

## EDPS comments on the draft implementing rules on the Data Protection Officer at Eurojust (2020-0710)

### 1. Introduction

- These comments refer to the draft implementing rules on the Data Protection Officer (DPO) at Eurojust ('the draft rules'). Our comments refer to the document submitted on 24 July 2020.
- We provide these comments in accordance with Article 40(2)(d) of Regulation (EU) 2018/1727 (hereinafter 'the Eurojust Regulation')<sup>1</sup>, 41(1) and 57(1)(g) of Regulation (EU) 2018/1725<sup>2</sup> (EUDPR).

### 2. EDPS recommendations

The EDPS trusts that Eurojust will implement the following recommendations prior to adoption of the draft rules by the Executive Board.

**Recommendation 1:** Article 1(2) of the draft rules provide that the '*The selection criteria shall have regard to the specific professional knowledge and competencies required in Article 36(2) of the Eurojust Regulation and to the Eurojust Competency Framework*'. In light of Article 36(2), read in combination with Recital 38 of the Regulation<sup>3</sup>, the EDPS recommends that the text of the draft rules further clarify the required professional knowledge in terms of expert knowledge in data protection law and practice as well as with regard to the specificities of Eurojust in terms of data processing. Eurojust shall also consider whether the document may also specify that the DPO should have a sound knowledge of the Eurojust's services.

**Recommendation 2:** Article 1(2) of the draft rules provide that '*the Executive Board shall designate a candidate for appointment.*' In order to avoid any misinterpretation, the EDPS recommends clarifying this provision so as to reflect the provisions of Art 26(1) of the Eurojust Regulation: '*The Executive Board shall designate a Data Protection Officer.*'

**Recommendation 3:** The EDPS recommends aligning the provisions of Article 2(1) of the draft rules with Article 36(4) and make it explicit that the total term for the DPO cannot exceed eight years.

**Recommendation 4:** Article 2(2) of the draft rules provides for the possibility that 'the successful candidate is not a member of temporary staff [...]'. The EDPS would like to draw the attention to Recital 38 of the Eurojust Regulation, which provides that '*The Executive Board of Eurojust should designate a Data Protection Officer who should be a member of the existing staff.*' As a result, the EDPS recommends that Article 2 should be adapted accordingly in line with the provisions of Recital 38.

---

<sup>1</sup> OJ L 295, 21.11.2018, p. 138–183

<sup>2</sup> OJ L 295, 21.11.2018, p. 39–98

<sup>3</sup> Recital 38 reads that the person designated as DPO of Eurojust '[...] should have received specialised training in data protection law and practice and for acquiring expert knowledge in that field. The necessary level of expert knowledge should be determined in relation to the data processing carried out and the protection required for the personal data processed by Eurojust'.

**Recommendation 5:** Article 3 of the draft rules refers to the dismissal of the DPO. In accordance with Article 44(3) of the EUDPR and in order to safeguard the independence of the DPO while performing his/her duties, the EDPS recommends specifying that the DPO shall not be dismissed or penalised for performing his/her tasks and that he/she shall directly report to the highest management level of the controller.

**Recommendation 6:** The EDPS recommends that the draft rules specify who will be responsible for keeping the records of processing activities provided for in Article 31 of the EUDPR. The EDPS recommends also that the DPO keeps the register and that the register is made publicly available<sup>4</sup>.

**Recommendation 7:** The EDPS recommends that Eurojust further elaborates in Article 4 on the tasks, duties and powers of the DPO (as listed in Article 45 of the EUDPR and Article 38 of Eurojust Regulation) and in particular with regards to the DPO's role on data protection impact assessments, notification and communication of data breaches. Furthermore, we recommend that the draft rules include provisions on DPO's investigations and in particular with regards to deadlines for responding to the person who commissioned the investigation, obligation and deadline for the controller in charge of the processing operation at stake to respond to the DPO, obligation of confidentiality, obligation to conduct the enquiry in full independence. Additionally, we recommend that the rules contain provisions that, while performing his/her duties, the DPO shall have access at all times to the data forming the subject-matter of processing activities and to all offices, data-processing installations and data carriers, including those of processors. The duties of the DPO could also include the cooperation of the DPO with other DPOs and in particular with the JHA area DPOs.

**Recommendation 8:** The EDPS recommends that Article 4 of the draft rules include provisions regarding the support offered to the DPO in performing his/her tasks in line with Article 44(2) of the EUDPR.

**Recommendation 9:** Article 4(9) of the draft rules provide for the DPO's obligation to *'report periodically on the data protection activities he/she carries out at Eurojust, to the Executive Board as regards administrative personal data and to the College in relation to operational personal data'*. In accordance with Article 38(1)(j) of the Eurojust Regulation, the EDPS recommends clarifying the periodicity of the reporting obligation as well as providing that the report shall be communicated to the EDPS as well.

**Recommendation 10:** The EDPS recommends that the provision referring to the exercise of data subjects' rights (Article 6 of the draft rules) take into account Eurojust's obligation to comply with both the provisions of the Eurojust Regulation and of the EUDPR. More precisely, the deadline included shall be adjusted so as to ensure that Eurojust would be able to reply to data subjects requests in compliance with the provisions of Article 14(3) of the EUDPR. Furthermore, we recommend that the provisions of Article 8 of the draft rules be clarified so as to reflect the provisions of Article 7 (with respect to operational data) and Article 17 (with regards to administrative data) of the College Decision 2019-18 (rules of procedure on the processing and protection of personal data at Eurojust) with respect to the roles of the persons involved in the procedure.

---

<sup>4</sup> See pp. 7-8 of Accountability of the Ground Guidance - Part I  
[https://edps.europa.eu/sites/edp/files/publication/19-07-17\\_accountability\\_on\\_the\\_ground\\_part\\_i\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/19-07-17_accountability_on_the_ground_part_i_en.pdf)

**Recommendation 11:** The EDPS recommends that the provision referring to non-compliance procedure (Article 7 of the draft rules) be adapted so as to reflect the provisions of Article 38(4) of the Eurojust Regulation and more specifically the fact that, in case of non-compliance with the Eurojust Regulation and EUDPR, the DPO ‘*shall inform the Executive Board*’.

**Recommendation 12:** Article 7(5) of the draft rules provide that: ‘*No one shall suffer prejudice on account of a matter brought to the attention of the Data Protection Officer alleging a breach of the data protection guarantees provided for in the Eurojust Regulation.*’ The EDPS recommends specifying that this provision applies also to the EUDPR.

**Recommendation 13:** With regards to the entry into force of the rules, the EDPS recommends a longer *vacatio legis*, namely 20 days after its adoption.

Brussels, 9 September 2020