

**UNCTAD Debt Workout Mechanism (DWM):****Working Group Meeting no 5**

23 February 2015

CONCLUDING SUMMARY

The purpose of the fifth meeting on a DWM was to discuss the draft Sovereign Debt Workout Roadmap and Guide that was produced by the drafting committee of the Working Group. This concludes a two-year long process of expert meetings coordinated by the UNCTAD Secretariat. The WG gathered experts in issues related to sovereign debt, including legal and academic scholars, multilateral and bilateral lenders, representatives of the civil society, of the private sector, and other relevant stakeholders.

1. Structure and form of the roadmap**1.1. Structure of the document**

The document under discussion, called "roadmap" for the purpose of the meeting with the intention of redefining it, was considered by the WG as having the potential to spark the interest of a variety of groups: debt management offices of indebted countries, journalists, judges, bilateral and multi-lateral institutions amongst others. Each of these stakeholders might therefore require a document that is tailored to their needs, time availability, expertise, and competencies. This is why the WG proposed to produce two separate documents to be published: 1. a concise roadmap, 2. a more didactic guide providing an in-depth explanation of the principles and recommendations contained in the roadmap. Regarding the guide, there was consensus on the usefulness to divide it in two parts, the first one giving an expanded background on the reasons for the existence of this document, the second part describing the aforementioned principles for sovereign debt workouts, and the last part detailing the different stages of a debt workout in line with the principles.

Based on earlier discussions, the WG recalled the need for this document and its legitimacy, which stemmed in particular from economic, political and legal justifications. The WG emphasized the necessity of providing more explanation on how the principles came to be, by grounding them in international law for example. The WG also discussed the insertion of references to human rights throughout the document.

1.2. Tone of the roadmap

Prior to the meeting, the WG submitted several comments on, inter alia, the tone of the document. The Secretariat endeavoured to integrate each of these comments as appropriate. For example,

while some members of the WG found the tone of the roadmap to be too neutral on some points, others thought some passages could benefit from an even more neutral or cautious language.

1.3. Status of the Roadmap

UNCTAD's work on a DWM is an expert-based UNCTAD reference document. UNCTAD indicated the possibility for members of the WG to express their willingness (or not) to see their names featured in the acknowledgements section of the document.

2. Principles guiding debt workouts

The draft of the roadmap identified several principles for sovereign debt workouts. The WG discussed the content, scope and presentation of these principles. The following key points emerged:

- There was a broad consensus that the **unpredictability and uncertainty** of current debt restructuring practices needed to be stressed, even though the WG acknowledged the predictability of the actors involved in the various processes. Indeed, current practices occur within well-defined institutional frameworks which nevertheless leave room for uncertainties in restructuring outcomes.
- **Development needs and economic growth** need to be mentioned as they are usually not sufficiently considered in debt restructurings;
- It was considered useful to include in current practices a **presumption of good faith** for the debtor state in case of a creditor holdout occurring in spite of a good faith conduct of negotiations. A clear and systematic documentation of good faith practices was considered a useful undertaking in this respect.

3. Salient elements of the roadmap

The WG suggested that the guide could highlight the steps to be taken by states prior to the process so as to obtain a more predictable outcome. Several comments were made in that regard:

- Debtors should regularly conduct **debt sustainability analyses** while taking into account their development goals. Members of the WG proposed that this analysis could be carried out by a collection of bodies so as to avoid biases and reinforce legitimacy, impartiality, and comprehensiveness. The identification of **early-warning indicators** could then encourage them to engage in **pre-default restructuring**.
- There should be mention of the possibility for governments to issue bonds containing provisions that **facilitate potential debt restructurings**, such as CACs for example;
- **Innovation to debt contracts**, such as the inclusion of a standstill of payments and a stay on litigation and enforcement for example, can facilitate debt restructurings and even help prevent them;
- Mention of **anti-vulture legislation** that could be implemented at the national level, like in the UK with the Debt Relief (Developing Countries) Act of 2010, could also be inserted in the document in the absence of an internationally binding agreement;

The WG also emphasized some elements to take place after the start of the restructuring process:

- It has been pointed out that for example in the case of Jamaica, an **effective communication plan** could solve the issue of **capital control and capital flight**. The inclusion of an effective communication plan could also help circumvent the **political costs** associated with debt workouts by heightening citizen's awareness on the benefits of debt restructuring;
- Regarding seniority status, the WG pointed out that restructuring should be based on a **cut-off date**, which could be decided by a debt workout institution. The lenders willing to provide money after this date would get the status of "**crisis lenders**".
- The volume of interim financing should be limited so as not to hamper debt sustainability and growth. It was proposed that this could be achieved through the introduction of **GDP indexed bonds**.

4. Implementation of the roadmap

In order to realistically implement this document, several options are available. It was suggested by the WG that the debtor state could create a Debt Workout Institution that could take various forms. It was recognized that the setting up of any institution constitutes a challenge but would help achieve a greater coherence in the current landscape of practices.

The WG also reminded the importance of linking the DWI to other mandates such as the Monterrey Consensus, the Financing for Development process, and the Principles on Promoting Sovereign Lending and Borrowing, for a better implementation at the international level.

5. Next steps

These different institutional options will be further discussed during the meeting on the Legal Framework for Debt Restructuring Processes at Columbia University on 31 March.

Further to the revision of the draft, the "roadmap" will be released in the course of April.