



Council of the
European Union

**Brussels, 8 December 2015
(OR. en)**

15148/15

**FISC 184
ECOFIN 964**

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
On:	8 December 2015
To:	Delegations

No. prev. doc.:	14945/15
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Subject:	Future of the Code of Conduct (Business Taxation) - Council conclusions
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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 3415th meeting held on 8 December 2015.

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. UNDERLINES that the May 2013 European Council conclusions noted that *“it is important to continue work within the EU on the elimination of harmful tax measures. To that end, work should be carried out on the strengthening of the Code of Conduct on business taxation on the basis of its existing mandate”*;
5. RECALLS the usefulness and the efficiency of the work done under the Code of Conduct so far to assess Member States individual tax measures;
6. CONFIRMS 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;

7. ENDORSES the Group's new Work Package, and ENCOURAGES the Group to continue its work on that basis;
8. CONFIRMS its invitation to the Group to develop general guidance to prevent tax avoidance, base erosion and profit shifting (BEPS);
9. INVITES the High Level Working Party on Taxation (HLWP) to discuss a revision to the mandate in relation to the concept that profits are subject, as appropriate, to an effective level of tax within the EU, notwithstanding the competencies of Member States in the area of taxation;
10. AGREES that the rollback and standstill procedures foreseen in paragraphs C and D of the Code should cover existing and future general guidance notes developed by the Group;
11. INVITES in this respect the Group to ensure through such general guidance an effective implementation at the EU level of the relevant OECD BEPS Project conclusions when not covered by the EU legislation, and in accordance with the Group's new Work Program;
12. AGREES that the Code Group should clarify the third criterion by developing guidance on the basis of the OECD BEPS conclusion on Action 5 ;
13. AGREES that the Code Group should clarify the fourth criterion by developing guidance in the light of OECD Transfer Pricing Guidelines, as amended by OECD BEPS conclusions on Actions 8-9-10;
14. INVITES the Group to further develop, where appropriate, guidance notes on the interpretation of the criteria of the Code, including the gateway criterion, and their application;

15. CONFIRMS the importance that the principles of the Code of Conduct are applied on as broad geographical basis as possible, WELCOMES in this respect the recent Joint Statement with Switzerland and ongoing dialogue with Liechtenstein and INVITES the Group to open dialogues with relevant third countries, as well as to monitor the implementation of past agreements;
 16. EXPRESSES the wish to improve the visibility of the work of the Code of Conduct Group and AGREES therefore that its results, in particular its 6-monthly reports, are systematically made available to the public;
 17. INSISTS however on the confidentiality of the Group's deliberations with a view to protect the public interest as regards the economic policy of Member States, maintain the efficiency of the assessment process and counter related risks of aggressive tax planning;
 18. INVITES the 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."
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