



Final

77th Plenary meeting

28 March 2023, Remote

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

1.1 Minutes of the 75th Plenary meeting – adoption

The minutes of the 75th plenary meeting were adopted unanimously. The members of the EDPB also agreed on the public version of the minutes.

1.2 Minutes of the 76th 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.

1.3 Draft agenda of the 77th EDPB meeting – adoption

The draft agenda was adopted with one modification - 'Draft Statement' in the title of item 4.1.1 was replaced with 'Letter to the European institutions'.

The discussions relating to agenda points 2.4, 3.1 and 3.2 were declared confidential according to Art. 33 EDPB RoP.

2 Consistency mechanism, Guidelines and EDPB RoP

2.1 Guidelines on data subject rights - Right of access (after public consultation) – discussion and adoption

The rapporteur presented the Guidelines on data subject rights - Right of access after the public consultation, which ended in March 2022. The rapporteur provided an overview of the contributions received and presented the main changes made by the drafting team. During the meeting, one additional modification was made in the wording of the executive summary in order to align with paragraph 146 of the Guidelines.

26/04/2023

The final version of the Guidelines after public consultation was adopted by the EDPB members unanimously.

2.2 Targeted update of the Guidelines for identifying a controller or processor's lead supervisory authority (after public consultation) – discussion and adoption

The rapporteur recalled the background to the targeted update of the Guidelines for identifying a controller or processor's lead supervisory authority (LSA Guidelines) and outlined the contributions received during the targeted public consultation. It was explained that, taking into account the stakeholder's input, no need for changes or further clarification has been identified.

The final version of the Guidelines after public consultation was adopted by the EDPB members unanimously.

2.3 Targeted update of the Guidelines on data breach notification (after public consultation) – discussion and adoption

The rapporteur presented the Guidelines on data breach notification and provided an overview of the contributions received during the public consultation. Some relevant feedback was included in the updated Guidelines. It was explained that stakeholders have pointed out operational issues and administrative burden likely to arise from the update. However, the EDPB members considered that the update aligns the guidelines with the text of the GDPR. In order to facilitate the process of notification by data controllers to multiple SAs, it was agreed to publish on the EDPB website a contact list of SAs for data breach notifications. Such list will include the relevant links and addresses of SAs for data breach notifications as well as the accepted languages.

The Guidelines were adopted by the EDPB members unanimously and the publication of the contact list of SAs was approved.

2.4 Ongoing Article 65 procedure on the dispute submitted by the IE SA (transfers by Meta IE) - request to add an additional document to the file – discussion and decision

The EDPB Secretariat introduced the item and requested the EDPB members to approve the addition of a document in the Article 65 case file in accordance with Article 11.2 of the EDPB RoP. The IE SA explained that the document has been excluded from the case file due to an administrative oversight. It was highlighted that the inclusion of the file would have no impact on the competence of the EDPB and on the analysis of the relevant and reasoned objections.

The members of the EDPB unanimously agreed to add the document to the file.

Following this, the EDPB members discussed a recent press publication according to which meetings between EDPB members and a representative of Meta IE concerning the ongoing Article 65 procedure have been held. It was agreed that individual EDPB members should not meet companies that are the respondents in ongoing Article 65 procedures to discuss these procedures.

3 Current Focus of the EDPB Members

3.1 Update on EDPB litigations – discussion

The EDPB Secretariat presented to the EDPB members an overview of the up-to-date information on the 8 litigations in which the EDPB is currently involved and explained that additional ones are

expected in 2023. It was recalled that following the General Court's Order in Case T-709/21 declaring the action introduced by WhatsApp inadmissible, the EDPB has introduced a plea of inadmissibility in case T-682/22. Considering that the case raises the same issues on admissibility than the ongoing appeal in C-97/23 P, and in order to avoid unnecessarily increasing the EU Courts' workload and needless legal costs for the parties, the EDPB members agreed to request stay of proceedings in the ongoing case T-682/22. This will also be done for new cases raising identical issues on admissibility, such as T-128/23, T-129/23, and 153/23.

Upon request of one of the EDPB members, the IE SA provided a clarification on the effect of appeals under Irish procedural law.

3.2 "101 Taskforce" Draft Report - discussion and adoption by the SAs

The EDPB created the 101 Taskforce to promote cooperation and effective exchange of information between the SAs on this specific subject-matter, in accordance with Article 70(1)(u) GDPR. The lead rapporteur recalled the background to the creation of the taskforce in September 2020 and presented the draft report which provides a state of play on the taskforce's work since then. It was proposed to end regular meetings but to leave open the possibility to organise ad hoc meetings in case the implications of technical changes need to be discussed.

The SAs adopted the report unanimously and agreed to make it public. The EDPB Secretariat was entrusted to make an assessment prior to the publication in order to verify if any redactions and/or relevant modifications would be necessary in accordance with the applicable rules.

The EDPB members unanimously agreed to end regular meetings and to only organise ones on an ad hoc basis.

3.3 Creation of a taskforce on the interplay between data protection, competition and consumer protection - request for mandate

The lead rapporteur presented the proposal to create the taskforce, which was motivated by the recent regulatory developments at EU level and the need for further cooperation between data protection, competition and consumer protection authorities. It was recalled that on 14 February 2023 the EDPB has reached an agreement in principle to proceed with the creation of a new taskforce. The general mandate of the taskforce would be to provide guidance, expertise and resources on the interplay between data protection, competition and consumer protection, both at EDPB and national level. It was also recalled that, since the different members of the EDPB and the EDPS will be members of the DMA High-level group, there will be a need to prepare and consolidate common positions. A work plan for 2023-2024 was proposed. The FR SA and the EDPS volunteer to act as co-coordinators of the taskforce.

The mandate was adopted by the EDPB members unanimously and the EDPB members agreed that the taskforce will report to the SAESG.

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

4.1 FM ESG

4.1.1 Letter to the European institutions on data sharing for AML/CFT purposes - discussion and adoption

The lead rapporteur presented the background to the draft letter and recalled that the FM ESG was given a mandate during a previous EDPB plenary meeting to work on a position on data sharing between private and public entities for the purposes of AML/CFT.

It was explained that, with the letter, the EDPB draws the attention of the co-legislators to the significant risks posed by Articles 54(3a), 55(5), 55(7) as amended by the Council's mandate on the Commission's Proposal for a Regulation on AML/CFT. The letter expresses concerns relating to the proportionality, the necessity and to the quality of these provisions.

The EDPB members agreed to recommend the co-legislators to remove these Articles from the final text of the proposed Regulation because they deemed the provisions at stake unacceptable.

22 EU members of the EDPB voted in favour of adopting the letter and 5 EU members of the EDPB voted against. 1 EU member of the EDPB abstained. The 3 EEA members of the EDPB voted in favour of adopting the letter without modifications.

4.2 Secretariat

4.2.1 2022 EDPB budget execution and 2024 EDPB budget proposal – discussion

The EDPS Head of Finance presented the 2022 budget execution and informed that almost 96% of the budget has been executed. It was explained that this excellent performance was the result of active monitoring and smooth cooperation with the EDPB Secretariat. The difficulties linked to the impact of the high inflation and the increased costs was highlighted.

The EDPS Head of Finance also presented the 2023 adopted budget. Considering the increase of litigation cases, the EDPB introduced a request to increase the level of appropriations to cover the costs of legal assistance. This request will be examined by the budget authorities. The budget proposal for 2024 prepared by the Chair and the EDPB Secretariat with the help of the EDPS finance team was also discussed. A request for reinforcement of the EDPB Secretariat's staff of 9 FTEs has been made. Finally, the important costs related in particular to rent, plenary meetings, translation, interpretation and IT tools was highlighted.

The EDPB members took note of the information.

4.2.2 Proposal for a Regulation on the Transparency and targeting of political advertising – discussion

The EDPB members discussed the matter and entrusted the EDPB Secretariat to exchange with the contacts at the EP on the questions discussed during the plenary and convey the views expressed by the members.

5 For information - Expert subgroups and Secretariat

5.1 Secretariat

5.1.1 Presentation EDPB Data Protection Guide for small business - information

The EDPB Secretariat made a preliminary presentation on the project and informed that a more detailed one will follow in April when the guide is ready. The EDPB Secretariat is in the final stages of the preparation of the tool, which will be integrated in the EDPB website and will seek to ensure an optimal user experience.

5.2 Secretariat

5.2.1 Update on the nomination of the EDPB Representatives to the DMA High Level Group - information

The EDPB Chair provided an update on the matter. Following the voting on the EDPB representatives for the DMA High Level Group, the EDPB Chair has sent a letter to DG CNECT and DG COMP to inform them of the five EDPB representatives. In March, the EU COM has published the decision setting up the high-level group and the decision has been notified to the EDPB in a letter. The EU COM also indicates that the EDPB would be informed of the date and agenda of the constituent meeting in due time.

6 AOB

6.1 Update on Facebook Fanpage of the German Federal Press and Information Office – information

The DE SA provided an update following exchanges and an official hearing of the German Federal Press and Information Office related to the operation of a Facebook fan page in the name of the Federal Government. The DE SA informed the EDPB members of its findings that the Press Office has breached Article 5(1) GDPR and their accountability obligation under Article 5(2) GDPR, as well as their obligations under the German law transposing the e-privacy directive with regard to cookies. Therefore, in February 2023, the DE SA FED has prohibited the Press Office from processing personal data in the context of the operation of the Facebook Fanpage. The DE SA informed the EDPB members that the Press Office has appealed the decision.

The DE SA expressed their interest in hearing how other SAs deal with Facebook fanpages operated by public bodies in their Member States.

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, MK, RS SAs. In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points 2.4 and 3.2 of the agenda.- EDPB Secretariat