

# **EDPS comments on Eurojust's draft internal rules concerning restrictions of certain data subjects' rights (Article 25 of the Regulation (EU) 2018/1725)**

## **1. Introduction**

These comments refer to Eurojust's draft internal rules concerning restrictions of certain rights of data subjects (pursuant to Article 25 of Regulation (EU) 2018/1725, hereinafter 'The Regulation'<sup>1</sup>).

The EDPS' comments refer to the document submitted on 9 June 2020. We provide these comments in accordance with Article 41(1) of the Regulation.

We take note that the draft internal rules are based on the template included in the EDPS Guidance on Article 25 of the Regulation (version of 9 March 2020) and that only minor adaptations have been included in the updated draft internal rules. Please note that an updated version of the Guidance, including of the internal rules template, was published on 24 June 2020.<sup>2</sup>

## **2. General comments**

- We welcome that Eurojust will only restrict data subject's rights based on internal rules providing for restrictions of certain data subjects' rights (hereinafter 'draft rules'), which provide a clear legal basis thereto.
- The EDPS welcomes the fact that the draft rules provide for the obligation to document the application of restrictions in each specific case.
- The EDPS also takes note of the fact that Eurojust will perform a necessity and proportionality test on the need for the restriction of data subjects' rights in each case.
- Applying the necessity principle, the EDPS has underlined that restrictions should be temporary and be lifted when their causes no longer apply. Therefore, the EDPS notes with satisfaction that applicable restrictions will be reviewed at least every six months.
- In order to ensure appropriate general transparency, clarity and foreseeability of these potential restrictions towards data subjects, we take note that Eurojust will publish data protection notices on its website/intranet containing information on potential restrictions of data subjects' rights.

## **3. EDPS recommendations**

- **Recommendation 1:** Article 1(4) of the draft rules lists the categories of personal data 'covered by this Decision', namely: 'identification, contact and behavioural data'. As Recital 10 refers to other categories of personal data (including, for

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<sup>1</sup> OJ L 295, 21.11.2018, p. 39.

<sup>2</sup> Available on the EDPS website via: [https://edps.europa.eu/data-protection/our-work/publications/guidelines/guidance-art-25-regulation-20181725\\_en](https://edps.europa.eu/data-protection/our-work/publications/guidelines/guidance-art-25-regulation-20181725_en)

example financial), Eurojust is invited to reflect on the categories of personal data to be covered by the future Decision on restrictions of data subjects' rights.

- **Recommendation 2:** Article 1(5) of the draft rules refers to a number of administrative entities representing the controller. The EDPS recommends referring in the Decision only to the highest management level function of the controller as ultimately accountable for compliance with the data protection rules. This would also avoid an update of the Decision should the organisational chart undergo changes.
- **Recommendation 3:** Depending on Eurojust's particular circumstances and its envisaged use of a restriction of confidentiality of electronic communications, Eurojust could consider adding a new provision under Article 8(3) allowing it to defer, omit or deny the provision of information concerning the reasons for a restriction and the right to lodge a complaint with the EDPS for as long as it would cancel the effect of the restriction. However, Eurojust should be aware that this should only take place in exceptional situations and on a case-by-case basis. If Eurojust opts for this provision, it should remove 'notwithstanding Article 6(3)' from Article 8(2), for consistency and legal clarity. For further reference, please consult the updated version of internal rules template included in the Guidance on Article 25 (version of 24 June 2020).

Brussels, 24 June 2020