

EDPB Documents



EDPB Document on Coordinated Enforcement Framework under Regulation 2016/679

Adopted on 20 October 2020

Version history

Version 1.1	04 October 2021	Correction of material mistake
Version 1.0	20 October 2020	Adoption of the document

EXECUTIVE SUMMARY

Definition

The Coordinated Enforcement Framework (CEF) provides a structure for coordinating recurring annual activities by EDPB Supervisory Authorities (throughout this document, this is called an ‘annual coordinated action’). The annual coordinated action focuses on a pre-defined topic and allows SAs to pursue this topic using the agreed-upon methodology. The CEF itself provides the procedural outline within which the coordinated action can take place (the ‘rulebook’).

Objectives

The objective of the CEF is to facilitate joint actions in a flexible but coordinated manner, ranging from joint awareness raising and information gathering to enforcement sweeps and joint investigations. The purpose of recurring annual coordinated actions is to promote compliance, to empower data subjects to exercise their rights, to raise awareness, and/or to increase the knowledge of SAs.

Legal Basis

According to Article 61(1) GDPR, SAs shall put in place measures for effective cooperation with one another. Article 57(1)(g) GDPR tasks SAs with cooperating, including sharing information and providing mutual assistance to other SAs with a view to ensuring the consistency of application and enforcement of the GDPR.

The Relationship between the CEF and Chapter VII GDPR

The one-stop-shop mechanism remains unaffected by the CEF and applies whenever cross-border processing activities are concerned. Mutual assistance (Article 61 GDPR) can be used as a tool within the annual coordinated action, but should be limited to its voluntary form where possible. Lastly, it is possible to use joint operations (Article 62 GDPR) as a methodology to perform an annual coordinated action, but other, less formal methodologies are possible as well.

Timeframe

The coordinated action will, in principle and if the resources allow, cover a period of one year. If the CEF is adopted in the second quarter of 2020, the focus for the first coordinated action will be identified in the last two quarters of 2020, the coordinated action will be executed in the first and second quarters of 2021 and in the third quarter of 2021, the final report will be drafted and a new coordinated action will be prepared.

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The European Data Protection Board

Having regard to Article 70(1)(u) of the Regulation 2016/679/EU of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (hereinafter “GDPR”),

Having regard to Article 61 (1) and Article 57 (1)(g) of the Regulation 2016/679/EU of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, (hereinafter “GDPR”),

Having regard to the EEA Agreement and in particular to Annex XI and Protocol 37 thereof, as amended by the Decision of the EEA joint Committee No 154/2018 of 6 July 2018,

Having regard to its Rules of Procedure,

HAS ADOPTED THE FOLLOWING DOCUMENT

1 INTRODUCTION

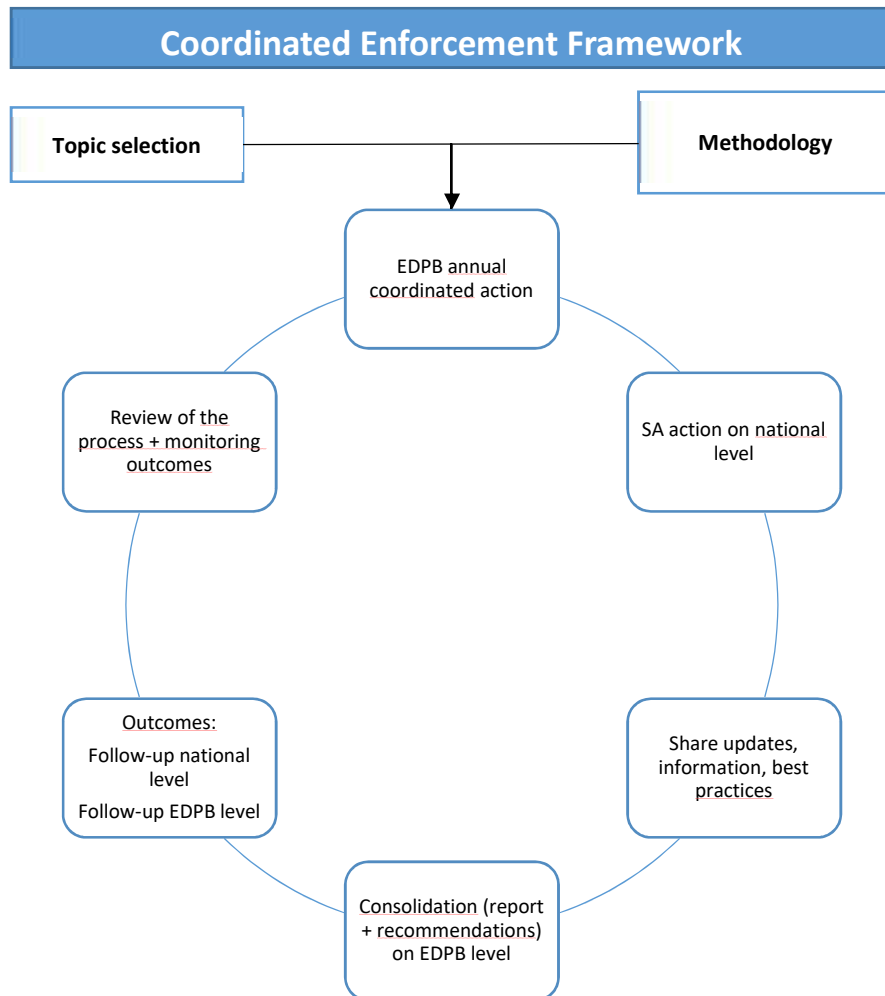
1. The European Data Protection Board (EDPB) is an independent European body, which is tasked to ensure the consistent application of data protection rules throughout the European Union (EU), and promotes cooperation between the EU's data protection authorities. The EDPB is composed of the heads of the Supervisory Authorities (SA) and the European Data Protection Supervisor (EDPS) or their representatives.
2. All SAs are tasked with the supervision and enforcement of the General Data Protection Regulation (GDPR), which applies from 25 May 2018. The GDPR safeguards the fundamental right to protection of personal data and facilitates free movement of personal data (Article 1 GDPR). To that end, the GDPR contains a catalogue of rights for data subjects and imposes obligations upon controllers and processors – not just with regard to respecting the rights of data subjects, but also concerning technical and organizational measures associated with security aspects. The GDPR gives the SAs a fundamental role in supervision of compliance with these provisions, as well as a duty of cooperation between the authorities and coherence in their decisions that contribute to the free circulation of data among the Member States, resulting in a harmonized European space in terms of data protection.
3. The EDPB supports coherence in approach through consistency procedures, regular meetings and (internal) guidance. In addition, the GDPR emphasizes cooperation between national SAs and introduces a one-stop-shop mechanism for case handling. The Coordinated Enforcement Framework (CEF) that is introduced in this document supports and builds on mechanisms for cooperation that are in the GDPR. Different from reactive action (e.g. complaint handling), action under the CEF is intended to be proactive.

2 WHAT IS THE COORDINATED ENFORCEMENT FRAMEWORK?

4. The Coordinated Enforcement Framework (CEF) provides a **structure for coordinating recurring annual activities** by EDPB Supervisory Authorities (throughout this document, this is called an 'annual coordinated action'). The annual coordinated action focuses on a pre-defined topic which participating SAs may pursue using a pre-defined methodology.
5. The CEF is the foundation on which the annual coordinated action is built (the 'rulebook' for coordinated action). The objective of the CEF is to facilitate joint actions in the broad sense in a flexible but coordinated manner, ranging from joint awareness raising and information gathering to an enforcement sweep and joint investigations. This ultimately contributes to compliance with the GDPR; ensuring the rights and freedoms of citizens and reducing the risk of services based on new technologies in the field of data protection.

2.1 Summary of the CEF life-cycle

6. The CEF life-cycle, including the annual coordinated action, can be visualised as follows:



7. As this schematic overview illustrates, the Coordinated Enforcement Framework is the structure in which an annual coordinated action can take place. In principle, each year, the EDPB decides upon a topic for coordinated action and agrees on the methodology that goes along with it. After that, the national SAs determine the scope of their national execution of the annual coordinated action and carry it out over the course of – approximately – one year. Participation in the coordinated action for any given year is not mandatory, though decisions regarding topic selection and methodology should be as inclusive as possible with an aim to maximize SA participation in any agreed annual coordinated action.
8. For the duration of the chosen annual coordinated action, national SAs will share updates on the progress, relevant information and – where applicable – best practices. All national findings will be consolidated in a report on EDPB-level, in which the participating SAs will make recommendations as to the follow-up of the annual action (for instance follow-up enforcement action on a national level, or guidance on an EDPB-level). After the coordinated action has taken place and recommendations have been made, the participating SAs will review the process as a whole, in order to fine-tune the CEF and simplify coordinated actions for the coming years. Where follow-up action is recommended, the implementation of such action will be monitored.

2.2 Legal basis and division of competences

9. The GDPR is the basis and the authority under which the annual coordinated action within the Coordinated Enforcement Framework will be executed¹. This means that other relevant EU legislation (such as Directive 2016/680) will be left outside the scope. The GDPR both determines the scope of the action ('what type of non-compliance do we address to best safeguard the rights of data subjects') as well as the legal basis on which action can be taken. In that sense, it almost goes without saying that the field of application of any action by the EDPB and national SAs should fall within the material and territorial scope of the GDPR. To that end, the CEF and the annual coordinated action are confined by the limits of Article 2 (material scope) and Article 3 (territorial scope) of the GDPR.
10. The legal basis for the CEF is found in Article 57(1)(g), which gives national SAs the competence to cooperate "with, including sharing information and provide mutual assistance to, other supervisory authorities with a view to ensuring the consistency of application and enforcement of this Regulation." National SAs participating in the annual coordinated action do so on the basis of their advisory powers and monitoring- and awareness-raising tasks outlined in Articles 57(1) and 58(3) GDPR. Additionally, if SAs decide to use investigative powers or impose measures, they may do so on the basis of Articles 58(1) and (2) GDPR.
11. Turning to the division of competences between the EDPB and the national SAs, the CEF assumes as a starting point that investigation and enforcement of the GDPR primarily rests with the national SAs (cf. Article 58 GDPR), whereas the EDPB is tasked with ensuring the consistent application of the GDPR (cf. Article 70 GDPR). To that end, only national SAs are responsible for investigations and follow-up enforcement action in their respective jurisdictions. The EDPB, in turn, provides the platform to share and combine national efforts and takes responsibility where the outcomes of the annual coordinated action call for guidance or recommendations in the fields covered by Article 70(1) GDPR.

2.3 Relationship with the cooperation mechanisms under the GDPR

12. The CEF and the annual coordinated action are without prejudice to the functioning of the cooperation- and consistency mechanisms under the GDPR and the other tasks and the powers of the EDPB and the national SAs. Any coordinated enforcement action should be mindful of the division of competences between EDPB and national SAs, making the most of the tasks and competences allocated to both.

2.3.1 One-stop-shop mechanism

13. The OSS regulates the cooperation of the responsible supervisory authorities for cross-border data processing within the EU. The OSS has a dual objective: (i) to give the responsible bodies and processors the possibility of turning to a supervisory authority as the central point of contact for the whole of the European Union and (ii) to give concerned persons a local body with the necessary powers and competences to help them enforce their data protection rights. If a certain processing is considered cross-border processing in the sense of Article 4(23) GDPR, the application of the OSS is mandatory –

¹ References to the GDPR and national SA are to be understood as references to the "EUDPR" (Regulation 2018/1725) and the EDPS as regards the participation of the EDPS in the CEF.

even if this cross-border processing is found in the context of an annual coordinated action. If this happens, the procedures outlined for dealing with cross border cases should be followed and the best course of action should be determined on a case by case basis.

14. Since the annual coordinated action should not lead to an unreasonable burden upon a small number of LSAs and because all participating SAs should have the competence to examine the controllers/processors involved, it should not be the intention from the offset to trigger the OSS during an annual coordinated action. However, depending on the scope of the coordinated action, it is possible that the OSS becomes applicable nonetheless, for instance if it is discovered that a controller/processor under examination engages in cross-border processing relevant to the topic. If this happens, the procedures outlined for dealing with cross-border cases should be followed and the best course of action should be determined on a case-by-case basis. It should be borne in mind that in these cases, Articles 61 and 62 GDPR can be used as tools to alleviate unnecessary burden upon the (newly found) LSA.

2.3.2 Mutual assistance

15. The obligation to give mutual assistance applies to any case in which an SA requires the assistance of another SA for the performance of its tasks. Essentially, Article 61 GDPR regulates the obligations of the requested SA and the consequences of breach of those obligations. Article 61 GDPR does not have to concern cross-border processing in order to be triggered.
16. Article 61 GDPR and the CEF are two distinct instruments. The first allows for SAs to request each other's assistance regarding specific issues/cases. The latter facilitates that multiple SAs look into the same issue in their respective countries at the same time, and provides a framework under which they can discuss their findings and intended next steps. However, Article 61 GDPR can be used as a tool within the CEF to share findings or ask information between the participating SAs – especially the *voluntary* mutual assistance that is available on the IMI system. Triggering a formal mutual assistance procedure should be avoided in the course of the CEF due to the voluntary nature of participation and should – in accordance with the Article 61 Process Guide – be reserved for cases in which an informal request is impossible.

2.3.3 Joint operations

17. Article 62 GDPR provides rules for joint operations by the supervisory authorities, including joint investigations and joint enforcement measures. A joint operation occurs where two or more SAs join forces in order to act toward a commonly agreed purpose. In order to do so, SAs make available their resources including their skills and staff. The application of Article 62 GDPR is not limited to crossborder cases.
18. In order to distinguish the CEF from an Article 62 joint operation, it is important to bear in mind that the CEF is a broader framework that allows SAs to use various methodologies to look into a predefined issue on their respective national levels. Examples of such methodologies are conducting a joint survey, conducting a sweep or engaging in joint awareness raising. Conducting a joint operation in the sense of Article 62 GDPR is also one of the methodologies that can be used. Therefore, the CEF is the overarching framework in which Article 62 GDPR can be used as a tool for an annual coordinated action. For that reason, joint operations are not further elaborated upon in this document.

For the European Data Protection Board

The Chair
(Andrea Jelinek)