EDPS Formal comments on the draft Commission Implementing Regulation on setting out the technical specifications and other requirements for the decentralised IT system, as referenced in Regulation (EU) 2023/2844 of the European Parliament and of the Council for the electronic service of documents through the European electronic access point

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals 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 ('EUDPR')[1], and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 12 November 2025, the European Commission consulted the EDPS on the draft Commission Implementing Regulation on setting out the technical specifications and other requirements for the decentralised IT system, as referenced in Regulation (EU) 2023/2844[2] of the European Parliament and of the Council, in relation to the procedures established by the legal acts listed in points 3 and 4 of Annex I, the legal acts listed in points 1, 10 and 11 of Annex II to that Regulation, and to the procedure established by Article 19a of Regulation (EU) 2020/1784 of the European Parliament and of the Council, as introduced by Article 24(3) of Regulation (EU) 2023/2844 of the European Parliament and of the Council for the electronic service of documents through the European electronic access point ('the draft Implementing Regulation').

2. Regulation (EU) 2023/2844 establishes a legal framework for the use of electronic communication between competent authorities in judicial cooperation procedures in civil, commercial and criminal matters and for the use of electronic communication between natural or legal persons and competent authorities in judicial procedures in civil and commercial matters. The objective of the draft Implementing Regulation is

[1] OJ L 295, 21.11.2018, p. 39.
[2] Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 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, OJ L, 2023/2844, 27.12.2023.

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to ensure uniform conditions for the implementation of Regulation (EU) 2023/2844, as regards the establishment of the decentralised IT system, referred to in Article 3(1) of that Regulation, for data exchanges in cross-border judicial procedures[3].

3. The draft Implementing Regulation is adopted pursuant to Article 10 (1) of Regulation (EU) 2023/2844.

4. The EDPS previously issued 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[4].

5. The present formal comments of the EDPS are issued in response to a consultation by the European Commission pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital 12 of the draft Implementing Regulation.

6. These formal comments do not preclude any additional comments by the EDPS in the future, 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[5].

7. 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 the EUDPR and are limited to the provisions of the draft Implementing Regulation that are relevant from a data protection perspective.

[3] Recital 1 of the draft Implementing Regulation

[4] 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, issued on 25 January 2022.

[5] In case of other Implementing or Delegated acts with an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data, the EDPS would like to remind that he needs to be consulted on those acts as well. The same applies in case of future amendments that would introduce new or modify existing provisions that directly or indirectly concern the processing of personal data.

2. Comments

8. According to Article 3(1) of Regulation (EU) 2023/2844, communication between competent authorities in judicial cooperation procedures in civil, commercial and criminal matters, as well as between natural or legal persons and competent authorities in judicial procedures in civil and commercial matters, should be carried out through a secure and reliable decentralised IT system.

9. The EDPS welcomes the provisions of the draft Implementing Regulation which provide that confidentiality of information shall be ensured[6] and that the development of components of the decentralised IT must be in accordance with the principle of data protection by design and by default, and appropriate administrative, organisational, and technical measures, to ensure a high level of cybersecurity[7].

10. The EDPS positively notes the inclusion, in the draft Implementing Regulation, of technical requirements relating to the configuration and implementation of the protocols used: 'Where TLS *is employed in the context of the decentralised IT system, the latest stable version of the protocol shall be used, or, failing that, a version without known security vulnerabilities*'[8]. For clarity, the EDPS recommends specifying the meaning of the acronym 'TLS' (Transport Layer Security) in the text of the Annex of the draft Implementing Regulation.

11. Similarly, the EDPS welcomes the specification in the draft Implementing Regulation that '*to the extent possible, PKI digital certificates used for the purposes of operation of the decentralised IT system shall be issued by Certification Authorities recognised as Qualified Trust Service Providers in accordance with Regulation (EU) No 910/2014 of the European Parliament and of the Council*' and that '*measures shall be implemented to ensure that such certificates are used solely for their intended purpose*'[9].

12. The EDPS positively notes the clear references[10] to the need for Member States to comply with their obligations pursuant to Regulation (EU) 2016/679 ('GDPR')[11] and Directive (EU) 2016/680 ('LED')[12]. At the same time, the EDPS notes that the draft

[66] Annex I, points 5.1
[7] Annex I, point 5.3
[88] Annex I, point 5.2
[9] Annex I, point 5.3
[10] Annex I, points 5.4 and 5.5
[11] Regulation (EU) 2016/679 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 and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 4.5.2016, pp. 1–88.
[12] 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 L 119, 4.5.2016, pp. 89–131.

Implementing Regulation does not expressly require the Commission to design, develop and maintain the reference implementation software in compliance with the data protection requirements and principles laid down in Regulation (EU) 2018/1725 of the European Parliament and of the Council. Such a specification is included in the draft Commission Implementing Regulation laying down the rules for the application of Regulation (EU) 2018/1727 of the European Parliament and of the Council, as regards the technical specifications, measures and other requirements for the establishment and use of the decentralised IT system for secure processing and communication of information[13], whose content is similar to this draft Implementing Regulation. As it is the reference implementation software which will allow Member States to comply with their data protection obligations, the EDPS recommends adding the same specification in this draft Implementing Regulation.

13. The EDPS welcomes the specific attention given in the draft Proposal on Eurojust and the European Public Prosecutor's Office, in order to ensure that they comply with the requirements of the EUDPR, whenever they participate in the decentralised IT system[14].

14. The EPDS also welcomes the introduction in the section of Annex I dedicated to 'minimum availability objectives' the objective of data availability, along with the relevant technical measures, including the need to establish a back-up and recovery policy[15].

15. The EDPS recalls the importance of effective logging in a decentralised system, to ensure accountability. In the event of a personal data breach, unlawful access, or misuse of data, the logs are often the only means to reconstruct the sequence of events and trace the action back to its source. In this regard, the EDPS welcomes the inclusion, in a footnote[16] of the draft Implementing Regulation, of a reference to the requirements set out in Article 88 of Regulation (EU) 2018/1725 ('EUDPR') and, where applicable, Article 25 of Directive (EU) 2016/680 ('LED').

16. According to Article 88 EUDPR and Article 25 LED, the logs of consultation and disclosure should make it possible to establish the justification for, and the date and time of, such operations, the identification of the person who consulted or disclosed operational personal data, and, as far as possible, the identity of the recipients of such operational personal data. However, given that different systems will interact in this decentralised system, the EDPS recommends to introduce specific mandatory fields

[13] Annex I, point 5.6 of the draft Commission Implementing Regulation laying down the rules for the application of Regulation (EU) 2018/1727 of the European Parliament and of the Council, as regards the technical specifications, measures and other requirements for the establishment and use of the decentralised IT system for secure processing and communication of information.
[14] Annex I, points 5.6
[15] Annex I, point 6.8
[16] Footnote 1 in Annex I.

for the log files on the interconnected IT systems. In particular, the EDPS recommends clarifying the logging fields of the e-Codex system and which extra fields Member States should log in their national systems, to ensure the chain is complete and the user launching an action (to see operational data) is adequately identified.

17. Finally, the EDPS encourages the inclusion in the draft Implementing Regulation of additional relevant technical details that would help establish the baseline required to implement the planned measures and achieve the intended objectives (for example, a more detailed system architecture, data flows specification, security mechanisms, and interfaces with other systems).

Brussels, 28 November 2025

(e-signed)
Wojciech Rafał WIEWIÓROWSKI