



Final

97th Plenary meeting

7 - 8 October 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 96th EDPB meeting – adoption

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 97th EDPB meeting – adoption

The draft agenda was adopted with some editorial modifications in item B.3 and the inclusion of four AOB points: one requested by the HR SA concerning the presentation of the “Olivia Web Tool”, a virtual assistant for GDPR compliance developed by the HR and IT SAs, and the invitation of the EDPB members to the online wrap-up meeting of the ARCI project; two requested by the PT SA concerning a state of play on the DPAs designated as competent to enforce the AI Act; and one concerning the departure of the Director of the ES SA.

The discussions relating to agenda points B.1, B.2, B.3, B.4, B.5 and B.8 were declared confidential in accordance with Art. 33 EDPB RoP.

The Chair informed the EDPB members that the Swedish DPA has a new Director General: Eric Leijonram. She further informed the members of two hearings that will take place before the CJEU: one on 7 November 2024 in Case C-413/23 P and one on 26 November 2024 in Case C-97/23 P.

The Chair also shared information on the first Atlantic Inter-Network Meeting of Personal Data Protection Authorities, organized by the Moroccan DPA (CNDP), which she attended with a member of the EDPB Secretariat on 25 and 26 September 2024 in the city of Rabat in Morocco, as well as the President and one Member of the Portuguese DPA presenting the Networking between the DPA of

the Portuguese Speaking Countries launched in Lisbon, on June 2024. Visions and work strategies of each Network were presented, in particular regarding Neurodata and Neurotechnology, Digital Identity for Access to Public Services, Artificial Intelligence and Deep Fakes, as well as possible avenues for cooperation and collaboration among Networks. The Chair presented the work of the EDPB and the member of the EDPB Secretariat presented aspects related to AI. The Chair noted that the discussions were very interesting as they shed light on the priorities of various networks around the world.

A. Agenda items for adoption

The Chair introduced the following A item for adoption:

A.1 Reply to the letter of the European Commission regarding the EDPB position paper on the interplay between data protection and competition law (Task Force on Competition and Consumer Law)

There was no request to discuss the proposed A item and it was adopted unanimously.

B. Agenda items for discussion

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

B.1 Article 64(2) procedures

The Chair introduced the topic and recalled the discussions that took place during the previous plenary meeting.

Some members underlined the very short deadlines applicable to Article 64(2) GDPR requests of opinion and the consequences if a public consultation would be implemented, e.g. a risk that powerful stakeholders might be able to react in a short term given and others might not.

In this specific case, and without considering this as a precedent, the EDPB members decided by majority that it would be appropriate to organise a public consultation in the form of a remote event on the IE SA request for an Article 64(2) GDPR opinion on AI. This was decided in light of the exceptional societal impact of the AI technological developments and the fact that it relates to fast-moving technologies for which external inputs will be particularly useful.

The Chair communicated to the EDPB members that during the next plenary meeting a request for mandate will be discussed on “the approach to Article 64(2) GDPR opinions” including the question of eventually implementing public consultations on a framed ground.

B.2 EDPB Meeting with DPAs from countries having been subject to an EU adequacy decision on 8 October 2024

The Chair recalled that a meeting of the EDPB with DPAs from countries which are subject to an EU adequacy decision will take place on 8 October 2024 and a draft agenda has been prepared in cooperation with the International Engagement Taskforce. The EDPB members discussed the preparation of the meeting and approved the agenda.

B.3 Article 64(2) opinion on controllers and (sub-)processors

The Chair introduced the item and recalled that the opinion, which was requested by the DK SA, relates to specific obligations of controllers and processors and to the interpretation of certain related provisions of the GDPR, such as Article 28 GDPR. Following this, she gave the floor to the Secretariat to present the opinion and the options for discussion. The Secretariat presented the first part of the

Opinion on which consensus has been reached at the ESG level, as well as a series of questions which were left open for discussion by the ESG.

The Secretariat explained the current content of the draft Opinion and recalled that the first question to be decided was whether the words “unless required to do so by law or binding order of a governmental body” can be construed as a documented instruction of the controller or not. The Secretariat explained the Option A (that the wording cannot be construed as a documented instruction by the controller) and the Option B (that the wording can be construed as a documented instruction by the controller). The EDPB members discussed the matter and agreed to keep Option A in the Opinion and to proceed with the second discussion point.

The EDPB members were then invited to decide on the wording of the very last paragraph of the opinion. Following discussions, the EDPB members agreed to retain the paragraph, but agreed on editorial changes for the sake of clarity.

The EDPB members adopted the Opinion. 26 EU members of the EDPB voted favour of adoption and 1 EU member of the EDPB abstained. The 3 EEA members of the EDPB were in favour of adoption.

B.4 Request from Kosovan DPA to become an observer to EDPB’s activities

The Chair informed the EDPB members that the Kosovan DPA has requested to become an observer to the EDPB’s activities and recalled that the request needs to be assessed in accordance with the criteria set out in Article 8(1) of the EDPB RoP. Following this introduction, the EDPB Secretariat presented the analysis of the request and the three conditions for granting the status of observer and elaborated on each of them, as applicable to Kosovo.

Following the presentation, the EDPB members exchanged on the matter. One EDPB member outlined arguments in favour of Kosovo DPA becoming an observer to the EDPB. Three SAs informed the Board that they could not support the application given their governments’ official position on the independence of Kosovo. Another EDPB member noted that, under the rules of procedure, some items are not open for observers and suggested that those rules be revised to enable a more broad attendance of observers. The Chair agreed that to discuss this in a future Plenary meeting.

Following the discussions, 18 EU members of the EDPB voted in favour of accepting the Kosovan DPA as an observer to the EDPB activities, 5 EU members of the EDPB voted against and 4 EU members of the EDPB abstained. The 3 EEA members of the EDPB were in favour of accepting the application.

The DPA of Kosovo was granted the status of observer to the activities of the EDPB.

B.5 Future of strategic cases

The Chair recalled that, at the December plenary, the EDPB members decided to continue with the selection of strategic cases and that the EDPB Strategy 2024–2027 explicitly refers to strategic cases. The ENF Coordinator provided an update on the strategic cases: the ██████████ case has been closed as the case was solved, the ██████████ and the ██████████ case are well advanced and are expected to be coming soon too their end, the ██████████ case is still ongoing, and a ██████████ case has been proposed as a potential Strategic case to the ENF ESG. No new cases have been proposed since the last call.

The EDPB members exchanged on the matter. Some highlighted the benefits of the project and spoke in favour of continuing it, as it is one of the key commitments following the Vienna meeting. Others expressed their concerns about the future of the project and also proposed to suspend it, while the focus now should be on the handling and finalisation of the ongoing strategic cases. Members further noted that closer cooperation between DPAs, outside of the strategic cases procedure, is becoming

more and more regular and could explain the reasons why there is no need to select new strategic cases. It was also recalled that the new Procedural regulation is expected soon and this will have an impact on how SAs handle strategic cases.

It was agreed that the strategic cases project would continue to be available when needed and that Members would continue to examine whether they had any cases which would be suitable for proposal as a strategic case.

B.6 Revised Guidelines 2/2023 on Technical Scope of Art. 5(3) of ePrivacy Directive (Technology ESG)

The Chair introduced the topic and recalled that the first version of the Guidelines was adopted in November 2023, after which they have been subject to a public consultation. The lead rapporteur then presented the contributions received during the public consultation and the updates made by the TECH ESG. First, he explained that many contributions concerned the EDPB's ability to produce such guidelines, as SAs are not systematically competent for ePrivacy matters at national level. However, it was recalled that Article 15(3) of the ePrivacy Directive gives a very clear authority on this matter to the WP29 and therefore to the EDPB, and that SAs were asked to carry out an analysis of their competence and collect feedback from other competent regulators. This has also led to the inclusion of several references to BEREC guidelines. Secondly, the concept of "access to the terminal equipment" has been the subject of numerous contributions. Therefore, this concept has been discussed again at ESG level and specific amendments have been made to clarify the operations concerned. Finally, some contributions have stressed that the legislature's intention at the time of the 2009 amendments to the Directive was to ensure that Article 5(3) of the ePrivacy Directive would apply in the context of direct access in the absence of a network. Therefore, the parts of EDPB guidelines explaining the criteria for the applicability of Article 5(3) have been updated accordingly.

Following the presentation, one EDPB member informed that they would abstain from the vote due to their particular national legislation.

The EDPB members adopted the Revised Guidelines 2/2023 on the Technical Scope of Art. 5(3) of ePrivacy Directive. 25 EU members of the EDPB voted in favour of adopting the revised guidelines and 2 EU members abstained. 2 EEA members of the EU were in favour of adoption and 1 EEA member abstained.

B.7 Statement on laying down additional procedural rules for GDPR enforcement

The Chair introduced the topic and recalled that the Statement is an EDPB initiative, taken as a follow-up action to EDPB–EDPS Joint Opinion 1/2023. The purpose is to comment on the amendments made by the European Parliament and the Council to the EU COM proposal for a procedural regulation, in view of having an impact on the upcoming inter-institutional negotiations. The lead rapporteur then thanked the COOP ESG for their work and presented the structure and content of the statement. Following the presentation, one EDPB member stressed that this is an important step forward in line with the Vienna commitments and expressed hopes that the co-legislators would support and act on the statement.

The EDPB members then took a vote and adopted the statement. 26 EU members of the EDPB voted in favour of adoption and 1 EU member of the EDPB abstained. The 3 EEA members of the EDPB were in favour of adoption.

B.8 Selection of topics for the CEF 2025 (Enforcement ESG)

The Chair informed the Board there were three possible topics submitted for the Coordinated Enforcement Action 2025 and noted that the action will be carried out on a voluntary basis as usual. The ENF Coordinator then presented the possible options.

The EDPB members discussed the topics and agreed that the next Coordinated Enforcement action 2025 will be on the “Implementation of the right to erasure (‘right to be forgotten’) by controllers”.

B.9 Guidelines on legitimate interest (Key Provisions ESG)

The Chair introduced the topic and recalled the previous discussions in SAESG and the CJEU ruling of 4 October 2024 in Case C-621/22, which addresses the question of whether a commercial interest can be considered as legitimate interest.

Following this introduction, the lead rapporteur presented the guidelines. The guidelines start by presenting Article 6(1)(f) GDPR as a legal basis, provide a method for the assessment of whether this could be a valid legal basis for the processing, explain the relationship between Article 6(1)(f) GDPR and several data subject rights and addresses some key areas where controllers might consider relying on this legal basis.

In addition, the lead rapporteur noted that the drafting team has taken the CJEU judgment in Case C-621/22 into account to make it clear that a commercial interest can constitute valid legitimate interest, provided that it is lawful. Some small editorial changes have also been made.

The EDPB adopted the guidelines unanimously. They also agreed that the guidelines will be subject to a public consultation for a period of six weeks.

Finally, the Chair informed that the Communications team of the EDPB Secretariat is working on a factsheet explaining the legal basis of legitimate interest to non-lawyers.

B.10 EDPB work programme 2024-2025 and list of ESGs, taskforces and their mandates

The Chair introduced the topic and recalled that the Work Programme 2024–2025 would be the first of the Work Programmes implementing the EDPB Strategy, with the second being for 2026–2027. As usual, two documents have been prepared, being an internal and a public work programme. The EDPB members were also invited to discuss the list of subgroups and taskforces and their mandates which, in accordance with the EDPB Rules of Procedure, should be reviewed on a yearly basis. The EDPB Secretariat presented the documents.

The EDPB members took note of the internal Work Programme 2024–2025 and adopted the public EDPB Work Programme 2024–2025 unanimously.

Following this, the EDPB members discussed the mandates of the sub-groups and taskforces. First, the EDPB members agreed to close the 101 Complaints TF and the Cookie Banner TF given that the TFs already produced the relevant documents to help DPAs to handle the complaints. One Member suggested that any enforcement questions in relation to cookies could be added to the agendas of some ENF/TECH meetings, to provide a forum for discussion.

The discussions then focused on the future and mandate of the Competition & Consumer Law Taskforce. In this context, several members highlighted the importance of having a forum to discuss inter-regulatory affairs, either by creating a dedicated sub-group/taskforce or by extending the mandate of one of the existing ones. The C&C TF was identified as a possible option. It was agreed that a group of EDPB members will prepare a proposal of options on the possible change of status and mandate of the C&C TF, which will be submitted at a future plenary meeting.

C. Organisational matters

C.1. Appointment of a second coordinator for Compliance, E-Government and Health ESG

The Chair explained that, following the departure of one of the coordinators from the CEH ESG, a call for interest has been circulated among the CEH ESG members for a volunteer to replace them. Following this, there was one candidate – [REDACTED] from the LU SA.

The EDPB members unanimously designated [REDACTED] (LU SA) as second coordinator of the Compliance, E-Government and Health ESG. The members agreed to launch a call for a third coordinator.

D. Agenda items for information

D.2. Updates from EDPB participants

D.2.1. Presentation of Rome Roundtable of G7 DPAs

The IT SA provided information to the EDPB members regarding the G7 DPA Roundtable, which will be held in Rome in October 2024.

The EDPB members took note of the information given.

D.2.2. Presentation of “DAAZ”, a tool developed by CNPD LU to support small entities in compliance with the GDPR

The LU SA made a presentation to the EDPB members of the “DAAZ” tool (Data Accountability from A to Zen) – an online tool developed by the LU SA to support small entities without legal expertise in their compliance with the GDPR.

The EDPB members took note of the information given.

D.3. Any other business

D.3.1. Information on the newly established DPA for the legislative sector in Austria

The AT SA provided information to the EDPB members regarding the newly established DPA, the “Parliamentary Data Protection Committee”, which is competent for the supervision of processing of personal data activities by the Austrian Parliament and its bodies. The Parliamentary Data Protection Committee will commence its work on 1 January 2025. In terms of EDPB activities, the AT SA will remain the sole representative and single point of contact for Austria, but must inform the Parliamentary Data Protection Committee in a timely manner about all matters concerning Chapter VII of the GDPR and involve it if it could be affected by the matter.

The EDPB members took note of the information given.

D.3.2. Information on the opinion of Advocate General de la Tour in C 416/23 concerning the “excessive” character of requests under Article 57(4) GDPR

The AT SA provided an update to the EDPB members on the opinion of Advocate General de la Tour in C 416/23 of 5 September 2024 concerning the “excessive” character of requests under Article 57(4) GDPR, issued following a request for a preliminary ruling by the Austrian Supreme Administrative Court.

The EDPB members took note of the information given.

D.3.3. Information on a request for preliminary ruling by the Austrian Supreme Administrative Court in C-414/24 concerning the parallelism of Articles 77 and 79 GDPR

The AT SA informed the EDPB Board that the Austrian Supreme Administrative Court has lodged a request for preliminary ruling by the CJEU in case C-414/24 concerning the parallelism of Articles 77 and 79 GDPR. More specifically, the Austrian Supreme Administrative Court seeks clarifications from the CJEU, in light of the CJEU ruling in case C-132/21, on the interplay between Articles 77 and 79 GDPR.

The EDPB members took note of the information given.

D.3.4. Recommendations on mobile applications to help professionals design mobile applications that respect privacy

The item was postponed for the next EDPB plenary meeting.

D.3.5 Information about the “Olivia Web Tool for GDPR compliance” and invitation to the online final event organized to present the results of EU funded project ARC II (HR SA)

The HR SA will send information in writing.

D.3.6 DPAs appointed to enforce the AI Act (PT SA)

The PT SA will send information in writing.

D.3.7 Departure of the Spanish Commissioner (PT SA)

At the occasion of the departure of Mar España Martí, Commissioner of the ES SA, the PT SA took the initiative to pay tribute and thank her for all her work and successful cooperation. Commissioner Martí also thanked the EDPB members for the very good cooperation.

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, LI SA, LT SA, LU SA, MT SA, NL SA, NO SA, PL SA, PT SA, RO SA, SE SA, SI SA, SK SA

The LV SA delegated voting rights to the EE SA pursuant to Art. 22.5 RoP.

European Commission

Observers:

- MD SA, GE SA In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points B.1, B.3, B.4, B.5, B.8 of the agenda.

EDPB Secretariat