



## **EDPS Formal comments on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/1727 of the European Parliament and the Council and Council Decision 2005/671/JHA, as regards the digital information exchange in terrorism cases**

### **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 amending Regulation (EU) 2018/1727<sup>1</sup> of the European Parliament and the Council and Council Decision 2005/671/JHA<sup>2</sup>, as regards the digital information exchange in terrorism cases (“Proposal”).

The Proposal seeks to achieve the following main objectives:

- fully integrate the Counter-Terrorism Register (CTR) in Eurojust technical and legal framework and regulate the relationship between the Eurojust Regulation and Council Decision 2005/671/JHA;
- modernise the Eurojust Case Management System (CMS)
- regulate the operational access of the third country liaison prosecutors to the Eurojust CMS.

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<sup>3</sup>. In this regard, the EDPS welcomes the reference to this consultation in Recital 29 of the Proposal. The EDPS also positively notes that he was already previously informally consulted pursuant to recital 60 of Regulation 2018/1725.

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 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 of Regulation (EU) 2018/1725 and are limited to the provisions of the Proposal that are relevant from a data protection perspective.

---

<sup>1</sup> Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138)–herein after “Eurojust Regulation”.

<sup>2</sup> Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences (OJ L 253, 29.9.2005, p. 22).

<sup>3</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).



## Comments

### 2.1. General comments

The EDPS would like to point out that the Proposal is likely to increase the number of Eurojust cases and the volume of operational personal data processed by Eurojust. The European Commission also acknowledges that the rules on sharing, storage and cross-checking of data “*will have a significant impact on the amount of data processed at Eurojust*”<sup>4</sup>. Therefore the EDPS would like to remind that expanding the scope of Eurojust data processing activities would also require the EDPS to dedicate **additional financial and human resources** to exercise its supervisory role, in line with the increased workload<sup>5</sup>.

The EDPS notes that pursuant to the Proposal the current detailed technical regulation of the Eurojust’s Case Management System architecture would be abandoned. While the EDPS understands the desire to allow for more flexibility when shaping the new CMS, he draws attention to the fact that some of the data protection safeguards and rules on access are attached to the existing architecture of the CMS (e.g. prohibition to process special categories of operational personal data in the index – Articles 23(4), 25 and 27(4) of the current Eurojust Regulation). The EDPS therefore points out that the new technical architecture of the CMS should continue to ensure a high level of personal data protection. To this end, appropriate safeguards, based on remaining provisions of Eurojust Regulation and general data protection rules applicable to operational personal data, laid down in Chapter IX of Regulation (EU) 2018/1725, should be considered from the very start of the development process of the new CMS, **in accordance with the principle of data protection by design**.

### 2.2. Specific comments

**Article 1(3)** of the Proposal provides for the deletion of paragraph 10 of Article 21 of the current Eurojust Regulation which lays down two distinct requirements - on the one hand Members States should provide information to Eurojust in a structured way, determined by the Agency, and, on the other hand, the competent national authorities are not obliged to provide information where it has already been transmitted to Eurojust. While the EDPS notes that the first condition of the deleted paragraph 10 would be partially reintroduced by Article 22a of the Proposal, the second requirement is simply removed. The EDPS is of the opinion that the second sentence of Article 21(10) of Eurojust Regulation should be reintroduced in the Proposal, as it provides for an important clarification from an operational point of view, but also having in mind **the principle of data minimisation**.

**Article 1(4)** of the Proposal introduces a new Article 21a on the exchange of information on terrorism cases. Regarding the exception for the exchange of information, provided for in paragraph 5 of this article<sup>6</sup>, the EDPS considers that this exception should be applicable also

---

<sup>4</sup> SWD(2021) 391 final, page 25.

<sup>5</sup> According to the Explanatory Memorandum, p. 8, the “proposal would have an impact on Eurojust’s budget and its staff needs”, therefore the Commission envisages 25 additional permanent posts at the Agency.

<sup>6</sup> “5. Paragraph 1 shall not apply where the sharing of information would jeopardise current investigations or the safety of an individual, or when it would be contrary to essential interests of the security of the Member State concerned.”

to the obligation to update (provided in paragraph 4), if such update could have consequences described in paragraph 5.

**Article 1(8)** of the Proposal would lay down specific rules regarding storage limitation for operational personal data transmitted in accordance with Article 21a. The EDPS positively notes the envisaged safeguards in Article 29 of the Eurojust Regulation, such as the automatic deletion of data after the expiry of the storage deadlines, as well as the shorter storage period for operational personal data of acquitted persons for whom the judicial decision of the last of the Member States concerned by the investigation or prosecution became final. The EDPS recommends, however, introducing the same **shorter storage periods** for personal data of the accused persons where the prosecutor withdrew the indictment (for lack of evidence), as the formal consequences for the accused person following such a decision would be similar to an acquittal.

The EDPS notes that **Article 1(9)** of the Proposal introduces a new Article 54a into the Eurojust Regulation. This new Article, under its paragraph 3, grants access to the Case Management System for the secure exchange of data to liaison prosecutors seconded to Eurojust. In this regard, while welcoming that fact that rules and safeguards on transfer to third country liaison prosecutors would not be affected, the EDPS would also like to recall that according to Articles 45 and 46 of the Eurojust Regulation, **Eurojust is liable for the personal data processing by the liaison prosecutors.**

The EDPS finally notes that **Article 1(11)** of the Proposal would introduce new types of personal data to be processed by Eurojust<sup>7</sup> in the context of the Counter-Terrorism Register (CTR), i.e. **biometric data (fingerprint and facial images)**. The EDPS is aware that Eurojust has already the legal possibility to process special categories of operational personal data, including biometric data, in accordance with Article 76 of Regulation (EU) 2018/1725. He also understands that such processing could be necessary for the purposes of reliable identification of suspects and, consequently, the linking of counter-terrorism cases. Nevertheless, the EDPS recalls his consistent position that that the collection and storing of biometric personal data, given their very nature and sensitive character, entails higher risks for data subjects and should always be accompanied by stringent safeguards<sup>8</sup>. This fact should be fully taken into account and reflected in the development process of the new CMS and the CTR.

Brussels, 26 January 2022

*(e-signed)*

Wojciech Rafał WIEWIÓROWSKI

---

<sup>7</sup> New Annex III, point (d)

<sup>8</sup> See also EDPS Opinion 07/2016 on the First reform package on the Common European Asylum System (Eurodac, EASO and Dublin regulations); Opinion 06/2016 on the Second EU Smart Borders Package Recommendations on the revised Proposal to establish an Entry/Exit System; Opinion 3/2016 on the exchange of information on third country nationals as regards the European Criminal Records Information System (ECRIS).

