

## France's comments on the proposal for Zero Draft of Terms of Reference for a United Nations Framework Convention (Zero Draft ToR) on international tax cooperation

### **Summary**

*France wishes to thank the Chair of the Ad Hoc committee for submitting the Draft of the Terms of Reference (ToR) for the framework convention.*

*We take this opportunity to express our strong commitment to participate constructively and in good faith in the discussions and works carried out by the Ad Hoc committee tasked to draft the ToR for a framework convention.*

*In this open-minded spirit, France submits on the one hand, a set of general guiding principles for the works under the aegis of the United Nations and on the other one, more extensive comments on the Zero Draft itself including a revised version accordingly.*

### **I/ General guiding principles for the Ad Hoc committee's works**

We refer 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. 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 framework convention and its protocols, as well as for the work of the Ad Hoc Committee, with the objective of reaching a broad and universal implementation.

We stress that early protocols should not be dealt with until the framework convention is adopted.

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 to be foreseen for the negotiations of early protocols will depend on the number of protocols and on the subjects they cover. There should not be a single deadline for finalizing 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 prioritize 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. (Therefore we would suggest including domestic resource mobilization, capacity building and fostering tax compliance.)

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).

## **II/ Presentation and comments on the modifications inserted in the Zero Draft ToR by France**

- **Preamble**

For the sake of concision France is in favour of a brief preamble focused on the considerations exposed in the General Assembly's Resolution 78/230 of December 22nd. 2023.

It is actually the founding Resolution which incorporates all essential considerations for the understanding of the extent the Ad Hoc committee's work.

- **Objectives**

We recall that the objective of the Ad Hoc committee according to Resolution 78/230 is to « *draft the terms of reference for a United Nations framework convention on international tax cooperation for the purpose of strengthening international tax cooperation and make it fully inclusive and more effective* »

It appears that the suggestions under points b and c of paragraph 7 to « *establish a system of governance for international tax cooperation* » and « *establish an inclusive, fair, transparent, efficient, equitable, and effective international tax system* » goes far beyond the initial mandate. A rewording emphasizing the building up of current frameworks is therefore suggested.

- **Principles**

In the same way, France suggests to recall the spirit of the General Assembly's Resolution to take into consideration the works carried out in other fora, as well as possible synergies, existing tools and to work in the interest of complementarity avoiding any duplication which could prove counterproductive.

Similarly, the need for consensus-building in good faith with regard to the importance of the issues relating to international tax cooperation should be emphasized in this part of the ToR for the framework convention. As noted by France in its previous contribution and recalled again above, the commitment of the countries and consequently the extent and success of the works carried out by the Ad Hoc committee will depend on the decision-making process.

It is also suggested to reword the principle, well accepted, concerning the need for sufficient flexibility in the future works, which are expected to be sound in evolutionary contexts over time.

Furthermore, the principle of sovereignty in the field of taxation shall be highlighted without any limitation. It is therefore suggested to revise this part of the Draft.

Eventually, the global and universal nature of the discussion implies as such to take into consideration the constraints and specific situations of each country. That is why it seems pointless and confusing to refer specifically to « countries in special needs ».

- **Substantive elements of the framework convention**

The issues addressed in this part seem partly redundant with those included in the description of possible topics for the protocols. It is therefore suggested to delete paragraph 10 whose content is reproduced in paragraph 14.

- **Structural elements of the framework convention**

This part constitutes the core of the ToR which shall concentrate the ground works of the committee next summer. It is crucial and must be developed in a way to list the items to be inserted into the framework convention, such as:

- Decision-making process;
- Technical support;
- Composition and missions of the Secretariat;
- Relationship with other existing instruments;
- Financial resources;
- Dispute settlement for the purpose of implementing the framework convention;
- Periodic assessment of the framework convention's implementation;
- Exchange of information for the purpose of implementing the framework convention;
- Final clauses.

- **Specific priority areas to be addressed in early protocols**

First, attention is drawn on the need for a progressive agenda of the Ad Hoc committee's works. More specifically, the drafting of the framework convention must be prioritized and the discussions on preliminary protocols will only start subsequently. France is not in favor of holding parallel discussions.

Besides, when the time comes to start discussions on preliminary protocols it is essential for the credibility of the works that each protocol be preceded by an impact assessment in order to demonstrate its relevance and added value. In any case, these works must be initiated in the less controversial areas and the most likely ones to achieve a consensus as well as a global and universal implementation.

France therefore suggests to select a short list of working options, in particular in the area of environmental measures to support and finance the climate change. For the reasons previously outlined, we renew the proposal submitted in our last contribution to start reflecting on the taxation of air transport – through the taxation of kerosene or airline tickets, and on the taxation of sea transport. In an effort to take into consideration possible synergies and works carried out in other fora, France recalls that these topics are currently being discussed within the Global solidarity levies Task Force.

We also can agree on a reflection on the fight against illicit financial flows whose purpose shall be explicitly clarified and restricted to the field of taxation.

### **Approches et calendrier**

It is essential to establish a consistent agenda with regard to the extent of the works in this part of the Draft of the framework convention's ToR.

In addition, we suggest to strengthen the organization of the future open-ended negotiating committee.