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'I/A' ITEM NOTE

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

No. prev. doc.: 12419/19

Subject: Draft COUNCIL DECISION (EU) 2019/... of... concerning the request of Ireland to take part in some of the provisions of the Schengen acquis relating to the European Union Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA)
– Adoption

1. On 14 November 2018, Regulation (EU) 2018/1726 of the European Parliament and of the Council¹ was adopted, repealing Regulation (EU) No 1077/2011. Regulation (EU) 2018/1726 establishes the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-Lisa) (the 'Agency'), which replaces and succeeds the agency as established by Regulation (EU) No 1077/2011. The Agency is responsible for the operational management of SIS II, VIS and Eurodac, and for the preparation, development and operational management of EES, DubliNET and ETIAS.

¹ Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99).

2. Under the regime previously regulated by Regulation (EU) 1077/2011, the question of the participation of Ireland was regulated by Decision 2012/764/EU, by which the Council authorised Ireland to take part in Regulation (EU) 1077/2011 to the extent that it relates to the operational management of the VIS and the parts of SIS II, in which Ireland does not participate.
3. Given its participation in Eurodac, DubliNet and its partial participation in SIS II, Ireland has the right to participate in the activities of the Agency, to the extent that it is responsible for the operational management of SIS II as governed by Regulation of the European Parliament and of the Council (EU) 2018/1862 which will replace Council Decision 2007/533/JHA, of Eurodac and of DubliNet.
4. However, the Agency has a single legal personality and is characterised by the unity of its organisational and financial structure, and was established by means of a single legislative instrument which is applicable in its entirety in the Member States bound by it. This excludes the possibility of partial applicability for Ireland. Consequently, necessary steps should be taken to ensure that Regulation (EU) 2018/1726 is applicable to Ireland in its entirety.
5. By letters of 12 April 2019, Ireland notified the Commission and the Council, of its intention to accept the provisions of Regulation (EU) No 2018/1726 relating to Eurodac and DubliNet. In accordance with the procedure provided for in Article 331(1) of the TFEU, the Commission confirmed, by Decision C(2019) 5336 final of 23 July 2019, the application to Ireland of Regulation (EU) 2018/1726 in so far as its provisions relate to Eurodac and DubliNet. Following the adoption of that Commission Decision, the first precondition for the participation of Ireland in the Regulation (EU) 2018/1726 is fulfilled.
6. By a letter dated 12 April 2019, Ireland has also requested to take part in Regulation (EU) 2018/1726 under Article 4 of the Schengen Protocol to the extent that its provisions refer to the responsibility of the Agency for the operational management of SIS II as governed by Regulation (EU) 2018/1861 which will replace Regulation (EC) No 1987/2006, and for the VIS, the EES and ETIAS, that is for the systems to which Ireland does not participate.

7. The Council recognizes the right of Ireland to make a request for participation in the proposed Regulation in accordance with Article 4 of the Schengen Protocol. For that matter, delegations may refer in particular to the explanations contained in documents² which preceded the adoption of Decision 2012/764/EU, with the necessary adaptations to reflect the text of Regulation (EU) 2018/1726.
8. The draft Council Decision concerning the request of Ireland to take part in some of the provisions of the Schengen acquis relating to the European Union Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA)³ was examined by the delegations (group of JHA Counsellors (eu-LISA)) in an informal silence procedure which expired on Monday 30 September 2019 without any remarks being raised.
9. Based on the above, the Permanent Representatives Committee is invited to approve the draft Council Decision, as set out in 12543/19 after legal-linguistic revision, and forward it to the Council for adoption as an A item on the agenda of one of its meetings.

² 12373/10, 14016/1/10 REV 1.

³ 12419/19.