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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Code of Conduct (Business Taxation)
– Report to the Council
– Draft Council Conclusions

1. At its meeting on 24 November 2016, the Code of Conduct Group discussed the report from the Group to the Council.
2. As usual, this report should be accompanied by the draft Council Conclusions as set out below:

"With regard to the Code of Conduct (Business Taxation), the Council:

- welcomes the progress achieved by the Code of Conduct Group during the Slovak Presidency as set out in its report (doc. 14750/16 FISC 202 ECOFIN 1092);
- welcomes in particular the work performed on the clarification of the third and fourth criteria of the Code in the context of OECD BEPS reports on Actions 5-8-9-10;

- agrees to consider the principles of the modified nexus approach, as described in the OECD BEPS report on Action 5, as a starting point for the work of the Code of Conduct Group on preferential regimes other than patent boxes when interpreting the third criterion of the Code and to substantiate these principles on a case-by-case basis depending on the type of regime in a manner consistent with the OECD;
- endorses the OECD BEPS report on *Aligning Transfer Pricing Outcomes with Value Creation* (Actions 8-9-10);
- invites the European Commission, making use of its EU Joint Transfer Pricing Forum (JTPF) expert group, to investigate the need to revise past EU guidelines on transfer pricing issues in the light of this OECD BEPS report and to report to and advise the Code of Conduct Group as appropriate;
- asks the Code of Conduct Group to continue its work with a view to facilitating, through the third and fourth criteria, an effective, swift and coordinated implementation at EU level of the principles of the modified nexus approach and other internationally accepted principles such as the arms' length principle as developed by the OECD;
- agrees to take into account the changes to the OECD Transfer Pricing Guidelines for interpreting the internationally accepted arm's length principle as a key reference for the fourth criterion of the Code;
- supports also further work by the OECD on transfer pricing issues, amongst others the transactional profit split method;
- welcomes progress made following the November ECOFIN Conclusions regarding the identification of third countries to be included in the screening process and asks the Code of Conduct Group to continue this work;

- welcomes the agreement on guidelines concerning procedural issues relating to the notification of tax measures and on guidelines on the conditions and rules for the issuance of tax rulings;
- asks the Group to continue monitoring standstill and the implementation of the rollback and invites the Group to continue its work under the Work Package 2015;
- invites the Commission to continue the dialogue with Liechtenstein on the application of the principles of the Code of Conduct, as set out in the report;
- invites the Group to continue to monitor the alignment of the Patent box regimes with the agreed nexus approach;
- invites the Group to report back to the Council on its work during the Maltese Presidency."

3. The Permanent Representatives Committee is invited:

- to forward to the Council the report (doc. 14750/16 FISC 202 ECOFIN 1092), together with the draft Council conclusions as set out above;
- to suggest that it endorses both as "A" items on its agenda.
