



The FfD Chronicle

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.

THE WORK STARTS NOW: AMBITION MUST BE SUBMITTED BY 5 DECEMBER

Dear delegates,

It's been a great pleasure to see you all during this first ever intergovernmental UN tax negotiation on the African Continent. But as we wish you all safe travels back, we want to issue a reminder that the work starts now. The negotiating text for Workstream 1 is a bareboned "template", and it's up to you – the Member States – to submit the meat in the form of concrete proposals for what must be included in the new "international tax system for sustainable development."

A few important reminders:

- We are still only scratching the surface in the discussion about what fair allocation of taxing rights would entail. We need fair and clear solutions.
- Despite the clear mandate in the ToR, the negotiating text doesn't even have a specific para on Equitable Taxation of Multinational Enterprises, and even less a road to get us to the to a fair and effective corporate tax system we need (i.e. out of the transfer pricing trap and into a unitary tax system).
- Taxation of HNWIs is there in name, but in terms of concrete actions and international mechanisms, the text is empty.
- The word transparency is barely mentioned, and all the key components needed to support effective taxation are missing. There is no public country-by-country reporting, no Global Asset Register or beneficial ownership transparency, and while the words "information exchange" are mentioned throughout the text, the word "automatic" is completely absent.
- Keeping in mind how absolutely crucial taxation is in the fight for sustainable development, Article 9 is an insult to all of those who put hope in us to contribute to a better future, including your government colleagues that are currently at the climate COP in Belém.

We call on your all to bring in ambitious solutions to these issues by submitting concrete proposals by 5 December.

Looking forward to a Member State-led negotiating text

Following the 5 December deadline, but before we meet each other again in February, we also need to see a truly Member State-led negotiating text. Unlike the current Co-Lead's template, the next draft of the Convention must include specific paragraphs – in [brackets] – which are actually written by Member States, and can outline ambitious proposals for the way forward. Only then can we get a real negotiation where Member States engage directly with each other's proposals and start developing joint solutions.

It's time to commit to doing great things together

A key underlying problem is that many delegates apparently still suffer from severe commitment issues, and the thought of resolving differences and building great things together is clearly perceived by some as hugely intimidating. But at the same time, those very same people seem to bring a peculiar wish to try and mask their non-cooperation as true transboundary love and deep dedication to multilateralism. The creativity seems endless. "Maybe we can sign a convention together, but keep it free of content?" "Maybe we can keep all the content in protocols, but invent a "pick and choose" approach that allows everyone to do whatever they want?"

This type of approach seems misplaced, absurd and very foreign in the UN, where building alliances and substantive agreements is bread and butter. But the "agree to disagree" approach is unfortunately not new in the world of tax. In fact, the "opt in/out madness" is high on the list of absurd OECD-inventions that are undermining the effectiveness of the international tax system. For example, as tax experts would know, the OECD BEPS MLI is basically one big multiple choice template, and mapping out which of the signatories committed to what on BEPS turns into a small PhD thesis.

Dear delegates. We are not here to develop Trump-style ways of "living side-by-side" (which apparently is American English for "writing what others should do on tax, and then dumping everyone and going off to do whatever you please"). We are here to build a new, fair, effective and ambitious framework for international tax cooperation. And you, dear delegates, are holding the pens.

We know, that many of you are on our side and sympathize with our positions and real change in the international tax system. If you lack the backing from higher political levels in your countries, no worries, we'll be there to support you.

**Read our catalogue of
proposals for articles in
the UN Tax Convention.**



PROTOCOL 2: THE SUPPLY SIDE ECONOMICS OF DISPUTE RESOLUTION AT PLAY

Yesterday at the UN Tax Convention negotiations we saw the failed logic of dispute resolution play out once again. Rather than reducing tax disputes, the creation of a dispute resolution mechanism increases disputes - and revenue losses to States.

And yet, those promoting arbitration as a dispute resolution mechanism, mainly from the European side, should remind themselves that they just ended the entire system of Bilateral Investment Treaties (BITs) within the EU, as it contravened with fundamental rights and the rule of law in the founding treaties of the EU.

EU doesn't like arbitration within, but is promoting them outside
 In 2018 a landmark *Achmea* case judgement of the Court of Justice of the European Union (CJEU) ruled that investor-state arbitration based on BITs between EU member states is incompatible with the Treaty of the Functioning of the EU (TFEU) due to uniform interpretation and application of EU law throughout the EU's judicial systems, as well as exclusivity of EU courts.

Then another *Komstroy* case judgement in 2021 the same CJEU found that the arbitration mechanism under the Energy Charter Treaty (ECT) could not apply to intra-EU investment disputes either.

Many states, including France, Germany, Poland, Spain, the Netherlands, Luxembourg, Portugal, Slovenia, and the United Kingdom have left the Energy Charter Treaty, mainly to prevent future ISDS cases on policies that are critical to the green transition, such as taxing fossil fuel companies or ending their licences.

Don't mention LuxLeaks

LuxLeaks scandal in 2014 nearly created the momentum for the EU ending tax disputes via a common approach. The LuxLeaks revealed 548 secretive tax rulings, covering 340 MNCs dating from 2002 to 2010. At the heart of this was PriceWaterhouseCooper's office in Luxembourg, a key enabler of tax abuse.

In the wake of the LuxLeaks, the EU tried to establish steps towards a unitary tax system in the form of the Common, Consolidated Corporate Tax Base (CCCTB), that would have drastically reduced the scope of tax disputes by agreeing a tax base, and consolidating it.

But the initiative failed due to lack of unanimity, with notably both Ireland and the UK opposing it openly. The EU then created an EU Dispute Resolution Mechanism in 2017 on tax treaties, which had an inventory of 96 cases were active end of 2023. In addition, the number of open cases for Mutual Agreement Process (MAP) at the end of 2023 was 2381. These cases are not published, as also aren't tax rulings so no public scrutiny is allowed on them.

Now the EU wants to bring this failed system of thousands of open and pending dispute cases to the UN, based on the failed transfer pricing system that the European Union itself tried to change, but lacked adequate will to do so.

No to dispute resolution based on the transfer pricing system

The Framework Convention must build a legal basis first for taxing companies before designing a dispute resolution system. Just as investment treaties are seen as blocking the green energy transition, similarly the transfer pricing system due to its inherent generation of tax disputes and abuses is blocking advancing financing for domestic and international obligations.

