

EDPB Documents



**EDPB Document on
Terms of Reference of the EDPB Support Pool of Experts**

Adopted on 15 December 2020

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1 TERMINOLOGY

1. For purposes of these Terms of Reference, the following terminology is used:
 -) **Support Pool of Experts:** a pool of experts established in the context of the EDPB in order to assist in the carrying out of investigations and enforcement activities of significant common interest, comprising both EDPB experts and external experts.
 -) **EDPB expert:** an expert employed by an EDPB member¹ or the EDPB Secretariat who is available to provide expertise relevant to an investigation or enforcement activity carried out by another supervisory authority.
 -) **External expert:** an expert who is not employed by any member of the EDPB or EDPB Secretariat who is requested to provide expertise relevant to the investigation or enforcement activities of a supervisory authority against a fee, following the successful completion of the relevant selection process.

2 OBJECTIVES

2. The objective of the SPE is to contribute to a high and consistent level of protection of personal data throughout the EEA Member States by:
 - (1) **Providing material support** to EDPB members in the form of expertise that is useful for investigations and enforcement activities of significant common interest and thereby promote better protection of data subjects; as well as
 - (2) **Enhancing the cooperation** and solidarity between all EDPB members by sharing, reinforcing and complementing strengths and addressing operational needs.

3 SCOPE

3. The SPE will be deployed in order to support **investigations and enforcement activities of significant common interest** for the members of the Board.
4. Investigations and enforcement activities of significant common interest may for example concern cases involving major global companies whose activities have a substantial impact on the protection of personal data of individuals across the EEA.
5. While the need for additional support may be greatest in large and complex cases, the SPE may also be useful for smaller, yet strategically important matters. For example, there may be cases that are in first instance only of national importance, yet could set an important precedent for other EDPB Members as regards the interpretation of the GDPR.² The complexity of the subject matter or the fact that it will be likely to be resource-intensive will, however, remain an important consideration.

¹ For purposes of these Terms of Reference, the term “EDPB member” should be understood as referring to all EEA national supervisory authorities (including the DE Länder SAs) as well as the EDPS.

² This may be particularly relevant in the absence of relevant guidelines or other common position of the EDPB on the matter.

6. In other words, the possible deployment of the SPE is not limited to cases involving processing activities with EU-wide impact. Deployment in cases with primarily local (or regional) impact may also be envisaged, provided it relates to matters of significant common interest.
7. The SPE should not replace or pre-empt the ordinary discussions or exchanges that take place at the level of expert subgroups, where EDPB members can discuss both practical issues related to investigation and enforcement as well as matters of legal interpretation of the GDPR. For the SPE to be deployed there should also be an actual **operational need** (i.e. the supervisory authority in charge would have difficulty to proceed with its investigation or enforcement activity without receiving additional support going beyond the mere exchange of views or general discussion of the experiences from other supervisory authorities).³

8. **N.B.: Relationship to Coordinated Enforcement Framework (CEF):**

-) The SPE has no direct relationship with the CEF.
-) Whereas the CEF provides a structure for coordinating recurring annual activities by EDPB members (“topics for coordinated action”), the SPE provides a framework for sharing and combining resources.
-) Whereas the CEF identifies topics for coordinated action on an annual basis, deployment of the SPE is determined on an ad hoc (case-by-case) basis, in light of the operational needs of individual EDPB members in relation to a particular case.

It is not excluded that the SPE is deployed to support the operational needs of one or more EDPB members in the context of a particular coordinated action, to be decided on a case-by-case basis.

³ Chapter VII GDPR sets out various mechanisms for cooperation among supervisory authorities that include a.o. exchange of information, mutual assistance and joint operations. The precise purpose and nature of the support activity will be determinative in identifying the appropriate cooperation mechanism. See also Section 5.2 (Deployment of SPE).

4 SUPPORT ACTIVITIES

9. Supervisory authorities may require different types of expertise at different stages of their investigation and enforcement activities. As a result, there are **many different types of support** activities (types of expertise) that can be provided which include, without being limited to:
 -) **analytical support** (e.g., sharing /explaining of a methodology for the carrying out of an inspection or calculating an administrative fine, legal analysis of a matter of EU law, a survey of the state of the art in a particular type of technology, ...);
 -) assisting in the **performance findings** of a forensic nature (e.g., in the context of an on-site or remote data protection audit);
 -) assisting in the preparation of **investigative reports** on the basis of evidence collected.
10. The need for additional expertise is not always clear at the outset of an investigation or enforcement activity. Additional expertise may also be needed at later stages in the investigative and/or enforcement process (e.g. when preparing a fining decision; or in the context of an appeal).
11. The SPE may also have a more limited scope in terms of the types of support activities during the pilot phase (e.g. limited to the investigative phase).

5 LEGAL BASIS

5.1 Creation of the SPE

12. The legal basis for the creation of the SPE within the context of the EDPB can be found in Article 70 (1) (u) and (v) and Article 75 of the GDPR:
13. **Article 70(1)(u) GDPR** provides that the Board shall “*promote the cooperation and the effective bilateral and multilateral exchange of information and best practices between the supervisory authorities*”.
14. **Article 70(1)(v) GDPR** provides that the Board shall “*promote common training programmes and facilitate personnel exchanges between the supervisory authorities and, where appropriate, with the supervisory authorities of third countries or with international organisations*”.
15. **Article 75** of the GDPR provides that the Secretariat shall provide analytical, administrative and logistical support to the Board and shall be responsible for the communication between the members of the Board.

5.2 Deployment of the SPE

16. The legal basis for EDPB members to contribute to and receive assistance from the SPE can be found in Articles 57(1)(g) and (t) GDPR, Section 1 of Chapter VII of the GDPR (Articles 60-62) as well as Article 61 of Regulation (EU) 2018/1725 (EUDPR).

17. **Article 57(1) (g)** GDPR provides that each supervisory authority shall “*cooperate with, including sharing information and provide mutual assistance to, other supervisory authorities with a view to ensuring the consistency of application and enforcement of this Regulation*”.⁴
18. **Article 57(1) (t)** GDPR provides that each supervisory authority shall contribute to the activities of the Board.
19. **Article 61(1)** GDPR provides that supervisory authorities “*shall provide each other with relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective cooperation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior authorisations and consultations, inspections and investigations.*”
20. **Article 62(1)** GDPR provides that supervisory authorities “*shall, where appropriate, conduct joint operations including joint investigations and joint enforcement measures in which members or staff of the supervisory authorities of other Member States are involved.*”
21. Experts can only support investigations and enforcement activities **in accordance with the GDPR and other applicable legislation**. Much like the CEF, the SPE supports and builds on mechanisms for cooperation that are in the GDPR. This means that the SPE is without prejudice to the functioning of the cooperation- and consistency mechanisms under the GDPR and the other tasks and the powers of the EDPB and EDPB members.⁵ There is also **no obligation** whatsoever for EDPB members to submit a request or offer of support via the SPE prior to initiating any of the cooperation mechanisms provided by GDPR. In other words: the creation of the SPE in no way precludes SAs from extending support to one another in any case they consider appropriate.⁶
22. Chapter VII GDPR sets out various mechanisms for cooperation among supervisory authorities that include a.o. exchange of information, mutual assistance and joint operations. The precise purpose and nature of the support activity will be determinative in identifying the appropriate cooperation mechanism. In practice, the involvement of EDPB experts may take the form of a sharing of information (Article 57(1)g, mutual assistance (voluntary/formal⁷) (Article 61), or joint operation (Article 62)⁸. As a

⁴ Article 61 Regulation (EU) 2018/1725 (EUDPR) provides that “[t]he European Data Protection Supervisor shall cooperate with national supervisory authorities and with the joint supervisory authority established under Article 25 of Council Decision 2009/917/JHA to the extent necessary for the performance of their respective duties, in particular by providing each other with relevant information, asking each other to exercise their powers and responding to each other’s requests.” See also Art. 26 of the [EDPS Rules of Procedure](#) (“Article 26 Cooperation with national supervisory authorities under Article 61 of the Regulation”).

⁵ Any involvement of the SPE must therefore be mindful of the division of competences between EDPB and national SAs, making the most of the tasks and competences allocated to both. In the same vein, the establishment of the SPE shall be without prejudice to any other existing provisions or arrangements on cooperation or the setting up or operation of joint operations.

⁶ The SPE primarily seeks to *facilitate* the matching of available expertise with operational needs. It does not in any way prevent EDPB members and national supervisory authorities from directly providing each other with support whenever the operational need arises in accordance with cooperation mechanisms of the GDPR.

⁷ The ability to seek (and the obligation to give) mutual assistance applies to any case in which an SA requires the assistance of another SA for the performance of its tasks. Article 61 GDPR does not have to concern cross-border processing in order to be triggered. Article 61 GDPR can be used, for example, as a tool to share findings between the SAs involved.

⁸ Article 62 GDPR provides rules for joint operations by the supervisory authorities, including joint investigations and joint enforcement measures. The application of Article 62 GDPR is not limited to cross-border cases. In case of a joint operation within the meaning of Article 62 GDPR, any investigative powers conferred upon an EDPB expert may only be exercised with the approval, under the guidance and in the presence of members or staff of

result, the appropriate cooperation mechanism (i.e. the legal basis for a particular form of cooperation) will need to be determined on a case-by-case basis prior to deployment, taking into account also any limitations imposed by national law.

6 KEY PRINCIPLES

6.1 Voluntary

23. The involvement of EDPB experts or external experts requires the agreement of the EDPB member responsible for the investigation and/or enforcement activity. In case of EDPB experts, it also requires the agreement of their employer.
24. Any EDPB member may request or propose the involvement of one or more experts from the SPE to support an investigation and/or enforcement activity.
25. Experts will provide their expertise in accordance with the purpose, nature and duration of the support activity agreed by the EDPB member responsible for the investigation and/or enforcement activity.
26. Each EDPB member remains responsible for investigations and follow-up enforcement action in their respective jurisdictions.

6.2 Confidentiality and applicable law

27. Experts will be required to support investigations and enforcement activities in compliance with the legislation applicable to the EDPB member responsible for the investigation and/or enforcement activities.
28. Experts will be required to respect at least equivalent rules of confidentiality as the staff of the EDPB member responsible for the investigation or enforcement activities, which may require the signing of a non-disclosure agreement and to provide further guarantees of impartiality.

6.3 Coordination

29. The SEC will be charged with ensuring coordination of the SPE, in accordance with Articles 70(1)(u)-(v) and 75(5)-(6) GDPR.
30. The SEC will liaise with the contact points of the SPE in order to help fill requests for support (i.e. to match experts with the operational needs articulated in the requests).

the host supervisory authority and insofar the law of the Member State of the host authority permits. The EDPB expert shall be subject to the Member State law of the host supervisory authority. The scope of application of Article 62 is limited to supervisory authorities. As a result, only experts employed by EDPB members can participate in Article 62 joint operations. Experts employed by the EDPB Secretariat cannot participate in Article 62 Joint Operations in the same manner as EDPB members.

Adopted

7 COMPOSITION OF THE SPE

7.1 EDPB experts

31. An EDPB expert is an expert employed by an EDPB member or the EDPB Secretariat who is available to provide expertise relevant to an investigation or enforcement activity carried out by an(other) EDPB member.
32. EDPB experts continue to be employed by their respective employer but provide assistance to an(other) EDPB member for the purposes, activities and duration agreed between their employer and the EDPB member responsible for the investigations and/or enforcement activity.

7.2 External experts

33. An external expert is a person who is not employed by any member of the EDPB or the EDPB Secretariat, yet has demonstrated expertise that is relevant to the needs of an investigation or enforcement activity.
34. External experts provide their services against the payment of a fee.⁹ External experts are admitted to the Support Pool of Experts following a call for expressions of interest and the successful completion of the selection process. The list drawn up on the basis of the call for expression of interest does not imply any obligation on the part of the EDPB to award a service contract (by the use of an order form) to the successful applicants.
35. The involvement of external experts may be necessary to ensure that highly specialised knowledge (e.g., in relation to forensics) can be made available to complement the expertise present in the supervisory authorities in order to address the operational needs of a specific case. As a result, external experts should only be selected on a subordinated basis , i.e. after it has been determined that no EDPB expert is available to provide the necessary support for the requesting EDPB member within the requested timeframe due to reasons of capacity.

7.3 Reporting and evaluation

36. The SEC will provide regular reports (minimum twice a year). For example, in case the number of requests risks to exceed available resources, the Plenary may be informed to help determine priorities, taking into account also the resources that remain for the relevant period.
37. The SEC will also make an annual evaluation report of the SPE initiative.

7.4 Budget and accountability

38. The funding of eligible expenses of the SPE will be part of the EDPB budget¹⁰.

⁹ Without prejudice to particular specifications agreed for a specific assignment, which will be enclosed with the request sent to the expert selected, the volumes, deadlines and remuneration for the various forms of expertise are set out in a table included with the call for expressions of interest, as well as the maximum total amount that can be paid to each individual expert.

¹⁰ The EDPB Secretariat will plan for the inclusion of additional budget for SPE in the preparation of 2022 Budget that will be carried out beginning of 2021.

8 FINANCIAL SUPPORT

8.1 EDPB experts

39. The salary of EDPB experts remains covered by their employer, as they remain part of the staff of their employer. Each EDPB Member as well as the EDPB SEC will therefore need to consider this in their respective budget plans.
40. Upon confirmation of eligibility, the EDPB may, subject to budget availability, assist by reimbursing the costs of two common areas of expenditure:
 - (1) travel and, subject to further assessment, accommodation and/or daily allowances (in case physical presence is required),
 - (2) translation (e.g., of investigative reports) in specific cases.

8.2 External experts

41. Upon confirmation of eligibility, the EDPB may assist by reimbursing the costs relating to travel and daily allowance (in case physical presence is required).
42. Fees of external experts may also be eligible for reimbursement, subject to budgetary availability and approval of the EU Budgetary Authority as regards allocation of EDPB Budget and provisioning of the necessary financial resources. Contact may also be made with the European Commission in case the SPE could also rely EU funding programmes (e.g., in the form of a project grant).