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ECOFIN 1167

**NOTE**

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From:	General Secretariat of the Council
To:	Council
Subject:	Code of Conduct (Business Taxation) - Draft Report to the Council - Draft Council Conclusions

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1. At its meeting on 20 November 2014, the Code of Conduct Group discussed the draft report from the Group to the Council (doc. 16553/14 FISC 225 ECOFIN 1166) and draft conclusions to be adopted by the Council (ECOFIN) at its meeting on 9 December 2014.
2. Paragraph 12 of the report is drafted as follows:

*"[Following all discussions in the OECD Forum on Harmful Tax Practices, a compromise regarding the modified nexus approach was endorsed by the Group (see Annex 1). The Group agreed that the EU patent box regimes that had been subject to examination by the Group are not compatible with the modified nexus approach as adapted by the compromise. As a consequence, these EU patent boxes should therefore be changed in line with the compromise. The Group agreed that the legislative process necessary to give effect to that change and the related monitoring by the Code of Conduct Group should commence in 2015]".*

3. During the same meeting, the draft Council Conclusions as set out below were discussed:

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

- welcomes the progress achieved by the Code of Conduct Group during the Italian Presidency as set out in its report (doc. 16100/14 FISC 216 ECOFIN 1105);*
- asks the Group to continue monitoring standstill and the implementation of the rollback as well as its work under the Work Package 2011;*
- invites the Commission to resume the dialogue with Liechtenstein on harmful tax regime, as set out in the report;*
- invites the Group to continue its consideration of the draft guidance on Hybrid Permanent Establishments;*
- [- takes note of the agreement reached on the interpretation of the third criterion of the Code of Conduct with regard to patent boxes as contained in the existing mandate;*
- emphasises the need to start already in 2015 the legislative process necessary to change the patent box regimes and asks the Group to monitor this process;]*
- invites the Group to report back on its work to the Council by the end of the Latvian Presidency."*

4. During the meeting of the Code of Conduct on 20 November 2014, IT, HR and NL expressed reservations on paragraph 12 of the Report and indents 5 and 6 of the draft Conclusions (wording in square brackets). In the meantime, IT and HR have lifted their reservations. During Coreper on 3 December 2014, NL indicated that it was not in a position to lift its reservation. Therefore, the Report and the draft Council Conclusions could not be considered as agreed and those points were submitted to Council for further discussion.

5. The Council (ECOFIN) is therefore invited to
- discuss the remaining open issues set out above in relation to the report and the draft Council conclusions
  - endorse the report (doc. 16553/14 FISC 225 ECOFIN 1166), together with the draft Council conclusions as set out above (paragraph 3).
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