

**Anu Talus** Chair of the European Data Protection Board

> Ms. Sophiein't Veld Member of the European Parliament

> > Brussels, 04 October 2023

*by e-mail only* Ref: OUT2023\_0073

## Subject: Your letter to the EDPB of 29 June 2023

Dear Ms. in 't Veld,

I would like to thank you for your letter of 29 June 2023 concerning the amendments passed by the Irish Parliament on 28 June 2023 by way of the Courts and Civil Law (Miscellaneous Provisions) Bill 2022 and including rules on the confidentiality of data protection investigations.

Firstly, I would like to stress that the EDPB takes the question of confidentiality of procedures very seriously, particularly with regard to the proper functioning of the GDPR cooperation and consistency mechanism.

The EDPB has addressed the topic of confidentiality in its Guidelines 02/2022 on the application of Article 60 GDPR<sup>1</sup>. These Guidelines state:

"The LSA and other CSAs may flag specific pieces of information as (highly) confidential, particularly when this seems necessary in order to meet requirements of confidentiality constraints laid down in national laws. In such a case, the SAs should inform each other immediately and jointly find legal options for a solution against the background that confidentiality provisions usually relate to external third parties and not to CSAs. In this regard, any information received that is subject to national secrecy rules should not be published or released to third parties without prior consultation with the originating authority, whenever possible."

Therefore, the Guideline clarify that Lead Supervisory Authorities (LSAs) and Concerned Supervisory Authorities (CSAs) should jointly find solutions to confidentiality constraints, taking account that such constraints should not, as a rule, affect the cooperation procedure among SAs.

<sup>&</sup>lt;sup>1</sup> EDPB Guidelines 02/2022 on the application of Article 60 GDPR, adopted on 14 March 2022.



In addition, on 10 October 2022, the EDPB sent a letter to the EU Commission, the annex of which contained a list of procedural aspects that could benefit from further harmonisation at EU level<sup>2</sup>. This was done with a view to ensuring the full effectiveness of the GDPR's cooperation and consistency mechanism ('the EDPB wish-list'). In this wish-list, the EDPB highlighted the need for further clarity on the rights of controllers, processors and complainants to receive documentation relating to the proceedings, and on how they can use the information received, including in the terms of disclosure.

On 4 July 2023, the European Commission issued a Proposal for a Regulation of the European Parliament and of the Council laying down additional procedural rules relating to the enforcement of the GDPR<sup>3</sup>—and formally consulted the EDPB and the EDPS jointly on that Proposal. The Proposal contains specific provisions in this respect to harmonise confidentiality requirements in cross-border proceedings. During its 84th Plenary on 19 and 20 September, the EDPB adopted an EDPB-EDPS Joint Opinion 01/2023 on the Proposal for a Regulation on procedural rules for the enforcement of the GDPR<sup>4</sup>.

The EDPB welcomes the Proposal for an EU-harmonised solution on this matter and expect this solution to foster cooperation amongst supervisory authorities. In this context, the Proposal highlights the importance for such solutions not to impair the exchange of information among supervisory authorities. The Proposal also takes into account the need to protect the confidentiality of sensitive information and to prevent disclosure that could negatively impact ongoing administrative or judicial proceedings.

Please be reassured that the EDPB takes the question of confidentiality of procedures very seriously and that we will continue to monitor the developments on this topic.

Yours sincerely,

Anu Talus

<sup>4</sup> <u>EDPB-EDPS Joint Opinion 01/2023 on the Proposal for a Regulation of the European Parliament and of the</u> <u>Council laying down additional procedural rules relating to the enforcement of Regulation (EU) 2016/679</u>

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<sup>&</sup>lt;sup>2</sup> <u>EDPB Letter to the EU Commission on procedural aspects that could be harmonised at EU level, issued on 10</u> <u>October 2022</u>.

<sup>&</sup>lt;sup>3</sup> <u>Proposal for a Regulation of the European Parliament and of the Council laying down additional procedural</u> <u>rules relating to the enforcement of Regulation (EU) 2016/679</u>.