

# EUROPEAN DATA PROTECTION SUPERVISOR

## **Summary of the Opinion of the European Data Protection Supervisor 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, as regards the collection, preservation and analysis of evidence relating to genocide, crimes against humanity and war crimes at Eurojust**

*(The full text of this Opinion can be found in English, French and German on the EDPS website [www.edps.europa.eu](http://www.edps.europa.eu))*

(2022/C 214/08)

On 25 April 2022 the European Commission issued a Proposal for a Regulation of the European Parliament and of the Council amending the Eurojust Regulation, as regards the collection, preservation and analysis of evidence relating to genocide, crimes against humanity and war crimes at Eurojust.

The EDPS acknowledges the urgent need to address the limitations of the Eurojust's existing case management system (CMS) which have an impact on Eurojust's ability to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to core international crimes, including those that may be committed following Russia's military aggression against Ukraine on 24 February 2022. In that regard the EDPS notes that the Commission has already proposed to enhance the current set-up of the Eurojust's CMS with regard to Eurojust's activities concerning investigations and prosecutions of terrorist offences. As part of that proposal, the modernisation of the CMS and the digitalisation of the information exchange between national competent authorities and Eurojust are also envisaged.

The EDPS notes that the envisaged derogation under the Proposal to store data relating to genocide, crimes against humanity and war crimes outside of the Eurojust's CMS would be of a temporary nature and the automated data management and storage facility would be integrated into the new CMS which is expected to be established under an earlier proposal. Due to the exceptional nature of the present circumstances and the novelty of the proposed solution, the EDPS will be paying particular attention to it in the course of his supervision activities regarding Eurojust.

This Opinion aims to provide constructive advice to the EU legislator with a view of ensuring the level of data protection as already guaranteed by the Eurojust Regulation is not undermined. Against this background, the EDPS makes several recommendations regarding:

- collection and exchange of evidence by Eurojust;
- security of the automated data management and storage facility;
- time limits for the data stored in the automated data management and storage facility;
- relationship with Article 90 of the EUDPR.

## 1. INTRODUCTION AND BACKGROUND

1. The European Union Agency for Criminal Justice Cooperation (Eurojust) supports national investigating and prosecuting authorities in relation to serious crime with which Eurojust is competent to deal, in accordance with Regulation (EU) 2018/1727 <sup>(1)</sup> ('Eurojust Regulation'). Amongst these crimes are genocide, crimes against humanity and war crimes.

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<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).

2. On 25 April 2022 the European Commission issued a Proposal for a Regulation of the European Parliament and of the Council amending the Eurojust Regulation, as regards the collection, preservation and analysis of evidence relating to genocide, crimes against humanity and war crimes at Eurojust ('the Proposal').
3. The Commission has previously proposed to enhance the current set-up of the Eurojust's case management system ('CMS') with regard to Eurojust's activities concerning investigations and prosecutions of terrorist offences and improving the functioning of the European Judicial Counter-Terrorism Register at Eurojust <sup>(2)</sup>. In that context, the modernisation of the CMS and the digitalisation of the information exchange between national competent authorities and Eurojust are also envisaged <sup>(3)</sup>.
4. The objective of the Proposal is to allow Eurojust to collect, preserve and analyse evidence in relation to genocide, crimes against humanity, war crimes and related criminal offences and, when necessary and appropriate, enable its exchange or otherwise make it available to the competent judicial authorities, national or international, in particular following the unprecedented military aggression by Russia against Ukraine on 24 February 2022 <sup>(4)</sup>.
5. The present Opinion of the EDPS is issued in response to a consultation by the European Commission of 6 May 2022, pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital 18 of the Proposal.

## 7. CONCLUSIONS

17. In light of the above, the EDPS makes the following recommendations:
- (1) *To add a statement in the preamble that the Proposal does not aim to introduce any obligation on national authorities to share information and evidence with Eurojust.*
  - (2) *To include guidance in the Proposal on the interpretation of the wording 'where necessary and appropriate'.*
  - (3) *To include in recital 13 of the Proposal a reference to the security provisions of Article 91 of Chapter IX of the EUDPR.*
  - (4) *To link the time limits for the storage of data with the storage limits already provided for in Article 29 of the Eurojust Regulation.*
  - (5) *To clarify the relationship between the newly introduced paragraph 8 of Article 80 of the Eurojust Regulation and Article 90 of the EUDPR.*

Brussels, 13 May 2022.

Wojciech Rafał WIEWIÓROWSKI

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<sup>(2)</sup> 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, COM(2021) 757 final, 1 December 2021.

<sup>(3)</sup> In relation to that Proposal the EDPS has issued his Formal Comments on the 26 January 2022.

<sup>(4)</sup> See Explanatory Memorandum of the Proposal COM(2022) 187 final, p. 2.