



**EDPS Formal comments on the Proposal for a Regulation of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation and the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 2003/8/EC, Council Framework Decisions 2002/465/JHA, 2002/584/JHA, 2003/577/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, 2008/947/JHA, 2009/829/JHA and 2009/948/JHA, and Directive 2014/41/EU of the European Parliament and of the Council, as regards digitalisation of judicial cooperation**

## **1. Introduction and background**

On 1 December 2021, the European Commission issued a Proposal for a Regulation of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation ('Proposal for a Regulation'), as well as a Proposal for a Directive of the European Parliament and of the Council amending Council Directive 2003/8/EC, Council Framework Decisions 2002/465/JHA, 2002/584/JHA, 2003/577/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, 2008/947/JHA, 2009/829/JHA and 2009/948/JHA, and Directive 2014/41/EU of the European Parliament and of the Council, as regards digitalisation of judicial cooperation ('Proposal for a Directive').

Both Proposals intend to provide a horizontal framework on the use of digital communication and videoconferencing tools in the context of the EU legal acts on judicial cooperation and access to justice in the civil, commercial and criminal area.

The EDPS was previously informally consulted pursuant to Recital 60 of Regulation (EU) 2018/1725<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. In this regard, the EDPS welcomes the reference to this consultation in Recital 35 of the Proposal for a Regulation. He recommends adding a referral to the consultation of the EDPS

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<sup>1</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).



also in the Recitals of the Proposal for a Directive, which is otherwise a common practice when it comes to consultations pursuant to Article 42(1) of the Regulation (EU) 2018/1725.

## **2. Comments**

The EDPS understands the need for the adoption of a harmonised set of rules on digitalisation, which would aim at improving access to justice and the efficiency and resilience of the communication flows inherent to the cooperation between judicial and other competent authorities in EU cross-border cases. He agrees that it is important that appropriate channels are developed to ensure that justice systems can efficiently cooperate digitally and under the condition that the digital channels used ensure a high level of security of communication enabling the safeguarding the rights of the persons concerned and protection of their privacy and personal data<sup>2</sup>.

With regard to the reference implementation software mentioned in Recital 12 of the Proposal for a Regulation, the EDPS recommends adding a reference to Directive (EU) 2016/680 as it could be used for cooperation in criminal matters. In the same vein, the EDPS recommends adding to Recital 30 of the Proposed Regulation a reference to Regulation (EU) 2018/1725 (which is already the case in Article 15 of the Proposal).

The EDPS welcomes that Article 15 of the Proposal clearly identifies the entities act as a ‘controller’ within the meaning of Union legislation on the protection of personal data. He also welcomes Recital 12 of the Proposal, which specifies that the Commission should design, develop and maintain the reference implementation software in compliance with the data protection requirements and principles, in particular the principles of data protection by design and by default as well as high level of cybersecurity.

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, especially given that Article 12 of the Proposal for a Regulation stipulates that the Commission shall adopt implementing acts establishing the decentralised IT system<sup>3</sup>. Those Acts are also likely to fall within the scope of Article 42(1) of Regulation (EU) 2018/1725, and are likely to be subject to consultation of the EDPS in the future.

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<sup>2</sup> See Recital 4 of the Proposal for a Regulation.

<sup>3</sup> Within the Proposal for a Regulation, a “decentralised IT system” means a network of IT systems and interoperable access points, operating under the individual responsibility and management of each Member State, Union agency or body that enables the secure and reliable cross-border exchange of information (Article 2(4) of the Proposal).

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 of Regulation (EU) 2018/1725 and are limited to the provisions of the Proposals that are relevant from a data protection perspective, in this case mainly the Proposal for a Regulation.

Brussels, 25 January 2022

*(e-signed)*

Wojciech Rafał WIEWIÓROWSKI