

The FfD Chronicle



CIVIL SOCIETY
FINANCING FOR
DEVELOPMENT
Mechanism

The CS FfD Mechanism is an open civil society platform including several hundreds of organizations and networks from diverse regions and constituencies around the world. CS FfD Mechanism's core principle is ensuring that civil society can speak with one collective voice.

WITH WHAT "CONTRIBUTION OF CIVIL SOCIETY"?

On the 1st day of negotiations on the ToR, CSOs were granted 3 speaking slots. On the 2nd, CSOs had one intervention. On the 3rd, zero. That makes 12 minutes of democratic open space within 1080 minutes of negotiations - or 1.1%.

We are here to implement a mandate about promoting inclusive international tax cooperation, which explicitly states the committee shall work "with the contribution of civil society". We have Modalities for stakeholder participation (the famous "Annex 2") that states that observer participation "could consist of (...) making oral statements, at the end of discussions by Member States, time permitting, on each substantive agenda item."

It is up to the UN Member States to decide what your time permits. But we would like to stress that:

- **CSO participation is a core pillar of UN's democracy and legitimacy.** The level of participation at the UNHQ is already well below most other UN processes. If we set an even worse precedent here, it can undermine CSO participation in all the UN's work areas and processes.
- **As CSOs, we have expertise, insights, capacity and experience that can inform and improve the quality of the outcome.** On Tuesday this week, we were left in a situation where Member States kept stressing the need for more information on tax and human rights, and on the back row, we had CSO experts on that very same topic waiting for hours without being able to answer the requests for more information. At the end, we were given a very brief chance to speak - but only AFTER the discussion had been concluded.
- **We are coordinated.** The Modalities state: "Stakeholders may consider selecting spokespersons from among themselves, in a balanced and transparent way, taking into account equitable geographical representation, gender balance and diversity of participants." We have carefully selected expert spokespeople ready to give relevant statements.

How did we end up in this situation?

At the Session in April, the Chair asked for permission to grant the floor to stakeholders during the discussions - as opposed to after. To our shock, an EU Member State - France - objected. Since then, we have been further pushed to the margins - no longer able to speak on each substantive agenda item, but instead given a "multistakeholder slot" on Friday afternoon. This approach is an extremely strict interpretation of the term "time permitting" and de facto makes us unable to contribute meaningfully to the discussions of the committee before the conclusions are reached.

Negotiation-time has been wasted on going in circles: 'duplication', 'consensus', 'complementarity', 'should or could', 'the level of commitments' (high, low, no), 'opt-in and opt-outs'. As CSOs however, we are prepared, sticking to the rules, committed to see the mandate successfully implemented, and keen to inform the debate. We want to be part of the process and we can help overcome discussion bottlenecks. This is in the general interest of the whole exercise.

It is unacceptable and undemocratic to put CSOs on the sidetrack. Whenever specific topics are discussed there must be space for CSOs to directly and immediately contribute to the debate - before decisions are made. It's not too late to correct this failure.



COMMITMENT ISSUES

Day three's discussions about paragraph 10 turned into a UN-version of couples therapy, as a number of – primarily – wealthy OECD countries expressed strong hesitations about committing to... well, anything, really. Bordering the absurd, some of these countries expressed strong concerns about “tying” the people who will be negotiating the future Framework Convention to anything specific, while knowing that those people will – to a large extent – be exactly the same people as those who are now negotiating the ToR.

But let's take a closer look at what these commitment-phobe countries are actually saying. Are they arguing for a world where no country is bound to any international tax rules and everyone just exercises their “national sovereignty” however they like? No, this is absolutely not what they're saying. In fact, some of the wealthy OECD countries that now express shock about the idea of “committing” have long been strong advocates of ensuring that everyone else commits to international tax rules.

Forced commitment

“BEPS implementation: The country must have committed to implement the OECD's Base Erosion and Profit Shifting (BEPS) minimum standards”. This is a criterion in the EU's system for blacklisting countries as “uncooperative” on tax matters. But unlike the UN Tax Convention negotiations – where all countries are able to participate on an equal footing – the OECD-led negotiations that resulted in the BEPS package were non-inclusive. In the OECD's own words, the BEPS rules were “developed by 44 countries including all OECD and G20 Members participating on an equal footing, as well as through widespread consultations with more than 80 other jurisdictions”. It's easy to do the math. 193 UN Member States = 149 countries were not part of the exclusive group of “rule developers”. However, having been excluded from the BEPS negotiations did not exclude countries from being blacklisted by the EU.

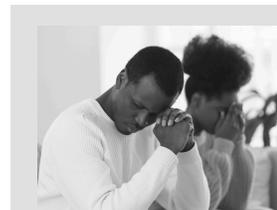
Take the example of Mongolia. Nobody would argue that this country is a tax haven, or even the slightest bit “uncooperative” on tax matters. And yet, in 2017, Mongolia was blacklisted by the EU with the argument that Mongolia had not “committed” to following the OECD's BEPS rules. Mongolia subsequently committed to following the OECD's BEPS rules and was taken off the list.

Enforcement without inclusivity

What we need is a UN convention that contains globally agreed commitments supported by enforcement mechanisms. Until now, we have never had an inclusive body where all countries participated on an equal footing, and thus we also do not have any globally agreed commitments. Despite that, we have harsh compliance mechanisms – including blacklisting – that countries use to force rules on others.

The idea of commitment to international tax rules is not new. What is new here is that countries will be able to decide for themselves whether to commit or not, as well as participate in defining what these commitments should look like. But if countries refuse to commit here at the UN, global tax governance is likely to continue being a world of “rule makers” and “rule takers”.

Signs you could be suffering from commitment issues:



Not opening up



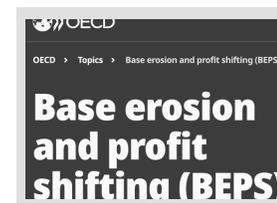
Not communicating properly



Relationship anxiety



Running away from serious issues



Focusing on past relationship



Feeling hesitant to talk about the future