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**'I/A' ITEM NOTE**

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. Cion doc.:	9289/21 ADD1
Subject:	Commission draft implementing regulation (EU) .../... of ... 2021 setting out technical and operational specifications of the technical system for the cross-border automated exchange of evidence and application of the "once-only" principle in accordance with Regulation (EU) 2018/1724 of the European Parliament and of the Council - Decision to exercise the right of scrutiny

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1. Article 11 of Regulation (EU) No 182/2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers<sup>1</sup> (the Comitology Regulation') provides that, where a basic act is adopted under the ordinary legislative procedure, either the European Parliament or the Council may at any time indicate to the Commission that, in its view, a draft implementing act exceeds the implementing powers provided for in the basic act. In such a case, the Commission shall review the draft implementing act, taking account of the positions expressed, and shall inform the European Parliament and the Council whether it intends to maintain, amend or withdraw the draft implementing act.

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<sup>1</sup> OJ L 55, 28.2.2011, p. 13.

2. Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012<sup>2</sup> entered into force on 22 October 2018.
3. Article 14(9) of Regulation (EU) 2018/1724 confers implementing powers to the Commission in order to set out, by 12 June 2021, the technical and operational specifications of the technical system necessary for the implementation of Article 14 of the said regulation regarding the technical system for the cross-border automated exchange of evidence and application of the 'once-only' principle. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 5 of the Comitology Regulation.
4. The Commission presented the draft 'Commission implementing regulation (EU) .../... setting out technical and operational specifications of the technical system for the cross-border automated exchange of evidence and application of the "once-only" principle in accordance with Regulation (EU) 2018/1724 of the European Parliament and of the Council' at the Single Digital Gateway Committee meeting of 25 May 2021<sup>3</sup>. The Commission's draft implementing regulation was notified to the Council on 2 June 2021.

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<sup>2</sup> OJ L 295, 21.11.2018, p. 1.

<sup>3</sup> ST 9289/21 ADD 1

5. During its informal videoconference on 1 June 2021, the members of the Working Party on Competitiveness and Growth (Internal Market) expressed their positions in view of exercising the Council's right of scrutiny pursuant to Article 11 of the Comitology Regulation as regards the Commission's draft implementing regulation. Considering that Articles 4(2) and 19 of the draft implementing regulation contemplate the setting out of technical and operational specifications after the date of 12 June 2021 and outside the remit of the examination procedure as established in Regulation (EU) 2018/1724, as well as considering that Article 14 of the draft implementing regulation obliges Member States to ensure that the procedure portal of the evidence requester gives the user access to a preview space, which deviates from Article 14(5) of Regulation (EU) 2018/1724, a large number of Member States found that the Commission's draft implementing regulation exceeds the implementing powers provided for in Article 14(9) of Regulation (EU) 2018/1724.
6. In light of the above, the Permanent Representatives Committee is invited to:
- i) Confirm its agreement that the Commission's draft implementing regulation exceeds the implementing powers provided for in Regulation (EU) 2018/1724;
  - ii) Recommend that, in view of the fact that the draft implementing regulation exceeds the implementing powers provided for in Regulation (EU) 2018/1724, the Council exercise the right to scrutiny pursuant to Article 11 of Regulation (EU) 182/2011 and inform the Commission and the European Parliament thereof.
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