



Final

75th Plenary meeting

14 February 2023, Brussels

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 Minutes of the 74th Plenary meeting – adoption

The minutes of the previous plenary meeting were adopted unanimously. The members of the EDPB also agreed on the public version of the minutes.

1.2 Draft agenda of the 75th EDPB meeting – adoption

The draft agenda was adopted with inclusion of one new item under AOB (5.2 Draft code of conduct on children's data).

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

1.3 Election of a new EDPB Chair and Deputy Chair 2023 – information

The Chair of the EDPB recalled that in accordance with Art. 5 and 6 of the EDPB RoP, the EDPB shall elect a Chair and one Vice Chair in May 2023. The Chair and one of the Vice-Chair's terms end on 25 May 2023 and the current Chair will not be running for a second term. A call for candidates will be circulated pursuant to Art. 5.4 of the EDPB RoP. Interested candidates will be able to send their applications in writing to the EDPB Secretariat and the Chair by 25 April 2023. Following that, the EDPB Secretariat will circulate the list of candidates and elections will take place on 25 May 2023 through secret ballot. The EDPB members agreed to have an in-person plenary meeting on 26 April 2023 during which interested candidates will be able to address the EDPB members. The meeting will take place in the EDPB premises, without interpretation and the meeting space will be more limited than usual. Further information will be shared by the EDPB Secretariat.

On 24 May 2023, there will be a farewell cocktail with the Chair of the EDPB.

2 Consistency mechanism, Guidelines and EDPB RoP

2.1 Guidelines 05/2021 on the Interplay between the application of Article 3 and the provisions on international transfers as per Chapter V of the GDPR (after public consultation) – discussion and adoption

The rapporteur presented the updated version of the Guidelines on the interplay between the application of Art. 3 and the provisions on international transfers as per Chapter V of the GDPR following the public consultation. The newly introduced explanations and clarifications were outlined, as well as a modification proposed by the EDPB secretariat.

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

2.2 Guidelines 07/2022 on certification as a tool for transfers (after public consultation) – discussion and adoption

The rapporteur presented the updated version of the Guidelines on certification as a tool for transfers following public consultation. The updated version has been reviewed and agreed upon by both ITS and CEH ESGs. The rapporteur explained the key amendments and underlying rationale in the updated version.

The EU COM proposed to make clearer the possibility provided in the Guidelines to include binding and enforceable commitments in the certification agreement and to require the development of templates to that effect. The EDPB members discussed the proposals and decided not to take them on board, given that the Guidelines already provide sufficient flexibility on those aspects and that no concerns were raised in that regard during the public consultation. The members of the EDPB agreed that more experience with the application of the Guidelines is necessary and that the Guidelines might be updated in the future following this additional practical experience.

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

2.3 Guidelines 03/2022 on deceptive design patterns in social media platform interfaces: how to recognise and avoid them (after public consultation) – discussion and adoption

The rapporteurs presented the Guidelines and the suggested amendments following the public consultation.

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

3 Current Focus of the EDPB Members

3.1 Follow-Up to the Art. 65 binding decision 5/2022 on the dispute submitted by the Irish SA regarding WhatsApp Ireland Limited – discussion

The rapporteur recalled the content of the EDPB binding decision 5/2022 of 5 December 2022 and the developments since the adoption of that decision. The EDPB members were invited to discuss three topics, namely the process foreseen in Art. 60(7)-(9) GDPR, the amount of the fine imposed, and the statement published by the IE SA on 19 January 2023 on the topic of “further investigations” into WhatsApp Ireland Limited.

The majority of the EDPB members who took the floor expressed the opinion that the EDPB Guidelines on Art. 60 and Art. 65 GDPR issued so far are clear and comprehensive enough but their application in practice needs to be improved. A number of EDPB members highlighted the need for a LSA to exchange information and involve the CSAs, in particular the complaint-receiving ones, as early as possible in the investigation process, especially to avoid any disagreement on its scope arising at a later stage of the enforcement process. It was also mentioned that every SA when acting as an LSA must adhere to the same standards of information exchange and cooperation. A special emphasis was put on the importance of using the full range of instruments provided for in Chapter VII of the GDPR, and more specifically Art. 61 and 62 GDPR, to strengthen cooperation by involving CSAs upstream and providing support to LSAs. The Chair of the EDPB also recalled that cooperation between a LSA and a complaint-receiving SA goes beyond the mere channelling of documents to the complainant via the complaint-receiving CSA and has to start as soon as the complaint is received.

The EDPB members entrusted the EDPB Secretariat to analyse the implementation of the binding decision 5/2022 on the three aspects mentioned in the infonote, and discussed by SAs during this Plenary, in the final national decision of the LSA in this case. This will apply to binding decision 5/2022, as well any future binding decision adopted by the EDPB. Further discussions might be organized to follow-up within the ENF ESG if necessary.

3.2 EU - U.S. Data Protection Framework – state of play

The rapporteurs presented to the EDPB members the state of play of the work carried out by the BTLE ESG and ITS ESG on the draft opinion relating to the EU COM's draft adequacy decision based on the EU-U.S. Data Protection Framework. In particular, they mentioned that exchanges with representatives from U.S. authorities have been taking place to clarify some elements.

The draft opinion will be presented to the EDPB members for discussion and adoption at its ad hoc plenary meeting planned on 28 February 2023.

3.3 Collection of information regarding large-scale cross-border inquiries – information from the European Commission

The EU COM referred to the request sent to the SAs to provide information regarding large-scale cross-border inquiries on a bi-monthly basis. It presented to the EDPB members the template table to be used, that had been shared ahead of the meeting following its public release. The EU COM request follows an inquiry launched by the European Ombudsman on the EU COM to assess whether the information it collected in relation to its monitoring of Ireland's implementation of the GDPR was sufficient. The European Ombudsman concluded in its inquiry that the EU COM's practice of collecting the data listed in the template from the IE SA was appropriate and in line with good administration. Following the European Ombudsman's decision, the EU COM announced the extension of this practice also to other SAs leading large-scale cross-border inquiries. The EU COM also indicated that, in line with the Ombudsman suggestions, it will provide an account of its practice of receiving this information in its report on the implementation of the GDPR, due to be issued in 2024, in compliance with any confidentiality requirements applying to investigations (e.g. indicating the specific kinds of data received by the EU COM).

The EDPB members and the EU COM exchanged on the legal basis for the EU COM to collect such information, as well as on practical aspects such as the definition of "large-scale inquiry" and the frequency of these reports.

Some EDPB members expressed concerns on the confidentiality attached to ongoing inquiries, in particular linked to the risk in case this information would be made publicly available, suggesting to

provide, as an alternative, statistics rather than information revealing the names of companies subject to investigations. A member proposed that this suggestion may be further explored by the co-rapporteurs working on the harmonisation of key notions to reflect SAs' activities based on comparable indicators. A number of EDPB members indicated that they saw no difficulty with providing the information requested by the EU COM.

In light of these discussions, the EDPB members agreed to invite the European Ombudsman to a future plenary meeting in order to exchange on this matter.

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

4.1 CEH ESG

4.1.1 Procedure for the adoption of the EDPB Opinions regarding national criteria for certification and European Data Protection Seals - **discussion and adoption**

The EDPB Secretariat presented the draft procedure for the adoption of EDPB Opinions regarding national criteria for certification and European Data Protection Seals, which was drafted in consultation with the ITS ESG.

26 EU members of the EDPB voted in favour of adoption of the procedure. 1 EU member of the EDPB abstained. The 3 EEA members of the EDPB voted in favour of adoption.

Furthermore, the EDPB Secretariat presented a proposal to add a disclaimer in the existing documents publicly available that they have been superseded by that new procedure. The proposal concerned Internal Document 04/2019 on the procedure for the adoption of the EDPB Opinions on the SA's draft accreditation requirements for certification bodies and the SA's draft decisions on criteria of certification, and the EDPB document on the procedure for the approval of certification criteria by the EDPB resulting in a common certification, the European Data Protection Seal.

In addition, the rapporteur presented a proposal to attach, to the new procedure, the template assessment on certification criteria used by SAs before requesting an opinion to the EDPB.

The EDPB members unanimously agreed with both proposals.

4.2 FM ESG

4.2.1 Request for mandate on AML/CFT - **request for mandate**

The rapporteur presented the request for mandate which relates to the adoption by the EU COM of a package of four legislative proposals aiming to strengthen the EU's activities to combat money laundering and the financing of terrorism. The rapporteur underlined the urgency for the EDPB to issue a position on that matter before the trilogue starts.

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

4.3 Chair team and SEC

4.3.1 EDPB Internal Work Program 2023-2024 - **discussion**

The EDPB Chair's team introduced the draft internal work program for 2023-2024 and the work done by the Coordinators of the expert subgroups to identify the topics the subgroup members plan to address in 2023-2024.

The EDPB Secretariat stressed that for now, this internal work program is presented only for discussion. The EDPB members took note of the work program and did not have any comments on it.

4.3.2 EDPB External Work Program 2023-2024 - **discussion and adoption**

The EDPB Chair's team introduced the draft external work program for 2023-2024. The EDPB Secretariat underlined that in 2024, the EDPB will have to adopt its new strategy for 2024-2025, hence the work program will probably have to be adapted to that new strategy.

The EDPB members adopted the external work program unanimously.

4.4 SAESG

4.4.1 Proposal to create a space for discussion at EDPB level to exchange views on the international agenda on personal data protection - **discussion and adoption**

The rapporteur presented a proposal to create a new taskforce at EDPB level to strengthen exchange of views on data protection-related matters discussed within various international fora, and invited other EDPB members to volunteer as co-coordinators of this taskforce.

The proposal for a mandate was adopted by the members of the EDPB unanimously. As several EDPB members already expressed interest in becoming co-coordinators of this new taskforce, the formal designation of the co-coordinators will be confirmed at a later stage. The EDPB members will be invited to express their interest to become members of this new task force.

4.4.2 Review of the list of ESGs and their mandates (Art. 25.2 EDPB RoP) - **information and agreement in principle**

The EDPB Secretariat informed the EDPB members of the discussions on the list of expert subgroups and taskforces and on their mandates held at a recent joint meeting of the Strategic Advisory expert subgroup (SA ESG) and the Coordinators. It was suggested to deepen the discussions on this matter, in particular on the repartition of tasks and work in relation to the Digital package, and the creation of a new task force for the interplay between data protection and competition/consumer law. The EDPB members agreed in principle with the proposal of one member to prepare a draft mandate for this taskforce, which will be presented at the March 2023 plenary meeting.

The subject matter of the list of expert subgroups and their mandates will be further discussed in a Coordinators' meeting at the end of March.

4.5 Secretariat

4.5.1 SPE report on 2022 activities with external experts - **information and discussion**

The EDPB Secretariat reported on the activities of the Support Pool of Experts (SPE) in 2022. In particular, it was mentioned that over 400 experts were selected and added to the reserve list of experts based on their technical and/or legal competencies. Some of them were already invited to support SAs in some enforcement activities, on a case-by-case basis.

The EDPB Secretariat also made a demo of a tool for website inspections, developed via the SPE.

4.5.2 2024 EDPB plenary meeting dates - **discussion and adoption**

The EDPB Secretariat presented the indicative meeting dates for plenaries in 2024, with the suggestion to hold physical and remote meetings in rotation, with 5 physical meetings.

The EDPB members unanimously adopted the timetable of indicative dates for plenary meetings in 2024.

5 AOB

5.1 Global Privacy Assembly - Renewal of EDPB observer status

The EDPB Secretariat presented a proposal to renew the observer status of the EDPB at the GPA.

The EDPB members unanimously agreed with this proposal.

5.2 Draft code of conduct on children's data

The IE SA informed the plenary that a group of organisations have started working on an EU-wide Art. 40 GDPR code of conduct on children's data for online service providers. [REDACTED]

[REDACTED] The competent SA for this draft code of conduct remains to be confirmed.

The EDPB members took note of this information, and of the offer of the IE SA to facilitate communication between the code organisers and the other EDPB members.

6 For information - Expert subgroups and Secretariat

6.1 European House of Data Protection - written state of play

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

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: MD SA, MK SA. 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.

- EDPB Secretariat