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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)/Council
No. Cion doc.: 5639/16 FISC 10 - COM(2016) 26 final
Subject: Draft COUNCIL DIRECTIVE laying down rules against tax avoidance practices that directly affect the functioning of the internal market
– Adoption

1. The abovementioned proposal for an Anti-Tax-Avoidance Directive (ATAD) was presented by the Commission on 28 January 2016 as part of its Anti-Tax-Avoidance Package (ATAP).
2. The ATAD proposal responded to the ECOFIN Council conclusions of 8 December 2015 on Base Erosion and Profit Shifting (BEPS) in the EU context (doc. 15150/15). In these conclusions the ECOFIN Council considered that EU directives should, where appropriate, be the preferred vehicle for implementing OECD BEPS conclusions.
3. The European Parliament delivered its opinion on 8 June 2016, whilst the European Economic and Social Committee (EESC) delivered its opinion on 28 April 2016.

4. The ECOFIN Council of 17 June 2016 had a discussion with a view to reaching a political agreement on the ATAD proposal. In the light of these discussions, the Presidency put forward a final compromise text with accompanying statements and noted that almost all delegations could agree to it.
5. Against this background the Presidency announced a silence procedure until Monday, 20 June 2016, 24:00 (midnight). The latter not having been broken, political agreement was reached on the ATAD proposal, as set out in document 10426/16.
6. The following statement by the Commission was subsequently entered in the ECOFIN Minutes of 17 June 2016: "The Commission commits to present, before the end of the year, a legislative proposal allowing individual Member States to derogate from the common system of value added tax so as to apply a generalised reverse charge mechanism to domestic supplies above a defined threshold and preserving the Internal Market".
7. The Permanent Representatives Committee is therefore invited to suggest that the Council:
 - adopt, as an "A" item on the agenda of a forthcoming meeting, the Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market, as finalised by the legal/linguistic experts in doc. 10539/16 FISC 110 ECOFIN 648;
 - enter the attached statements in the Council Minutes.

**STATEMENTS TO BE ENTERED IN THE MINUTES OF THE COUNCIL
AT WHICH THE DIRECTIVE IS ADOPTED**

Council statement on hybrid mismatches

"The Council requests the Commission to put forward a proposal by October 2016 on hybrid mismatches involving third countries in order to provide for rules consistent with and no less effective than the rules recommended by the OECD BEPS report on Action 2, with a view to reaching agreement by the end of 2016."

**Statement of the Council and the Commission
in relation to ensuring a level playing field at international level**

"The objective of the Directive is to ensure a coordinated and coherent implementation at EU level of the OECD's recommendations regarding base erosion and profit shifting (BEPS), which would enhance the single market by introducing a harmonized minimum standard. However, by transposing the OECD's recommendations into a legally binding instrument the EU goes further than the OECD approach. In order to avoid any unintended consequences and ensure that the EU is not placed at a competitive disadvantage relative to its trading partners, the Member States and the Commission will closely monitor the implementation of the BEPS recommendations at global level. The Member States and the Commission should actively engage with the OECD to promote swift, effective and inclusive implementation of BEPS recommendations in order to ensure a level playing field at international level."