



Final

## 65<sup>th</sup> Plenary meeting

12 May 2022, Remote

Some points have been redacted from these minutes as their publication would undermine the protection of one or more of the following legitimate interests, in particular: the public interest as regards international relations; the privacy and integrity of the individual regarding the protection of personal data in accordance with Regulation 2018/1725; the commercial interests of a natural or legal person; ongoing or closed investigations; the decision-making process of the EDPB, in relation to matters upon which a decision has not yet been taken and/or the decision-making process of the EDPB, in relation to matters upon which a decision has been taken.

### 1 Adoption of the minutes and of the agenda, Information given by the Chair

#### 1.1 Draft agenda of the 65th EDPB meeting – adoption

The draft agenda was adopted unanimously with the inclusion of new points under AOB (5.1 Access to documents requests and 5.1 Proposal for a Regulation laying down rules to prevent and combat child sexual abuse)

The discussions relating to agenda points 3.1 and 3.2 were declared confidential in accordance with Art. 33 EDPB RoP.

#### 1.2 Updated Draft EDPB Budget proposal for 2023 – discussion

The EDPB Chair and the EDPS Director informed the EDPB members that the European Commissioner for Budget and Administration urged for a revision of the first budget proposal presented at the plenary on 6 April. In a revised proposal and compared to the 2022 execution, the EDPB significantly reduced the requested increase, both on salary and non-salary expenditure, while remaining significantly below the Multi-annual Financial Framework which had been negotiated in 2020. The non-salary expenditure was also considerably reduced, and in practice, this will lead among others to

- reducing the number of physical meetings of the EDPB (at plenary and expert subgroup level) and of the Coordinated Supervision Committee,
- reducing the translation expenses (therefore some documents will not be available in all the EU languages),
- reducing the missions of the Chair and Vice Chairs,
- reducing costs for external consultancy and studies, and
- postponing important IT projects at the service of a better cooperation of SAs.

The EDPB Chair called upon the EDPB members to ask their national government to support the 2023 EDPB budget proposal. Without the requested additional posts, the EDPB Secretariat will be at high

risk of not being able to support the EDPB in meeting its legal duties (consistency mechanism, increased number of binding decisions to be prepared and adopted, EC consultations, litigation, access to document requests, and increased activities of the Coordinated Supervision Committee<sup>1</sup>) and to implement the strategic actions that were decided (support for the effective enforcement of GDPR following the Vienna Statement of April 2022, and coordination actions of the supervisory authorities to foster convergence of approaches).

An SA proposed to gather budget figures for 2022 from all the SAs (budget and evolution of human resources) as the overview made by the EDPB stops in 2021. The European Commission confirms that having such an updated overview would be important, and stressed that various parameters such as differences in competences or the number of residents in a Member State, for instance, may need to be taken into account when comparing the evolution of different SAs.

## 2 Consistency mechanism and Guidelines and EDPB RoP

### 2.1 Guidelines on the calculation of administrative fines under the GDPR – discussion and adoption

The rapporteur presented the draft guidelines, informing the members of some minor revisions proposed by the EDPB Secretariat and the drafting team following circulation to the EDPB members.

One SA suggested adding an example to the types of data that deserve special protection in paragraph 56.

One SA suggested a change of wording to paragraph 44 and the following example in order to more clearly express the distinction between cases where Art. 83.3 GDPR does or does not apply.

The EDPB members accepted the changes referred to above.

The EDPB members discussed the options put forward by the Fining Taskforce on the presentation of the methodology to determine a starting point for the calculation of fines. Since neither of the options secured a majority, the members of the EDPB decided to incorporate a description of the methodology with references to percentages. However, the EDPB members committed to drawing up a reference table containing ranges of starting points for the calculation of fines, correlating the seriousness of the infringement with the turnover of the undertaking. This work is entrusted to the Fining Taskforce and will be undertaken in parallel with the public consultation, in order to be included in the final version of the Guidelines.

The guidelines were adopted by the members of the EDPB. 27 EU members of the EDPB voted in favour of adoption. 1 EU member of the EDPB voted against. The 3 EEA members of the EDPB were in favour of adoption.

The Guidelines will be subject to a public consultation for a period of 6 weeks.

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<sup>1</sup> Following the entry of application of new legislations adding more systems and agencies within the framework of the CSC's activities, bringing them from 3 to date, to over 12 by 2023 (adding for instance Europol, Schengen, EES, ECRIS-TCN, VIS, Eurodac and Etias).

## 2.2 Guidelines on the use of facial recognition technology in area of law enforcement – discussion and adoption

The rapporteur presented the draft guidelines on the use of facial recognition technology in the area of law enforcement. One SA informed the EDPB members that the Berlin Group will discuss this topic at its next meeting.

The guidelines were unanimously adopted by the members of the EDPB.

The guidelines will be subject to a public consultation for a period of 6 weeks.

## 3 Current Focus of the EDPB Members

### 3.1 [REDACTED]

### 3.2 EDPS Conference on 16 & 17 June 2022 “The Future of Data Protection - Effective enforcement in the digital world” – discussion

One SA raised the importance of coordinating the EDPB members’ position ahead of the EDPS conference of June 2022, in particular with regards to issues related to enforcement of the GDPR. The Members also discussed the role that the EDPB could play in the future, in the context of the new EU legislative initiatives in the digital sector.

The EDPB members agreed that the main messages are contained in the statement on enforcement cooperation adopted on 28 April 2022, in which the EDPB members provide novel strategies to further enhance efficient and consistent GDPR enforcement. In addition, the EDPB members recalled the position taken in the Contribution of the EDPB to the evaluation of the GDPR under Article 97 GDPR (adopted on 18 February 2020) and restated during the plenary meeting of 18 January 2022, namely that it is premature to revise the GDPR at this point in time. They also stressed the role of the EDPB to support, lead, and guide data protection in the future.

## 4 FOR DISCUSSION AND/OR ADOPTION – Expert Subgroups and Secretariat

### 4.1 COOP ESG

#### 4.1.1 Publication of the Internal Document on the practical implementation of amicable settlement – discussion and adoption

The rapporteur recalled that the EDPB decided in November 2021, when the Internal Document on the practical implementation of amicable settlement was adopted, to take a decision on the document’s publication after six months. Following an access to documents request, the document has been disclosed and is available to the public on third-party websites.

The EDPB members decided to transform the internal document into the form of EDPB guidelines, entrusting the rapporteurs and the EDPB Secretariat with incorporating the necessary changes, including the addition of a reference to the initial internal document as well as updating outdated references. One member abstained from this decision.

The EDPB members agreed to discuss the publication of other internal documents during the next plenary meeting.

## 4.2 FM ESG

### 4.2.1 Letter on the EU AML/CFT proposal – discussion and adoption

The rapporteur presented a draft letter to the European Parliament, the Council, and the European Commission on a number of data protection issues raised following a package of four legislative proposals aiming to strengthen the EU's anti-money laundering and countering the financing of terrorism.

The letter was unanimously adopted by the members of the EDPB.

### 4.2.2 Letter of the European Payment Industry on PSD2 Guidelines – discussion and adoption

The rapporteur presented a draft letter in response to concerns raised by various associations representing the European payments industry (by letter dated 31 January 2022) regarding the EDPB's guidelines on the interplay between the GDPR and PSD2.

The letter was unanimously adopted by the members of the EDPB.

## 4.3 Secretariat

### 4.3.1 Format of the EDPB plenary meeting in September 2022 – decision

The EDPB Secretariat informed the members that no meeting room is available for an in person meeting on 13-14 September 2022. A room is available for a meeting on 12 - 13 September 2022, though official confirmation will follow on 18 July 2022. The EDPB members decided to adjust the meeting date to 12 - 13 September 2022.

## 5 AOB

### 5.1 Access to documents requests

The matter was postponed to the next plenary meeting.

### 5.2 Proposal for a regulation laying down rules to prevent and combat child sexual abuse

The European Commission informed the EDPB members about the proposal for a regulation laying down rules to prevent and combat child sexual abuse, which will replace the current interim Regulation 2021/1232 which will expire after 3 August 2024. The European Commission confirmed that a request for a joint opinion on the proposed regulation will be submitted to the EDPS and EDPB.

## Annex: Attendance List

### SAs:

AT SA, BE SA, BG SA, CY SA, CZ SA, DE SA, DK SA, EDPS, EE SA, EL SA, ES SA, FI SA, FR SA, HR SA, HU SA, IE SA, IS SA, IT SA, LI SA, LT SA, LU SA, LV SA, MT SA, NL SA, NO SA, PL SA, PT SA, RO SA, SE SA, SI SA, SK SA

- European Commission

- Observers: AI, MD, MK, SR

In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points 3.1 and 3.2 of the agenda.

- Ad hoc Observer: Federal CH was present during the plenary meeting for item 2.2 of the agenda.

- EDPB Secretariat