

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.



A WARM WELCOME BACK – NOW LET’S GET TO WORK!

Dear distinguished delegates. We hope you have had a refreshing tax break and we are delighted to see you back again. Now we have important work to do – it’s time to write tax history!

A kind reminder: International tax abuse is costing countries well over US\$ 1 billion per day. Furthermore, the failure to stop tax havens has caused many governments to give up on progressive corporate and wealth taxes, leaving inequality unabated and skyrocketing and creating a Grand Canyon-sized gap in the public coffers that were supposed to finance development and climate action.

A UN Framework Convention on International Tax Cooperation has never been more important and urgent!

The **good news** is that we now have the Terms of Reference for a fair and ambitious solution, and it was adopted by an overwhelming majority at the UN General Assembly! The **bad news** is that an uncooperative minority of governments still failed so show their support, despite having played a very active and influential role in the negotiation of the ToR. But luckily, the decision-making rules do not allow for an uncooperative minority to prevent a cooperative majority from moving ahead, and there is still time for governments to have a change of heart and get on the right side of history.

Let’s get organized!

This organizational session includes important points on modalities and the topic of the second early protocol. The former includes the decision-making rules – and for that we kindly call your attention to the article on page 2 of this newsletter. It also includes the formal approval of civil society participation. Paragraph 21 of the Terms of Reference stresses that “*International organizations, civil society and other relevant stakeholders are encouraged to contribute to the work of the intergovernmental negotiating committee*”. We are happy and ready to do so, but we kindly remind delegates that we are unable to speak before the modalities are adopted. So, PLEASE ADOPT THE MODALITIES ASAP!

Substance matters!

On the topic of the second early protocol, we want to remind delegates that Paragraph 10 of the Terms of Reference makes it very clear that all the topics listed as options for the protocol will be covered by commitments regardless of whether they appear in the form of a protocol or under the Convention. There is thus no debate about whether the issues of illicit financial flows, taxation of high-net worth individuals, dispute resolution and the digitalized economy will be covered by commitments in a legally binding document. It is simply a question of whether those commitments go into a protocol or the Convention itself. On the back rows of the Conference room, we civil society organizations are eagerly awaiting the discussion about what those very important commitments should look like. Therefore, we urge all delegations to engage constructively and ensure we get the organizational matters sorted, so that we can finally get to the very important discussions on substance!

THE “GOOD FAITH” POCKET GUIDE

We often hear governments stressing their commitment to being “constructive”, showing a “spirit of cooperation” and negotiating in “good faith”. But what does that actually mean? The FfD Chronicle is happy to present this *Pocket Guide to Good Faith Negotiation*.

Do	Don’t
Take a clear position and be ready to present arguments to support it. The fact that your country or group has not managed to find a clear standpoint is not a valid argument for blocking progress in the negotiations.	Apply double standards , for example by arguing in favor of a specific set of principles in one process, but taking the opposite position in another process.
Be willing to negotiate and find solutions , as opposed to taking an inflexible position and rejecting all attempts to find compromises.	Use proxy-arguments . The classic example is if you raise process concerns when your real concern is about substance. Be honest about your true position – also when you know it will be unpopular.
Be willing to move forward , including by not reopening old discussions and issues that have already been decided.	Throw mud , for example by disrespecting other countries or presenting false claims concerning the positions of other countries.
Show a spirit of compromise and be ready to enter into agreement . When your country has had the opportunity to influence the outcome, we expect you to support the final compromise (reminder to developed countries: “abstain” is not the same as “in favor”).	Be unreasonable . We are here to create a UN Convention that promotes “ <i>an inclusive, fair, transparent, efficient, equitable and effective international tax system for sustainable development</i> ”. If your government is fundamentally opposed to that exercise, you don’t get to spoil it for everybody else.

DON'T GIVE A VETO-RIGHT TO AN UNCOOPERATIVE MINORITY

In 2024, we saw a minority group of Global North countries present two arguments. Firstly, they argued that decisions on international taxation must be taken by consensus. Secondly, they called for all countries to follow the OECD tax standards and rules. The irony of that position is that the OECD decisions are very far from consensus decisions.

Unlike the UN tax process, the OECD tax processes have not allowed all countries to participate on an equal footing. For example:

The OECD's Standard on Automatic Information Exchange was developed by the members of OECD in collaboration with the G20 and a small group of additional countries, and when a ministerial declaration to endorse the standard was negotiated and adopted in 2014, it was signed by less than 50 countries.

The OECD's 2015 package on Base Erosion and Profit Shifting (BEPS): According to the OECD, 62 countries were "directly involved" in the work on the package, and "about 90 countries have joined an ad hoc group to negotiate a multilateral instrument to implement the treaty-related BEPS measures". This leaves well over 100 (primarily developing) countries that were not involved in the development of the BEPS package.

OECD's Pillar 1 and 2, and the "Inclusive Framework": After the BEPS package was adopted in 2015, the OECD established what is known as the "Inclusive Framework". All countries were invited to join on the condition that they commit to implementing the BEPS package from 2015. Officially, the OECD's line has been to say that the Inclusive Framework allows all countries to participate on an equal footing and that decisions are made by consensus. This has, however, not been the reality. When Pillar 1 and 2 were adopted in October 2021, 123 countries were participating in the negotiations in the OECD's Inclusive Framework. Of these 123, only 119 agreed to the decision on Pillar 1 and 2 (Nigeria, Kenya, Pakistan and Sri Lanka did not agree). At the moment, the OECD's Inclusive Framework has increased to include 130 countries (the official number of members is 147, due to the fact that OECD allows jurisdictions such as Cayman Island, Jersey, etc. to be individual members). But still today, a third of the UN Member States have never participated in the Inclusive Framework negotiations, and it is thus not "inclusive".

The lack of consensus among the members has continued to haunt the Inclusive Framework negotiations. When the Inclusive Framework adopted a statement in July 2023, five of the countries participating in the negotiations (Canada, Belarus, Russia, Pakistan and Sri Lanka) did not agree. When an OECD proposal for a convention to implement Pillar 1 was released in October 2023, it included footnotes to indicate that there were specific parts of the text that some of the Inclusive Framework members (Colombia, Brazil and India) had not agreed to. Lastly, while the US has participated in the negotiations and "agreed" to the outcome, the US has made it extremely clear that it does not intend to implement any of the agreements.

The UN Tax Convention process is a historical breakthrough, and for the first time, we finally have an intergovernmental tax process where all countries are able to participate as equals.

Exactly because this process is so unique and important, it is vital to ensure that it is able to function. In this context, the call to change the decision-making rules is a Trojan horse attempt to block progress. Let's be clear - no government can ever be forced to sign on to a Convention against their will, and that has never been disputed. From that perspective, all governments will have a veto right as regards the question of whether their country becomes a party to the Convention and its Protocols. The decision-making rules of the UN Tax Convention negotiations concern the question of whether a minority of governments should be allowed to block a majority from negotiating an agreement if they so wish. In the case of consensus rules, it would be possible for one single uncooperative country to prevent all other countries from moving forward in the negotiations. It is very important to avoid that.

When it comes to the negative consequences of consensus rules, the European Union presents an interesting case. Within the EU, tax decisions require consensus, and the European Commission has long argued for changing that. In the words of the European Commission:

"[the unanimity requirement] makes it very difficult to reach any compromise at all, because the opposition of just one Member State is sufficient to prevent agreement. Member States often hold back from seriously negotiating solutions in the Council, as they know that they can simply veto any result that they do not like. This explains why many taxation proposals require years for Member States to agree, or are simply blocked in the Council without any discussion taking place (...) Even when agreement in the tax field is reached with unanimity, it tends to be at the lowest common denominator level, limiting the positive impact for businesses and consumers, or making implementation more cumbersome. (...) Unanimity in the tax field is self-defeating. Decisions taken by unanimity can only be reversed or changed by unanimity. This often makes Member States overly cautious, dampening ambitions and weakening the final outcome."

With thanks to the EU for showing us what not to do, we call on all Member States to avoid introducing the consensus-deadlock in the UN Tax Convention process.

