

Invitation to provide comments on the *Zero Draft Terms of Reference* for a United Nations Framework Convention on International Tax Cooperation

Submission by the Republic of Austria

Austria welcomes the possibility to provide written comments on the *Zero Draft Terms of Reference* for a United Nations Framework Convention on International Tax Cooperation in preparation of the Second (Substantive) Session of the *Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation*. Austria reiterates its position presented as a general statement during the First (Substantive) Session and aligns itself with the position presented on behalf of the European Union and its Member States during the First (Substantive) Session in New York. To facilitate further discussions and negotiations of Terms of Reference for a United Nations Framework Convention on International Tax Cooperation, Austria wishes to submit the following:

[Objectives]

Regarding paragraph 7 of the *Zero Draft Terms of Reference*:

The objectives presented in paragraph 7 are not entirely clear and could be more streamlined.

While sub-paragraph (b) addresses a system of governance, sub-paragraph (c) addresses the international tax system, i.e. rules and standards flowing from international tax cooperation. From an Austrian point of view, the adjectives “inclusive, transparent, efficient and effective” as well as the goal of “enhancing legitimacy” seem to fit better under sub-paragraph (b) than under (c). Furthermore, Austria would welcome a focus on sustainable development as well as on strengthening domestic resource mobilization in sub-paragraph (c). Addressing tax-related illicit financial flows is already relatively specific and it should therefore rather be listed as a potential high-level commitment (as addendum to paragraph 10).

Based on these comments, we propose the following drafting for sub-paragraph (c):

“c. Establish a framework for a fair and equitable international tax system for sustainable development, with a view to enhancing certainty and resilience while strengthening domestic resource mobilization.”

[Principles]

Regarding paragraph 9 of the *Zero Draft Terms of Reference*:

Considering the proposed preamble, in which reference is made to previously adopted resolutions in relation to promotion of inclusive and effective international tax cooperation at the United Nations, it must be pointed out that the *Zero Draft Terms of Reference* omits to

mention that efficient international tax cooperation needs to recognize and be based on the principle that duplication of existing rules and standards should be avoided. This approach to efficient international tax cooperation has already been included in OP 6 sub-paragraph (d) of Resolution 78/230 and its inclusion in the Terms of Reference should therefore be undisputed.

Therefore, we propose to add the following item in paragraph 9:

“- take into consideration the work of other relevant forums, potential synergies and the existing tools, strengths, expertise and complementarities available in the multiple institutions involved in tax cooperation at the international, regional and local levels”.

Where Member States have well-established rules in place, the focus of international tax cooperation at the United Nations should be on improving those rules rather than completely changing such rules. This is essential to maintain stability and certainty, as well as to promote efficiency and effectiveness of international tax cooperation. Any actions taken at the level of the United Nations should be informed by and based on thorough analyses undertaken by Member States before starting to negotiate any provisions under a future framework convention.

[Substantive elements of the Framework Convention]

Regarding paragraph 10 of the *Zero Draft Terms of Reference*:

It is our understanding that the list of commitments put forward in paragraph 10 is purely indicative for a future negotiating committee and does not pre-empt the outcome of negotiations of a future framework convention.

Therefore, we suggest the following drafting change:

“The framework convention **could** include **high-level** commitments on: (...)”

In addition, the commitments described in paragraph 10 should neither supersede nor overwrite the commitments that Member States have already adhered to in the context of existing international tax cooperation mechanisms. Commitments described in paragraph 10 should therefore be complementary to existing international tax cooperation mechanisms.

[Structural elements of the Framework Convention]

Regarding paragraph 13 of the *Zero Draft Terms of Reference*:

Paragraph 13 mentions “procedures for amendments and adoption of protocols”. So far this point does not mention a need to design the relationship between a future framework convention and future protocols. In our opinion, this needs to be added.

Furthermore, protocols may not be the only instruments which might be adopted by the parties to a future framework convention to achieve its objectives. Therefore, we propose to add the following item in paragraph 13:

“relationship with protocols and other instruments provided for by the framework convention”.

[Specific priority areas to be addressed in early protocols]

Regarding paragraph 14 of the *Zero Draft Terms of Reference*:

We understand that a possibility of developing early protocols in parallel to the negotiation of the framework convention remains an open issue to be further discussed by Member States. Further, it is our understanding that the list of priority areas put forward in paragraph 14 is purely indicative for a future negotiating committee and does not pre-empt the outcome of negotiations of a future framework convention. Therefore, we suggest the following drafting change:

“Early protocols on a small number of specific priority areas **could be discussed** (...)”

Depending on the time frame for negotiation, it would further be prudent to indicate in the Terms of Reference that early protocols – if they are to be negotiated at all – should be limited in number. The topics of such protocols should focus on areas with the broadest consensus and agreement, avoiding controversial topics and issues already under negotiation.

Paragraph 14 does not indicate the purpose of protocols and their relation to the high-level commitments described in paragraph 10. It would be helpful to clarify these two issues based on the Report of the Secretary-General (A/78/235) in order to put the topic of early protocols into a proper context. According to the Report, protocols could help to agree on more detailed commitments on particular topics, giving Member States the ability to opt-in and/or to opt-out on the basis of their priorities and capacities.

Paragraph 15 mentions additional topics for future protocols that might be negotiated under a future framework convention. While the Ad-Hoc Committee could theoretically provide for a list of additional topics, we do not understand why and to what extent this would be helpful. The Terms of Reference should rather state that a future framework convention should comprise provisions for establishing a procedure regarding future action items that could be agreed on by the parties to a future framework convention.

[Approaches and time frame for negotiation]

Regarding paragraph 16 of the *Zero Draft Terms of Reference*:

In general, the Terms of Reference need to be clearer on the procedures that will be followed by the negotiating committee, similar to what has been done in other UN processes (e.g. UNGA Resolution 72/249, paragraphs 17-19). We reiterate the importance of consensus-based decision making and this should clearly be reflected in the Terms of Reference. We believe that decision making based on a simple majority is not appropriate for a future

negotiating committee since international tax rules cannot be imposed by a majority over a minority of Member States.

Regarding paragraphs 16 and 17 of the *Zero Draft Terms of Reference*:

Firstly, the proposed timeline, which suggests that an intergovernmental negotiating committee should begin to negotiate a future framework convention while simultaneously also negotiating early protocols, not exceeding two years in total, is very ambitious. This timeline will place excessive demands on Member States' resources. We thus suggest extending the deadline to allow all Member States to fully participate in the works of a future negotiating committee, and, as a result, to be able to agree in an informed manner on the outcomes of such negotiations. This is vital for establishing a long-lasting and resilient international tax cooperation framework.

Secondly, a future framework convention is supposed to be "constitutive in nature", as proposed in the Report of the Secretary-General (A/78/235) (para. 55). Therefore, negotiations of protocols – which need to be embedded in a future framework convention – can be started only once the "constitutional elements" of such a convention are fairly stable. We thus urge to apply a sequential approach and complete discussions on a future framework convention before starting to negotiate early protocols. If, however, discussions regarding early protocols would be started before a future framework convention is complete, we propose to start negotiating early protocols with a sufficient delay after starting negotiations of a future framework convention. Furthermore, the time frame for negotiating early protocols will depend on the number of protocols and on the subjects they cover so that there should not be a single deadline for finalising all protocols at the same time.

[General considerations]

Regarding the text of the *Zero Draft Terms of Reference*:

Finally, we see a need to better understand the meaning of certain concepts used in the *Zero Draft Terms of Reference*. We therefore suggest that guiding notes on topics and/or terms used in the *Zero Draft of Terms of Reference* should be prepared in advance of the Second (Substantive) Session to facilitate an informed discussion during the upcoming meeting.