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.

BAD OECD HABITS

Distinguished delegates. Civil society at your service – today we offer you this list of bad OECD practices that shouldn't be carried into the UN Tax Convention. But first a kind reminder – the OECD was not set up to do global governance, and we're here at the UN because that fact has become all too clear on the issue of tax. The UN is the world's leading institution on global governance. It's time to "duplicate" the good practice of the UN, and break the bad OECD habits. Bad OECD habits:

#**1: OECD country privilege**. Here at the UN, we work under the UN Charter, including the principle of "sovereign equality of all its Members". This is different from the OECD, where the founding convention, among other things, sets the aim "to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries" – i.e. OECD countries.

#**2: US privilege**. At the OECD, the US has a proud tradition of being a dominant voice in the drafting of the rules it doesn't intend to follow. The Pillar 2 "Side-by-Side" agreement is only the latest example – the US has also not signed up to BEPS1 or the Common Reporting Standard. But the most blatant example of US privilege is probably the draft Pillar 1 agreement, which awards "points" to certain selected countries, and states that the agreement cannot enter into force unless signed by countries and jurisdictions representing a minimum of 600 out of 999 points. The US was awarded no less than 486 points and became the only country with the power to veto the entire deal. And the rest is history – the US used its privilege to kill Pillar 1, but as you might have guessed, we – civil society – will not be shedding tears about that.

#**3: Residency country privilege**. Unsurprisingly, the result of points 1 and 2 above was international tax rules with clear biases – in the form of rules that favor residence countries, at the expense of source countries. Correcting this injustice, and ensuring a fair allocation of taxing rights, is a key reason why we're here.

#**4: Non-inclusivity.** As we all know by now, giving bodies nice-sounding names such as the Inclusive Framework and Global Forum doesn't make them neither inclusive nor global.

#**5: Pick and choose treaties.** The idea of writing global tax rules as "multiple choice" agreements is a fascinating OECD invention, which is, none the less, extremely unsuited for creating a clear and coherent system. The best example of this approach is the BEPS1 multilateral legal instrument, which is accompanied by a highly complex "matching database", where the OECD has tried to show which signatory has chosen what option (in reality, it serves as a perfect illustration of over-complexity and bad global governance).

#**6: Reservations.** In line with the philosophy of agreeing to disagree, the OECD also introduced the idea of allowing countries to sign without truly committing. In the BEPS1 MLI, Article 28 on "Reservations" is over 3 pages long. In comparison, UN Conventions tend to use the clear, concise and crisp wording: "No reservations may be made to the Convention" – encapsulating the philosophy that when countries negotiate an agreement, they should also stick to it.

#**7: The Arm's Length Principle and the Transfer Pricing system.** The first Transfer Pricing guidelines were issued by the OECD in 1995, and since then, the organization has been on a mission impossible to make this illogical and highly complex system work. As a result, the 2022 version of the OECD TP Guidelines is 658 pages long. Meanwhile, several OECD members, including the US, have introduced formulary apportionment as the internal tax system in their own countries. It's time to transition away from this mess, and develop a system with a clear, coherent, and fair international corporate tax system that allocates taxing rights to the countries where economic activity takes place (yes – formulary apportionment!).

#**8: Advance pricing agreements**. Along with the emergence of the transfer pricing system came the idea of using secret "pricing agreements" (also known as sweetheart deals) between tax authorities and individual companies to determine how the highly complex rules would be interpreted in practice. To state the obvious – this is not good practice. The UN Tax Convention brings an opportunity to replace this bad habit with clear and logical corporate tax rules.

#**9: Over-lengthy highly technical legally binding agreements**. At the UN, Conventions and Protocols take different forms, but typically, they are around 25 pages long, and include the key overall commitments and decisions of the Parties, as well as mandates for future work. In comparison, the OECD's draft legal instrument to implement Pillar 1 (may it rest in peace) was 212 pages long, highly technical, and accompanied by a 638 page long "explanatory statement."

#**10: Arbitration**: The idea of letting a few selected individuals sit in secrecy and decide whether a country has the right to tax is not only absurd – it's also harmful and undermines democracy and national sovereignty. And yet, "Arbitration" was included as a voluntary option in the 2015 OECD BEPS1 package (under Action 15). It's time to bin that very bad OECD habit, and instead rely on the UN tradition of letting Member States sort out their disagreements without "arbitrators."

BAD OECD HABITS, CONTINUED

#11: Shutting observers out. What would the negotiations be without the Chronicle? In OECD tax negotiations, we – your dear civil society colleagues – are strictly banned from attending (we're not even allowed in the building). The UN, however, has a long and proud tradition of openness and transparency, including strong principles for participation of observers. Dear delegates – show us some love, and commitment to democracy, inclusivity and transparency.

#12: Secretariat-led negotiations. Here at the UN – as underlined in ToRs – the negotiations must be Member State-led. This is a very significant and positive change compared to the OECD, and an essential step forward for democracy and national sovereignty.

#13: Presents for tax havens. The OECD has introduced the tradition of adding loopholes to the international tax rules to please those of its members who can best be described as tax havens. For example, the 2015 BEPS1 agreement introduced the concept of "OECD approved patent boxes", and Pillar 2 included the famous Qualified Domestic Top-Up Tax (QDMTT). In the UN Tax Convention, the aim must be to end harmful tax practices – not to replace old ones with new ones.

#14: Add your own. It's really impossible to write an exhaustive list of bad OECD habits, but we've left this space so that you can write in your own bad OECD habits that you would like to break: _____

PLEASE DON'T LET ARTICLE 4 ACTUALLY DO ANYTHING

Delegates, we implore you. Whatever you do - whatever the loud-mouthed bunch at the back of the room say - do not allow any substance to creep into Article 4 on Sustainable Development. Not an operational sentence. Not a mechanism. Not a word on how to ensure strong links between tax policies and sustainability. Not a smidgen of progressive environmental taxation. Think of the consequences!

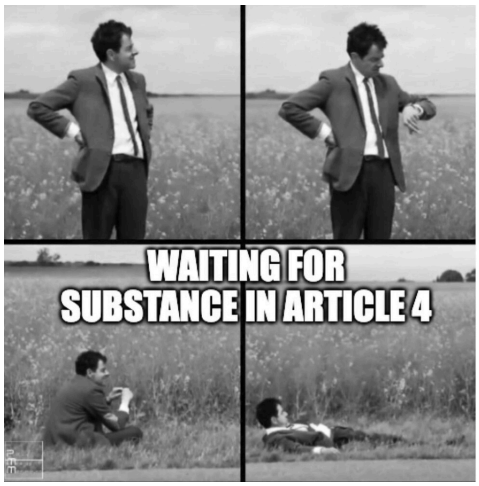
For one thing, you might inadvertently create coherence between UN systems. The UNFCCC and the UN tax process could start working together - exchanging ideas, aligning incentives, nodding knowingly across conference centres. Where would that leave us? Forced to have coherence across our areas of work and different state obligations, probably. Coordination is a slippery slope.

Worse, you might accidentally mobilise finance for climate action. Actual money, raised through taxation to pay for adaptation, mitigation and loss and damage. And honestly, where would that end? Gold-plated wind turbines? If climate finance really mattered, surely Global North countries would have delivered those promised billions by now. Since they haven't, the issue is clearly theoretical.

Then there's the real horror: tax systems that discourage companies from torching the atmosphere and poisoning ecosystems. Taxes disincentivising bad behaviour? That's not what they're for.

Worst of all, you might leave us all in a situation where oil companies, airlines, and oligarchs end up having to pay the costs of clearing up the pollution they cause in line with the Polluter Pays Principle, simply because they caused it. Preposterous!

You wouldn't want responsibility for any of this, would you? 39 words copy-pasted from the Terms of Reference is really quite enough to satisfy your obligations. So please: no substance, no commitments, no mechanisms, no tax system for sustainable development. Let's keep Article 4 as high-level as our rapidly warming atmosphere.



THE PROBLEM IS ARBITRATION

ISDS has been a disaster for governments: secret and costly proceedings, hand-picked arbitrators, a fragmented system where sums that rival the cost of public health systems hang in the balance of a decision that has no appeal. Mechanisms in international investment treaties allow foreign investors, particularly in the fossil fuel sector, to sue governments over climate policies, creating a "regulatory chill" that hinders climate action. Such lawsuits, often over cancelled projects or tax changes, can result in billions in compensation, diverting public funds.

Many of these problems don't disappear in state-to-state arbitration. Here are 4 reasons to join member states opposing arbitration in Protocol II:

1. **Hand-picked arbitrators** create perverse incentives
2. Decisions are kept **secret**
3. No right of **appeal**
4. Produces a **fragmented** system with no precedent and no interpretive coherence

Dispute resolution should be fully in line with the objective of the treaty, including the aim of creating an "international tax system for sustainable development."