Council of the European Union

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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 2 June 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 Netherlands Presidency as set out in its report (doc. 9912/16 FISC 97 ECOFIN 558);

– welcomes in particular the agreement on the guidance and explanatory notes on hybrid permanent establishment mismatches involving third countries;

– 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 Slovak Presidency".

3. The Permanent Representatives Committee is invited:

– to forward to the Council the report (doc. 9912/16 FISC 97 ECOFIN 558), together with the draft Council conclusions as set out above;

– to suggest that it endorses both as "A" items on its agenda.

ANNEX

STATEMENT BY SPAIN TO BE ENTERED IN THE COUNCIL MINUTES

"Spain agrees with the Group in considering part of Gibraltar’s regime as harmful according to the criteria laid down by the Code of Conduct on Business Taxation. Furthermore, Spain contends that the assessment made by the Group is still meagre as important issues of this regime – especially those related to lack of transparency and tax information – have been outside this work, which has significantly limited the analysis made. Gibraltar has not furnished information on how many of its more than ten thousand assets holding companies are owned by non-Gibraltarian residents, neither on the income derived by these companies nor its source; therefore it was not possible to determine whether this regime is specially favouring these taxpayers.

Definitively, the selective modifications introduced in this regime are paltry, while in the opinion of Spain the key harmful issues that attract non-Gibraltarian activities remain fully operational, which besides sets a highly negative precedent concerning the work of this Group in assessing similar tax regimes of other territories and third States."