



EUROPEAN
COMMISSION

Brussels, 29.9.2025
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Recommendation for a

COUNCIL DECISION

**authorising the negotiations at the United Nations for an agreement
on the second Early Protocol to the United Nations Framework Convention
on International Tax Cooperation and
on any provision of the Framework Convention related to or affecting that Protocol**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Reasons for and objectives of the proposal

In December 2022, the United Nations General Assembly adopted Resolution 77/244¹ on *Promotion of inclusive and effective international tax cooperation at the United Nations*. The Resolution launched an intergovernmental discussion at the United Nations (UN) on the ways to strengthen the inclusiveness and effectiveness of international tax cooperation. In August 2023, the UN Secretary General released a report² analysing all relevant international legal instruments and multilateral arrangements, following consultations with UN Member States and stakeholders. To enhance the UN role in tax norm-shaping, the report identified three options for consideration: (1) a legally binding multilateral convention on tax; (2) a legally binding framework convention on international tax cooperation; and (3) a framework for international tax cooperation. A majority of UN Member States voted in support of option 2, which was eventually adopted by the General Assembly in Resolution 78/230³.

Resolution 78/230 stressed that efforts in international tax cooperation should be universal in approach and scope and consider the different needs and capacities of all States, particularly developing countries and countries in special situations. As a first step, the Resolution set up an ad hoc intergovernmental committee for the purpose of drafting terms of reference for a Framework Convention on International Tax Cooperation at the United Nations (hereafter the Framework Convention). Following intense negotiations, the terms of reference were adopted by the General Assembly in Resolution 79/235⁴. As a second step, an intergovernmental negotiating committee has been set up to develop and seek agreement on the legal instruments of the Framework Convention.

The terms of reference of the Framework Convention specify that two Early Protocols should be developed simultaneously with the Framework Convention. The first Early Protocol will concern taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy, as agreed under Resolution 79/235. The second Early Protocol will concern the prevention and resolution of tax disputes, as agreed at the organisational session of the intergovernmental negotiating committee, which took place in New York from 3 to 6 February 2025⁵.

Resolution 79/235 also specifies that the work of the intergovernmental negotiating committee is to be finalised in 2027, in time for consideration in the 1st quarter of the 82nd session of UN General Assembly. The intergovernmental negotiating committee is planned to meet in 2025, 2026 and 2027 for at least three substantive sessions per year. In 2025, the first and second substantive sessions took place back-to-back from 4 to 15 August in New York, followed by the third substantive session planned from 10 to 21 November in Nairobi. In 2026, the substantive sessions are provisionally scheduled for 3 to 14 August in New York, followed by another session from 30 November to 11 December in Nairobi. In 2027, the three

¹ General Assembly Resolution of 30 December 2022, [A/RES/77/244](#)

² Report of the Secretary-General on “Promotion of inclusive and effective international tax cooperation at the United Nations” [A/78/235](#)

³ General Assembly Resolution of 22 December 2023, [A/RES/78/230](#). [The 27 EU Member States voted against adoption.](#)

⁴ General Assembly Resolution of 24 December 2024, [A/RES/79/235](#)

⁵ Report of the Organizational Session, [A/AC.298/3](#)

substantive sessions are provisionally scheduled for 18 to 29 January, 26 April to 7 May, and 19 to 30 July, all sessions taking place in New York.

This proposal aims to ensure the appropriate participation of the European Union in these negotiations since the negotiations are expected to include matters that fall within the Union's competence in the area of taxation. The negotiations are expected to cover also some areas that would fall under the exclusive competence of the Union pursuant to Article 3(2) of the Treaty on the Functioning of the European Union (TFEU).

In particular, the second Early Protocol on prevention and resolution of tax disputes currently under negotiation risks to cover matters falling under the Union's exclusive competence pursuant to Article 3(2) TFEU, particularly relevant EU law instruments concerning dispute resolution and preventive mechanisms under the framework of administrative cooperation. As provided for in Article 2(1) TFEU, where the Treaties confer on the Union exclusive competence in a specific area, only the Union may adopt legally binding acts, including international agreements, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.

The Union should therefore be allowed to at least participate in the negotiations of the second Early Protocol and the elements of a Framework Convention related to or affecting such a protocol in case it impacts EU legislation.

In view of the particular area of negotiations, practical arrangements for the conduct of the negotiations should be defined, in particular with a view to ensuring effective cooperation between the Union negotiator and Member States, without prejudice to the role of the Commission as the negotiator in accordance with its prerogatives under Article 17 TEU and to the role of the special committee within the meaning of Article 218(4) TFEU.

1.2. Consistency with existing policy provisions in the policy area

While the exact scope of the negotiations remains unclear, the subject matters identified for the Early Protocols give an indication of a potential overlap with matters or areas covered by certain EU laws. This is particularly the case of the second Early Protocol on tax dispute prevention and resolution. The Dispute Resolution Mechanism Directive (Directive 2017/1852/EU)⁶ lays down rules for swiftly and effectively resolving disputes related to the different interpretation and application of agreements and conventions that provide for the elimination of double taxation of income and, where applicable capital, such as bilateral tax treaties and the Arbitration Convention (90/463/EEC). The second Early Protocol could introduce a similar dispute resolution mechanism to solve instances of double taxation and thus affecting the scope of Union rules. In this regard, the Union should participate in the negotiations in order to ensure that taxpayers in EU Member States retain their right to continue to apply available EU law instruments in resolving tax disputes.

Moreover, administrative cooperation in tax matters is covered by the Directive 2011/16/EU (Directive on administrative cooperation – DAC) and its subsequent amendments⁷. DAC lays

⁶ [Council Directive \(EU\) 2017/1852](#) of 10 October 2017 on tax dispute resolution mechanisms in the European Union

⁷ [Council Directive 2011/16/EU](#) of 15 February 2011; [Council Directive 2014/107/EU](#) of 9 December 2014 (DAC2); [Council Directive \(EU\) 2015/2376](#) of 8 December 2015 (DAC3); [Council Directive \(EU\) 2016/881](#) of 25 May 2016 (DAC4); [Council Directive \(EU\) 2016/2258](#) of 6 December 2016 (DAC5); [Council Directive \(EU\) 2018/822](#) of 25 May 2018 (DAC6); [Council Directive \(EU\)](#)

down the rules and procedures for close cooperation between Member States' competent authorities in the field of direct taxation. It sets up a harmonised framework that allows Member States to assist each other through the exchange of information as well as other forms of advanced cooperation. The cooperation tools provided for in the DAC may assist in the prevention and resolution of tax disputes. As such, the future UN rules could fall within the area already covered by Union law.

Considering the above, the negotiations of the second Early Protocol on prevention and resolution of tax disputes should ensure that the agreed provisions are compatible with EU law. This recommendation is therefore submitted to the Council pursuant to Article 218 TFEU in order to receive authorisation for the appropriate participation of the EU and provide negotiating directives focusing on the second Early Protocol and any provisions of the Framework Convention related to or affecting measures related to the second Early Protocol.

Furthermore, according to the above-mentioned terms of reference⁸, the general objectives of the Framework Convention seek to “establish an inclusive, fair, transparent, efficient, equitable, and effective international tax system”. Possible commitments are meant to address matters such as (i) fair allocation of taxing rights, including equitable taxation of multinational enterprises, (ii) addressing tax evasion and avoidance practices by high-net worth individuals and ensuring their effective taxation in relevant Member States, as well as (iii) effective mutual administrative assistance in tax matters, including with respect to transparency and exchange of information for tax purposes. As the negotiations evolve, they are likely to also extend to other matters or areas that could affect or alter the scope of other common (EU) rules in accordance with Article 3(2) TFEU. In that event, it will be necessary to revise and further develop the scope of the negotiating directives for the EU participation as appropriate.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

2.1. Procedural Legal basis

Article 218(3) of the Treaty on the Functioning of the European Union (TFEU) provides that, where the agreement envisaged does not relate exclusively or principally to the common foreign and security policy, the Commission shall submit recommendations to the Council. The Council shall adopt a decision authorising the opening of the negotiations and nominating the Union negotiator or the head of the Union's negotiating team.

Article 218(4) TFEU provides that the Council may address negotiating directives to the negotiator and designate a special committee to consult the negotiator.

Pursuant to Article 218(8) TFEU, second subparagraph, the Council acts by unanimity when the agreement is envisaged to cover a field for which unanimity is required for the adoption of a Union act and for association agreements.

The Commission recommends authorising the negotiations on behalf of the Union of the UN Framework Convention on International Tax Cooperation and of its related second Early Protocol on prevention and resolution of tax disputes. The Commission is to be nominated as negotiator.

[2021/514](#) of 22 March 2021 (DAC7); [Council Directive \(EU\) 2023/2226](#) of 17 October 2023 (DAC8); and [ST/6845/2025](#), adopted on 11 March 2025 (DAC9)

⁸ [A/AC.298/2](#)

The procedural legal basis for the proposed decision to authorise the negotiations on behalf of the Union of the UN Framework Convention on International Tax Cooperation and of its second Early Protocol is Article 218(3) and (4) TFEU and the second subparagraph of Article 218(8) TFEU.

2.2. Substantive Legal Basis

The subject matter covers the area of taxation and could cover either direct or indirect taxation matters. The legal basis should therefore be 113 and 115 TFEU.

2.3. The choice of negotiator

Given that the agreement envisaged exclusively covers matters other than the common foreign and security policy, the Commission must be designated as the negotiator pursuant to Article 218(3) TFEU.

2.4. Union competence

As explained above, the negotiation of the second early protocol is expected to potentially cover both shared and exclusive competences.

2.5. Subsidiarity (for non-exclusive competence)

Some of the potential areas of negotiations in the Framework Convention and its two Early Protocols may fall within the Union's exclusive competence. Appropriate participation of the EU in these negotiations is therefore needed to ensure compliance with Union law.

2.6. Proportionality

This initiative does not go beyond what is necessary to achieve the policy objectives at stake. It is a Recommendation to give the Commission a mandate to participate in the negotiations of the elements of an international agreement to the extent that these also cover matters falling within the exclusive competence of the Union.

This Decision will be without prejudice to the division of competences between the Union and its Member States as defined by the Treaties, or any subsequent decision to sign, conclude or ratify the convention on behalf of the Union. This Decision should also be without prejudice to the capacity of the Union in other instances to negotiate matters falling only under shared competences, when so authorised in accordance with the relevant procedure under Article 218 TFEU, as recognised by the jurisprudence of the Court.

2.7. Choice of the instrument

This recommendation for a Council decision is submitted in accordance with paragraphs 3 and 4 of Article 218 TFEU, which envisage the adoption by the Council of a decision authorising the opening of negotiations and nominating the Union negotiator. The Council may also address negotiating directives to the negotiator. There exists no other legal instrument that could be used in order to achieve the objective expressed in this recommendation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

3.1. Ex-post evaluations/fitness checks of existing legislation

Not applicable.

3.2. Stakeholder consultations

Not applicable.

3.3. Collection and use of expertise

The Commission took into account views expressed by Member States' experts during discussions in the relevant Council's working groups in the preparation of the negotiations.

3.4. Impact assessment

Not applicable.

3.5. Regulatory fitness and simplification

Not applicable.

3.6. Fundamental rights

The negotiations are likely to include areas or matters that could constitute an interference with fundamental rights, including of taxpayers, such as protection of personal data, the right to be heard and to good administration. The provisions to be negotiated may lead to interferences with e.g. the right to privacy and the right to the protection of personal data. The participation in the negotiations on behalf of the European Union should ensure that the final outcome does not compromise the level of protection of fundamental rights in the Union.

4. BUDGETARY IMPLICATIONS

There are no budgetary implications for the Union budget.

5. OTHER ELEMENTS

5.1. Implementation plans and monitoring, evaluation and reporting arrangements

The negotiations process is expected to span a period from 2025 until end 2027, with a possibility to extend the negotiations if necessary. After the finalisation of the legal texts, the signature and conclusion of the Framework Convention and its Early Protocol may take place. The initiative proposes to pursue a negotiation process that is open, inclusive and transparent.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 113 and 115 thereof, in conjunction with Article 218(3) and (4), and Article 218(8), second subparagraph, thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) On 24 December 2024, the United Nations General Assembly adopted resolution 79/235 on Promotion of inclusive and effective international tax cooperation at the United Nations⁹. The resolution lays down the terms of reference for a United Nations Framework Convention on International Tax Cooperation ('the Framework Convention'). It also established a Member State-led, open-ended intergovernmental negotiating committee for the purpose of drafting the Framework Convention and two Early Protocols simultaneously in accordance with the terms of reference.
- (2) The Union has adopted a set of common rules that address matters which may be part of the content of the second Early Protocol on prevention and resolution of tax disputes. Those rules include, most notably, dispute resolution mechanisms¹⁰, and administrative cooperation on direct tax matters¹¹. In so far as the second Early

⁹ General Assembly Resolution [A/RES/79/235](#)

¹⁰ Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (OJ L 265, 14.10.2017, p. 1, ELI: <http://data.europa.eu/eli/dir/2017/1852/oj>).

¹¹ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 064 11.3.2011, p. 1, ELI: <http://data.europa.eu/eli/dir/2011/16/2024-01-01>); Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (DAC2) (OJ L 359, 16.12.2014, pp. 1–29, ELI: <http://data.europa.eu/eli/dir/2014/107/oj>); Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (DAC3) (OJ L 332, 18.12.2015, pp. 1–10, ELI: <http://data.europa.eu/eli/dir/2015/2376/oj>); Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (DAC4) (OJ L 146, 3.6.2016, pp. 8–21, ELI: <http://data.europa.eu/eli/dir/2016/881/oj>); Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (DAC5) (OJ L 146, 3.6.2016, pp. 8–21, ELI: <http://data.europa.eu/eli/dir/2016/881/oj>); Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (DAC6) (OJ L 139, 5.6.2018, pp. 1–13, ELI: <http://data.europa.eu/eli/dir/2018/822/oj>); Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC7) (OJ L 104, 25.3.2021, pp. 1–26, ELI: <http://data.europa.eu/eli/dir/2021/514/oj>); Council Directive (EU)

Protocol covers matters that fall under the exclusive competence of the Union under Article 3(2) of the Treaty on the Functioning of the European Union (TFEU), the Union should participate in the negotiations of the second Early Protocol and any provisions of the Framework Convention related to or affecting the second Early Protocol. To that effect, the negotiating directives addressed to the Commission are annexed to this Decision.

- (3) The terms of reference of the Framework Convention also include effective prevention and resolution of tax disputes as one of the subjects for a commitment. In view of the need to coordinate the various provisions of the Framework Convention and the second Early Protocol in this area, the Union should participate in the negotiations of the Framework Convention to the extent these touch upon matters that are relevant for or affect the second Early Protocol.
- (4) Considering the early stage of the negotiations, the exact scope of the Framework Convention and its first Early Protocol on taxation of cross-border services is not yet known. As the negotiations evolve, additional matters or areas that may affect Union rules or alter their scope may be identified or it could transpire that those negotiations are such as to potentially affect the establishment and the proper functioning of the internal market, making it necessary for the Union to participate also in those negotiations. Therefore, depending on the evolution of the negotiations, the negotiating directives may be amended and further developed to cover matters relating to the first Early Protocol, as well as possible provisions of the Framework Convention.
- (5) In accordance with the principle of sincere cooperation, the Commission and the Member States are to cooperate closely during the negotiation process, including through regular contacts with the Member States' technical experts and their representatives in New York, Nairobi, or in any other UN premises,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to participate in the negotiations at the United Nations, on behalf of the Union, for an agreement on the second Early Protocol on prevention and resolution of tax disputes, which is an integral part of the United Nations Framework Convention on International Tax Cooperation (the 'Framework Convention'), and any provisions of the Framework Convention related to or affecting the second Early Protocol.

Article 2

The negotiations shall be conducted on the basis of the negotiating directives of the Council set out in the annex to this Decision.

2023/2226 of 17 October 2023 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC8) (OJ L, 2023/2226, 24.10.2023, ELI:<http://data.europa.eu/eli/dir/2023/2226/oj>); and Council Directive (EU) 2025/872 of 14 April 2025 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC9) (OJ L, 2025/872, 6.5.2025, ELI:<http://data.europa.eu/eli/dir/2025/872/oj>).

Article 3

The Commission is hereby nominated as the Union negotiator.

Article 4

The negotiations shall be conducted in consultation with the Special Committee provided for in Article 218(4) TFEU and in accordance with the directives contained in the annex to this Decision, subject to any directives which the Council may subsequently issue to the Commission.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*



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COMMISSION

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ANNEX

ANNEX

to the

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ANNEX

Alongside Member States, the Union should participate in the negotiations on a Framework Convention and its two Early Protocols on International Tax Cooperation at the United Nations to ensure that the agreed provisions do not conflict with EU law. Pending further developments, these initial negotiating directives outline conditions targeted to the negotiations of the second Early Protocol on prevention and resolution of tax disputes, or matters under the negotiation in the context of the Framework Convention relating to or affecting the second Early Protocol, most notably:

- (1) The negotiation process is open, inclusive and transparent, and based on cooperation in good faith.
- (2) The negotiation process enables participation in a meaningful way of all relevant stakeholders, including civil society, the private sector, academia and non-governmental organisations.
- (3) All the inputs received from the entire United Nations Membership are considered on an equal basis to ensure an inclusive process.
- (4) The negotiation process is based on an effective and realistic work programme for the simultaneous elaboration of the Framework Convention and its early Protocols.

In the negotiations, the Union should aim to achieve the following general objectives:

- (5) The second Early Protocol on Tax Dispute Prevention and Resolution contributes to the stability, certainty and coherence of the international tax architecture.
- (6) Throughout its work, the intergovernmental negotiating committee should 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. Fragmentation of international standards or unnecessary duplication should be avoided.
- (7) The second Early Protocol should be compatible with the commitments of the European Union and its Member States in respect of other international agreements to which they are a party, and any adverse impact on the effective application of those international agreements should be avoided.
- (8) The provisions of the second Early Protocol should be fully aligned with the international legal framework on the protection of human rights. EU Member States should be able to comply with EU law, including the fundamental rights, freedoms and general principles of EU law, as enshrined in the European Union Treaties and the Charter of Fundamental Rights.
- (9) The second Early Protocol should include a clause or clauses that allow EU Member States, in their mutual relations, to continue to apply EU law in matters covered by the scope of the second Early Protocol and that shall allow taxpayer(s) to choose the instrument to resolve the dispute as they see fit. If there is a dispute settlement mechanism under the Convention, it should safeguard the exclusive competence of the Court of Justice of the European Union to interpret Union law.
- (10) The negotiations of the second Early Protocol should lead to a final result that can be supported by the broadest range of parties possible.