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NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: The draft of the Directive of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA (recast)
- General approach
- Statement by Belgium, Finland, Ireland, Latvia, Luxembourg, Slovenia and Sweden

Delegations will find in annex a statement by Belgium, Finland, Ireland, Latvia, Luxembourg, Slovenia and Sweden.

Statement by Belgium, Finland, Ireland, Latvia, Luxembourg, Slovenia and Sweden

We welcome the revision of the Directive on combating sexual abuse and sexual exploitation of children and child sexual abuse material and wish to declare the following.

About one in five children are victims of some form of sexual violence. This includes sexual touching, rape, sexual harassment, grooming, exhibitionism, exploitation in prostitution and pornography, online sexual extortion, and coercion.¹

Although children, **who have reached the age of sexual consent**, can consent to sexual acts, they are particularly vulnerable and deserve a comprehensive legal protection. We stand ready to protect the personal and sexual integrity of these young persons in the EU.

We welcomed the Commission's proposal to introduce the concept of lack of consent in the definition of rape concerning children, who have reached the age of sexual consent. In this concept it is clearly stated **when consent can be given** and when it is **not possible for a child to consent**, such as when the child is **unconscious, asleep** or in the state of **frozen fright**. It is also stated that the **absence of consent cannot be refuted exclusively by the child's silence, verbal or physical non-resistance or past sexual conduct**.

However, the Council has deleted essential parts of this text. We strongly regret that the majority of Member States proved unable to get behind a more ambitious approach in ensuring that children, who have reached the age of sexual consent, are provided with the strongest and most comprehensive **legal protection** as possible against unwanted sexual acts.

¹ According to the ONE in FIVE Campaign by the Council of Europe, <https://human-rights-channel.coe.int/stop-child-sexual-abuse-in-sport-en.html>.

For us, it goes without saying that **unconscious** or **sleeping** children cannot consent to sexual acts. Neither can the absence of consent be refuted exclusively by the child's silence, **verbal or physical non-resistance** or **past sexual conduct**. This should all be made clear in the operative part of the Directive.

Furthermore, research shows that **frozen fright** is a common reaction to rape and sexual violence. For example, the study "Tonic immobility during rape" shows that 70 percent of the victims of rape experienced a freeze reaction by becoming immobile and unable to resist when subjected to rape, and almost 50 percent had experienced an extreme freezing reaction. The state of frozen fright is not giving consent. It is an instinctive survival response, and this should be clearly stated in the operative part of the Directive, as suggested by the Commission.

To conclude, we strongly regret the inability of the majority of Member States to join forces in advocating a more ambitious and comprehensive approach to protect children, who have reached the age of sexual consent, from unwanted sexual acts.
