



Final

69th Plenary meeting 12-13 September 2022, Brussels

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

1.1 Minutes of the 67th and the 68th Plenary meetings – adoption

The minutes of the 67th plenary meeting were adopted unanimously with the modifications agreed upon by the EDPB members. The members of the EDPB also agreed on the public version of the minutes.

The minutes of the 68th plenary meeting were adopted unanimously with the modifications agreed upon by the EDPB members. The members of the EDPB also agreed on the public version of the minutes.

1.2 Draft agenda of the 69th EDPB meeting – adoption

The draft agenda was adopted. The discussions relating to agenda points 2.1, 3.1, 4.2.1, 4.2.3, 6 and 7.2 were declared confidential according to Art. 33 EDPB RoP.

2 Consistency mechanism, Guidelines and EDPB RoP

2.1 Art. 64 Opinion on EuroPriSe certification criteria – discussion and adoption

The rapporteur presented the draft opinion on a certification scheme drafted by EuroPrise, which was assessed in line with the EDPB Guidelines on certification and identifying certification criteria in accordance with Articles 42 and 43 of the Regulation and their Addendum. The rapporteur recalled that the ITS ESG was consulted during the process.

The EDPB members discussed modifications to the wording of the opinion in relation to Chapter V GDPR. In particular, the new wording suggested aimed at recalling data exporter's obligations following the Schrems II judgment when applicants are subject to GDPR by virtue of its Art. 3(2). Following the discussion, the new compromise wording was agreed upon.

The EDPB members adopted the opinion, as modified during the meeting, unanimously.

3 Current Focus of the EDPB Members

3.1 Update on Twitter data security allegations – information

IE SA shared information on recent allegations about security issues regarding Twitter. Among other issues, the allegations claim that Twitter misinformed IE SA. IE SA has been in contact with Twitter with respect to the allegations and requested further information from Twitter. [REDACTED]

FR SA explained that it is also alleged that Twitter misinformed FR SA [REDACTED]

3.2 Inclusive language in EDPB documents – information

NO SA presented their proposal to use inclusive language in the documents prepared by the EDPB, specifically “they” should be used, rather than gender specific pronouns.

Several SAs took the floor to support the proposal. One SA proposed to add an explanation regarding the use of inclusive language in the EDPB documents.

The EDPB members supported the NO SA proposal unanimously.

3.3 The EU House of Data Protection – discussion

The EDPS recalled that the initiative to create the EU House of Data Protection was discussed on several occasions. The EDPS explained that the concerns raised by the EDPB members could be addressed and proposed to create a SAESG drafting team to prepare terms of reference for the initiative, covering the modalities of its implementation.

Several EDPB members, while supporting the overall objective of the initiative, had concerns about the potential confusion of the roles of the EDPB and the EDPS, the impact on the “Chinese wall” to be respected within the EDPS towards the EDPB Secretariat, as well as constraints on the EDPB’s resources and budgetary implications. Several SAs also underlined the need to treat the EDPB members on an equal footing and proposed to transform the project into a pure EDPB project. Some SAs also questioned how the operational decisions would be made in the context of this initiative. Several other SAs supported the proposal and considered that the questions raised could be addressed by a dedicated drafting team.

Following the exchange of views, a request for mandate was drafted to address the questions raised during the discussion. It was proposed to create an SAESG drafting team, which would work based on the objectives set out in the mandate. Some modifications to the text of the mandate were agreed upon during the meeting. One SA proposed that the mandate refers to the “European” instead of “EU” House of Data Protection.

The EDPB members adopted the mandate, as agreed upon during the meeting, unanimously.

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

4.1 BTLE ESG

4.1.1 Statement on EU Police Cooperation Code Cooperation – discussion and adoption

The rapporteur presented the draft statement which aims to provide input to the ongoing legislative process on the proposed EU Police Cooperation Code.

The EDPB members adopted the statement unanimously.

4.2 ENF ESG

4.2.1 Substantive questions from the CEF members – discussion

The EDPB Secretariat presented the questions from the Coordinated Enforcement Framework (CEF) members. The questions mainly relate to transfers and hosting by non-EU providers. The members of the co-ordinated action working group considered that these questions warrant a discussion at the EDPB level, to ensure the adoption of consistent approaches across the EEA, even though the decision on enforcement action will rest with the SA.

Following the discussion during which the EDPB members highlighted the importance of coordination and consistency, the EDPB Secretariat was entrusted to modify the info note and to consider the input from the discussion in the future work of the CEF.

4.2.2 GPA International Enforcement Working Group - information

NO SA shared information about the GPA International Enforcement Working Group and its recent work. The group prepares guidelines, provides a forum for exchange between the different authorities, including on practical cases, and has started to proactively engage with controllers. NO SA encouraged other EEA SAs to join this group, this would also correspond to the EDPB strategy. The EDPB itself could be an observer.

4.2.3 Coordinated Action 2023 – selection of topic - decision and adoption

The EDPB Secretariat presented the selection of topics for the Coordinated Action 2023 and explained that the topics were discussed in the ENF ESG.

The EDPB members decided to select the designation and role of DPOs as the topic for the Coordinated Action 2023, with 18 EU and 2 EEA members of the EDPB in favour. 9 EU members of the EDPB voted for the other topic.

4.3 Secretariat

4.3.1 Open letter on EDPB budget proposal for 2023 - discussion and adoption

The Chair and the EDPB Secretariat presented the EDPB-EDPS draft open letter, which was prepared following the decision during the EDPB plenary on 28 July 2022. The EDPB members discussed modifications to the addressees and wording of the open letter.

The EDPB members adopted the letter, as modified during the meeting, unanimously. A dedicated joint press release (EDPB-EDPS) will be shared on the open letter.

5 AOB

5.1.1 G7 DPA Roundtable 2022

DE SA shared information about the G7 DPA roundtable that took place on 7 and 8 September 2022 in Bonn. A press release was adopted following the meeting. The G7 data protection and privacy authorities agreed to establish the Data Protection and Privacy Roundtable meetings as a permanent grouping with annual meetings at Commissioner's level and to continue exchange information at expert level.

The European Commission stressed the importance of coordinating the common EU position within the framework of the EDPB in relation to the work of that permanent group in advance of the meetings.

5.1.2 44th Annual Conference of the Global Privacy Assembly (GPA) 2022

DE SA informed the EDPB members about the event planned in Türkiye on 25-28 October 2022 and mentioned some of the topics to be addressed by the GPA, such as emerging technologies including AI, protection of vulnerable groups and global data protection.

The Chair of the EDPB recalled that the EDPB has an observer status and its representatives will attend this conference. The EDPB members were invited to reach out to the EDPB Secretariat in case of a need for coordination.

5.1.3 DE SA update

DE SA informed the EDPB members about a matter related to [REDACTED]

The EDPB members took note of the information given.

5.1.4 BE SA update on the IAB Europe case

BE SA informed the EDPB members that the BE national court has referred questions for a preliminary ruling to the CJEU. The referred questions concern the nature of data processed within the IAB Europe TCF, i.e. whether the consent string data is personal or not, and the processing roles of the different parties involved, i.e. whether the IAB Europe is a joint controller.

BE SA further explained that, in accordance with its national law, appeals do not have a suspensive effect. BE SA is currently assessing the possible consequences of this referral on its decision.

5.1.5 FTC request for comments on commercial surveillance

The EDPB Secretariat explained that the EDPB has received a request from the Federal Trade Commission (FTC) to provide input on a wide range of concerns regarding commercial surveillance practices.

The EDPB members questioned the possibility to prepare a consolidated reply from the EDPB to the detailed questionnaire within the set deadline.

6 Preparation of the meeting with the NGOs

The EDPB members held a discussion to prepare the meeting with NGOs.

7 FOR INFORMATION – Expert Subgroups and Secretariat

7.1 FATCA – written state of play

The EDPB members took note of the written state of play.

7.2 Strategic cases – second round of selection – written state of play

The EDPB members took note of the written state of play.

Meeting with NGOs

The Chair welcomed the NGOs and BEUC. She recalled EDPB's actions on GDPR enforcement following the Commissioner's meeting in Vienna, including the identification of procedural aspects to be harmonised in EU law. Today's meeting and some of the written contributions of NGOs will support finalising this work. NGOs thanked the EDPB for the invitation. They recognised the importance of the Vienna meeting and of the EDPB Guidelines (e.g. guidelines on Article 60), and explained that many of the issues they identified with the OSS stem from differences in national procedural law.

The first block of issues concerns the lodging of complaints. NGOs presented the findings of an empirical study of current practices. In this context, the Chair recalled that the EDPB is currently working on a common optional template form for data subjects' complaints.

Then, the NGO representatives outlined procedural issues once a complaint has been filed and in the Art. 60 cooperation. They discussed national differences on the status of the complainant, like the sharing of documents or information available to the complainant and the risks of civil litigation in parallel.

On the SAs' duty to decide on a complaint, NGOs believe that some SAs do not always provide the necessary information to complainants. SAs discretionary powers on own volition investigations should not result in narrowing down investigations or reducing data subjects' rights. It would not always be clear for individuals which SA should communicate with them, what information they should receive and in which language. They added that it might sometimes be preferable for the data subject to communicate directly with the LSA, while also acknowledging the difficulties to do so.

NGOs raised the concept of 'decision', and explained that each complaint should lead to a formal decision, to ensure the right to a legal remedy. One SA commented that a 'decision' does not necessarily mean that corrective measures are taken.

On procedural deadlines, NGOs advocate for clear deadlines for each step of the cooperation procedure (admissibility of the complaint, SA's competence and the decision to investigate or not).

Then, the access to file and the right to be heard was discussed, which according to the invitees vary considerably across Member States. The Chair pointed out that the EDPB is currently working on this matter, but also stressed the need for legislative changes to further harmonise procedural legislations.

On legal remedies, NGOs identify issues related to the informal closing or narrowing down the scope of complaints, merging with an ex-officio investigation or pausing investigations. When data subjects have no information from SAs, NGOs see no choice but to seek legal remedies under Art. 78 GDPR, which is costly and burdensome, so they suggested to have a remedy requiring SAs to make use of Art. 61 GDPR.

NGOs addressed the notification of decisions. They reported that the information given is not always conveyed to complainants in a timely manner or decisions are not made available. They proposed to notify (draft) decisions to parties in a harmonised way and to publish decisions fully. The Chair explained that also this topic is different from Member State to Member State.

NGOs raised the lack of transparency on voting of individual members of the EDPB. The EDPB members recalled that the current practice of indicating the number of votes in favour/against and

abstentions, allows for the verification of the quorum, and that the information on the votes cast by specific SAs would have no added value. This was acknowledged by NGOs.

Finally, NGO representatives said there is no need to reopen GDPR at this stage. In their view, while the EDPB guidelines should keep being used for clarifying procedural matters, complementary actions (possibly through legislation) are necessary to further streamline and harmonise procedural rules. The NGOs representatives thanked the EDPB for the opportunity to exchange views on GDPR enforcement and encouraged the EDPB to keep providing possibilities for a dialogue in the future.

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: AL, MD; In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points 2.1, 4.2.1, 4.2.3., 6 and 7.2 of the agenda.

- EDPB Secretariat

- External participants: representatives of the following organisations were present for the point of the agenda “Meeting with NGOs”:

- Access Now

- BEUC

- EDRI

- noyb