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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Code of Conduct Group (Business Taxation)
Subject:	(Draft) Progress Report by the Code of Conduct Group (Business Taxation) to the ECOFIN Council of December 2018 - Annex: Spain's national patent box regime (ES021)

Delegations will find attached a document in view of the meeting of the Code of Conduct Group (Business Taxation) on 15 November 2018.

Spain's national patent box regime (ES021)

The following rollback was agreed by the Code of Conduct Group on 21 September 2018:

a. Previous assessment:

*"There is one main concern **which deviates** from the CoC criteria and it relates to:*

- the **scope of the Spanish IP regime** which is broader than the scope set in the Action 5 report. IP assets such as know-how, trade secrets¹ are not covered by the latter, while they fall under the ES IP regime. "*

b. Rollback amendments:

- Know-how/trade secrets (along with trademarks and other non-qualifying IP rights) have been specifically excluded from the scope. Thus, the "harmful" feature is corrected.
- New IP assets are added amongst the qualifying assets:
 - complementary protection certificates of medicine and of plant protection products,
 - designs and models legally protected;
 - resulting from research and development and innovation activities;
 - and
 - sophisticated copyrighted software resulting from research and development activities.

The above changes are in line with paragraphs 34 to 36 of the nexus agreement² and the Group's previous decisions.

- Legal reference: 2018 Budget Law. Law 6/2018, 3rd of July. Articles 68 and 72 modify article 23 and the twentieth transitory provision of Law 27/2014, of November 27, of the Corporate Income Tax, in relation to the State IP regime. Publication: BOE (Spanish Official Gazette), on 4th of July 2018:
<http://www.boe.es/boe/dias/2018/07/04/pdfs/BOE-A-2018-9268.pdf>

¹ "secret formula or process or from the assignment of information concerning industrial, commercial or scientific experience".

² Action 5 Report.