



EUROPEAN DATA PROTECTION SUPERVISOR

# Opinion 01/2018

## EDPS Opinion

### on the proposal for a recast of Brussels IIa Regulation

*(Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction)*



15 February 2018

*The European Data Protection Supervisor (EDPS) is an independent institution of the EU, responsible under Article 41(2) of Regulation 45/2001 'With respect to the processing of personal data... for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to privacy, are respected by the Community institutions and bodies', and '...for advising Community institutions and bodies and data subjects on all matters concerning the processing of personal data'. Under Article 28(2) of Regulation 45/2001, the Commission is required, 'when adopting a legislative Proposal relating to the protection of individuals' rights and freedoms with regard to the processing of personal data...', to consult the EDPS.*

*He was appointed in December 2014 together with the Assistant Supervisor with the specific remit of being constructive and proactive. The EDPS published in March 2015 a five-year strategy setting out how he intends to implement this remit, and to be accountable for doing so.*

*This Opinion responds to a formal consultation by the Council of the European Union pursuant to Articles 41(2)(2) and 46(d) of Regulation 45/2001 and provides recommendations on how to better safeguard the right to privacy and the protection of personal data in the proposed recast of the Brussels IIa Regulation.*

## Executive Summary

The Brussels IIa Regulation is the cornerstone of judicial cooperation in family matters in the European Union. It establishes uniform jurisdiction rules for divorce, separation and annulment of marriage as well as for disputes about parental responsibility in cross-border situations. The overall objective of the recast of the Brussels IIa Regulation is to remove the remaining obstacles to the free movement of judicial decisions in line with the principle of mutual recognition and to better protect the best interest of the child by simplifying the procedures and enhancing their efficiency.

The new proposed rules aim to promote better cooperation between Central Authorities, which exchange information within and across Member States, without involving the creation of any IT system. The EDPS had not been consulted on the proposal by the Commission. Given that concerns regarding the relationship between the proposed recast and the Union law on protection of personal data were raised during the discussions within the Council Working Party on Civil Law Matters, the Council formally requested an opinion of the EDPS. The EDPS welcomes this request for consultation from the Council.

The Opinion focuses on specific **recommendations to strengthen the lawfulness of the processing** provided for under Articles 63 and 64 of the Proposal. Additionally, the EDPS provides **recommendations for suitable and specific safeguards to protect the fundamental rights and interests of the data subjects**.

In the light of Articles 6(3) and 9(2)(g) of the GDPR and in consideration of the context, the aim of the Proposal and the fact that children are among the data subjects affected by the Proposal, the EDPS recommends including in the Regulation specific clauses in relation to the purpose of processing and the types of data subject to the processing. In particular, **the EDPS recommends clarifying whether the cooperation framework set up under Chapter V of the Proposal covers parental responsibility matters only or includes international child abduction as well**. Thus, considering that Chapter V appears to include both areas of cooperation, and in order to provide more legal certainty and to satisfy the requirements of the purpose limitation principle, the EDPS considers that Article 63(3) could be modified to narrow the purposes to “*cooperation in specific cases relating to parental responsibility and international child abduction*”. **In addition, the EDPS would welcome an explicit reference to the principles of data quality and minimisation in the Regulation.**

In the context of the current Proposal, **the EDPS is satisfied that Article 63(4) provides for the obligation, as a principle, to notify the data subject about the transmission of information. This obligation may be postponed, as an exception, until the request has been carried out**. This limitation, which aims to ensure a fair balance between the rights of the data subjects to be informed about the transmission and the interests of the Member States to exchange information, in itself does not appear to raise fundamental questions from the point of view of the general principles of lawfulness, fairness and transparency. However, the EDPS considers that the reference to the “*national law of the requested Member State*” may be subject to confusion in that it seems to allow the introduction of national restrictions to the duty to inform. **The EDPS recommends specifying that the reference to the national law of the requested Member State under Article 63(4) does not allow further limitations on the right to information to be introduced at national level, so that the specific measure envisaged to ensure fairness of the processing enshrined in this provision be consistently applied across the Union.**

In addition, the EDPS recommends establishing in the Regulation, as a principle, the right of access of data subjects to the information transmitted to the requesting authority of a Member State. The EDPS further recommends, to the extent restrictions to the rights of access and rectification are considered necessary in the particular context of the Proposal, supplementing the Proposal with a clear and specific provision laying down “*the scope of the restrictions*”, in accordance with Article 23(2)(c) of the GDPR.

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## **THE EUROPEAN DATA PROTECTION SUPERVISOR,**

Having regard to the Treaty of the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to the Charter of Fundamental Rights of the European Union, and in particular Articles 7 and 8 thereof,

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>1</sup>, and to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)<sup>2</sup>,

Having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>3</sup>, and in particular Articles 28(2), 41(2) and 46(d) thereof,

Having regard to Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters<sup>4</sup>, and to Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA<sup>5</sup>,

### **HAS ADOPTED THE FOLLOWING OPINION:**

## **1. INTRODUCTION AND BACKGROUND**

1. On 30 June 2016, the Commission submitted to the Council a Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast). The Proposal is a recast of Council Regulation (EC) No 2201/2003 of 27 November 2003, repealing Regulation (EC) No 1347/2000 (the so-called Brussels IIa Regulation, hereinafter the “Proposal”).
2. The Brussels IIa Regulation is the cornerstone of judicial cooperation in family matters in the European Union. It establishes uniform jurisdiction rules for divorce, separation and annulment of marriage as well as for disputes about parental responsibility in cross-border situations. It facilitates the free circulation of judgements, authentic instruments and agreements in the Union by laying down provisions on their recognition and enforcement in other Member States. It applies since 1 March 2005 to all Member States<sup>6</sup> except Denmark<sup>7</sup>.
3. The Commission has assessed the operation of the Regulation in practice and considered necessary to amend the instrument in its application report adopted in April 2014<sup>8</sup>. The evaluation showed that between the two major areas covered by the

Regulation, matrimonial and parental responsibility matters, the latter was identified to have caused acute problems. In addition, the European Court of Justice (CJEU) has so far rendered 24 judgments concerning the interpretation of the Regulation, which were taken into account.

4. The overall objective of the Proposal is to further develop the European area of Justice and Fundamental Rights based on mutual trust by removing the remaining obstacles to the free movement of judicial decisions in line with the principle of mutual recognition and to better **protect the best interest of the child** by simplifying the procedures and enhancing their efficiency.
5. In particular, the Proposal abolishes the procedure of *exequatur*<sup>9</sup> for all decisions covered by the Regulation's scope, introducing, instead, **automatic recognition of all judgments from other EU Member States**. The Proposal also clarifies a number of issues concerning cross-border child abduction, with the aim of improving the efficiency of the return of an abducted child.
6. The new rules aim to promote **better cooperation between Central Authorities**, which exchange information within and across Member States, without involving the creation of any IT system. The Council Working Party on Civil Law Matters has nevertheless raised concerns during the discussions about the relationship between the proposed recast and the Union law on protection of personal data.
7. On 11 January 2018, the Council submitted to the EDPS a formal request for an opinion, in particular on Articles 63(3) and 63(4) of the Proposal, concerning rules on how information collected by Central Authorities dealing with cross border cases may further be used and how notification to data subjects should be done.
8. The EDPS welcomes that he has been consulted by the Council. The focus of this Opinion, is to provide specific recommendations to strengthen the lawfulness of the processing provided for under Articles 63 and 64 of the Proposal (Section 2). Additionally, the EDPS provides recommendations for suitable and specific safeguards to protect the fundamental rights and interests of the data subjects (Section 3).

## 2. **LAWFULNESS OF THE PROCESSING (Articles 63 and 64 of the Proposal)**

9. As a preliminary remark, the EDPS welcomes that the applicability of Regulation (EU) No 2016/679<sup>10</sup> ("the GDPR") is highlighted in recital 43, which provides that "*Regulation (EU) No 2016/679 applies to the processing of personal data by the Member States carried out in application of this Regulation*".
10. The Proposal provides, in particular under Articles 63 and 64, the legal basis for the processing and exchange of personal data in the context of cross-border cooperation in matters of parental responsibility and international child abduction. From the point of view of EU data protection rules, the legal bases for the envisaged processing and exchange of personal data can be found in Article 6(1)(c) and 6(1)(e) of the GDPR: "*processing is necessary for compliance with a legal obligation to which the controller*

*is subject” and/or “for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”.* According to Article 6(3) of the GDPR, when the basis of the processing is a legal obligation or a public interest, envisaged by Union law or national law, to which the controller is subject, **“that legal basis may contain specific provisions to adapt the application of rules of this Regulation, inter alia: the general conditions governing the lawfulness of processing by the controller; the types of data which are subject to the processing; the data subjects concerned; the entities to, and the purposes for which, the personal data may be disclosed; the purpose limitation; storage periods; and processing operations and processing procedures, including measures to ensure lawful and fair processing [...]”** (emphasis added).

11. In addition, the Proposal provides for the processing and exchange of information that may involve, in many situations, the processing of special categories of data such as data concerning the health of the child and/or of the parents (e.g. information regarding *“the situation of the child”* under Article 64(1)(a) of the Proposal). Whenever data that belong to such special category are processed, Article 9(2)(f) and 9(2)(g) will become applicable: *“processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity”* and *“processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject”* (emphasis added).
12. In light of Articles 6(3) and 9(2)(g) of the GDPR and considering the context, the aim of the Proposal and the fact that children are among the data subjects affected by the Proposal, the EDPS recommends including in the Regulation specific clauses in relation to:
  - the **purpose of processing**; and
  - the **types of data** which are subject to the processing in the light of the principles of data quality and minimisation.
13. The proposed suitable and specific measures to ensure fair processing and the protection of the data subjects’ rights of access and rectification are discussed in Section 3.

### **3.1. Purpose of the processing**

14. The proposed Article 63(3) of the Proposal provides:

***“The Central Authorities shall, within their Member States, transmit the information referred to in Articles 63 and 64 to the competent authorities, including the authorities competent for service of documents and for enforcement of a decision, as the case may be. Any authority to which information has been transmitted pursuant to Articles 63 and 64 may use it for the purposes of this Regulation”*** (emphasis added).

15. Articles 63 and 64 are included in Chapter V of the Proposal, entitled *“Cooperation between central authorities in matters of parental responsibility”*. The scope of the

cooperation covered under this Chapter is however not sufficiently clear, since it does not appear limited to “*parental responsibility matters*”, but instead appears under Article 63(1)(g) to include cooperation in cases of “*international child abduction*”, which is dealt with extensively under Chapter III of the Proposal.

16. The EDPS emphasises that, given that the Proposal aims to provide the legal ground for the envisaged personal data processing by the competent authorities, the definition of the purpose(s) for which personal data are to be processed (including disclosure) must be sufficiently specified and explicit (see Article 5(1)(b) of the GDPR).
17. The EDPS understands that the objective of the Proposal is to enhance cooperation in parental responsibility matters and in cases of international child abduction. Therefore, the EDPS recommends clarifying the Proposal so as to ensure consistency between the titles of the Chapters and their content. In particular, **the EDPS recommends clarifying whether the cooperation framework set up under Chapter V of the Proposal covers parental responsibility matters only or includes international child abduction as well.** Alternatively, the Proposal may set up two distinct cooperation frameworks, one for each area.
18. In addition, the EDPS considers that the definition of the purposes of cross-border transmission of information and further use by the receiving authorities under Article 63(3) are provided in broad and not sufficiently specific terms (“*for the purposes of this Regulation*”). This could be interpreted to include matrimonial matters as well, and should be explicitly narrowed down.
19. Specific and explicit determination of the purpose(s) of the processing and exchange of information is also necessary to ensure that the “*authorities*” entitled to process personal data under the Proposal are clearly defined. The EDPS notes that under Article 2(1) of the Proposal, an “*authority*” means “*any judicial or administrative authority in the Member States with jurisdiction in the matters falling within the scope of this Regulation*”. It follows that the various authorities referred to in the Proposal, and in particular under Article 63 and 64, such as “*Central authorities*”, “*Competent authorities*” (including authorities competent for service of documents and for enforcement of a decision); “*Authorities or other bodies*” or “*Any authority*” shall be interpreted in the light of the definition of Article 2(1). As far as Chapter V of the Proposal is concerned, the EDPS understands that authorities who do not have specific jurisdiction in the matters of parental responsibility or international child abduction should not be the requester or recipient of any information processed on the basis of the Regulation<sup>11</sup>.
20. Considering that Chapter V appears to include both areas of cooperation, and in order to provide more legal certainty and to satisfy the requirements of the purpose limitation principle, the **EDPS considers that Article 63(3) could be modified to narrow the purposes to “*cooperation in specific cases relating to parental responsibility and international child abduction*”,** thus excluding “*matrimonial matters*”, which is the other major area covered by the Regulation. The definitions of “*competent authority*” etc. should be adapted accordingly.

### 3.2. Categories of data processed and principles of data quality and minimisation

21. Article 64(1) of the Proposal provides that “[u]pon a request made with supporting reasons by the Central Authority or an authority of a Member State with which the child has a substantial connection, the Central Authority of the Member State where the child is habitually resident and present may, directly or through authorities or other bodies: (a) provide a report:
  - (i) on the situation of the child;
  - (ii) on any procedures under way concerning the child; or
  - (iii) on decisions taken concerning the child”.
22. Paragraph 2 further stipulates that “[w]here a decision in matters of parental responsibility is contemplated, an authority of a Member State, if the situation of the child so requires, may request any authority of another Member State which has information relevant to the protection of the child to communicate such information”.
23. Pursuant to Article 5(1)(c) of the GDPR, personal data must be adequate, relevant and limited to what is necessary for the purposes for which they are processed (data quality and data minimisation principles). This principle of EU data protection rules remains fully applicable also in the context of the Proposal. Compliance with the data minimisation principle becomes all the more critical given the processing under the Proposal is likely to regularly involve sensitive data of children, particularly vulnerable members of society who deserve specific protection.
24. The EDPS understands that parental responsibility matters routinely require complex and thorough analysis in order to evaluate and protect the best interests of the child. This may often involve the processing of a wide range of personal data, depending on the circumstances and context of each specific case. **The EDPS would nevertheless welcome an explicit reference to the principles of data quality and minimisation in the Regulation.** The EDPS recommends adding a paragraph as follows: “Any information collected and exchanged between Central Authorities or other authorities of Member States shall be adequate, relevant and limited to what is necessary, depending on the circumstances of each case, for the purposes of cooperation in parental responsibility matters and international child abduction”.

### 3. SUITABLE AND SPECIFIC MEASURES TO SAFEGUARD THE FUNDAMENTAL RIGHTS AND INTERESTS OF THE DATA SUBJECT (Article 63(4) of the Proposal)

- As required under Article 9(2)(g) of the GDPR, when the processing of special categories of data is carried out on the basis of “reasons of substantial public interest, on the basis of Union or Member State law”, such law “shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for **suitable and specific measures** to safeguard the fundamental rights and the interests of the data subject”. In the context of the current Proposal, the EDPS considers of particular importance to address specific measures to ensure a fair processing (3.1) and recommends to include specific measures to ensure access and rectification rights (3.2).

### 3.1 Specific measures to ensure fair processing

- Article 5(1)(a) of the GDPR requires that personal data should be processed lawfully, fairly and in a transparent manner in relation to the data subject (“*lawfulness, fairness and transparency*”). The data subject should be informed of the existence of the processing operation and its purposes, and any further necessary information taking into account the specific circumstances and the context<sup>12</sup>. Articles 13 and 14 of the GDPR further provide for specific obligations of information to be provided to the data subject where personal data are collected from the data subject or obtained from other sources.

- Article 63(4) of the Proposal introduces the duty to inform the data subjects about the transmission of all or part of the information relating to them and the possibility to restrict this information as follows:

*“Notification of the data subject of the transmission of all or part of the information collected shall take place in accordance with the national law of the requested Member States.*

*Where there is a risk that it may prejudice the effective carrying out of the request under this Regulation, for which the information was transmitted, such notification may be deferred until the request has been carried out”.*

- The EDPS wishes to recall that any restriction to the right of information of the data subjects under Articles 13 and 14 of the GDPR shall comply with the standard established under Article 23 of the GDPR. Pursuant to this Article, Union or Member State law to which the data controller is subject may restrict by way of a legislative measure the scope of the obligations of information when such a restriction respects the essence of the fundamental rights and freedoms and is necessary and proportionate measure in a democratic society to safeguard one of the objective of public interests listed. In this particular case, the restriction introduced by Article 63(4) of the Proposal could be based on “*the enforcement of civil law claims*” (Article 23(1)(j)), the “*protection of the data subject or the rights and freedoms of others*” (23(1)(i)) or “*the protection of judicial independence and judicial proceedings*” (23(1)(f)). Article 23(2)(c) of the GDPR requires that such a legislative measure contain specific provisions regarding “*the scope of the restrictions introduced*”.
- The EDPS notes that the Proposal provides for the obligation, as a principle, to notify the data subject about the transmission of the information. This obligation may be postponed, as an exception, until the request has been carried out, in the mentioned circumstance of risks. This limitation, which aims to ensure a fair balance between the rights of the data subjects to be informed about the transmission and the interests of the Member States to exchange information, in itself does not appear to raise fundamental questions from the point of view of the general principles of lawfulness, fairness and transparency.
- However, the EDPS considers that the reference to the “*national law of the requested Member State*” may be confusing in that it seems to allow the introduction of national restrictions to the duty to inform. The EDPS is concerned that, if his interpretation is correct, the application of this provision in practice could hinder the harmonized application of the balance of interests achieved by the Proposal. **The EDPS therefore**

**recommends specifying that the reference to the national law of the requested Member State under Article 63(4) does not allow further limitations on the right to information to be introduced at national level, so that the specific measure envisaged to ensure fairness of the processing enshrined in this provision be consistently applied across the Union.**

- In addition, the EDPS recalls that, considering that the data subjects most likely to be affected by the Proposal are children (thus being less aware of the risks involved), the GDPR provides that children merit specific protection with regard to their personal data<sup>13</sup>. With this in mind, **the EDPS invites Member States authorities to consider appropriate measures (to the extent children or minors would be recipients of that information) to communicate in a concise, transparent, intelligible and easily accessible form, by using clear and plain language.**

### 3.2 Access and rectification rights

- In addition to his recommendations set out above, aiming at ensuring fairness of the processing, the EDPS considers that the Proposal would benefit from further strengthening of the protection for the fundamental rights and interests of the data subjects (including children). This would best be achieved by supplementing the Proposal with **specific provisions to safeguard the rights of access and rectification of data subjects.**
- The EDPS points out that Article 8(2) of the Charter specifically stipulates that *“everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified”*. Consequently, the rights of access and rectification may be considered as essential components of the right to the protection of personal data. The right of access is of particular importance as it enables the data subjects to exercise the other rights provided for by data protection legislation, in particular, the individuals may become aware of any inaccuracies in their data and would be able to rectify these. These rights are further detailed under Articles 15 and 16 of the GDPR.
- As explained above, Union or Member States law may provide restrictions to these rights within the limits established under Article 23 of the GDPR. Article 23(2)(c) of the GDPR requires that such a legislative measure contain specific provisions regarding *“the scope of the restrictions introduced”*.
- In the absence of such restrictions under national law, the rights of access and rectification under Articles 15 and 16 of the GDPR will be directly applicable (from 25 May 2018). Conversely, if certain or all Member States choose to introduce restrictions to these rights applicable in the context of the Proposal, this would inevitably lead to divergence of standards and practices across Member States, resulting in inconsistent consideration and handling of access requests.
- The EDPS has not performed a full assessment of the existence and extent of derogations provided under national law to the rights of access and rectification in the specific context of judicial or administrative proceedings in parental responsibility matters. Nevertheless, as the stated objective of the Proposal is to harmonise and

enhance the effectiveness of such procedures in cases of cross-border cooperation, the EDPS considers relevant including in the Proposal itself a **specific provision** (cf. Article 23(2)(c) of the GDPR) to ensure the consistent application across the Union of the rights of access and rectification. This would help ensure that both parents and children (through their legal representative or as from the age of their majority) could invoke a right of access to the information exchanged in the context of the Proposal. It should be kept in mind that information exchanged in cases of parental responsibility is usually of sensitive nature and contributes to decisions that have important and often dramatic impact on the lives of individuals. Thus, it is important to consider the overall framework not only from the point of view of strict compliance with the right to personal data protection, but also with regard to the right to private and family life of the individuals concerned. For these reasons, the EDPS recommends that the EU legislator considers providing specific guarantees in this respect.

- **The EDPS recommends establishing in the Regulation, as a principle, the right of access of data subjects to the information transmitted to the requesting authority of a Member State. The EDPS further recommends, to the extent restrictions to the rights of access and rectification are considered necessary in the particular context of the Proposal, supplementing the Proposal with a clear and specific provision laying down “*the scope of the restrictions*”, in accordance with Article 23(2)(c) of the GDPR. The possibility to deny access temporarily, depending for instance on the timing of the procedure, the protection of the data subject (e.g. the best interests of the child) or of the rights and freedoms of others should be defined in the Proposal.**

## 4. CONCLUSION

### Lawfulness of the processing

38. **As a main recommendation** and in order to strengthen the lawfulness of the processing envisaged (under Articles 6(3) and 9(2)(g) of the GDPR) and considering the context and aim of the Proposal, the EDPS recommends clarifying the scope and purpose(s) of the cooperation established under Chapter V of the Proposal:

- The EDPS recommends clarifying whether the cooperation framework set up under Chapter V of the Proposal covers parental responsibility matters only or includes international child abduction as well. Considering that Chapter V includes both areas of cooperation, and in order to provide more legal certainty and to satisfy the requirements of the purpose limitation principle, the EDPS considers that Article 63(3) should be modified to narrow the purposes to “*cooperation in specific cases relating to parental responsibility and international child abduction*”, thus excluding “*matrimonial matters*”, which is the other major area covered by the Regulation. The definitions of “competent authority” etc. should be adapted accordingly.

39. **As an additional recommendation** to strengthen the lawfulness of the processing:

- The EDPS would welcome an explicit reference to the principles of data quality and data minimisation under Article 64(1) of the Proposal.

## Suitable and specific measures to safeguard the fundamental rights and interests of the data subject

### 40. As a main recommendation:

- The EDPS recommends specifying that the reference to the national law of the requested Member State under Article 63(4) does not allow further limitations on the right to information to be introduced at national level, so that the specific measure envisaged to ensure fairness of the processing enshrined in this provision be consistently applied across the Union.

### 41. As an additional recommendation, the EDPS suggests supplementing the Proposal with specific measures to safeguard the rights access and rectification of data subjects:

- The EDPS recommends establishing in the Regulation, as a principle, the right of access of data subjects to the information transmitted to the requesting authority of a Member State. The EDPS further recommends, to the extent restrictions to the rights of access and rectification are considered necessary in the particular context of the Proposal, supplementing the Proposal with a clear and specific provision laying down “*the scope of the restrictions*”, in accordance with Article 23(2)(c) of the GDPR.

Brussels, 15 February 2018

(signed)

Giovanni BUTTARELLI  
European Data Protection Supervisor

## Notes

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1 OJ L 281, 23.11.1995, p. 31.

2 OJ L 119, 4.5.2016, p. 1.

3 OJ L 8, 12.1.2001, p. 1.

4 OJ L 350, 30.12.2008, p. 60.

5 OJ L 119, 4.5.2016, p. 89.

6 To those Member States which joined the Union after that date, the Regulation applies from the beginning of their membership.

7 Denmark does not participate in the Regulation and is therefore neither bound by it nor subject to its application.

8 COM(2014) 225 final.

9 A procedure whereby a foreign judgment needs to be formally recognised by the Member State of enforcement.

10 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural person with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

11 See also Article 60 of the Proposal: *“Where a communication is sent to a Central Authority without jurisdiction, the latter shall be responsible for forwarding it to the Central Authority with jurisdiction and informing the sender accordingly.”*

12 Recital 39 of the GDPR.

13 Recital 38 of the GDPR.