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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)/Council
No. Cion doc.:	10582/17 FISC 149 ECOFIN 572 IA 115 - COM(2017) 335 final
Subject:	Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements – Adoption

1. The Commission presented the abovementioned legislative proposal¹ on 21 June 2017. The main purpose of this initiative is to strengthen tax transparency and fight against aggressive tax planning by including into the existing Council Directive 2011/16/EU on administrative cooperation in the field of taxation² (DAC) new provisions, which would require Member States to:
 - lay down rules for mandatory disclosure to national competent authorities of potentially aggressive tax planning schemes with a cross-border element ("arrangements") by the "intermediaries" (e. g. tax advisers or other actors that are usually involved in designing, marketing, organising or managing the implementation of such "arrangements"); and

¹ Doc. 10582/17 FISC 149 ECOFIN 572 IA 115 + ADD 1, ADD2, ADD 3.

² OJ L 64, 11.3.2011, p. 1, as amended.

- ensure that national tax authorities automatically exchange this information with the tax authorities of other Member States by using the mechanism provided for in DAC.
2. The issues covered by this legislative proposal are high on the EU and wider international agenda. In its conclusions of 25 May 2016, on an external taxation strategy and measures against tax treaty abuse, the Council of the EU invited the European Commission "*to consider legislative initiatives on Mandatory Disclosure Rules inspired by Action 12 of the OECD BEPS project³ with a view to introducing more effective disincentives for intermediaries who assist in tax evasion or avoidance schemes*"⁴
 3. The European Economic and Social Committee has delivered its opinion on this legislative proposal on 18 January 2018⁵, the opinion of the European Parliament has been delivered on 1 March 2018.⁶
 4. On 13 March 2018, the Council reached a political agreement on the Presidency compromise text and agreed on a Council statement to be entered into the minutes.⁷
 5. 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 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements**, as finalised by the legal/linguistic experts in doc. 7160/18 FISC 132 ECOFIN 238;
 - enter into the minutes the statements set out in Annex I to this note.

³ The OECD Base Erosion and Profit Shifting (BEPS) Action Plan, was endorsed in 2015 by G20 Finance Ministers and G20 Heads of State, and it was welcomed by ECOFIN in its December 2015 "Council Conclusions on base erosion and profit shifting (BEPS) in the EU context (doc. 15150/15 FISC 185 ECOFIN 965, point 6).

⁴ Doc. 9452/16 FISC 85 ECOFIN 502, point 12.

⁵ Doc. 5631/18 FISC 34 ECOFIN 60.

⁶ Not yet published in the Official Journal.

⁷ Doc. 7213/18 PV CONS 15 ECOFIN 251, point 3, and doc. 6804/18 FISC 103 ECOFIN 206.

STATEMENT BY THE COUNCIL

"To ensure an adequate level playing field with regard to the effective exchange of information and full transparency regarding circumvention schemes of Common Reporting Standard (CRS), the Council expresses its firm political support to an action at the international level for a general implementation of the Mandatory Disclosure Rules for Addressing CRS Avoidance Arrangements and Opaque Structures."

STATEMENT BY GERMANY

"In the understanding of the Federal Republic of Germany, the national legal professional privilege in Germany also applies to auditors, tax advisers and chartered accountants in the same way as for lawyers."
