

COMMISSION DECISION**of 16 December 2019****on the renewal of the Commission Expert Group 'Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation'**

(2019/C 428/08)

THE EUROPEAN COMMISSION,

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

Whereas:

- (1) In its Communication of 6 December 2012 ⁽¹⁾, 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 planning ⁽²⁾ and one regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters ⁽³⁾.
- (2) Commission Decision C(2013)2236 ⁽⁴⁾ set up the Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation ('the Platform'), a Commission expert group, to review progress on a range of measures, including the 2012 Action Plan on tax fraud and evasion and the implementation of the two Recommendations. In its Communication on double taxation in the single market ⁽⁵⁾, the Commission concluded that it would examine the potential benefits of setting up an EU Forum on double taxation. Given that double non-taxation and double taxation are often linked, it was deemed appropriate to also address double taxation in the Platform, and that is still the case today.
- (3) By Commission Decision C(2015)4095 ⁽⁶⁾, the Platform was established anew and Decision C(2013)2236 was repealed. Decision C(2015)4095 ceased to apply on 17 June 2019.
- (4) The European Parliament ⁽⁷⁾ and the Council of the European Union ⁽⁸⁾ have called for continuous efforts in the fight against tax fraud and tax avoidance. The work of the European Parliament's TAXE committee established in the early 2015 and immediately followed by TAX2 special committee, the 'Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion', and finally the TAX3 committee called for further work to fight against unfair, inefficient taxation and further initiatives in tax good governance and tax transparency.
- (5) The Platform has been an efficient tool in increasing such transparency in tax policy-making while encouraging and enabling constructive dialogue between the Commission and the different tax stakeholders, as well as among the different tax stakeholders themselves. The Commission needs to rely on the expertise of specialists and stakeholders. The Platform has been a valuable source of such expertise in the field of tax.
- (6) The Commission is a partner in the Addis Tax Initiative, a multi-stakeholder partnership initiated in 2015, aiming at enhancing domestic revenue mobilisation in developing countries to fund their development agenda and meet the Sustainable Development Goals by 2030. The Platform should continue to advise and assist the Commission in its ongoing work based on the Addis Tax Initiative.

⁽¹⁾ COM(2012) 722 final.

⁽²⁾ C(2012) 8806 final.

⁽³⁾ C(2012) 8805 final.

⁽⁴⁾ Commission Decision C(2013) 2236 of 23 April 2013 on setting up a Commission Expert Group to be known as the Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation.

⁽⁵⁾ COM(2011) 712 final.

⁽⁶⁾ Commission Decision C(2015)4095 of 17 June 2015 establishing the Commission Expert Group 'Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation' and replacing Decision C(2013)2236.

⁽⁷⁾ European Parliament resolution of 25 March 2015 on the Annual Tax Report.

⁽⁸⁾ ECOFIN Council meeting of 9.12.2014, European Council meeting of 18.12.2014.

- (7) Fair and efficient taxation as a political priority of the Commission led to numerous legal initiatives, as well as State aid cases and soft law. On 18 March 2015, the Commission adopted a package on tax transparency⁽⁹⁾. On 17 June 2015⁽¹⁰⁾, it adopted a Communication on a fair and efficient corporate tax system in the Union (the 2015 Action Plan) where it reported on the application of the 2012 Recommendations with input from the Platform. In that Communication, the Commission announced that the mandate of the Platform would be prolonged, its scope expanded and its working methods enhanced.
- (8) On 28 January 2016, the Commission adopted a Communication on an External Strategy for Effective Taxation⁽¹¹⁾, to promote tax good governance globally. The Communication identified new areas of work for the Platform, notably in relation to the Union's tax and development agenda and the coordination of national lists of non-cooperative jurisdictions. In this regard, the EU list of non-cooperative jurisdictions for tax purposes⁽¹²⁾ still remains a fundamental tool to enforce tax good governance globally.
- (9) As indicated in the political guidelines 2019-2024 presented in July 2019⁽¹³⁾, fair and efficient taxation will remain a high priority for the Commission.
- (10) Given the proven usefulness of the Platform as a forum that has had and continues to have a significant impact by contributing to the development of the tax transparency and fair taxation agenda, it is appropriate to renew its mandate.
- (11) The Platform should provide advice and assistance to the Commission. The Platform would also allow for dialogue, sharing of experience and expertise, and exchange of views among all stakeholders.
- (12) The Platform should be chaired by a representative of the Commission and consist of representatives from the Member States' tax authorities, and organisations representing business or civil society and tax practitioners.
- (13) Rules on disclosure of information by members of the Platform should be laid down.
- (14) Personal data should be processed in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council⁽¹⁴⁾.
- (15) To ensure the continuity of the activity of the Platform, this Decision should apply retroactively.
- (16) It is appropriate to fix a period for the application of this Decision. The Commission will in due time consider the advisability of an extension,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter

The mandate of the group of experts 'Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation' ('the Platform') is hereby renewed.

⁽⁹⁾ Communication on tax transparency to fight tax evasion and avoidance (COM(2015)136 final), which led to amendments of Directive 2011/16/EU by Council Directive (EU) 2015/2376 as regards mandatory automatic exchange of information in the field of taxation (OJ L 332, 18.12.2015, p. 1) referring to cross-border rulings and advance pricing arrangements, Council Directive (EU) 2016/881 as regards mandatory automatic exchange of information in the field of taxation (OJ L 146, 3.6.2016, p. 8) referring to country-by-country reports and Council Directive (EU) 2018/822 of 25 May 2018 as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (OJ L 139, 5.6.2018, p. 1).

⁽¹⁰⁾ COM(2015)302 final.

⁽¹¹⁾ COM(2016) 24 final.

⁽¹²⁾ <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/>

⁽¹³⁾ https://ec.europa.eu/commission/interim_en#political-guidelines

⁽¹⁴⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Article 2

Tasks

The Platform's tasks shall be to provide advice and assistance to the Commission in the field of tax good governance, aggressive tax planning and double taxation, while allowing for a dialogue in which experience and expertise are exchanged and the views of all stakeholders are heard. In particular, the Platform shall:

- (a) provide the Commission with information relevant to the identification of priorities in areas such as good governance in tax matters, aggressive tax planning and double taxation;
- (b) advise the Commission on the appropriate means and instruments to achieve progress in those areas;
- (c) 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;
- (d) discuss practical insights provided by tax authorities, as well as business, civil society and tax practitioners, and elaborate on possible ways to address more efficiently the current double taxation problems affecting the smooth functioning of the internal market;
- (e) advise and assist the Commission in its ongoing work based on the Addis Tax Initiative.

For the purposes of this Decision, 'good governance in tax matters' means transparency, exchange of information and fair tax competition.

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 and the follow-up to the 2015 Action Plan.

Article 4

Membership

1. The Platform shall be composed of a maximum of 43 members.
2. Members of the Platform shall be:
 - (a) Member States' tax authorities ('Type D members' as referred to in Article 7(2)(d) of Commission Decision C(2016) 3301 final)⁽¹⁵⁾;
 - (b) up to fifteen business, civil society and tax practitioner organisations with competence in the matters referred to in Article 2 ('Type C members' as referred to in Article 7(2)(c) of the horizontal rules).
3. Type D members shall only be represented by civil servants or public employees. 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. Type C members shall only be appointed and shall only take part in the workings of the Platform or its sub-groups if they are registered in the Transparency Register that has been set up jointly by the European Parliament and the Commission.
5. Where a Type C member is suspended or removed from the Transparency Register, the Directorate-General for Taxation and Customs Union (DG TAXUD) shall suspend it from the Platform as long as its registration in the Transparency Register is not re-established. During suspension or removal, that member shall not be invited to participate in any meeting of the group and shall not receive any document. If after six months from suspension or removal from the

⁽¹⁵⁾ Commission Decision C(2016) 3301 final of 30.5.2016 establishing horizontal rules on the creation and operation of Commission expert groups ('the horizontal rules').

Transparency Register registration on the Transparency Register is not re-established, DG TAXUD shall exclude the member from the Platform. Any such change in membership shall be recorded in the Register of Commission expert groups and other similar entities ('Register of expert groups') ⁽¹⁶⁾.

6. Type C members shall nominate permanent representatives and alternates in the Platform or its sub-groups and shall be responsible for ensuring that their representatives provide a high level of expertise.

Article 5

Selection process

1. The selection of the Platform's Type C members shall be carried out via public calls for applications. For that purpose, DG TAXUD shall make use of the standard call for applications for the selection of the Platform's members as set out in Annex 2 to the horizontal rules. DG TAXUD may depart from it or supplement it, where this is justified by specific requirements, in compliance with the horizontal rules.

2. A call for applications shall be published on the Register of expert groups. In addition, the call for applications may be published through other means, including on a dedicated website ⁽¹⁷⁾. The call shall clearly outline the selection criteria, including the required expertise and the interests to be represented ⁽¹⁸⁾ in relation to the work to be performed. The minimum deadline for applications shall be four weeks.

3. When responding to the call for applications, organisations shall nominate one representative and one alternate member, in accordance with the same conditions as the representative. The alternate member shall automatically replace a representative who is absent or indisposed. DG TAXUD may refuse the nomination of a representative or alternate by an organisation if they consider it inappropriate, which should be justified in the light of the requirements specified in the decision setting up the Platform and/or in the call for applications. In such cases, the organisation concerned shall be asked to nominate another representative or another alternate.

4. The members of the group shall be appointed by the Director-General of DG TAXUD from specialists with competence in the areas referred to in Article 2 and who have responded to the call for applications. When selecting the members of the Platform from specialist organisations, DG TAXUD shall aim at ensuring, as far as possible, a high level of expertise, a geographical balance, as well as a balanced representation of relevant know how and competence in the areas of interest referred to in Articles 2 and 3, taking into account the specific tasks of the expert group, the type of expertise required and the response received to the call for applications.

5. Members shall be appointed for 2,5 years. They shall remain in office until replaced, or until the end of their term of office. Their term of office may be renewed.

6. In order to ensure continuity and the smooth functioning of the group, DG TAXUD shall establish a reserve list of suitable candidates that may be used to appoint members' replacements. DG TAXUD shall ask applicants for their consent before including their names on the reserve list.

7. Type C members or their representatives shall no longer be invited to participate in any meetings of the Platform and may be replaced or excluded for the remainder of their term of office in any of the following cases:

- (a) where a Type C member or its representative is no longer capable of contributing effectively to the Platform's deliberations;
- (b) where a Type C member or its representative, in the opinion of DG TAXUD, does not comply with the conditions set out in Article 339 of the Treaty on the Functioning of the European Union;
- (c) where a Type C member or its representative resigns.

Where a Type C member or its representative is to be replaced or excluded, the Director-General for Taxation and Customs Union may, as appropriate, appoint a replacement organisation from the reserve list referred to in paragraph 6 or ask an organisation to nominate another representative or another alternate.

⁽¹⁶⁾ <http://ec.europa.eu/transparency/regexpert/>

⁽¹⁷⁾ https://ec.europa.eu/taxation_customs/business/company-tax/tax-good-governance/platform-tax-good-governance_en

⁽¹⁸⁾ This is only relevant for member organisations.

Article 6

Chair

The Platform shall be chaired by the Director-General for Taxation and Customs Union or a representative.

Article 7

Operation

1. The Platform shall act at the request of DG TAXUD, in compliance with the horizontal rules.
2. Meetings of the Platform and its sub-groups shall, in principle, be held on Commission premises.
3. The Platform and its sub-groups may hold joint meetings with other expert groups on issues of common interest.
4. DG TAXUD shall provide secretarial services. Commission officials from other departments with an interest in the proceedings may attend meetings of the Platform and its sub-groups.
5. In agreement with DG TAXUD, the Platform may, by simple majority of its members, decide that deliberations shall be public.
6. Minutes on the discussion on each point on the agenda and on the opinions delivered by the Platform shall be meaningful and complete. Minutes shall be drafted by the secretariat under the responsibility of the Chair.
7. The Platform shall adopt its opinions, recommendations or reports by consensus.

Article 8

Sub-groups

1. To facilitate the efficient functioning of the Platform, DG TAXUD may establish a sub-group composed exclusively of government (Member States' tax authorities) representatives and another sub-group composed exclusively of non-government (business, civil society and tax practitioner organisations) representatives.
2. DG TAXUD may set up other sub-groups to examine specific questions on the basis of terms of reference defined by it. Such sub-groups shall be dissolved as soon as their mandate is fulfilled. The members of sub-groups that are not members of the Platform shall be selected via a public call for applications, in compliance with Article 5 and the horizontal rules ⁽¹⁹⁾.
3. Each sub-group shall operate in compliance with the horizontal rules and shall report to the Platform.

Article 9

Invited experts

DG TAXUD may invite experts with specific expertise with respect to a subject matter on the agenda to take part in the work of the Platform or its sub-groups on an *ad hoc* basis.

Article 10

Relationship with the European Parliament

As regards information to be transmitted to the European Parliament and participation of European Parliament experts in meetings of the Platform, point 15 and Annexes I and II of the Framework Agreement on relations between the European Parliament and the European Commission shall apply ⁽²⁰⁾.

⁽¹⁹⁾ See Articles 10 and 14(2) of the horizontal rules.

⁽²⁰⁾ OJ L 304, 20.11.2010, p. 47.

*Article 11***Observers**

1. Individuals, organisations and public entities other than Member States' authorities may be granted an observer status, in compliance with the horizontal rules, by direct invitation.
2. Organisations and public entities appointed as observers shall nominate their representatives.
3. Observers and their representatives may be permitted by the Chair to take part in the discussions of the group and provide expertise. However, they shall not participate in the formulation of recommendations or advice of the Platform.

*Article 12***Rules of procedure**

On a proposal by and in agreement with DG TAXUD, the Platform shall adopt its rules of procedure by simple majority of its members, on the basis of the standard rules of procedure for expert groups, in compliance with the horizontal rules.

*Article 13***Professional secrecy and handling of classified information**

The members of the Platform and its sub-groups and their representatives, as well as invited experts and observers, are subject to the obligation of professional secrecy which, by virtue of the Treaties and the rules implementing them, applies to all members of the institutions and their staff, as well as to the Commission's rules on security regarding the protection of Union classified information, laid down in Commission Decisions (EU, Euratom) 2015/443 ⁽²¹⁾ and 2015/444 ⁽²²⁾. Should they fail to respect these obligations, the Commission may take all appropriate measures.

*Article 14***Transparency**

1. The Platform and its sub-groups shall be registered in the Register of expert groups.
2. As concerns the Platform's composition, the following data shall be published on the Register of expert groups:
 - (a) the name of member organisations; the interest represented shall be disclosed;
 - (b) the name of observers;
 - (c) the name of Member States' authorities ⁽²³⁾.
3. DG TAXUD shall publish all relevant documents of the Platform and its sub-groups, including the agendas, the minutes and the participants' submissions, either on the Register of expert groups or via a link from the Register to a dedicated website where this information can be found. Access to such a website shall not be submitted to user registration or any other restriction. In particular, the agenda and other relevant background documents shall be published in due time ahead of the meeting, followed by timely publication of minutes.

⁽²¹⁾ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

⁽²²⁾ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

⁽²³⁾ According to the horizontal rules, it is not mandatory to publish the name of the Member States' authorities. The specific administrations of these countries to which experts usually participating in the meetings belong may be published in the Register of the expert groups. See Article 23(1)(b) of the horizontal rules.

4. Exceptions to publication shall only be allowed where it is deemed that disclosure of a document would undermine the protection of any public or private interest as referred to in Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽²⁴⁾.

Article 15

Protection of personal data

Personal data shall be processed in accordance with Regulation (EU) 2018/1725.

Article 16

Meeting expenses

1. Participants in the activities of the Platform and its sub-groups shall not be remunerated for the services they offer.
2. Travel and subsistence expenses incurred by participants in the activities of the Platform and its sub-groups shall be reimbursed by the Commission in accordance with the provisions in force within the Commission. For Type C and Type D members, the Commission shall reimburse travel and subsistence expenses, in accordance with the provisions in force within the Commission. For organisations appointed as observers, reimbursements shall not be granted under any circumstance. Invited experts shall be granted reimbursement for their travel and subsistence expenses.
3. Any reimbursement of expenses in accordance with paragraph 2 shall be within the limits of the available appropriations allocated under the annual procedure for the allocation of resources.

Article 17

Applicability

This Decision shall apply from 17 June 2019 until 16 June 2024.

Done at Brussels, 16 December 2019.

For the Commission
Paolo GENTILONI
Member of the Commission

⁽²⁴⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (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.