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NOTE

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

Subject: The draft 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 Austria

Delegations will find in annex a statement by Austria.

Statement by Austria**Statement by the Republic of Austria on Article 14 of the proposal for a Directive on combating child sexual abuse**

Austria acknowledges the efforts made to align the provisions on the liability of and penalties for legal persons in Articles 13 and 14 of the proposal with those in existing Directives or proposals for Directives. Consistency with other legal acts of the Union is essential for Austria when adopting new legal acts in order to create a harmonised EU legal system and to enable Member States to implement it in a uniform manner.

However, in our opinion, Article 14 of the proposal for a Directive on combating child sexual abuse regrettably does not fulfil these requirements: the proposed system of penalties for legal persons does not correspond to the system used in other Directives (in particular the Directive on the protection of the environment through criminal law or the Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures) or in other proposals for Directives, such as the proposal for a Directive on trafficking in human beings, in that it proposes a different regime in the relationship between the levels of penalties for natural and legal persons. The system used so far provides for a fine of 1 % of global turnover or EUR 8 million as a fixed amount for legal persons, which corresponds to a custodial sentence of one year for natural persons, and for a fine of 5 % of global turnover or EUR 40 million as a fixed amount for legal persons, which corresponds to a custodial sentence of five years for natural persons. While the present proposal for the amount of the fine corresponding to a custodial sentence of one year adheres to this system, it deviates from it in the case of a custodial sentence of five years and provides for only 3 % instead of the 5 % that has always been used to date.

Austria regrets this deviation. It risks creating fragmentation of Union law and implementation difficulties for Member States. In addition, this approach also undermines the parallel efforts to create so-called ‘model provisions’ for criminal law.

