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European Union

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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  - Commission's reply to the Council's decision of 10 June 2021 to exercise its right of scrutiny
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EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

The Secretary-General

Brussels,  
SG.DSG3/B3 HK/RP

Dear Mr Seeuws,

Please find enclosed the Commission's reply (SEC(2021)306) to the Council's decision of 10 June 2021 to exercise its right of scrutiny pursuant to Article 11 of Regulation (EU) No 182/2011 regarding the draft Commission Implementing Regulation (EU) .../... of xxx 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.

In accordance with Article 11 of Regulation (EU) No 182/2011, the European Parliament is in copy of this reply.

Yours sincerely,

Ilze JUHANSONE  
*signed p.o.*  
Martine DEPREZ  
(Director SG.B)

Attached: 1

Copy: Markus WINKLER, Deputy Secretary-General of the European Parliament

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 Electronically signed on 31/08/2021 17:36 (UTC+02) in accordance with article 11 of Commission Decision C(2020) 4482

**Commission response to the Council's decision to exercise its right of scrutiny concerning 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' (decision number: 9289/21 ADD 1-2 MI)**

On 10 June 2021 the Council notified the Commission of its decision, in accordance with Article 11 of Regulation (EU) No 182/2011, to exercise its right of scrutiny concerning 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 (further referred to as "draft implementing regulation"). In that decision, the Council took the view that the Commission exceeded the implementing powers conferred on it by Article 14(9) of that Regulation. The Council based its decision on the following arguments:

- a) Articles 4(2) and 19 of the draft implementing regulation contemplating 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;
- b) Article 14 of the draft implementing regulation obliging 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.

The Commission would like to point out that those arguments, discussed at the Internal Market working party meeting on 1 June 2021, relate to an outdated version of the draft implementing regulation. A revised draft was transmitted to the Council and the Parliament on 7 June 2021 (Document D074092/01).

Concerning the first point, the Commission would like to stress that the empowerment conferred on the Commission to adopt implementing acts pursuant to Article 14(9) of Regulation (EU) 2018/1724 is not limited in time. Consequently, the Commission remains empowered and obliged to adopt one or several implementing acts based on that provision after 12 June 2021. The Commission therefore does not agree with the view expressed by the Council that the adoption of an implementing act after that date would constitute an example of the Commission exceeding the implementing powers conferred on it by Article 14(9) of Regulation (EU) 2018/1724.

As is the case for other technical systems set out by the Commission, the technical and operational specifications laid down in the implementing act will be accompanied by a set of detailed, non-binding technical documents aimed at supporting the Member States in their implementation of the technical and operational specifications. Those "technical design

documents”, as defined in the draft implementing regulation, will be drawn up by the Commission in cooperation with the Member States.

In accordance with Article 11 of Regulation (EU) No 182/2011, the Commission hereby informs the Council that, in relation to point a) above, it does not consider that the draft implementing act exceeds the implementing powers conferred on it by Article 14(9) of Regulation (EU) 2018/1724 and that there is therefore no need to modify the draft for that reason.

Concerning the second point, and in accordance with Article 11 of Regulation (EU) No 182/2011, the Commission hereby informs the Council that it has modified the draft implementing regulation in order to take account of the argument put forward by the Council. When a new draft is sent to the comitology committee, it will contain the revised wording already included in Document D074092/01.

That notwithstanding, the Commission would like to inform the Council and also the European Parliament, which is in copy of this letter, of its intention to further amend the draft implementing regulation setting out the “once-only” technical system. The Commission will engage in discussions with Member States to determine the precise scope of additional changes in order to transmit a new draft to the comitology committee.