

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.

LOOK TO COPs, NOT JUST PROTOCOLS

The world of tax does not remain the same forever; indeed, it can change drastically in a few years due to innovations in business, trade, services, and mobility. That is what happened with globalization in the 1950s. The way corporations were taxed became obsolete and countries have been looking for ways to retax them since then. As corporations had found a way to not pay taxes, so did the wealthiest. The UN Framework Convention on International Tax Cooperation itself has a lot to do with this challenge of adapting tax systems to the new reality of a globalized economy to finally allow States to effectively have corporate taxation and taxation of high net wealth individuals.

This changeable context of tax must be a guide throughout decision-making of the Framework Convention. That is why having a mechanism to update and adapt is fundamental, and for this aim the Conference of Parties (COP) is the best instrument, not Protocols. Commitments can be included as stand-alone actions, without necessarily being an anchor for a future protocol. If the language of a commitment is strong and clear enough, it can be operationalized and implemented through future decisions of COP, without needing a protocol.

The COP can be empowered to make important decisions after the Convention has entered into force. This approach, which has also been applied in other UN processes, allows for the Convention text to be relatively concise, since the COP can specify the details which operationalize the commitments. COP decisions can serve this important function for decisions that need more regular review, since they can be changed by the COP itself without requiring an amendment to the Convention or a Protocol. The COP also comes with the advantage that the group of Parties remains the same - for every Protocol, there is the risk of fewer countries signing and ratifying. Furthermore, protocols also entail a separate governing body (often referred to as the "Meeting of the Parties" (MOP), which operates separately from the COP of the Convention). A high number of protocols, and thus a high number of different MOPs, risks fragmentation.

The reasoning for making strong and clear commitments

In viewing COP as a key implementing body, rather than Protocols, the biggest question becomes: how can a commitment be strong and clear enough without entering too many details?

The Convention provides the mandate for the COP, and thus, it should clearly spell out what the COP is expected to deliver in the future. Furthermore, the commitments in the Convention can spell out what the Parties - i.e. the countries that sign the Convention - are expected to adhere to and deliver. This can be very concrete - such as actions that need to be taken within specified timeframes. It can also be commitments that specify what Parties will do at the national level (such as, for example, remove harmful tax practices).

With this in mind, the commitments need to be able to equip domestic authorities and judges with actionable tools from the outset. This approach strengthens the rule of law in international taxation and promotes good governance by providing clear, applicable standards for domestic policy makers and tax authorities worldwide and for international tax cooperation. It represents a commitment to tangible action rather than mere aspiration, and operationalization details can be further developed at a COP. For example, the Convention can request the COP to define what constitutes a harmful tax practice, as well as carry out regular reviews on this question.

Without concrete, immediately applicable tools within the Convention, judges, domestic policy makers and authorities would be hindered in their ability to interpret and apply its provisions promptly, potentially leading to delays, inconsistencies, and a lack of effective implementation. For international law, the principle "*ut res magis valeat quam pereat*" (that the thing may rather have effect than be destroyed) demands that treaty provisions be interpreted to have useful effect rather than being rendered ineffective. Specific commitments also strengthen the Convention under the principle of *Pacta Sunt Servanda* (agreements must be kept). In contrast, when the text provides clear, actionable language, the treaty creates unambiguous obligations that states must honor, reinforcing the binding nature of the agreement and its immediate relevance to domestic legal systems.

Our rapidly evolving digital economy demands an immediate response. Actionable commitments allow domestic policy makers and authorities to react swiftly to these challenges, protecting national revenues and ensuring fair taxation across borders, without waiting for additional protocols, while updates can be made by the COP. This approach is particularly crucial in addressing issues of illicit financial flows, tax avoidance and evasion more effectively.

From the perspective of domestic integration, specific, actionable language in the Convention facilitates smoother incorporation into national legal frameworks. This clarity enables legislators and tax authorities to develop policies and criteria that align with international standards, promoting consistency and reducing potential conflicts between domestic and international obligations.

Concrete provisions in the Convention text will enhance judicial application, enabling consistent and effective resolution of tax-related disputes across different jurisdictions, preventing tax conflicts and reducing the costs of tax dispute resolution. This supports the rule of law and also contributes to the development of a coherent body of international tax jurisprudence.

A FAIR ALLOCATION OF TAXING RIGHTS

A fairer tax system requires replacing existent international tax principles like the arm's length and residence-based taxation. These principles favor capital-exporting countries and enable multinationals to shift profits to tax havens, worsening global inequality and undermining development. The flawed assumption that subsidiaries operate independently leads to arbitrary profit allocations and legal disputes. Reform must treat multinationals as single entities under unitary taxation, replacing transfer pricing with fractional apportionment and updating permanent establishment rules with a "Significant Economic Presence" test. The Convention should ensure profits are taxed where real activity occurs, ending the distortions of the current system.

What is Fair?

In their submissions, several EU Member States have raised concerns about using the word "fair" – stating, for example, that "fair" is an undetermined concept. "We have no definition" and "We believe that it would be very difficult to define what could be perceived as a fair system."

This is a quite surprising stance – not least keeping in mind that the EU has, for several years, been blacklisting non-EU countries for not fulfilling the EU's definition of who is a "cooperative jurisdiction for tax purposes". The EU uses 3 criteria for its (very controversial) blacklisting exercise. Can you guess what Criteria number 2 is called? That's right – "FAIR TAXATION".

The FfD Chronicle is happy to offer assistance to promote understanding: Dear EU Countries – that is NOT fair!

EU Countries: "We have no definition of fair taxation."

The EU:



A fair allocation of taxing rights is also essential to ensure that rules in place allow countries to effectively tax high-net-worth individuals. Existing tax treaties often restrict source-based taxation and constrain countries' ability to implement exit taxes or guarantee the taxing rights related to income and wealth, something particularly relevant in a world where billionaires can buy their residency, and often derive their wealth from several countries. The Jeff Bezos' of the world do not get rich by their activities in a single country, and taxing rights should aim to reflect this reality, by supporting a coordinated approach to taxing HNWIs, and enabling countries to raise critical revenues.

The Compromiso de Sevilla urges Member States to promote progressivity and efficiency in tax systems to combat inequality and increase fiscal space. A fair allocation of taxing rights needs to go hand in hand with stronger transparency measures - with better access to data, more effective information exchange, and concrete tools such as a Global Asset Register and a public Country-by-Country Reporting (CBCR) database.

CIVIL SOCIETY PRESENTS

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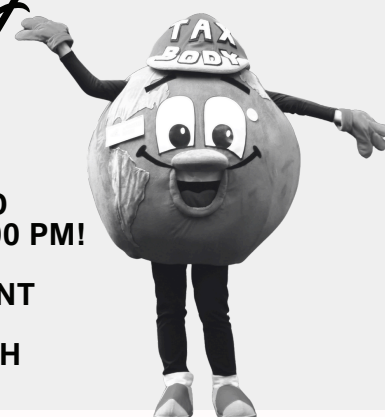
**A ROOFTOP
EVENT TO CLOSE
WEEK ONE OF
THE UN TAX
CONVENTION
NEGOTIATIONS.**

**NO SEPARATE
ACCREDITATION
PROCESS.
EVERYONE WHO
SHOWS A UN
BADGE
WELCOME.**

**6:00 PM - 10:30 PM
FRIDAY, 8 AUGUST**

**FREE OPEN BAR AND
APPETIZERS TILL 8:00 PM!**

**AUDACE RESTAURANT
ROOFTOP
365 PARK AVE SOUTH**



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