



Brussels, 23.4.2013
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COMMISSION DECISION

of 23.4.2013

**on setting up a Commission Expert Group to be known as the Platform for Tax Good
Governance, Aggressive Tax Planning and Double Taxation**

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Whereas:

- (1) In its Communication of 6 December 2012¹, the Commission presented an Action Plan to strengthen the fight against tax fraud and tax evasion. The Communication was accompanied by two Recommendations, one on aggressive tax planning² and one regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters³. These areas are of particular importance today, as also underlined by the European Parliament in its resolution of 19 April 2012 on the call for concrete ways to combat tax fraud and tax evasion⁴.
- (2) According to the Recommendation on aggressive tax planning, Member States should adopt a general anti-abuse rule under which they would ignore artificial arrangements carried out essentially for tax avoidance purposes and apply their tax rules instead by reference to actual economic substance. The Recommendation also encourages Member States to include in their double tax conventions a provision intended to prevent a specific form of double non-taxation.
- (3) The Recommendation regarding measures intended to encourage third countries to apply minimum standards on good governance in tax matters provides criteria allowing identification of third countries that do not meet those minimum standards. It also lists a series of actions that Member States may take in relation to such third countries and in favour of third countries that do comply with those standards or are committed to do so.
- (4) It is important that these Recommendations be implemented to the widest extent possible in a manner that benefits from all relevant experience, expertise and views. Moreover, these elements should also benefit the report the Commission has committed to publish, by the end of 2015, regarding the application of the above mentioned Recommendations. It should also benefit further work of the Commission in the area concerned.
- (5) In its Communication on double taxation in the single market⁵, the Commission concluded that it would examine the potential benefits of setting up an EU Forum on double taxation, i.e. an expert group discussing problems pertaining to this subject. In view of their importance for the operation of the internal market, it appears that those

¹ COM(2012) 722,
² C(2012) 8806 final
³ C(2012) 8805 final
⁴ P7_TA(2012)0030.
⁵ COM(2011) 712 final.

problems should be regularly discussed in an expert group. Moreover, replies from the Commission's Public Consultation on factual examples and possible ways to tackle double non-taxation have emphasised that, from a practical point of view, double non-taxation and double taxation are often linked and should thus not be dealt with separately. Given that double non-taxation itself presents a link to aggressive tax planning, one of the subjects referred to above, it is appropriate to address double taxation in the same expert group, i.e. the present Platform.

- (6) The Platform should allow for a dialogue in these areas in which experience and expertise are exchanged and the views of all stakeholders are heard.
- (7) The Platform should be chaired by the Commission and consist of representatives from the Member States' tax authorities, organisations representing business or civil society and tax practitioners.
- (8) Rules on disclosure of information by members of the Platform should be laid down.
- (9) Personal data should be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁶,

HAS DECIDED AS FOLLOWS:

Article 1

Subject Matter

The group of experts called the '*Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation*', hereinafter referred to as 'the Platform' is hereby set up.

Article 2

Tasks

The Platform's tasks shall be:

- (a) to encourage discussion between business, civil society and national tax authorities' experts on issues in the field of good governance in tax matters, aggressive tax planning and double taxation. The term good governance in tax matters covers transparency, exchange of information and fair tax competition;
- (b) to provide the Commission with information relevant to the identification of priorities in these areas and to selecting the appropriate means and instruments to achieve progress in these areas;
- (c) to contribute to the best possible application and implementation of the above mentioned Commission Recommendations, by identifying technical and practical issues potentially relevant in this area, as well as possible solutions;
- (d) to provide the Commission with information relevant to the preparation of its report on the application of its Recommendations regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters and on aggressive tax planning;

⁶ OJ L 8, 12.1.2001, p. 1.

- (e) to discuss practical insights provided by tax authorities, as well as business, civil society and tax practitioners, and to elaborate on possible ways to address more efficiently the current double taxation problems affecting the smooth functioning of the internal market.

Article 3

Consultation

The Commission may consult the Platform on any matter relating to good governance in tax matters, aggressive tax planning and double taxation.

Article 4

Membership - Appointment

1. The Platform shall be composed of a maximum of 45 members.
2. Members of the Platform shall be:
 - (a) Member States' tax authorities;
 - (b) up to fifteen business, civil society and tax practitioner organisations.
3. The tax authorities of each Member State shall nominate one representative from among the officials dealing with cross-border taxation with a focus on fighting aggressive tax planning.
4. Following a call for applications, the Director-General for Taxation and Customs Union shall appoint organisations referred to in point (b) of paragraph 2 with competence in the areas referred to in Article 2 and which have responded to the call for applications.
5. When responding to the call for applications, organisations shall nominate one representative and one alternate to replace a representative who is absent or indisposed. The Director-General for Taxation and Customs Union may object the nomination of a representative or alternate by an organisation on the basis that he or she does not meet the profile required in the call for applications. In such cases, the organisation concerned shall be asked to nominate another representative or another alternate.
6. Alternates shall be nominated on the same conditions as members; alternates automatically replace any members who are absent or indisposed.
7. Organisations are appointed for three years, unless they are replaced or excluded pursuant to paragraph 9. Their term of office may be renewed after they have responded to a further call for applications.
8. Organisations deemed suitable for membership, but not appointed, may be placed on a reserve list to be kept for three years, which the Commission shall use to appoint replacements.
9. Organisations referred to in point (b) of paragraph 2 or their representatives may be replaced or excluded for the remainder of their term of office in any of the following cases:
 - (a) where the organisation or its representative is no longer capable of contributing effectively to the Platform's deliberations;

- (b) where the organisation or its representative does not comply with the condition set out in Article 339 of the Treaty on the Functioning of the European Union;
- (c) where the organisation or its representative resigns;
- (d) where it is desirable in order to maintain a balanced representation of relevant areas of expertise and areas of interest.

With a view to address the situations referred to in the first subparagraph, the Director-General for Taxation and Customs Union may, as appropriate, appoint a replacement organisation from the reserve list referred to in paragraph 8 o or ask an organisation to nominate another representative or another alternate.

- 10. The names of organisations and their representatives shall be published in the Register of Commission expert groups and other similar entities, hereinafter referred to as ‘Register’, as well as on a dedicated website.
- 11. Personal data shall be collected, processed and published in accordance with Regulation (EC) No 45/2001.

Article 5

Operation

- 1. The Platform shall be chaired by the Director-General for Taxation and Customs Union or his representative.
- 2. In agreement with the Chair, the Platform may set up sub-groups to examine specific questions on the basis of terms of reference defined by the Platform. Such sub-groups shall be disbanded as soon as their mandate is fulfilled.
- 3. The Chairperson may, on an ad hoc basis, invite experts from outside the Platform with specific competence on a subject on the agenda to participate in the work of the Platform or sub- group. In addition, the Chairperson may invite as observers individuals or organisations, as defined in Rule 8(3) of the horizontal rules on expert group⁷, and candidate countries. In particular, representatives of accession countries and from international organisations may be invited as observers.
- 4. Members and their representatives, as well as invited experts and observers, shall comply with the obligation of professional secrecy laid down by the Treaties and other relevant Union rules, as well as with the rules regarding the protection of EU classified information, laid down in the Annex to the Commission’s rules of procedure⁸. Should they fail to respect these obligations, the Commission may take all appropriate measures.
- 5. The meetings of the Platform and its sub-groups shall in principle be held on Commission premises. The Commission shall provide secretarial services. Other Commission Services with an interest in the proceedings may be involved and may attend meetings of the Platform and its sub-groups.
- 6. The Platform shall adopt its rules of procedure on the basis of the standard rules of procedure for expert groups.

⁷ Communication from the President to the Commission — Framework for Commission expert groups: horizontal rules and public register, C(2010) 7649 final.

⁸ OJ L 308, 8.12.2000, p. 26.

7. The Commission publishes all relevant documents on the activities carried out by the Platform (such as agendas, minutes and participants' submissions) either in the Register or via a link from the Register to a dedicated website. A document shall not be published where its disclosure would undermine the protection of a public or private interest as defined in Article 4 of Regulation (EC) No 1049/2001⁹.

Article 6

Meeting expenses

1. Participants in the activities of the Platform shall not be remunerated for the services they render.
2. Travel and, where appropriate, subsistence expenses incurred by participants in the activities of the Platform shall be reimbursed by the Commission in accordance with the provisions in force within the Commission.
3. Those expenses shall be reimbursed within the limits of the available appropriations allocated under the annual procedure for the allocation of resources.

Article 7

Applicability

This Decision shall apply for three years.

Done at Brussels, 23.4.2013

For the Commission
Algirdas ŠEMETA
Member of the Commission

⁹ OJ L 145, 31.5.2001, p. 43. These exceptions are intended to protect public security, military affairs, international relations, financial, monetary or economic policy, privacy and integrity of the individual, commercial interests, court proceedings and legal advice, inspections/investigations/audits and the institution's decision-making process.