



EDPS Formal comments on the draft Commission implementing Regulations (EU) laying down the technical specifications, measures and other requirements for the implementation of the decentralised IT system referred to in by Regulation (EU) 2020/1783 of the European Parliament and of the Council and by Regulation (EU) 2020/1784 of the European Parliament and of the Council

1. Introduction and background

On 19 January 2022, the European Data Protection Supervisor (EDPS) received a letter of formal consultation under Article 42(1) of Regulation (EU) 2018/1725¹ by the European Commission, on two draft Commission implementing Regulations, on which the EDPS had previously been consulted informally pursuant to Recital 60 of Regulation (EU) 2018/1725.

These draft implementing Regulations lay down the technical specifications, measures and other requirements for the implementation of the decentralised IT system established by:

- Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters ('Regulation on taking of evidence') (recast)² together with its Annex setting out the technical specifications, measures and other requirements referred to in Article 1, and
- Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ('Regulation on service of documents') (recast)³ together with its Annex setting out the technical specifications, measures and other requirements referred to in Article 1.

Pursuant to Articles 25⁴ of the above mentioned Regulations on the service of documents and taking of evidence, the Commission shall adopt implementing acts establishing a

¹ 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).

² OJ L 405, 2.12.2020, p. 1.

³ OJ L 405, 2.12.2020, p. 40.

⁴ Article 25 - Adoption of implementing acts by the Commission

1. The Commission shall adopt implementing acts establishing the decentralised IT system, setting out the following:

- (a) the technical specification defining the methods of communication by electronic means for the purposes of the decentralised IT system;
- (b) the technical specifications for communication protocols;
- (c) the information security objectives and relevant technical measures ensuring minimum information security standards for the processing and communication of information within the decentralised IT system;



decentralised IT system for the purposes of these Regulations, by defining and adopting technical specifications, measures and other requirements for the implementation of the system.

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. 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 of Regulation (EU) 2018/1725.

2. Comments

First, the EDPS welcomes that reference to this consultation is made in the preamble of both draft implementing acts.

Pursuant to Art 5(1) of the Regulation on the service of documents and Art 7(1) of the Regulation on the taking of evidence, the decentralised IT system through which the documents should be transmitted shall be based on an interoperable solution **such as** e-CODEX. In this regard, the EDPS takes note that the definite interoperable solution, as stated in both Annexes of the Implementing Regulations subject of these comments, would be e-CODEX.

He therefore welcomes the references made to e-codex both under point 3 “methods of communication by electronic means” and point 4 “Communication protocols”. He also welcomes the reference made under point 5 “security standards” to the fact that the system will be developed in accordance with the principle of data protection by design and by default.

While being fully aware of the legal deadline for the adoption of these Implementing Regulations (by 23 March 2022), the EDPS regrets however that the draft Implementing Regulations cannot be read in conjunction with the implementing acts of the soon to be published e-CODEX Regulation⁵ in order to have a more complete picture of all the technical specifications, measures and other requirements for the implementation of the decentralised IT system.

(d) the minimum availability objectives and possible related technical requirements for the services provided by the decentralised IT system;

(e) the establishment of a steering committee comprising representatives of the Member States to ensure the operation and maintenance of the decentralised IT system in order to meet the objectives of this Regulation.

2. The implementing acts referred to in paragraph 1 of this Article shall be adopted by 23 March 2022 in accordance with the examination procedure referred to in Article 26(2).

⁵ <https://www.consilium.europa.eu/en/press/press-releases/2021/12/08/digitalisation-of-justice-council-presidency-and-european-parliament-reach-provisional-agreement-on-e-codex/>

In particular, at this stage, it stems from the last Council document publicly available⁶, that the minimum technical specifications and standards, including on security and methods for integrity and authenticity verification [...], underpinning the components of the e-CODEX system will be also adopted by implementing acts, part of it by the 31 December 2022 i.e. 6 months after the Regulations on taking of evidence and service of documents enter into application.

Brussels, 24 January 2022

(e-signed)
Wojciech Rafał WIEWIÓROWSKI

⁶ See Article 5 of the draft Regulation (9005/21).