



Final

## 98th Plenary meeting

04 November 2024, Remote

### I. Adoption of the minutes and of the agenda, Information given by the Chair

#### I.1. Minutes of the 97th EDPB meeting – adoption

The EDPB Deputy Chair underlined that, in absence of the EDPB Chair, he will chair the meeting of today. The Chair of the meeting then welcomed the representatives of the Information and Privacy Agency of Kosovo, who were attending the EDPB plenary for the first time as observer. The Chair gave the floor to Commissioner Krenare Sogojeva Dërmaku, who introduced herself and expressed that she is looking forward to participating in the EDPB plenary meetings.

The minutes were unanimously adopted with the modifications proposed.

The members of the EDPB also agreed on the public version of the minutes.

#### I.2. Draft agenda of the 98th EDPB meeting – adoption

The draft agenda was adopted unanimously without modification.

The discussions relating to agenda points B.1.1, B.1.2, B.1.3, B.1.5, B.1.6 and B.1.7 were declared confidential in accordance with Art. 33 EDPB RoP.

### A. Agenda items for adoption

The Chair introduced the A items for adoption:

- A.1. Request for an Article 64(2) Opinion on Úrad pre dohľad nad výkonom auditu (UDVA) in Slovakia/Public Company Accounting Oversight Board (PCAOB) Administrative Arrangement - decision to not adopt an opinion on the same matter as Opinion 5/2021 (International Transfers ESG);

Adopted: 03/12/2024

- A.2. Opinion on the draft decision of the IE SA on the BCR-C of Aptiv (International Transfers ESG).

There was no request to discuss the proposed A items. A single vote was organised for the two A agenda items and the decision to not adopt an opinion for A.1 and the opinion under A.2 were adopted unanimously.

## B. Agenda items for discussion

### B.1. Agenda items for discussion in view of adoption

#### B.1.1. Request for mandate on Best practices relating to Article 64(2) GDPR Opinions

The Chair introduced the item by recalling the previous discussions at the March plenary, where one EDPB member had proposed to work on this topic, and the June plenary, where a preliminary discussion took place. The Chair then gave the floor to the lead rapporteur. The lead rapporteur began by thanking those SAs who had already volunteered to join the drafting team, and mentioned it was still possible for other SAs to join if they wished. The lead rapporteur then presented the request for mandate for Best practices relating to Article 64(2) GDPR Opinions. The lead rapporteur explained that the planned work entails an update to be appended to EDPB Internal Document 3/2019. This update would reflect discussions regarding new best practices on Art. 64(2) GDPR. The need to ensure the compatibility of the draft best practices with the EDPB Rules of Procedure and the EDPB Plenary meeting best practices was underlined, and the drafting team will inform the plenary in case it identifies a need for any amendments. One member proposed to join the team of rapporteur and another one indicated it might join.

The EDPB members adopted the mandate unanimously.

#### B.1.2. Update of the Strategic Cases Process Guide

The Chair recalled the discussion at the October plenary, where it was decided to continue with the strategic cases project, and the decision at the December 2023 plenary to entrust the Enforcement ESG with looking into supplementing the guide, to address the practical and procedural hurdles identified. The Chair then gave the floor to the coordinator of the Enforcement ESG, who presented the work done on this Guide. Some members underlined the importance of having a commitment to contribute cases at the level of the Enforcement ESG. Others recalled that this project is a key part of the Vienna process.

The EDPB members took two votes: one for the adoption of the Strategic Cases Process Guide, one for the publication of this guide. 27 EU members of the EDPB voted in favour of adoption. There were no votes against, nor any abstentions. The 2 EEA members of the EDPB who were present were in favour of adoption. 23 EU members of the EDPB voted in favour of the publication, with 4 votes against and one abstention.

The EDPB members decided to publish the guide.

#### B.1.3. Reply to the letter from NATO dated 29 April 2024

The Chair introduced the item by recalling the discussion at the May plenary, where members were informed about the letter received from NATO's Supreme Headquarters Allied Powers Europe ("SHAPE"), and also discussed the possibility of inviting NATO to a future plenary meeting.

The rapporteur presented the content of the draft reply which recalls that the EDPB and its members need to ensure that entities that are subject to EU law comply with EU data protection law, including their rules on transfers and points out to existing guidance concerning the question of transfers to international organisations.

After a change made to the draft letter to propose several dates of in-person plenary meetings to NATO, the draft letter was adopted by the members of the EDPB unanimously.

#### B.1.4. Request for mandate regarding Guidelines on the use of biometrics for physical access control

The coordinator of the Technology ESG presented a request for mandate for Guidelines on the use of biometrics for physical access control, which would address additional legal issues from those covered in Opinion 11/2024 and would also broaden the scope to beyond airports.

One member suggested clarifying that the mandate that these guidelines will focus only on the GDPR, and not the LED. There were no objections to this proposal.

The EDPB members adopted the mandate with the agreed change unanimously.

#### B.1.5. Key Concepts Pilot Phase

The lead rapporteur provided an update on the work done and the proposed next steps for the project, including the sharing of a questionnaire with SAs as a pilot project to collect data regarding their activities in 2023 which would form the basis for a report. The importance of having a collective volition of all members to participate was underlined. Some members emphasised the need to ensure that additional burden was not placed on SAs to collect new statistics, and that the possibility to extract statistics from IMI should be explored as much as possible. The lead rapporteur confirmed that the IT users ESG had been consulted to check which information could be collected directly from IMI and this had been highlighted in the document. The European Commission expressed its strong support for the exercise and stressed the importance for collecting the relevant harmonised and comparable data both to adequately present actions carried out by SAs and provide the necessary input into, for instance , the regular Commission's reports on the application of the GDPR.

The EDPB members adopted the document on the Key Concepts Pilot Phase unanimously.

#### B.1.6. EDPB Report on the first review of the European Commission Implementing Decision on the adequate protection of personal data under the EU-U.S. Data Privacy Framework

The Chair recalled that five EDPB representatives took part in the European Commission's review of the adequacy decision of the EU-US Data Privacy Framework. The Chair informed the members that on 30 October 2024, one member sent the first complaint under the DPF redress mechanism for law enforcement and national security to the EDPB Secretariat, which is currently being assessed. In light of this, the draft report had to be slightly modified, which the members received in advance of the meeting. The Chair then gave the floor to the rapporteurs to present the report.

The rapporteurs first presented the EDPB findings with regard to the commercial aspects of the review. One member suggested an addition to the report, which did not receive support from the members. The rapporteurs then presented the EDPB findings with regard to the law enforcement and national security aspects of the review. Finally, the rapporteurs presented the conclusion of the review, that it would be appropriate for the next review to take place within three years or less.

The EDPB members then took a vote and unanimously adopted the report.

### B.1.7. Reply to letter from AI Office on European Data Protection Board (EDPB) statement on the role of data protection authorities (DPAs) in the Artificial Intelligence Act Framework

The rapporteur presented the draft reply to the letter which expresses the EDPB's appreciation the AI office's interest to engage with the EDPB. Two members made some suggested changes to the wording, which were presented by the EDPB Secretariat.

The draft letter was adopted with the changes agreed by the members of the EDPB unanimously. The EDPB members also agreed to publish the reply to this letter.

### B.1.8. Statement on the Recommendations of the High-Level Group on Access to Data for Effective Law Enforcement

The Chair recalled that the High Level Group was launched by the Presidency of the Council and the Commission to explore challenges for law enforcement practitioners in connection to access to data and propose solutions and recommendations. The Chair underlined that it is an important and sensitive topic, relating to encryption, data retention, and cooperation between authorities and with the private sector.

The coordinator of the Borders, Travels and Law Enforcement (BTLE) ESG explained that the draft was prepared by both the BTLE ESG and the Technology ESG. The coordinator of the BTLE ESG then presented the key messages of the statement which focus on the necessity and proportionality of the proposed measures and the need to safeguard the fundamental rights of individuals in the context of data access by law enforcement agencies. In this regard, the statement notes that some proposals could lead to significant interference with the rights of individuals.

The statement was adopted unanimously by the EDPB members.

## B.2. Agenda items for discussion

### B.2.1. Audited Descriptions of Consumer Profiling Techniques provided to the EDPB pursuant to Article 15 DMA

The rapporteurs provided information to the EDPB members regarding the results of the analysis made by the SAs on the Audited Descriptions of Consumer Profiling Techniques provided to the EDPB pursuant to Article 15 DMA.

The EDPB members took note of the information given.

## C. Organisational matters

### C.1. Changes to 2025 EDPB Plenary Meeting Dates

The EDPB Secretariat presented a proposed change to the date for the remote plenary in May 2025, which would be on 5 instead of 6 May, in light of the Spring Conference on 7-9 May 2025 organised by the Georgian DPA.

The EDPB Secretariat then presented a proposal to invite the network of communication officers to the June 2025 in-person plenary meeting, depending on whether this can be organised within the European Commission's premises.

The EDPB members agreed with the proposals.

## D. Agenda items for information

### D.3. Any other business

D.3.1. Information on the International Organisations Workshop on data protection co-hosted by the EDPS and the World Bank on 23-24 September

The EDPS provided information to the EDPB members regarding the International Organisations Workshop on data protection co-hosted by the EDPS and the World Bank on 23 & 24 September 2024.

The EDPB members took note of the information given.

### Annex: Attendance List

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, 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:

- RS SA, GE SA, XK SA. In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points B.1.2 and B.1.6 of the agenda.

EDPB Secretariat

Note: Deputy-Chair Vukić chaired the meeting.