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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)/Council
Subject: Council conclusions on the 'EU standard provision on good governance in tax matters for agreements with third countries'
– Adoption

1. On 14 May 2008, the existing EU standard provision on good governance in tax matters was adopted by the ECOFIN Council, which contained a standard clause on commitment to the principles of good governance in the tax area, to be introduced in relevant agreements concluded by the EU and third countries or third-country groupings. Good governance in the tax area was defined as meaning the principles of transparency, exchange of information and fair tax competition.
2. At its meeting of 16 April 2015 the High Level Working Party (HLWP) discussed the negotiation of tax provisions in agreements with third countries and agreed that "*a coordinated tax clause that should be included in free trade agreements the EU concludes with third countries, should take into account discussions in relevant Council preparatory bodies*" (ECOFIN report to the European Council of June 2015, doc. 10161/15, paragraph 64).

3. In its conclusions on an external taxation strategy and measures against treaty abuse from 25 May 2016 (doc. 9452/16) the Council supported "*the need to update the principles of tax good governance to be used as the new standard provision in future negotiations with third countries*" and invited the Code of Conduct Group "*to examine key elements which should be contained in a clause to be inserted in agreements between the EU and those countries*".
4. At the Code of Conduct Group meeting of 20 July 2016, the Group mandated the Subgroup on third countries (CoC subgroup) to start work, with the task of preparing the ground for further discussions at Group level.
5. A first discussion at technical level took place at the CoC subgroup meeting of 14 September 2016. In view of the close correlation between the revision of the tax good governance clause and the screening criteria for the EU list of non-cooperative third country jurisdictions, it was considered at that stage appropriate to continue the technical discussion after the adoption of the screening criteria.
6. Following the Council conclusions of 8 November 2016 on the criteria for and the process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes, the HLWP of 6 April 2017 asked the CoC subgroup to resume its work on the update of the EU standard provision on good governance in tax matters for agreements with third countries.
7. In order to reflect recent progress in the international tax agenda and to align the EU standard provision on good governance in tax matters with the screening criteria, it was proposed under the Maltese Presidency to include the following revised text in relevant agreements to be concluded with third countries by the EU and its Member States:

"The Parties recognise and commit themselves to implement the principles of good governance in the tax area, including the global standards on transparency and exchange of information, fair taxation, and the minimum standards against Base Erosion and Profit Shifting. The Parties will promote good governance in tax matters, improve international cooperation in the tax area and facilitate the collection of legitimate tax revenues."

8. On 16 March 2018, at the meeting of the CoC subgroup, an updated version of the text of the draft Council conclusions as suggested by the Presidency was discussed. Delegations largely supported it.
9. Consequently, the Presidency circulated to delegations for approval by e-mail a final compromise of the draft Council conclusions under the silence procedure, which was completed successfully on 6 April 2018, subject to a parliamentary scrutiny reservation entered by SE, which has since then been lifted.
10. Against this background, the Permanent Representatives Committee is invited to suggest that the Council:
 - adopt the attached conclusions as an "A" item on the agenda of a forthcoming meeting;
 - agree on the publication of the attached conclusions in the Official Journal.

COUNCIL CONCLUSIONS**on the EU standard provision on good governance in tax matters
for agreements with third countries**

"The Council:

1. RECALLS the Council conclusions of 14 May 2008 in the field of tax provisions in agreements with third countries with a view to tackling tax fraud and evasion and to reinforce efforts to combat cross-border tax fraud and evasion in the area of taxation and REFERS to the specific provision on good governance in the tax area to be included in relevant agreements to be concluded with third countries by the Union and its Member States, which was adopted on that occasion.
2. RECALLS the Council conclusions of 25 May 2016 on an external taxation strategy and measures against tax treaty abuse which called for a new standard provision in line with the evolution of international standards in the tax area.
3. EMPHASISES the importance of implementing an updated provision on good governance in the tax area in ongoing and future negotiations with third countries, on as broad a geographical basis as possible, while taking into consideration the particular situation of each third country. The core elements of an updated provision would include the global standards on transparency and exchange of information, fair taxation and anti-BEPS standards. Good governance in the tax area is not only an essential means for combating cross-border tax fraud and evasion, but could strengthen the fight against money laundering, corruption, and the financing of terrorism.

4. RECOGNISES therefore the need to include in relevant agreements to be concluded with third countries by the Union and its Member States, without prejudice to their respective competences, the updated provision on good governance in the tax area and considers the following text to be appropriate in this respect:

"The Parties recognise and commit themselves to implement the principles of good governance in the tax area, including the global standards on transparency and exchange of information, fair taxation, and the minimum standards against Base Erosion and Profit Shifting (BEPS). The Parties will promote good governance in tax matters, improve international cooperation in the tax area and facilitate the collection of tax revenues."

5. STRESSES its attachment to the furtherance of good governance in the tax area with respect to ongoing and future negotiations.
6. Within the framework of the applicable TFEU provisions, the Commission will inform and consult, whichever is appropriate, the relevant Council bodies, with due diligence and timely, on any question relating to the specific provision on good governance in the tax area which may arise in the process of the negotiations of the international agreements referred to above."