

## **EDPS Formal comments on the Proposal for a Regulation of the European Parliament and of the Council establishing a collaboration platform to support the functioning of Joint Investigation Teams and amending Regulation (EU) 2018/1726**

### **1. Introduction and background**

On 1 December 2021, the European Commission adopted a Proposal for a Regulation of the European Parliament and of the Council concerning the establishment of a collaboration platform to support the functioning of Joint Investigation Teams (JIT) and amending Regulation (EU) 2018/1726 (“Proposal”).

The general objective of the proposal is to provide technological support to those involved in JITs to increase the efficiency and effectiveness of their cross-border investigations and prosecutions<sup>1</sup>.

The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 2 December 2021, pursuant to Article 42(1) of Regulation 2018/1725 (‘EUDPR’)<sup>2</sup>. In this regard, the EDPS welcomes the reference to this consultation in Recital 39 of the Proposal. The EDPS also positively notes that he was already previously informally consulted pursuant to recital 60 EUDPR.

These formal comments do not preclude any future additional comments by the EDPS, in particular if further issues are identified or new information becomes available, for example as a result of the adoption of other related implementing or delegated acts, pursuant to the Regulation subject of this consultation. Furthermore, these formal comments are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 EUDPR and are limited to the provisions of the Proposal that are relevant from a data protection perspective.

### **2. Comments**

Given that establishing the JIT platform at EU level would imply the processing of personal data, appropriate data protection safeguards must be put in place. The EDPS appreciates that Article 1(d) of the Proposal explicitly stipulates that one of the objectives of the act is to lay down “*specific data protection provisions needed to supplement the existing data protection*

---

<sup>1</sup> Explanatory Memorandum, p. 2.

<sup>2</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ, 21.11.2018, L.295, p.39 (Regulation 2018/1725).

*arrangements and to provide for an adequate overall level of data protection, data security and protection of the fundamental rights of the persons concerned.”* In the same vein, taking into account the possibility for access to the JIT collaboration spaces by third countries’ competent authorities, the EDPS welcomes the reference to the conditions for transfer of personal data laid down in Chapter V of Directive 2016/680 (‘LED’)<sup>3</sup>.

The EDPS welcomes Article 19 of the Proposal, which aims to allocate the roles and responsibilities of the competent national and Union authorities with regard to the processing of personal data in the JITs collaboration platform.

The EDPS recalls that the concepts of controller, joint controller and processor play a crucial role in the application of data protection law, since they determine who shall be responsible for compliance with different data protection rules, and how data subjects can exercise their rights in practice.

Furthermore, the EDPS reminds that in accordance with Articles 28 and 86 EUDPR and Article 21 LED, where two or more controllers together determine the purposes and means of the processing, they shall be joint controllers. This specification makes it clear that the concept of controllership does not necessarily refer to one single entity, but can also involve multiple parties playing a role in a processing operation. As a result, and as confirmed by the CJEU, each of the actors involved have obligations under data protection law<sup>4</sup>. Insofar as the various actors act as joint controllers, they shall in transparent manner determine their respective responsibilities for compliance with their data protection obligations, in particular as regards the exercising of the rights of the data subject and their respective duties to provide the information. In case of joint controllers, the distribution of tasks between them shall be specified by means of an arrangement between them. The EDPS therefore recommends to clarify whether controllers mentioned in Article 19 of the Proposal shall be considered as ‘joint controllers’ and, if so, to provide for the arrangement envisaged by Article 21 LED.

The EDPS takes note of Article 19(4) of the Proposal, stating that the JITs collaboration platform users shall be jointly responsible for managing non-operational data in the JITs collaboration platform. However, it is not clear whether the same considerations would apply for operational data.

---

<sup>3</sup> 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, OJ, 4.5.2016, L.119, p. 89.

<sup>4</sup> See EDPS Guidelines on the concepts of controller, processor and joint controllership under Regulation (EU) 2018/1725, 7 November 2019, p. 11. See also Court of Justice of the European Union, Case C-210/16, *Wirtschaftsakademie Schleswig-Holstein*, paragraph 29.

In addition, Article 19(2) and the corresponding Recital 31 aim to define the controller in cases of international transfers via the JITS collaboration platform. The Proposal does not specify, however, any criteria for this allocation and which procedure should be followed in case the JITS space administrators are not able to agree between themselves who will be the controller of the data uploaded by those third countries.

In conclusion, the EDPS recommends to further specify the roles and responsibilities of the competent national and Union authorities with regard to the processing of personal data in the JITS collaboration platform. While detailed arrangements to ensure compliance with data protection requirements may be further defined by way of an implementing act if necessary, the Proposal should in any case unambiguously identify the roles of each entity involved as controller, joint controller or processor respectively.

Brussels, 25 January 2022

*(e-signed)*

Wojciech Rafał WIEWIÓROWSKI