



**EDPS Formal comments on the draft Proposals for Commission Implementing Decisions on the:**

- technical specifications and standards for the e-CODEX system, including for security and methods for integrity and authenticity verification
- service level requirements for the activities to be carried out by eu-LISA concerning the e-CODEX system
- specific arrangements for the handover and takeover process of the e-CODEX system

**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')<sup>1</sup>, and in particular Article 42(1) thereof,

**HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:**

**1. Introduction and background**

1. On 17 November 2022, the European Commission issued three draft Proposals for Commission Implementing Decisions on the:
  - technical specifications and standards for the e-CODEX system, including for security and methods for integrity and authenticity verification ('the draft technical Implementing Decision');
  - service level requirements for the activities to be carried out by eu-LISA concerning the e-CODEX system ('the draft service level requirements Implementing Decision');
  - specific arrangements for the handover and takeover process of the e-CODEX system ('the draft handover Implementing Decision').

The Draft Implementing Decisions are accompanied by their respective Annexes.

2. The draft technical Implementing Decision aims at setting out the minimum technical specifications and standards, including for security and methods for integrity and authenticity verification, underpinning the components of the e-CODEX system, referred to in Article 5 of Regulation (EU) 2022/850 on a computerised system for the

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<sup>1</sup> OJ L 295, 21.11.2018, p. 39.



cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters (e-CODEX system), and amending Regulation (EU) 2018/1726 ('the e-CODEX Regulation')<sup>2</sup> (Article 1).

3. The draft service level requirements Implementing Decision aims at setting out the service level requirements for the activities to be carried out by eu-LISA referred to in Article 7 of the e-CODEX Regulation and other necessary technical specifications for those activities as well as the number of e-CODEX correspondents referred to in Article 6(1), point (b) of the e-CODEX Regulation (Articles 1 and 2).
4. The draft handover Implementing Decision aims at setting out the detailed arrangements for the handover and takeover process of the e-Codex system and for its successful completion and related documentation referred to in Article 10 of the e-CODEX Regulation as well as the provisions on intellectual property rights or usage rights relating to the e-CODEX system (Articles 1 to 3).
5. The draft Proposals are to be adopted by the Commission in accordance with Articles 6(1) and 19 of the e CODEX Regulation. For the successful handover and takeover process of the e-CODEX system to eu-LISA, and to make possible the fulfilment of the tasks for which eu-LISA is to be responsible, the Commission is under a legal obligation to adopt these draft Implementing Decisions by 31 December 2022.
6. The EDPS previously issued Formal comments on the Commission proposal for the e-CODEX Regulation<sup>3</sup>.
7. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 17 November 2022, pursuant to Article 42(1) of EUDPR. The EDPS welcomes recital 6 of the draft handover Implementing Decision and technical Implementing Decision and recital 7 of the draft service level requirements Implementing Decision, referring to this consultation under Article 42(1) of the EUDPR.
8. 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<sup>4</sup>.

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<sup>2</sup> OJ L 150, 1.6.2022, p. 1.

<sup>3</sup> [EDPS Formal comments on the Commission proposal for a Regulation of the European Parliament and of the Council on a computerised system for communication in cross-border civil and criminal proceedings \(e-CODEX system\), and amending Regulation \(EU\) 2018/1726](#), issued on 26 January 2021.

<sup>4</sup> 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.

9. 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 Proposal that are relevant from a data protection perspective.

## 2. Comments

10. As recalled in its recital 10, the e-CODEX Regulation does not provide for the mandatory use of the e-CODEX system but establishes its legal framework. In particular, it lays down rules on its definition, composition, functions and management, the responsibilities of European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) regarding, in particular, development and maintenance of this system, the responsibilities of the Commission, Member States and the entities operating authorised e-CODEX access points and its legal framework for the security (Article 1). It applies to 'the cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters by means of the e-CODEX system in accordance with the Union legal acts adopted in that area' (Article 2). As explained in recital 19, the e-CODEX Regulation only applies to the cross-border exchange of data between connected systems via authorised e-CODEX access points, in accordance with the corresponding digital procedural standard. The e-CODEX Regulation entered into force in June 2022.
11. According to recitals 7 to 10 of the e-CODEX Regulation, the aim of the e-CODEX system is to improve the efficiency of cross-border communication between competent authorities and to facilitate citizens' and businesses' access to justice. Until the handover of the e-CODEX system to eu-LISA (which will be in the second semester of 2023 according to Article 10(4)), the e-CODEX system will be managed by a consortium of Member States and organisations with funding from Union programmes. The e-CODEX system provides an interoperable solution for the justice sector to interconnect the IT systems of the competent national authorities, such as the judiciary, or other organisations.
12. It is noteworthy that in December 2021, the Commission adopted a proposal - still under negotiations at the time of writing- 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 ('the digitalisation of justice proposal')<sup>5</sup>. It establishes an obligation to carry out written communication between competent authorities in cases falling under the scope of the legal acts listed in

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<sup>5</sup> COM(2021)759 final.

Annexes to the proposal through a secure and reliable decentralised IT system, without specifically designating e-CODEX (Article 3(1)). However, recital 6 states that the 'e-Justice Communication via On-line Data Exchange (e-CODEX) system is the main tool of this type developed to date' and recital 11 adds that the 'decentralised IT system should be comprised of the back-end systems of Member States and the Union agencies and bodies, and interoperable access points, through which they are interconnected. The access points of the decentralised IT system should be based on e-CODEX'.

13. As a general observation in relation to the digitalisation of judicial cooperation, the EDPS notes that the future Regulation on the digitalisation of justice, which provides for important data protection elements, such as the clarification on the controllership of personal data processed in the context of the EU judicial cooperation instruments when using a decentralised IT system embedding a component like e-CODEX, has not yet entered in force. He would, therefore, like to express his regret that this Regulation has not yet been adopted, while the e-CODEX Regulation is already applicable as it entered in force in June 2022.
14. However, the EDPS also understands that e-CODEX Regulation only aims at specifying a particular component of a decentralised IT system to be used for electronic communication in matters of judicial cooperation. It does not establish new processing activities of personal data in the judicial cooperation sector but relies on the EU judicial cooperation framework and therefore has no further comments on the draft Implementing Decisions to this Regulation, subject of this particular consultation.

Brussels, 24 November 2022

*(e-signed)*  
Wojciech Rafał WIEWIÓROWSKI