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From:	General Secretariat of the Council
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Subject:	Recommendation for a Council Decision authorising the opening of negotiations for agreements between the Union and Bolivia, Canada, Chile, Costa Rica, Ecuador, Panama, Peru and the United Arab Emirates on cooperation between the European Union Agency for Criminal Justice Cooperation (Eurojust) and the competent authorities for judicial cooperation in criminal matters of those third States - Opinion of the European Data Protection Supervisor (EDPS)

Delegations will find attached Opinion 26/2026 of the EDPS relating to the recommendation in subject.



EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data
protection authority

Opinion 26/2026

on the negotiating mandate to conclude
eight agreements allowing the exchange of
data between Eurojust and the competent
authorities for judicial cooperation in
criminal matters in certain third countries

edps.europa.eu

The European Data Protection Supervisor (EDPS) is an independent institution of the EU, responsible under Article 52(2) of Regulation 2018/1725 'With respect to the processing of personal data... for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to data protection, are respected by Union institutions and bodies', and under Article 52(3)'... for advising Union institutions and bodies and data subjects on all matters concerning the processing of personal data'.

Wojciech Rafał Wiewiórowski was appointed as Supervisor on 5 December 2019 for a term of five years. The selection procedure for a new EDPS mandate for a term of five years is still ongoing.

*Under **Article 42(1)** of Regulation 2018/1725, the Commission shall 'following the adoption of proposals for a legislative act, of recommendations or of proposals to the Council pursuant to Article 218 TFEU or when preparing delegated acts or implementing acts, consult the EDPS where there is an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data'.*

This Opinion relates to the Recommendation for a Council Decision authorising the opening of negotiations for agreements between the Union and Bolivia, Canada, Chile, Costa Rica, Ecuador, Panama, Peru and the United Arab Emirates on cooperation between the European Union Agency for Criminal Justice Cooperation (Eurojust) and the competent authorities for judicial cooperation in criminal matters of those third States¹.

This Opinion does not preclude any future additional comments or recommendations by the EDPS, in particular if further issues are identified or new information becomes available. Furthermore, this Opinion is without prejudice to any future action that may be taken by the EDPS in the exercise of its powers pursuant to Regulation (EU) 2018/1725.

This Opinion is limited to the provisions of the Recommendation that are relevant from a data protection perspective.

¹ COM(2026) 459 final.

Executive Summary

On 10 September 2026, the European Commission issued a Recommendation for a Council Decision authorising the opening of negotiations for agreements between the Union and Bolivia, Canada, Chile, Costa Rica, Ecuador, Panama, Peru and the United Arab Emirates on cooperation between the European Union Agency for Criminal Justice Cooperation (Eurojust) and the competent authorities for judicial cooperation in criminal matters of those states.

The objective of the Recommendation is to obtain from the Council the authorisation for the Commission to negotiate the future agreements on behalf of the Union to strengthen judicial cooperation between Eurojust and the competent authorities of respective third countries in combating serious crime by exchanging personal data. The Annex to the Recommendation lays down the Council's negotiating directives to the Commission.

The future agreements would provide the legal basis for the cooperation between Eurojust and the competent authorities of the third countries concerned, including the exchange of operational personal data, in order to support and strengthen the action by the competent authorities of these countries and the Member States and their mutual cooperation in preventing and combating the forms of crime for which Eurojust is competent in accordance with Regulation 2018/1727, while ensuring appropriate safeguards with respect to the protection of privacy, personal data and the fundamental rights and freedoms of individuals.

The EDPS previously had the opportunity to comment on the exchange of personal data between Eurojust and the competent authorities of Algeria, Armenia, Bosnia and Herzegovina, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia and Turkey in its Opinion 10/2020 on the negotiating mandate for agreements with those countries. The EDPS notes with satisfaction that the Commission has incorporated a number of recommendations made in that opinion into this proposed negotiating mandate.

The EDPS positively notes that the Commission has established by now, based also on a number of previous recommendations laid down in EDPS Opinions on this matter, a well-structured set of data protection safeguards and principles, which are the basis for all already negotiated agreements with third countries, and should therefore be incorporated in the new eight international agreements resulting from this negotiating mandate.

At the same time, the EDPS makes additional specific recommendations aimed at clarifying and, where necessary, further developing the safeguards and controls in the future agreements with respect to the protection of personal data.

In that regard, the EDPS suggests further specific assurances capable of ensuring in practice effective compliance with the requirement related to the application of the death penalty by third countries. In addition, the EDPS considers that the Recommendation should make explicit the involvement of independent supervisory authorities in the monitoring and evaluation of the agreements.

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THE EUROPEAN DATA PROTECTION SUPERVISOR,

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

Having regard to 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 ('EUDPR')², and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING OPINION:

1. Introduction

1. On 10 September 2026, the European Commission issued a Recommendation for a Council Decision authorising the opening of negotiations for agreements between the Union and Bolivia, Canada, Chile, Costa Rica, Ecuador, Panama, Peru and the United Arab Emirates (UAE) on cooperation between the European Union Agency for Criminal Justice Cooperation (Eurojust) and the competent authorities for judicial cooperation in criminal matters of those third States ('the Recommendation') along with an Annex containing directives for the negotiations³.
2. The objective of this Recommendation is to obtain from the Council the authorisation for the Commission to negotiate the future agreements on behalf of the Union to strengthen judicial cooperation between Eurojust and the competent authorities of respective third countries in combating serious crime by exchanging personal data. The Annex to the Recommendation lays down the Council's negotiating directives to the Commission.
3. The future agreements would provide the legal basis for the cooperation between Eurojust and the competent authorities of the third countries concerned, including the exchange of operational personal data, in order to support and strengthen the action by the competent authorities of these countries and the Member States and their mutual cooperation in preventing and combating the forms of crime for which Eurojust is competent in accordance with Regulation 2018/1727, while ensuring appropriate safeguards with respect to the protection of privacy, personal data and the fundamental rights and freedoms of individuals.
4. The envisaged agreements build upon Eurojust's Strategy on Cooperation with International Partners 2024–2027, where Bolivia, Ecuador, Mexico, Nigeria, Peru and UAE are identified as particular strategic operational partners⁴. Whereas Canada, Panama and

² OJ L 295, 21.11.2018, p. 39.

³ COM(2026) 459 final.

⁴ See Eurojust's Strategy on Cooperation with International Partners 2024–2027, available at <https://www.eurojust.europa.eu/publication/eurojust-strategy-cooperation-international-partners-2024-2027>

the UAE had already been identified in the previous Eurojust Strategy (2020–2024) and their operational relevance has been reiterated in the latest Strategy⁵.

5. The present Opinion of the EDPS is issued in response to a consultation by the European Commission of 10 September 2026 pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital 6 of the Recommendation. In this regard, the EDPS also positively notes that he was already previously informally consulted pursuant to recital 60 of EUDPR.

2. General remarks

6. Transfers of personal data gathered in the context of criminal investigations envisaged under the Agreement are liable to have a significant impact on the lives of the individuals concerned, as the personal data may potentially be used in prosecution cases in the receiving country under its national law.
7. As transfers of personal data to third countries constitute an interference with individuals' rights to privacy and data protection guaranteed by Articles 7 and 8 of the Charter, requirements of necessity and proportionality of the envisaged processing need to be assessed in accordance with Article 52(1) of the Charter⁶. Consequently, the international agreement must ensure that the limitations to rights to privacy and data protection in relation to the fight against serious crime and terrorism apply only in so far as is strictly necessary⁷.
8. The EDPS notes that this Recommendation is not the first one of its kind. On 19 November 2020, the Commission already adopted a Recommendation for a Council Decision authorising the opening of negotiations for similar agreements between the EU and Algeria, Armenia, Bosnia and Herzegovina, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia and Turkey⁸. The EDPS issued an Opinion regarding this Recommendation on 17 December 2020 where the EDPS provided several recommendations in order to clarify and, where necessary, further develop the safeguards and controls with respect to protection of personal data⁹. The EDPS welcomes that the Commission has incorporated a number of recommendations made in this Opinion into the Recommendation.
9. The EDPS also already issued opinions on the Agreements on cooperation of Eurojust with third countries the EU had negotiated subsequently, namely with Armenia¹⁰, Lebanon¹¹,

⁵ See Eurojust's first Strategy on Cooperation with International Partner, available at <https://www.eurojust.europa.eu/states-and-partners/third-countries/strategy-cooperation-international-partners>

⁶ EDPS Guidelines on assessing the proportionality of measures that limit the fundamental rights to privacy and to the protection of personal data, issued on 19 December 2019.

⁷ Opinion 1/15 of the Court of Justice (Grand Chamber) of 26 July 2017, EU:C:2017:592, para. 140, and the cited CJEU case law. COM(2020) 743 final.

⁸ EDPS Opinion 19/2020 on the negotiating mandate to conclude ten agreements allowing the exchange of data between Eurojust and the competent authorities for judicial cooperation in criminal matters in certain third countries, issued on 17 December 2020.

⁹ EDPS Opinion 52/2021 on two Proposals for Council Decisions on the signing and conclusion of Agreement between the EU and Armenia on cooperation between Eurojust and the competent authorities for judicial cooperation in criminal matters of Armenia, issued on 11 December 2023.

¹⁰ EDPS Opinion 19/2024 on two Proposals for Council Decisions on the signing and conclusion of an Agreement between the EU and Lebanon on cooperation between Eurojust and the authorities of Lebanon competent for judicial cooperation in criminal matters, issued on 28 August 2024.

Bosnia and Herzegovina¹² and with Algeria¹³. The EDPS noted in those Opinions that the negotiated Agreements provide for similar data protection safeguards as those provided for in Chapter IX of EUDPR with regard to processing of operational personal data by Union bodies, offices and agencies when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part three TFEU¹⁴.

10. In addition, on 11 August 2026, the EDPS issued its Opinion 19/2026¹⁵ on the Proposal for a new Regulation on Eurojust, where the EDPS commented in general terms on the rules applicable to Eurojust when exchanging personal data with competent authorities of third countries.
11. The EDPS notes that the eight countries contained in this Recommendation have highly heterogeneous legal systems as regards the respect of fundamental rights and freedoms, including the fundamental rights to privacy and data protection.
12. Against this background, while understanding the importance of information exchange and close collaboration of Eurojust with international partners, the EDPS considers of paramount importance to ensure that cooperation with any of these third countries does not lead to weakening or otherwise prejudicing the protection of fundamental rights and freedoms of natural persons guaranteed under the EU law, in particular their rights to data protection and privacy.
13. The EDPS welcomes recital 6 of the Recommendation providing that *'the Commission should, where necessary, consult the European Data Protection Supervisor (EDPS), including during the negotiation of the agreements, and, in any event, it should consult the EDPS before the agreements are concluded'*. The EDPS also welcomes recital (7) providing that *'the agreements should respect the fundamental rights and observe the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to private and family life, recognised in Article 7 of the Charter, the right to the protection of personal data, recognised in Article 8 of the Charter and the right to an effective remedy and fair trial recognised in Article 47 of the Charter'*.
14. The recommendations in this Opinion are aimed at clarifying and, where necessary, further developing the safeguards and controls in the envisaged agreements with respect to the protection of personal data. They are without prejudice to any additional recommendations that the EDPS could make on the basis of further available information and the provisions of the draft agreements.

¹² Opinion 20/2024 on two Proposals for Council Decisions on the signing and conclusion of an Agreement between the EU and Bosnia and Herzegovina on the cooperation between Eurojust and the authorities of Bosnia and Herzegovina competent for judicial cooperation in criminal matters, issued on 6 September 2024.

¹³ EDPS Opinion 15/2026 on two Proposals for Council Decisions on the signing and conclusion of an Agreement between the EU and Algeria on the cooperation between Eurojust and the authorities of Algeria competent for judicial cooperation in criminal matters, issued on 10 August 2026.

¹⁴ 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 in (Eurojust Regulation) (OJ L 303, 13.3.2018, p.1), Art. 26; 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 (EUDPR) (OJ L 295, 21.11.2018, pp. 39-98), Art. 3 and Chapter IX.

¹⁵ Opinion 19/2026 on the Proposal for the Regulation on the establishment of Eurojust and repealing Regulation (EU) 2018/1727, issued on 11 August 2026.

3. Death penalty and other form of cruel and inhuman treatment

15. The EDPS welcomes the requirement in directive 2 of the Annex that personal data will not be used to request, hand down or execute a death penalty or any form of cruel and inhuman treatment, and recital 7 of the Recommendation, according to which 'any exchange of information which leads to inhuman and degrading treatment and punishment, and if applicable related to a death penalty, is prohibited'.
16. The EDPS nevertheless notes that the negotiation mandate may include third countries that actively impose death penalty for a range of offences. Having this in mind, the EDPS suggests supplementing and further particularising the general requirement of directive 2 of the Annex, by requiring that the future agreements with such third countries should provide for specific assurances or other relevant mechanisms capable of ensuring effective compliance with this requirement in practice, considering the specific situation of each country.

4. Special categories of personal data

17. The EDPS welcomes directive 2 (d) of the Annex providing that transfer of special categories of data should be prohibited, unless it is strictly necessary and proportionate in individual cases for preventing or combating criminal offences covered by the agreements and subject to appropriate safeguards.
18. In view of effective supervision and enforcement of this requirement, the EDPS suggests that, in addition, the negotiating directive should expressly require that the assessment of the strict necessity and proportionality is properly documented.

5. Involvement of the supervisory authorities in the monitoring and evaluation

19. The EDPS positively notes the requirement for monitoring and the periodic evaluation of the agreements, foreseen in directive 4 of the Annex, as this is an important guarantee of their effective implementation in practice and of the required level of protection of fundamental rights and freedoms.
20. The EDPS welcomes, in particular, that such monitoring and evaluation will include experts in data protection. In this regard, the EDPS recommends involving representatives of the independent supervisory authorities in these activities.

6. Conclusions

21. In light of the above, the EDPS makes the following recommendations:

- (1) to ensure that future agreements with third countries, which maintain in their legal systems and impose death penalty, provide for specific mechanisms capable of ensuring in practice that personal data will not be used to request, hand down or execute a death penalty or any form of cruel and inhuman treatment,*
- (2) to require that the assessment of the strict necessity and proportionality of the transfer of special categories of data is properly documented,*
- (3) to involve the independent data protection authorities in the future reviews and evaluations of the agreements.*

Brussels,



Wojciech Wiczyński

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