



Final

72nd Plenary meeting

5 December 2022, Remote

1 Adoption of the agenda, Information given by the Chair

1.1 Draft agenda of the 72nd EDPB meeting – a adoption

The draft agenda was adopted.

The discussions relating to agenda points 2.1, 2.2 and 2.3 were declared confidential according to Art. 33 EDPB RoP.

2 Consistency mechanism

2.1 Binding Decision 03/2022 on the dispute submitted by the Irish SA on Meta Platforms Ireland Limited and its Facebook service (Art. 65(1)(a) GDPR) – discussion and possible adoption

The Chair recalled the confidential nature of the discussions related to Article 65 GDPR procedures.

The lead rapporteur presented the draft binding decision which was discussed in the course of several ENF ESG meetings. The EDPB Secretariat recalled that the case stems from a complaint. The proposed key findings in this binding decision concern the IE SA draft decision relating to Meta IE's reliance on Article 6(1)(b) GDPR for the purpose of behaviour advertisement in its Facebook service, its compliance with certain data protection principles and corrective measures, including administrative fines.

The EDPB members discussed and decided on some modifications to the wording of the binding decision.

The European Commission made comments concerning the scope of relevant and reasoned objections, the role and the competences of the EDPB as provided for in Article 65 GDPR, the scope of the draft decision in questions and the scope of the binding decision.

The binding decision was adopted by EDPB members. 24 EU members of the EDPB voted in favour of adoption. An additional EU member voted in favour of adoption in writing. 1 EU member of the EDPB

voted against and 2 EU members abstained. 2 EEA members of the EDPB were in favour and 1 EEA member abstained.

No request was raised for the urgent translation of this binding decision.

2.2 [Binding Decision 04/2022 on the dispute submitted by the Irish SA on Meta Platforms Ireland Limited and its Instagram service \(Art. 65\(1\)\(a\) GDPR\) – discussion and possible adoption](#)

The lead rapporteur presented the draft binding decision which was discussed in the course of several ENF ESG meetings and recalled the high degree similarity between this Article 65 procedure concerning Instagram and the procedure concerning Facebook, which was discussed under point 2.1 of the agenda. This draft binding decision concerns the IE SA draft decision relating to Meta IE's reliance on Article 6(1)(b) GDPR for the purpose of behaviour advertisement in its Instagram service, its compliance with certain data protection principles and corrective measures, including administrative fines.

The EDPB members discussed and decided on some modifications to the wording of the binding decision in line with the changes made in the binding decision adopted under point 2.1 of the agenda.

The European Commission made comments concerning the scope of relevant and reasoned objections, the role and the competences of the EDPB as provided for in Article 65 GDPR, the scope of the draft decision in questions and the scope of the binding decision.

The binding decision was adopted by EDPB members. 24 EU members of the EDPB voted in favour of adoption. An additional EU member voted in favour of adoption in writing. 1 EU member of the EDPB voted against and 2 EU members abstained. 2 EEA members of the EDPB were in favour and 1 EEA member abstained.

No request was raised for the urgent translation of this binding decision.

2.3 [Binding Decision 05/2022 on the dispute submitted by the Irish SA on WhatsApp Ireland Limited \(Art. 65\(1\)\(a\) GDPR\) – discussion and possible adoption](#)

The lead rapporteur presented the draft binding decision which was discussed in the course of several ENF ESG meetings and explained that this decision concerns the IE SA draft decision relating to WhatsApp IE's reliance on Article 6(1)(b) GDPR, notably for the purpose of service improvement, its compliance with certain data protection principles and corrective measures, including administrative fines. The lead rapporteur also noted the level of similarity between this procedure concerning WhatsApp and the parallel procedures concerning Facebook and Instagram, which were discussed under points 2.1 and 2.2 of the agenda respectively.

The EDPB members discussed and decided on several modifications to the wording of the binding decision.

The European Commission made comments concerning the scope of relevant and reasoned objections, the role and the competences of the EDPB as provided for in Article 65 GDPR, the scope of the draft decision in questions and the scope of the binding decision.

The binding decision was adopted by EDPB members. 24 EU members of the EDPB voted in favour of adoption. An additional EU member voted in favour of adoption in writing. 1 EU member of the EDPB voted against and 2 EU members abstained. 2 EEA members of the EDPB were in favour and 1 EEA member abstained.

No request was raised for the urgent translation of this binding decision.

Annex: Attendance List

SAs:

AT SA, BE SA, BG SA, CY SA, CZ SA, DE SA, DK SA, EDPS, 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

- EDPB Secretariat