee and 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 way. Other instruments than protocols should be explored as well (e.g. best practices, soft law).