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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
On:	8 March 2016
To:	Delegations
No. prev. doc.:	6674/16
Subject:	Future of the Code of Conduct (Business Taxation) - Council conclusions (8 March 2016)

Delegations will find in the annex the Council conclusions on the Future of the Code of Conduct (Business Taxation), adopted by the Council at its 3454th meeting held on 8 March 2016.

Council Conclusions on the future of the Code of Conduct

"The Council:

1. RECALLS its determination to combat tax fraud, tax evasion and aggressive tax planning at EU and global level;
2. RECALLS the adoption by the Council and the representatives of the Governments of the Member States, meeting within the Council, in December 1997 of a resolution on a Code of conduct for business taxation (hereafter "the Code");
3. RECALLS the subsequent establishment in March 1998 of a Code of Conduct Group (hereafter "the Group") to assess the tax measures falling within the scope of the Code and oversee the provision of information on these measures;
4. RECALLS its conclusions adopted on 8 December 2015 on the future of the Code confirming *"that work on the future of the Code of Conduct and its reinforcement should focus on making better use of the existing mandate of the Code; on examining the possibilities and modalities to extend the mandate and to update the criteria and on the possible need to adjust the governance of the Code accordingly"* and inviting *"the Council High Level Working Party on Taxation (HLWP) to conclude on the need to enhance the overall governance, transparency and working methods and to finalise the reform of the Group during the Dutch Presidency"*;
5. CONSIDERS that the organisation of the Group and its working methods could be updated in order to increase even more the efficiency of the Group;
6. CONFIRMS that the rules on the appointment of the chair of the Group should remain unchanged and that two vice-chairs should continue to assist the Chair;

7. ENCOURAGES the group to start preparing the election of the Chair with a view to a smooth transition at the next election early 2017;
8. RECALLS the Group to develop guidance on the interpretation of the gateway criterion and its application;
9. INVITES the Group to actively use existing subgroups and to foresee new subgroups where appropriate;
10. DECIDES that a subgroup will deal with the clarification of the third and the fourth criteria of the Code and that another subgroup will deal with dialogues with relevant third countries;
11. INVITES the High Level Working Party on Taxation (HLWP) to reflect on the need to request this latter subgroup at a later stage to deal with issues related to the communication on an external strategy for effective taxation (doc. 5637/16 FISC 8);
12. UNDERLINES the importance of tax measures being notified to the Group by reference to clear and objective criteria as part of the annual standstill and rollback procedure, NOTES that the Code of Conduct Group's 2015 work package includes the development of such guidelines and INVITES the Group to finalise these as soon as possible;
13. CONSIDERS that the decision-making process has to be speeded up by going from the "agreed description" stage to the "assessment" stage, without requiring a new broad consensus decision on this matter, without prejudice that the final assessment by the Group will remain subject to broad consensus;
14. SUPPORTS enhancing the political visibility of the work of the Group by involving more systematically the Council (ECOFIN), in particular when broad consensus on individual measures, on draft guidance or the evaluation of existing guidance cannot be reached, and by having public debates in ECOFIN as appropriate on some general Code of Conduct issues;

15. UNDERLINES the necessity to increase the transparency of the group on past and ongoing work, whilst stressing the importance to ensure that result-orientated cooperation within the Code of Conduct Group can continue in a confidential manner;
16. CALLS FOR having more substantial 6-monthly Group reports to ECOFIN, reflecting the main elements and views, which were discussed under specific items and reporting also on the monitoring concerning (non-) compliance with agreed guidance;
17. INVITES the Group to explore initiatives to further inform the public on the results of its meetings and to report back to ECOFIN on this issue by June 2017;
18. SUPPORTS regular oral reports to ECOFIN of the Chair of the Group, as well as interinstitutional exchange of information, if necessary;
19. EXPRESSES its wish to facilitate the access to information on ongoing and past work in the Group including already public documents, e.g. through a dedicated page on the Council's website and by releasing, to the extent possible, documents related to general guidance notes and to final decisions on individual measures;
20. INVITES the HLWP to review the new governance, transparency and working methods, especially on the efficiency of the decision making process also in relation to the use of the broad consensus rule in 2017; and report on that to the ECOFIN in December 2017;
21. INVITES the HLWP to examine the issue of the revision of the mandate of the Group, with the aim to take a decision on the possibilities and modalities to extend the mandate and to update the criteria by the end of the Netherlands Presidency."