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

Subject: Draft Directive of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (**first reading**)
- Adoption of the legislative act (**LA + S**)

Statement by the Commission relating to Article 6 on the burden of proof

The Commission regrets the deletion of Article 5, paragraph 2, of its proposal for a Directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings. The Commission considers that the compromise in relation to Article 6 may lead to problems in the implementation of this Directive, in terms of legal certainty, monitoring and operability, which may increase the risk of unnecessary litigation, in particular at national level. However, the Commission does not stand in the way of the adoption of this Directive.

**Statement by the Commission relating to Article 7, paragraph 6, on the right to remain silent
and the right not to incriminate oneself**

The Commission considers that Article 7, paragraph 6, of the Directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings must be interpreted as merely confirming the possibility for Member States to decide that, with regard to minor offences, the conduct of the proceedings, or certain stages thereof, may take place in writing or without questioning of the suspect or accused person by the competent authorities.

In contrast, this provision does not allow derogating from the rights enshrined in Article 7, and it may notably not be interpreted as obliging a suspect to make any statements in relation to the facts at issue or allowing a Member State to draw negative consequences from the exercise of the suspects' right to remain silent.
