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European Union

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#### **OUTCOME OF PROCEEDINGS**

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From:	General Secretariat of the Council
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To:	Delegations

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Subject:	Base Erosion and Profit Shifting (BEPS)
	- Council conclusions

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Delegations will find in the annex the Council conclusions on the Base Erosion and Profit Shifting (BEPS), adopted by the Council at its 3415th meeting held on 8 December 2015.

**Council Conclusions on base erosion and profit shifting (BEPS) in the EU context**

"The Council:

1. NOTES that effective corporate taxation can be undermined by base erosion and profit shifting;
2. STRESSES that unfair tax competition between Member States as well as between the latter and third countries could affect the functioning of the Single Market, whilst acknowledging the importance of taxation for competitiveness;
3. RECALLS and CONFIRMS the European Council conclusions of 18 December 2014 stating the urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at the global and EU levels;
4. RECALLS the European Council Conclusions of 13 and 14 March 2013 on the need for close cooperation with the OECD and the G20 to develop internationally agreed standards for the prevention of BEPS and in particular its call for the European Union to coordinate its positions;
5. HIGHLIGHTS the recent political agreement reached by the Council on automatic exchange of information of tax rulings and the pioneer role of the European Union in this field in fully implementing OECD BEPS conclusions on Action 5 (harmful tax practices);
6. WELCOMES the conclusions of the OECD Base Erosion and Profit Shifting (BEPS) Action Plan, as recently endorsed by G20 Finance Ministers in Lima, Peru, on 8 October 2015 and G20 Heads of State in Antalya, Turkey, on 15-16 November 2015;

7. NOTES that G20 Finance Ministers renewed on 8 October 2015 a commitment for swift, global and efficient implementation of BEPS conclusions and asked the OECD to prepare an inclusive monitoring framework by early-2016;
8. INDICATES that several legislative proposals linked to the BEPS agenda are currently under discussion in the Council, notably the proposal for a Common Consolidated Corporate Tax Base (CCCTB) and the recast of the Interest and Royalties Directive (IRD);
9. UNDERLINES furthermore that the Code of Conduct Group on business taxation established in 1998 continues to perform important non-legislative work in combating BEPS phenomena both inside the European Union and towards third countries;
10. STRESSES therefore the need to find common, yet flexible, solutions at the EU level consistent with OECD BEPS conclusions, paying specific attention to compliance with EU Treaty freedoms and competences and SUPPORTS an effective, swift and coordinated implementation by Member States of the anti-BEPS measures to be adopted at EU level;
11. OBSERVES that OECD BEPS conclusions often propose different options for implementing certain of its recommendations and that a common approach at EU level in favour of certain options would bring value with a view to ensure the proper functioning of the Single Market;
12. CONSIDERS that EU directives should be, where appropriate, the preferred vehicle for implementing OECD BEPS conclusions in the EU in order to ensure both legal certainty and proportionality in the level of harmonisation required by the Single Market;
13. AGREES in this respect that where the implementation of an OECD BEPS conclusion is foreseen through EU legislation this process is given priority over possible parallel soft-law discussions;

14. UNDERLINES at the same time the role that can be played by the Code of Conduct Group in providing guidance to Member States for implementing certain other OECD BEPS conclusions;
15. INVITES the Council's High Level Working Party on Tax Questions (HLWP) to closely monitor the implementation of the anti-BEPS actions at EU level and, more generally, to play a central role in overseeing work in this field, as it has done so far, including through 6-monthly Presidency BEPS roadmaps when presented;

*Implementation of BEPS conclusions through EU legislation*

16. TAKES NOTE of the Commission's expert group final report on the taxation of the digital economy (May 2014) and of the subsequent OECD BEPS conclusions on Action 1, as well as of the Commission's intention to revise in 2016 value added tax (VAT) rules in the context of its 'Digital Agenda for Europe' initiative;
17. RECALLS that OECD BEPS conclusions on Actions 2 (hybrid mismatches), 3 (Controlled Foreign Company rules), 4 (interest limitation rules), 6 (general anti-abuse rule), 7 (permanent establishment status) and 13 (country by country reporting) might be implemented, following further technical analysis, through legislative proposals focusing on international anti-BEPS aspects, without precluding the application by Member States of domestic or agreement-based provisions aimed at preventing BEPS;
18. INVITES therefore the Commission to come forward with a proposal on these international aspects which takes fully into account the work done on these issues in the frame of the on-going legislative files, notably CCCTB;
19. NOTES that the insertion of a common anti-abuse clause is envisaged in the context of the recast of the Interest and Royalties Directive, following the insertion of a similar clause in the Parent-Subsidiary Directive, on the basis notably of OECD BEPS conclusions on Action 6;
20. ACKNOWLEDGES the need for further discussion on the concept of minimum effective taxation, in particular within the recast of the Interest and Royalties Directive;

21. INVITES the Commission to reflect on possibilities to improve the availability of corporate taxation data and statistics at the EU level on the basis of OECD BEPS conclusions on Action 11;

*A complementary 'soft law' approach*

22. NOTES that OECD BEPS conclusions on OECD Action 2 (neutralising the effects of hybrid mismatch arrangements) are being taken into account for ongoing works of the subgroup on hybrid mismatches of the Code of Conduct Group and INVITES the Code of Conduct Group and the Subgroup to discuss the forms of hybrid mismatches which are not addressed through EU legislation;

23. RECALLS its previous endorsement of the modified nexus approach (doc. 16846/14) and INVITES the Code of Conduct Group to follow this approach, as outlined in OECD BEPS conclusions on Action 5 (harmful tax practices), for monitoring the legislative processes necessary for Member States to change their existing 'patent box' regimes;

24. INVITES the Code of Conduct Group to assess the opportunity, in the light of the fourth criterion, of developing EU guidance for implementing OECD BEPS conclusions on Actions 8-9-10 (aligning transfer pricing outcomes with value creation) and on Action 13 (Guidance on transfer pricing Documentation), with the support of the Commission and its advisory bodies, notably the EU Joint Transfer Pricing Forum;

25. INVITES equally the Code of Conduct Group to assess the opportunity of developing EU guidance for implementing OECD BEPS conclusions on Action 12 (disclosure of aggressive tax planning), notably with a view to facilitate exchange of such information between tax authorities;

*Other implementation issues*

26. NOTES that certain OECD BEPS conclusions concern bilateral double taxation agreements entered into by Member States and CONSIDERS that some form of exchange of views through the HLWP would in this respect be useful;
27. STRESSES the need for a swift and efficient implementation of OECD BEPS conclusions also at global level and LOOKS FORWARD to the multilateral instrument to modify tax treaties envisaged under OECD BEPS conclusions on Action 15 expected by the end of 2016;
28. UNDERLINES the importance of involving a maximum number of countries, including developing countries, in order to ensure a level playing field in the area of BEPS.
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