STATEMENT of The Netherlands on the draft Council Conclusions (Code of Conduct - patent boxes)
ECOFIN Council, Brussels, 9 December 2014

- The Netherlands fully supports the objective of ending agressive tax planning and to put a stop on innovation/patent boxes that encourage profit shifting and on the trading of patents only for the purpose to move them to the most favourable tax regime. The Netherlands therefore welcomes the German-British proposal on the modified nexus approach and supports stricter rules on IP regimes among others the formula for the level of qualified expenditure (lift up), a tracking and tracing system and excluding trademarks and marketing from the IP regime.

- An inclusive definition of 'IP assets', meaning patent and non patent research & development, would help to promote innovation in the EU, enabling the EU to compete in the global arena for knowledge and ideas and to achieve our Europe2020 goals. The EU's aim is to boost real innovation including innovation in SMEs. SMEs would in practice be excluded from pure patent boxes, as an application for patents is in many cases too expensive for SMEs. It is evident that SMEs have enough 'nexus' with the Member State. Such an inclusive definition of 'IP assets' has to be elaborated in the OECD.

- For the Netherlands it is important that IP regimes are not limited to patents, but could also cover other innovations derived from R&D, provided that such activities have been certified by a competent government authority (not being the tax authorities), so that the linkage between R&D, IP-assets and profits (tracking and tracing) can be ensured.