

Germany's comments on the zero draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation

I. General Statement

Germany appreciates the opportunity to provide feedback on the zero draft of the Terms of Reference (ToR) for a United Nations Framework Convention, and reaffirms its commitment to the goals of inclusive, fair and effective international tax cooperation. In general, Germany refers 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.

Recognizing the pivotal role tax cooperation plays in fostering global equity and prosperity, especially in promoting sustainable development and poverty reduction in developing countries, 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 also promote stability and reliability within the international tax architecture. Additionally, we hope that the Ad Hoc Committee (AHC) will strive to build bridges, find common ground, and foster mutual understanding. Therefore, during the remaining discussions, it is imperative to build upon areas of consensus, and reach suitable compromises where countries have different positions. This will ensure that the final ToR encompass the full spectrum of views expressed, and secure broad support. This approach also ensures that the further process remains open, inclusive and unbiased, allowing for genuine deliberation and negotiation.

We are convinced that the ToR 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 without prejudging the outcomes of the negotiating committee, and including procedural elements necessary for negotiating the framework convention.

Regarding substance, i.e. the high-level commitments, Germany deems it essential to maintain stability and legal certainty by avoiding inconsistencies with established global standards. To promote efficiency and effectiveness while avoiding destabilizing the international tax architecture, throughout its work, the intergovernmental negotiating committee should, in line with OP 6 letter (d) of Res. 78/230, avoid duplicating the work of other relevant fora by considering their work, potential synergies as well as the existing tools, strengths, expertise and complementarities available in the multiple institutions and processes involved in tax cooperation at the international, regional and local levels. By coordinating with and building upon existing initiatives, we can ensure that our efforts are both complementary and effective, and should therefore be adequately reflected in the guiding principles. Also, for the purpose of ToR, subjects for potential protocols should be selected carefully, and the future process should allow for adequate analysis and discussion before any additional specific commitments are envisaged. This would help to ease the initial phase of this project, and ensure its effectiveness.

II. Specific Comments

Below are our preliminary comments on the zero draft of the ToR for a United Nations Framework Convention on International Tax Cooperation:

Paragraph 9: It is unclear what is meant by “special situations”. We think this should be further defined in order to avoid discussions in the further process.

Paragraph 10: Germany believes that, considering the discussions at the first meeting of the AHC and the overall objectives of the process, it is advisable to include "promoting domestic resource mobilization" among the listed commitments.

With respect to the effective taxation of high net-worth individuals (HNWI), we think that the wording of this commitment is too narrow and specific, solely addressing one aspect currently under discussion. As the Framework Convention should constitute a permanent set of guiding principles, we propose rephrasing this commitment more abstractly as: "effective taxation and fostering tax compliance, also with regards to high-net-worth individuals."

Paragraph 12: Currently it is very challenging to get a clear picture about the different activities of different actors in the field of capacity building. This may lead to inefficiencies and overlaps. Therefore, the Framework Convention should address the exchange among stakeholders to ensure both demand-based approaches to capacity building as well as effective coordination and collaboration between providers of capacity building. For instance, the following sentence could be added: “To ensure an effective coordination of support provided by stakeholders the Framework Convention should include a mandate for the United Nations to establish a comprehensive, detailed and regularly updated database, taking into account already existing databases from OECD, Addis Tax Initiative, IMF, etc., of all ongoing and planned tax-related capacity building projects in the field of DRM and ensure its use.”

Paragraph 13: For clarification, it should be specified that the relationship to protocols must also be provided for by the Convention. It is likely that the Convention will provide for other instruments, e.g. recommendations, in addition to protocols to address specific requirements, and achieve its objectives. Therefore, "other instruments" should also be mentioned. Drafting suggestion: "relationship with protocols and other instruments provided for by the framework convention." Additionally, it would be beneficial to specify what is meant by "other agreements, instruments." Drafting suggestion: "tax-related agreements and instruments."

Furthermore, it is unclear to what extent the Framework Convention could elaborate on the relationship with domestic law. The relationship to the Convention will generally be determined by the constitutional law of the respective jurisdictions. Therefore, we prefer deleting this part.

Paragraph 14: Regarding the simultaneous development of protocols, the Ad Hoc Committee is only mandated to consider the development of early protocols. As the development of early protocols constitute only one option that also requires further thorough analysis (and legal clarity), we propose replacing "should" with "could." This change might also make it easier to reach an agreement on the issues mentioned.

Additionally, we propose substituting "developed" with "discussed," addressing different understandings of what is meant by the development of protocols. Also, these discussions should take place after the negotiations of the framework convention are concluded – the word “after” should be added here. The effect of a protocol and its relationship to the Convention are currently unknown. If a protocol is assumed to be legally binding, not every tax challenge would require one. More efficient means, such as recommendations, voluntary actions, and soft law, should be considered. Thus, we suggest adding "or other appropriate instruments."

Moreover, negotiating protocols (or other appropriate instruments) on the subjects within the time frame mentioned in *paragraph 17* is quite ambitious, as these subjects are complex.

Regarding the subject of tax-related illicit financial flows, it is unclear what exactly is to be regulated by a protocol in relation to IFFs. Typically, IFFs relate to tax information exchange and administrative cooperation, both mentioned in *paragraph 15* as topics for potential additional protocols. Consequently, no measures should be taken by the negotiating committee in relation to IFFs, which are only mentioned in *paragraph 15*.

Paragraph 15: We are wondering about the added value of this paragraph. The Convention should be future-oriented and enable tax challenges to be responded to in the future if necessary. The parties to the Convention, their secretariat and bodies will have to be able to launch initiatives to develop protocols. If these parties come to the conclusion that a protocol is required, they will be able to start work on it. Against this background, it is doubtful whether the Term of Reference should already list potential issues for future protocols.

Paragraph 16: We maintain our view that only consensus-based decisions are likely to be successful in the area of tax, and firmly believe that this requirement is covered by both the mandate of the Resolution and the UN rules. Based on the Bureau meeting on 8 May 2024, where there was significant divergence of opinions, we suggest adding the following: "by means of a consensus-based decisions". The previous "efforts to complete its work" would also refer to this part of the sentence.

Paragraph 17: We refer to our earlier comment, explaining why the parallel development of protocols appears inappropriate. As a possible compromise, we suggest the following: "The intergovernmental negotiating committee may begin discussing the early protocols described above during the negotiation of the framework convention as soon as progress on the underlying regulations related to protocols has matured sufficiently." This change, along with replacing "should" with "could" in *paragraph 14*, may allow more room for compromise and potentially listing a greater number of topics for protocols in *paragraph 14*.

III. Final Remarks

Overall, we stand ready to engage constructively in more in-depth discussions on the updated draft at the second substantive session and will strive to identify common ground on the remaining issues. Our goal is to develop a robust, fair and inclusive international tax

system together with enhanced international cooperation. Therefore, we will continue to work towards building bridges, finding compromises, and fostering mutual understanding.