



Final

99th Plenary meeting 2 – 3 December 2024, Physical

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

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

I.1. Minutes of the 98th EDPB meeting – adoption

The Chair opened the meeting by welcoming new Commissioners. First, she welcomed Mr. Eric Leijonram from the Swedish SA, who presented himself and expressed that he was looking forward to a fruitful and constructive cooperation. The Chair then informed the members that Mr. Tomáš Danč had been appointed as new vice president of the Slovak SA, but that he unfortunately could not attend the meeting.

Next, the Chair provided the members with a brief update on the first complaint on national security under the DPF. She also informed the members that she had a meeting with the Civil Liberties Protection Officer at the Office of the Director of National Intelligence (ODNI) on 19 November. During the meeting, the ODNI provided an update on its ongoing work. The Chair also reminded the members about the coming participation of the ODNI and the US Department of Justice in the BTLE meeting on 12 December 2024 to discuss the complaint mechanism with the BTLE members. The Chair reminded the members of the documents adopted at EDPB level on the DPF, such as the complaint forms, and highlighted the importance of ensuring that this information is available on the websites of all national SAs.

The minutes were unanimously adopted with the modifications proposed.

I.2. Draft agenda of the 99th EDPB meeting – adoption

The draft agenda was adopted with some modifications and additions. Two SAs requested the addition of points under AOB. One member requested to slightly amend the wording of the title of item B.1.4 from “response to” to “reaction regarding”. There were no objections to this change.

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

A. Agenda items for adoption

The Chair introduced the following A items for adoption:

A.1 Opinion on the draft decisions of the German SA on the BCR-C and BCR-P of Infosys (International Transfers ESG);

A.2 Opinion Art. 64(1) on the Datenschutz cert GmbH CAP national certification criteria (Compliance, E-Government and Health ESG).

There was no request to discuss the proposed A items and they were adopted unanimously.

B. Agenda items for discussion

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

B.1.1 Guidelines on Article 48 GDPR (International Transfers and Borders, Travel & Law Enforcement ESGs)

The Chair recalled the background of the file and the discussions which took place at the SAESG on 14 November. She then gave the floor to the lead rapporteur, who presented the work done.

Two members explained that they were not able to support the adoption of the guidelines in their current form.

The European Commission suggested a slight change to the wording of one of the footnotes. There were no objections to this proposal.

The EDPB members adopted the guidelines. 24 EU members of the EDPB voted in favour of adoption, 1 EU member voted against the adoption and 1 EU member of the EDPB abstained. 3 EEA members of the EDPB were in favour of adoption.

The members agreed that the guidelines will be submitted to public consultation for a period of 8 weeks to take into account the end of year holidays.

B.1.2 Letter to the European Commission on its review of 11 adequacy decisions adopted under Directive 95/46/EC (Borders, Travel & Law Enforcement and International Transfers ESGs)

The Chair introduced the item and passed the floor to the rapporteur, who presented the draft letter to the European Commission.

After discussing the draft, the members decided to include wording to clarify that the substance of the report was not being put into question and that the letter was instead addressing some aspects of the methodology which could be improved in future reviews.

The draft letter was adopted by the members of the EDPB unanimously.

B.1.3 Opinion Art. 64(2) on Brand Compliance certification criteria intended to become an EU data protection seal (Compliance, E-Government and Health ESG)

The Chair introduced the item and recalled that the opinion would be the third EDPB Opinion approving certification criteria intended to become an EU data protection seal.

The rapporteur presented the state of play of the opinion following discussions in the Compliance, E-Government and Health ESG.

The EDPB members adopted the Opinion unanimously.

B.1.4 Reaction regarding the European Commission second report on the application of the General Data Protection Regulation (Strategic Advisory ESG)

The Chair introduced the item and recalled the previous discussions on this matter at SAESG on 17 October 2024. The Chair then gave the floor to the EDPB Secretariat to present some optional sentences for possible inclusion in the draft and the precise format for the response.

The members exchanged views and decided on the optional sentences.

The members then discussed the format of the document. Several members intervened to express that a statement was the most appropriate and there were no objections to this.

One member suggested the inclusion of an executive summary at the beginning of the statement and shared proposed wording. This member, together with another member, proposed an additional sentence for the summary to recall the importance of legal certainty and coherency of digital legislation with the GDPR. There were no objections to this proposal and the statement was adopted by the members of the EDPB unanimously.

B.1.5 Guidelines on Social Media Use by Public Bodies (Social Media ESG)

The Chair introduced the file and passed the floor to the lead rapporteurs. The lead rapporteurs then recalled the mandate, the background of the work done, and the main focus and aim of the guidelines. They then provided a state of play and summarised the last discussions at ESG level before presenting the structure of the guidelines.

The Chair recalled the previous analysis carried out by the DPO network, which was endorsed by the plenary. The floor was then open for discussion.

One member intervened to thank the drafting team and lead rapporteurs for their hard work and emphasised that the subject matter of the guidelines is very complex due to the different actors involved and their respective models. The member expressed concern that the concept of joint controllership had been interpreted too broadly in the guidelines. The member suggested that the adoption be postponed and that clear guidance be given to the ESG to amend the guidelines to ensure that joint controllership is only alluded to in cases where there is a clear indication of a determination of purposes and means beyond the decision to make use of a social media service.

Other members expressed their support for the guidelines in their current form and argued for their adoption.

Some members supported the first intervention, expressing concerns about the broad interpretation of joint controllership, and referring to practical consequences if the guidelines were adopted without changes. Another member underlined the need to balance the right to data protection with other

fundamental rights, such as the transparency of public administrations and their need to engage with and inform the public.

Several members expressed their support for postponing the adoption. The Chair concluded that the document was not ready for adoption as it needs to be further developed, and that the analysis carried out by the DPO network, as endorsed by the plenary, should be taken into account during further work on this matter. The Chair further directed the lead rapporteurs to bring the matter to the SAESG if there may be a need to deviate from that analysis. In addition to the assessment on the joint controllership, the Social Media Subgroup should also further assess, considering our competence, whether the EDPB should take a stance on whether public authorities should use social media.

The members agreed to continue the discussion within the SOCM ESG and SAESG.

C. Organisational matters

C.1. Meeting with AI office

The Chair welcomed Ms Sioli, head of the AI Office. The Chair recalled the EDPB Statement 3/2024 on data protection authorities' role in AI act and AI Office's expression of interest to cooperate with the EDPB to ensure a coordinated approach on AI governance.

The Chair reiterated her appreciation of this cooperation, which already started in practice in the context of the coming EDPB consistency opinion relating to the training of AI models. Ms Sioli then presented the AI office and its activities, and expressed interest in further bidirectional cooperation between the EDPB and the AI office.

The EDPB members thanked the representatives of the AI Office for their presentation and a Q&A session took place. There was agreement on the need for constructive cooperation across regulations.

The Chair clarified that as the AI Office is part of the European Commission, they would be welcome to participate in EDPB subgroup meetings and that the DG Justice of the European Commission is coordinating this matter.

C.2 Discussion on the future of the taskforce on the interplay between data protection, consumer protection and competition (Competition and Consumer TF)

The Chair recalled the discussions on the future of the taskforce on the interplay between data protection, consumer protection and competition held at the EDPB plenary meeting on 7–8 October 2024, and then gave the floor to one of the coordinators of the taskforce.

The coordinator of the Competition & Consumer Law Taskforce presented the proposal to convert the taskforce into an expert subgroup and outlined possible activities, if the members agreed to extend the current mandate.

One member outlined concerns that increasing the number of expert subgroups and the remit of their work means that smaller authorities can lack the resources to adequately follow all of the discussions. The Chair indicated the need to indeed assess the volume of meetings and work, and the need for the EDPB to prioritise. Another member agreed that it was important to take resources into account when considering the work programme for this group in order to remain effective.

Several members expressed support for the proposal and underlined the need for a forum at EDPB level to discuss cross-regulatory matters.

The EDPB members agreed to convert the Competition & Consumer Law Taskforce into a new expert subgroup on Cross-regulatory Interplay and Cooperation (CIC). 23 EU members voted in favour and 3 EU members voted against. 2 EEA SAs voted in favour and 1 EEA SA abstained.

C.3 List of Expert Subgroups and Taskforces SGs/TFs and their mandates (Coordination and Strategic Advisory ESGs)

The Chair introduced the topic and recalled the discussions at the October 2024 plenary, where it was decided to postpone the adoption pending the decision on the future of the Competition & Consumer Law Taskforce.

The EDPB Secretariat presented the list of Expert Subgroups, taskforces and their mandates, and briefly presented the proposed changes with regard to the mandate of the Competition & Consumer Law Expert Subgroup and the deletion of the Task forces on 101 Complaints taskforce and Cookie banner taskforce in line with the decision taken in October 2024.

The EDPB adopted the list of Expert Subgroups and Taskforces unanimously.

C.4 Appointment of a second coordinator for Key Provisions ESG (Key Provisions ESG)

Following the departure of one of the coordinators from the KEYP ESG, a call for interest had been circulated among the KEYP ESG members for a volunteer to replace them. Following this, [REDACTED] from the SE SA expressed their interest for the position. The KEYP ESG had nominated them as a second coordinator.

The EDPB members unanimously designated [REDACTED] (SE SA) as second coordinator of the Key Provisions ESG.

C.5 Nomination of an EDPB representative in the Working Group 6 – Protection of Minors – of the European Board for Digital Services

The Chair explained that the EC had invited the EDPB to appoint a representative for the Working Group 6 – Protection of Minors – of the European Board for Digital Services. The initial scope of the Working Group 6 is the protection of minors, such as Article 28 Guidelines that will be produced by the Commission on duties of providers of online platforms to protect minors online. It will also cover the tasks which used to be performed by the Task Force on Age Verification, which has now been dissolved and replaced by this new Working Group.

The appointed representatives will be called to represent the EDPB and, consequently, will align their positions with the KEYP, TECH and SOCM ESGs.

The EDPB members decided to appoint [REDACTED] (IE SA) to the Working Group 6 – Protection of Minors – of the European Board for Digital Services, with [REDACTED] (BE SA) as alternate.

D. Agenda items for information

D.3. Any other business

D.3.1. Information about the Privacy Symposium Africa

The EE SA provided information to the EDPB members regarding the Privacy Symposium Africa.

The EDPB members took note of the information given.

D.3.2. Recommendations on mobile applications to help professionals design mobile applications that respect privacy

The FR SA provided an update to the EDPB members on the recommendations on mobile applications to help professionals design mobile applications that respect privacy.

The EDPB members took note of the information given.

D.3.3. Common Baltic state inspections

The LV SA updated the EDPB members on an initiative of the SAs of the Baltic States to coordinate their enforcement activities.

The EDPB members took note of the information given.

D.3.4. Update following the 47th Plenary meeting of the Committee 108

The HR SA informed the members that Anamarija Mladenčić of the HR SA had been elected vice chair of this committee during the 47th Plenary meeting of this Committee on 4–6 November 2024.

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, IE SA, IS SA, IT SA, LI SA, LT SA, LU SA, MT SA, NL SA, NO SA, PL SA, PT SA, RO SA, SE SA, SI SA,

European Commission

Observers:

- AL SA, GE SA, XK SA, MD SA, MK 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.1.3.

EDPB Secretariat