

# Statement



Adopted on 7 October 2024

The European Data Protection Board has adopted the following statement:

# 1. BACKGROUND AND PURPOSE OF THE STATEMENT

- 1. Following its Statement on enforcement cooperation<sup>1</sup>, the European Data Protection Board (EDPB) sent to the European Commission a list of procedural aspects that could benefit from further harmonisation at EU level, in order to maximise the full effectiveness of the GDPR's cooperation and consistency mechanisms (the 'EDPB wish list')<sup>2</sup>. The Commission then published a proposal for a Regulation laying down additional procedural rules relating to the enforcement of the GDPR (the 'Proposal'), on which the EDPB and the EDPS made recommendations through a Joint Opinion<sup>3</sup> (the 'Joint Opinion' or the 'JO').
- 2. The EDPB welcomes the Proposal's objective of better protection of fundamental rights through faster, smoother and more efficient enforcement procedures. At the same time, the EDPB stresses that the introduction of any new procedural steps and additional tasks of supervisory authorities (SAs)

<sup>&</sup>lt;sup>1</sup> EDPB Statement on enforcement cooperation, 28 April 2022.

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

<sup>&</sup>lt;sup>3</sup> EDPB-EDPS Joint Opinion 01/2023 on the Proposal for a Regulation of the European Parliament and of the Council laying down additional procedural rules relating to the enforcement of Regulation (EU) 2016/679, 19 September 2023.

will create the need for additional resources. For this reason, the EDPB called - and calls again - upon the EU legislators, as well as the European Commission and the Member States, to take the necessary actions to ensure that the EDPB and its members have the necessary resources to implement successfully the GDPR and the procedural rules.

3. With the present Statement, the EDPB generally welcomes the European Parliament's position<sup>4</sup> and the Council's General approach<sup>5</sup> on the Proposal (respectively, the 'EP Position' and the 'Council Position')<sup>6</sup>. Several of the Joint Opinion's recommendations have been taken into account, but the EDPB recommends further addressing some elements in order for the new regulation to achieve its objectives, i.e. to streamline cooperation and improve the enforcement of the GDPR. In addition, the EDPB highlights that having a high number of references to national law in the new regulation would not be in the spirit of increased harmonisation and should therefore be avoided.

# 2. RECOMMENDATIONS

## 1. COMPLAINTS, PRELIMINARY VETTING AND AMICABLE SETTLEMENTS

- 4. On complaints and rights of complainants The EDPB notes that the Council Position (Recital 3a) aims at clarifying the concept of 'complaint' and, in line with the CJEU case law<sup>7</sup>, takes an adequate approach on the rights of the complainant. The EDPB supports this approach, considering that regardless of the possible divergences between their national procedural environments, the ultimate goal of the supervisory authorities is the protection of fundamental rights enshrined in Article 8 of the Charter of Fundamental Rights of the European Union and specified in the GDPR. The EDPB highlights that, as a matter of principle, complainants should enjoy procedural rights to the extent that their subjective rights are at stake.
- 5. On preliminary vetting and amicable settlement of complaints The EDPB welcomes the amendments introduced by both the EP and the Council to Article 3(2) of the Proposal, which the Board construes as providing a legal basis for SAs to carry out preliminary vetting, as suggested in the Joint Opinion<sup>8</sup>. In particular, the EDPB welcomes that the EP Position clarifies that the determination of admissibility of a complaint by the complaint-receiving SA shall be binding on the lead supervisory authority (LSA) (Article 3(2)(c)(i) EP Position).
- 6. The EDPB positively notes that both the EP and the Council have supplemented Article 5 of the Proposal with additional elements in order to address the implementation of amicable settlements,

<sup>&</sup>lt;sup>4</sup> European Parliament, Amendments to the proposal for a regulation laying down additional procedural rules relating to the enforcement of Regulation (EU) 2016/679., P9\_TA(2024)0187, 10 April 2024

<sup>&</sup>lt;sup>5</sup> Council, General approach, 11214/24, adopted on 13 June 2024 and published on 18 June 2024.

<sup>&</sup>lt;sup>6</sup> This is in line with the commitment made in its 2024-2027 Strategy to strengthen further its efforts to ensure effective enforcement by, and cooperation between, the members of the EDPB; and to support the efforts for the adoption of the Proposal, including by continuing to provide feedback during the legislative process. EDPB Strategy 2024-2027, Pillar 2 (in particular, Key action 3).

<sup>&</sup>lt;sup>7</sup> C-26/22 and 64/22, Schufa, 7 December 2023, para. 58.

<sup>&</sup>lt;sup>8</sup> Joint Opinion, para. 20.

as per the EDPS and EDPB recommendations in the JO<sup>9</sup>. However, the EDPB recommends adopting a provision in the new regulation making sure that amicable settlements can be achieved in every country (and not to make it dependent on national law). Since the Proposal aims at enhancing cooperation and harmonising procedural rules, the EDPB also recommends harmonising the definition and procedure of amicable settlements, providing therefore a direct legal basis for amicable settlements at EU level.

- 7. In addition, the EDPB welcomes that the EP Report (Article 5(1)) clarifies that amicable settlements should be possible at any stage of the proceedings, and recommends that the new regulation provides supervisory authorities with an active role<sup>10</sup> in the conclusion of such settlements.
- 8. The EDPB further highlights that if reaching amicable settlements is subject to the explicit agreement of both the data subject and the controller in each case as provided for in Article 5(1)(a) of the EP Position, this will require to provide the SAs with additional resources to obtain such agreement. In this respect, the EDPB also recalls that it is not uncommon for complainants to cease communication with authorities after a certain period of time, particularly when their complaints have been pending for an extended period<sup>11</sup>. As a result, the requirement to seek active/explicit agreement by the complainant could also hinder the prompt resolution of issues that could be solved efficiently without such agreement. Therefore, the EDPB supports the Council's approach, which clarifies that amicable settlements may not be possible when the complainant objects to the proposed settlement (recital 9b and Article 5(3)b Council Position). Nevertheless, the EDPB highlights that the complainant should be warned in advance of the consequences of their silence and be given a suitable deadline to respond.
- 9. In any event, the EDPB recalls that the LSA is required to submit a draft decision to the concerned supervisory authorities (CSAs) in all cases<sup>12</sup> and welcomes that both the EP (Article 5(1b) EP Position) and the Council (Article 5(5) Council Position) confirm that amicable settlements achieved in the OSS context should be finalised by a draft decision by the competent SA. The EDPB recalls that this decision is a sui generis draft decision, finding that the complaint has been settled by the LSA with the mutual satisfaction of the parties involved <sup>13</sup>. In this regard, the EDPB welcomes the Council's clarification that the sui generis draft decision could be simplified (recital 9c Council Position). However, the EDPB expresses concerns as to the exclusion by the Council (Article 18(1)(c) Council Position) of the

<sup>&</sup>lt;sup>9</sup> Joint Opinion, para. 20.

<sup>&</sup>lt;sup>10</sup> See EDPB Guidelines on amicable settlements, para 7

<sup>&</sup>lt;sup>11</sup> As a result, the requirement to seek active/explicit agreement by the complainant could also hinder the prompt resolution of issues that could be solved efficiently without such agreement. In addition, if an explicit agreement by the complainant is not required, many complainants may assume that silence or a lack of response implies tacit agreement with the proposed settlement and decide not to actively confirm their agreement if they are satisfied or indifferent to the outcome. Conversely, if they disagree, they would have a clear incentive to respond and express their dissent. Thus, the absence of a response could be interpreted as an implicit form of agreement, allowing authorities to proceed with resolving the complaint efficiently.

<sup>&</sup>lt;sup>12</sup> See EDPB Guidelines on amicable settlements, para 37 and EDPB Guidelines on the application of Article 60 GDPR, paras 97-99.

<sup>&</sup>lt;sup>13</sup> See EDPB Guidelines on amicable settlements, paras 38 and 55.

possibility for CSAs to raise relevant and reasoned objections to a sui generis draft decisions issued in respect of amicable settlements, and urges the co-legislators to remove this restriction<sup>14</sup>.

10. Lastly, the EDPB also welcomes the possibility for the complaint-receiving SA to resolve the case at an early stage where the complainant's request has been dealt with in a satisfactory manner<sup>15</sup>, as provided for in Article 5(1)(a) of the Council Position. In these cases, there should not be a need for the complaint to be transmitted to the LSA: the EDPB suggests adapting Article 5(1)(a) of the Council Position in this regard.

#### 2. ACCESS TO THE ADMINISTRATIVE FILE / JOINT CASE FILE

- 11. In the Joint Opinion, the EDPS and EDPB welcome that the Proposal clarifies and harmonises the right of access to the administrative file<sup>16</sup>. The EDPB reiterates the importance of making sure that the complainant is also given access to the non-confidential version of the relevant documents on which a proposed rejection of the complaint is based, as well as a non-confidential version of the preliminary findings and of the documents in the administrative file. This being said, the EDPB underlines that confidentiality requirements should not prevent SAs from cooperating and exchanging information. They may flag specific pieces of information as (highly) confidential, but this aims to enable them to respect the confidentiality towards external parties<sup>17</sup>. Therefore, the EDPB welcomes the clarification made by the Council in Article 21(1) that confidentiality requirements entail that SAs shall not make accessible to the parties under investigation or to the complainant information which is confidential or contains trade secrets. In the Commission's Proposal, this provision may indeed be understood to apply also to exchanges between SAs.
- 12. The EDPB considers that the concept of 'joint case file', newly introduced by the EP (Article 2(2f) EP Position), is worth particular attention<sup>18</sup> and concurs with the objective of ensuring high level of transparency. While the EDPB welcomes the intention of the EP to facilitate and speed up the information sharing between supervisory authorities and to further harmonise the right of access to the administrative file enjoyed by the parties under investigation and complainants, it also has concerns on the legal and technical implications of this proposal. The EDPB stresses that the implementation of such joint case file would require complex changes to the document management and communication systems used at European<sup>19</sup> and national levels. A careful assessment of the

<sup>&</sup>lt;sup>14</sup> See EDPB Guidelines on amicable settlements, paras 39 and 40 explaining that it is still possible to raise relevant and reasoned objections in amicable settlement cases, but if the consensus objective has been taken into due account by the LSA in handling the procedure, such objections should be exceptional.

<sup>&</sup>lt;sup>15</sup> See EDPB Guidelines on amicable settlements, para 28 and JO, para 37 explaining that in such cases, the amicable settlement may make it unnecessary to initiate an Article 60 GDPR procedure, insofar as the settlement achieved is to the full satisfaction of the parties involved

<sup>&</sup>lt;sup>16</sup> See Joint opinion, para 77.

<sup>&</sup>lt;sup>17</sup> See EDPB Guidelines on the application of Article 60 GDPR, para 52 and JO, para 68.

<sup>&</sup>lt;sup>18</sup> Under the EP Position, a joint case file shall be managed by the LSA and include all relevant information regarding a case. The lead SA should provide the SAs with instant remote access, while the competent SAs should give remote access the parties to the procedure, with the possibility for this access to be restricted at the request of one of the parties and under certain conditions (Article 2b(4) EP Position).

<sup>&</sup>lt;sup>19</sup> Currently, the system used with respect to GDPR Cooperation is the IMI system.

appropriate technical solutions would be required<sup>20</sup>. Should the proposal of a joint case file nevertheless be adopted in the final version of the Regulation, the EDPB recommends in particular that:

- the new regulation should clarify under which modalities of access the joint case file can be
  accessed by the parties under investigation and the complainant, and in particular, whether
  such access would be continuous (i.e. possible at any time) or only granted upon request. The
  EDPB is concerned that providing the parties with continuous access to the joint case file
  would lead to an increased number of legal challenges against SAs decisions on confidentiality
  aspects, which might create an extra burden for the SAs. The EDPB is also concerned that such
  access would increase the likelihood of data breaches and/or information leaks, ultimately
  undermining trust in SAs and the joint case file. In this regard, further clarifications on how
  the protection of confidential information and trade secrets would be ensured are necessary;
- the joint case file should be implemented at EU level, and directly managed by the SAs. The EDPB and the SAs should be given sufficient time, as well as appropriate technical and financial resources for the implementation of this system. The EDPB hence recommends to the legislators to abstain from setting a specific implementation date for the joint case file, and instead that the progress of its implementation be communicated through the evaluation process of the new regulation. Should a specific implementation date be set, the EDPB would appreciate to be consulted on this matter during the trilogue negotiations to ensure that the deadline is realistic.

#### 3. COOPERATION PROCEDURE AND CONSENSUS FINDING

- 13. The EDPB welcomes that both the EP and the Council implement some of the JO's recommendations concerning the cooperation between SAs, such as enabling any CSA (and not only the LSA) to trigger the urgency procedure in case of a disagreement on the summary of key issues in complaint-based cases, as well as to comment on the preliminary findings. However, the EDPB notes that neither of the co-legislators deleted the requirement, when SAs have failed to reach a consensus, to use Articles 61 and 62 GDPR before having the possibility to trigger the urgency procedures, which the EDPB considers to be an unnecessary detour<sup>21</sup>. In addition, the EDPB reiterates its recommendation that the comments made by a CSA on the summary of key issues should be shared with all CSAs, and not just with the LSA<sup>22</sup>.
- 14. The EDPB also notes that the EP Position requires the summary of key issues to be regularly updated by the LSA without undue delay to reflect any factual or legal changes that emerge during the course of the procedure (Art. 9(2a) EP Position). While it is true that such regular updates could enable the

<sup>&</sup>lt;sup>20</sup> For instance, such technical solutions would also need to take into account the fact that under the EP report, internal deliberations of the supervisory authority or deliberations between supervisory authorities shall not be part of the joint case file. While this in line with the EDPS and EDPB recommendation that correspondence and exchanges between SAs should be considered internal and hence not accessible to the parties under investigation/the complainant, their exclusion from the joint case file implies that SAs would have to manage different communication flows and exchange documents via different channels, which might create confusion and additional workload.

<sup>&</sup>lt;sup>21</sup> As explained in more details in the JO, paras 58-59.

<sup>&</sup>lt;sup>22</sup> As explained in more details in the JO, para. 53.

LSA to better inform CSAs on ongoing investigations and to consider factual or legal changes occurring during the procedure, they would also create practical difficulties. More specifically, the evolving nature of the summary of key issues would make it difficult for the CSAs to anticipate changes and react in a timely manner to the update. Furthermore, legal uncertainty may arise as CSAs will not be necessarily aware of when the document would be considered finalised and the observations submitted on the summary of key issues might have the effect of overloading the LSA.

- 15. In respect of the amendments made by the Council in Articles 9(5) and 14(8) of the Council Position<sup>23</sup>, the EDPB recalls the need for the LSA to cooperate with the CSAs in the context of national administrative appeal procedures concerning a decision agreed upon in the cooperation mechanism, as such decision is binding upon the LSA and the CSAs<sup>24</sup>. However, if the co-legislators decide to include these provisions, the EDPB would recommend further clarifying what 'subsequent domestic procedure' refers to.
- 16. Application of enhanced cooperation (Opt-out from Chapter III of the Proposal) -The EDPB notes that Article 6bis of the Council Position provides for an opt-out possibility for the LSA, i.e. not to apply the new rules for enhanced cooperation to certain simpler and more straightforward cases, and Recital 10b of the Council Position provides examples of such cases. The EDPB considers this approach to be appropriate, as it would enable SAs to have a certain flexibility in dealing with cross-border cases and use resources more effectively. The mechanism also respects the core principle of cooperation, since the CSAs can object to the LSA's assessment leading to the non-application of the enhanced cooperation to a case.
- 17. The EDPB takes the view that the opt-out possibility relates to the entire Chapter III of the Proposal. At the same time, the Council Position provides that 'in such a case, the right to be heard of the parties under investigation and/or of the complainant shall be ensured mutatis mutandis as provided in Section II and Article 14 and 17 of this Regulation' (Article 6bis(2) Council Position). The EDPB recalls that the modalities of exercising such right should be harmonised and suggests specifying what is meant by applying the right to be heard 'mutatis mutandis as provided in Section II and Article 14 and 17 of this Regulation'.

#### 4. PROCEDURAL DEADLINES

18. The EDPB positively notes that both the EP and the Council take into account the remarks made in the Joint Opinion concerning procedural deadlines. In particular, the EDPB welcomes the introduction of additional deadlines by the Council, but highlights that such deadlines should be realistic in order for SAs to be able to meet them in practice. The EDPB also welcomes the possibility to remain flexible where appropriate and extend certain deadlines on account of the complexity of the cases. The EDPB also stresses that such extensions, where applicable, should not be for an indefinite period of time and that there should always be sufficient clarity on the total duration of the procedure.

<sup>&</sup>lt;sup>23</sup> These provisions specify that where the LSA is required by national law to engage in subsequent domestic procedure related to the same case, the summary of key issue (Article 9(5)) and the preliminary findings (Article 14(8)) shall be prepared again if the LSA intends to deviate from previous consensus on the case.
<sup>24</sup> Article 60(6) GDPR

#### 5. REQUEST THAT THE LSA CONDUCT AN EX OFFICIO PROCEDURE

19. The EDPB notes that the EP introduces the possibility for each CSA to request an ex officio procedure by the LSA, provided that certain substantive and procedural conditions are fulfilled (Article 5a(1) EP Position). It also requires the LSA to take concrete actions within a strict deadline (Article 5a(2) EP Position). The EDPB recalls that the sharing of competences and responsibilities among the supervisory authorities is of necessity underpinned by the existence of sincere and effective cooperation between SAs. While recognising the objective of ensuring that potential GDPR infringements are brought to the attention of the LSA and investigated without delay, the EDPB has doubts as to the added value of the provision as proposed in the EP Position. The EDPB considers that cooperation can be further streamlined on the basis of the tools explicitly provided by the GDPR, notably those contained in Articles 61-62 GDPR. Therefore, the EDPB invites the co-legislators to reconsider Article 5a as introduced by the EP Position.

#### 6. RIGHT TO AN EFFECTIVE JUDICIAL REMEDY AGAINST A SUPERVISORY AUTHORITY

- 20. With regard to the right to an effective judicial remedy against a data protection authority, the EDPB notes the introduction by the EP of a new Article 26b in Section 1 of Chapter III of the Proposal. This article explicitly provides for three specific scenarios where each party to the procedure shall have the right to an effective judicial remedy, namely when the complaint-receiving SA does not use its powers to ensure another SA makes progress (Article 26b(1)(a) EP Position); the LSA does not comply with the deadlines of the regulation (Article 26b(1)(b) EP Position); or an SA does not comply with an EDPB binding decision (Article 26b(1)(c) EP Position). In addition, Article 26b(3) of the EP Position states that if a court finds that a supervisory authority has not fulfilled its duties, it shall have the power to order that supervisory authority to take the necessary action.
- 21. The EDPB recalls that the right to an effective judicial remedy is already protected under Article 78 GDPR. However, should the co-legislators decide to extend this right as proposed by the EP, some important clarifications need to be provided. In relation to the first scenario mentioned above (i.e. when the complaint-receiving SA does not use its powers to ensure that another SA makes progress on the file), it is unclear which 'powers' a complaint-receiving SA would be required to use, and in which cases. This can be further clarified, for example by adding a reference to the relevant articles of the GDPR or to the new regulation providing for such powers. In relation to Article 26b(3) of the EP Position, the EDPB would welcome clarifications on which court(s) would be competent to review decisions of the SAs.

#### 7. PROCEDURAL DETERMINATIONS BY THE EDPB

- 22. The EP Position introduces a new Article 26a entitled 'procedural determinations by the Board'. The EDPB understands the objective of this provision to be to avoid deadlocks arising from diverging assessments or inaction of supervisory authorities involved in a cross-border case.
- 23. While the EDPB shares this objective, it highlights that this provision may increase recourse to the urgency procedure and to potential escalations to the Board, which will lead to an increased burden for the EDPB (also considering the extremely short legal deadline for the urgency procedure).
- 24. The EDPB suggests that, instead of linking procedural determinations to the Article 66 GDPR procedure, it should be introduced as a sui generis procedure, the details of which should be determined by the EDPB itself in its Rules of Procedure. In light of the principles of loyal cooperation

and mutual trust, the new regulation should make sure that the SAs should first endeavour to find an agreement, and a procedural determination procedure should only be addressed as an *ultima ratio*.

25. For the sake of clarity and legal certainty, the EDPB also suggests that, instead of referring to 'any procedural dispute arising between supervisory authorities in cases foreseen by this Regulation', Article 26a of the EP Position should clearly list the relevant provisions subject to procedural determinations.

#### 8. DISPUTE RESOLUTION PROCEDURE

- 26. **Relevant and reasoned objections (RROs)** Concerning Article 18 of the Proposal, the EDPB welcomes some of the changes made by the EP (removes the limitation for RROs to only concern the elements included in the draft decision and some formal requirements) and especially by the Council (removes the formal requirements, includes a reference to legal elements and allows RROs on the scope of the investigation), as recommended in the JO. However, the EDPB reiterates that it should be possible for CSAs to raise objections on all factual and legal elements of the file<sup>25</sup> (not just on the ones mentioned in the draft decision) and that formal requirements should be entirely dealt with by the EDPB<sup>26</sup>. In addition, as previously mentioned in para 9 of the present Statement, it should also be possible for CSAs to raise objections to 'sui generis draft decisions' submitted in the context of amicable settlements.
- 27. Therefore, the EDPB reiterates its view that Article 18 of the Proposal should be deleted from the final text of the new regulation. Alternatively, the EDPB suggests including the provision as amended by the Council, while taking into account the above-mentioned recommendations.
- 28. **Right to be heard in the dispute resolution procedure** Concerning the right to be heard in the dispute resolution procedure and Article 24 of the Proposal, the EDPB notes that the EP replaces this provision with a new general article on 'common procedural standards' (Article 2b EP Position). While the EDPB welcomes the goal of harmonising the right to be heard in the dispute resolution procedure and ensuring that it is effectively granted, it takes the view that such general approach does not provide the necessary details and clarifications for the proper administration of the right to be heard in practice.
- 29. The EDPB also notes that the Council modifies Article 24 of the Proposal. Article 24(1) of the Council Position requires the EDPB, when it intends to adopt a decision requiring the LSA to amend its (revised) draft decision, to assess whether the elements on which the EDPB will rely have already been subject to the right to be heard<sup>27</sup>. This assessment is already currently carried out by the EDPB in every case, at the very initial stage. Therefore, the EDPB does not see the added value of the requirement proposed by the Council in Article 24(1).
- 30. Moreover, under Article 24(1bis) of the Council Position, should the EDPB find that the parties under investigation or the complainant have not been already provided with the right to be heard on those

<sup>&</sup>lt;sup>25</sup> Which is consistent with Article 4(24) GDPR.

<sup>&</sup>lt;sup>26</sup> EDPB Guidelines 09/2020 on relevant and reasoned objection already provide sufficient details on the formal and substantive requirements.

<sup>&</sup>lt;sup>27</sup> On elements on which the parties under investigation and/or, in the case of full or partial rejection of a complaint, the complainant.

elements, the EDPB would be required to provide them with a 'statement of reasons'. As previously highlighted in the JO<sup>28</sup>, the concept of 'statement of reasons' is not defined, but it is the EDPB's understanding that it would include orientations about the content of the future binding decision. The provision of a statement of reasons would therefore require the EDPB to reach a full agreement on these orientations, and indirectly on the substance of the future binding decision within the already tight legal deadlines. This will clearly jeopardise the EDPB's ability to adopt the binding decision on time<sup>29</sup>. In addition, the EDPB deems this practice inefficient compared to the current one where the parties under investigation and/or the complainant should be given the opportunity to provide their views before the dispute reaches the EDPB, i.e. early in the process, in accordance with the architecture of the one-stop-shop mechanism and the CJEU case law<sup>30</sup>.

- 31. In light of the above, the EDPB urges again the co-legislators to delete Article 24 of the Proposal. Alternatively, the EDPB suggests amending the Council's text in order to replace the requirement to share a statement of reasons with a requirement to hear the parties/the complainant<sup>31</sup> on the elements the EDPB intends to rely upon in order to adopt its decision and on which they have not had yet an opportunity to express their views. This also corresponds to the current practice<sup>32</sup>.
- 32. In case the co-legislators would decide to not follow the views of the EDPB, a suspension of the legal deadline for adoption of the binding decision should be provided in case the parties need to be heard by the EDPB. However, this solution would still require the need for the EDPB to draft an extra document within the tight deadline<sup>33</sup>, with the consequence that the possibility for the EDPB to adopt its decision within the legal deadlines would clearly be jeopardised.

#### 9. URGENT OPINIONS AND URGENT BINDING DECISIONS

33. Concerning the urgency procedure, the EDPB very much welcomes that both the EP and the Council remove the restrictions on the geographical scope of the final measures, a key point highlighted in the JO<sup>34</sup>. More specifically, the EDPB welcomes the EP's clarification that urgent binding decisions shall be addressed to the LSA and all the CSAs and shall specify the SAs that would need to adopt final

<sup>&</sup>lt;sup>28</sup> See JO para 149.

<sup>&</sup>lt;sup>29</sup> The maximum deadline is 2 months. The proposal would imply the need to organise 3 plenary meetings within this time frame (one to decide whether the objections are relevant/reasoned, one to decide and adopt the statement of reasons, and a last one to adopt the binding decision), instead of one as currently happens. According to the EDPB Rules of procedure, documents need to be shared 10 days before the meeting. All the documents subject to plenary decisions must be prepared at technical level in subgroup meetings and are also generally subject to debates in the Strategic Advisory Subgroup. Documents are generally circulated a week ahead of those subgroup meetings. Considering the fact that Article 65 binding decisions generally require 6 subgroup meetings, it is simply practically not feasible for the EDPB to prepare, discuss and adopt a statement of reasons in addition to the drafting of the binding decision.

<sup>&</sup>lt;sup>30</sup> See JO, footnotes 78 and 79.

<sup>&</sup>lt;sup>31</sup> In case following or rejecting the objections may lead to a full or partial rejection of the complaint.

<sup>&</sup>lt;sup>32</sup> See for instance paras 12 and 25 of EDPB binding decision 01/2022, paras 22-23 of urgent binding decision 01/2021 and paras 68-69 of urgent binding decision 01/2023.

<sup>&</sup>lt;sup>33</sup> The deadline is tight considering the fact that CSAs can raise any number of objections which lead the EDPB to address (and to adopt with a two-third majority of its members) an unlimited number of legal questions, always within the same deadline of 2 months.

<sup>&</sup>lt;sup>34</sup> See JO, paras 113-116.

measures (Article 28(2) EP Position). The EDPB also recalls its recommendation to clarify that the EDPB should be able to instruct the competent SA to impose different/additional final measures than those requested by the requesting SA, that requests for an urgent opinion/decision need to be made no later than 4 weeks prior to the expiry of the provisional measures, as well as the other practical recommendations made in the JO<sup>35</sup>.

34. In addition, concerning Article 28.1ter of the Council Position, which provides for an assessment by the EDPB of whether the parties have been heard on the elements relied upon for the adoption of an urgent decision, the EDPB highlights that it is first for the SAs to ensure that the right to be heard has been granted at national level before the file reaches the EDPB and that its current approach does already envisage such an assessment in any case.

## 10. GENERAL COMMENTS

- 35. **Cooperation between the EDPS and national SAs** The EDPB reiterates that the need for effective and efficient cooperation is not limited to cross-border cases involving multiple national SAs. The same need exists where personal data flows from Union institutions, bodies, offices and agencies (EUIs) to other public bodies or private entities within the European Economic Area (EEA) and vice-versa. The EDPB calls on the co-legislators to address the existing obstacles to efficient cooperation between the national SAs and the EDPS through a specific provision<sup>36</sup>.
- 36. **On translations** the EDPB reiterates its recommendation that the new regulation should refrain from setting specific rules concerning translations of documents, in order to leave room for mutual agreement between the SAs<sup>37</sup>. In this regard, the EDPB supports the Council's proposal to delete Article 6 of the Proposal.
- 37. On the entry into force and application, evaluation and review The EDPB supports the approach suggested by the Council (Articles 29bis and 31 Council Position), which should allow sufficient time for implementation of the new regulation.

For the European Data Protection Board,

The Chair

(Anu Talus)

<sup>&</sup>lt;sup>35</sup> See JO, paras 113-128.

<sup>&</sup>lt;sup>36</sup> See <u>EDPS contribution in the context of the Commission initiative to further specify procedural rules relating</u> to the enforcement of the General Data Protection Regulation (GDPR), issued on 25 April 2023, Section 3.1, with a proposal for a provision in Annex I; see JO, paragraphs 182-189.

<sup>&</sup>lt;sup>37</sup> Joint Opinion, paragraph 71.