



Final

84th Plenary meeting

19-20 September 2023, Brussels

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.

1 Adoption of the minutes and of the agenda, Information given by the Chair

1.1 Minutes of the 82nd and 83rd Plenary meetings – adoption

The minutes of the previous plenary meeting were adopted unanimously. The members of the EDPB also agreed on the public version of the minutes.

1.2 Draft agenda of the 84th EDPB meeting – adoption

The draft agenda was adopted with the inclusion of two additional points under AOB: one from the BG SA's application for the GPA Executive Committee and one from the DE SA regarding an ongoing case.

The EDPB Secretariat recalled that, in the afternoon, there will be a meeting with 11 Data Protection Authorities from the Western Balkans and Eastern Partnership. The EDPB members were informed that the EDPB Chair and the EDPB Secretariat had already met these authorities on 18 September, to present the work of EDPB.

The European Commission requested to add an AOB on GDPR evaluation.

The EDPB Chair informed the members of future meetings where she will represent the EDPB, in particular the Global Privacy Assembly and a meeting at the EU Parliament in Strasbourg to present the Joint opinion which is scheduled for adoption under point 2.1. A meeting will also be scheduled with the Council Working Party on Data Protection mid-October. The discussions relating to agenda points 4.2.1, 6.1 and 6.3 were declared confidential according to Art. 33 EDPB RoP and Article 76 (1) GDPR.

2 Current Focus of the EDPB Members

2.1 EDPB/EDPS Joint Opinion on the proposal for a Regulation on procedural rules for the enforcement of the GDPR – discussion and adoption

The rapporteur recalled the background to the draft Joint Opinion and thanked the European Commission for the swift response to the EDPB “Wish list” sent in October 2022, as well as the COOP, ENF and SA ESGs for their work on the file, in particular considering that most of the preparatory work was performed during the summer period. The rapporteur then outlined the structure of the draft Joint Opinion and the main recommendations made to the co-legislators for the future Regulation. The EDPB members then discussed the text of the draft Joint Opinion.

Some EDPB members expressed their general support for the draft Joint Opinion but shared some remaining concerns.

One EDPB member stressed that conclusion in the draft Joint Opinion with regard to Article 18 of the Proposal should be amended in order to better reflect the agreement reached at sub-group level, which implied to only recommend the deletion of this provision and not its substantial amendment as an alternative. This proposal was taken on board.

The EU COM explained that, in their view, some of the changes as requested in the Joint Opinion would undermine the effectiveness of the solutions concerning due process rights of complainants and parties under investigation on which the Proposal is based. In the same vein, the EU COM highlighted why, in their view, it would be important to grant the right to be heard by the EDPB as proposed in Article 24 of the Proposal.

Some members proposed that the new regulation should not apply to all Article 60 GDPR cases but only to the “strategic” or “high-impact” cases, as this would, in their view, ensure a quicker and more effective implementation. Other members disagreed with this proposal as the creation of different procedural avenues depending on the types of cases would be likely to raise issues with the procedural rights of the parties and that it is not clear how it would be determined whether a given case is “strategic” or not. In addition, such distinction does not exist in the GDPR. The EDPB Members decided not to make a distinction between high impact/strategic and other types of cases.

The EDPB members also discussed further the question of deadlines introduced in the Joint opinion. Some members proposed to introduce further deadlines for certain steps in the procedure such as the draft decision and the revised draft decision, while other suggested to remove the existing proposals for additional deadlines in the Joint Opinion. Based on the discussion, the EDPB Chair concluded that balanced approach was established in the draft Joint Opinion.

Finally, the EDPB members stressed the importance of recommending the inclusion of a review clause, according to which the European Commission shall publish a report on the evaluation and review of the future Regulation at the same time as it publishes its report on the evaluation and review of the GDPR under Article 97 GDPR. They agreed to also include this recommendation in the Executive summary of the Joint Opinion.

The EDPB-EDPS Joint Opinion was adopted by the members of the EDPB. 23 EU members of the EDPB voted in favour of adoption. 2 EU members of the EDPB voted against. 3 EU members of the EDPB abstained. The 3 EEA members of the EDPB voted in favour of adoption.

2.2 EDPB Strategy – discussion

The EDPB Chair recalled that in July 2023, the EDPB members were invited to start brainstorming internally about the future EDPB strategy. She also recalled that according to the EDPB RoP, the EDPB work programme is for a period of two years but the current strategy is for three years. The EDPB members shared some preliminary views on the optimal duration of the next strategy and on its content. A few EDPB members expressed support for a 3-year strategy and shared concrete points that they consider as priorities.

The EDPB members were invited to submit written contributions on this matter. The EDPB Secretariat was entrusted to compile the suggestions. A draft, based on the suggestions, will be prepared to be discussed at a Strategic Advisory Expert Subgroup. Some EDPB members volunteered to participate in the drafting.

3 Consistency mechanism and Guidelines

3.1 Art. 64 Opinion on Brand Compliance certification criteria – discussion and adoption

The rapporteur presented the draft Article 64 Opinion, following a draft decision submitted by the NL SA on Brand Compliance certification criteria. The EDPB members were informed that, after the discussions at CEH ESG, one paragraph of the draft Opinion has been modified to accommodate the request from one delegate to include the additional clarification that Brand Compliance is a national certification scheme.

The draft Article 64 opinion was adopted by the members of the EDPB unanimously.

3.2 Guidelines on Article 37 Law Enforcement Directive – discussion and adoption

The rapporteur presented the Article 37 LED Guidelines on the interpretation and application of the two transfer mechanisms as per Article 37(1)(a) and (b) LED, including documentation and accountability obligations pursuant to Article 37(2) and (3) LED. The rapporteur explained that the version previously circulated to the members had stated that the legally binding instruments would always be subject to prior consultation. Following to comments received, the latest amendment states that legally binding agreements may be subject to prior consultation, while a footnote indicates that the reference to Art. 28 LED still has to be clarified.

The guidelines were adopted by the members of the EDPB unanimously.

The EDPB members also agreed to submit them for public consultation for a period of 6 weeks.

4 Expert Subgroups, Taskforces and Secretariat

4.1 COOP ESG

4.1.1 Letter to MEP In 't Veld on amendments to Irish legislation (Rapporteurs: EDPB Secretariat, HR SA, IT SA)- discussion and adoption

The rapporteur presented the draft reply to MEP In 't Veld's letter of 29 June 2023 and outlined its content. The draft reply refers to EDPB Guidelines 02/2022 and recalls that confidentiality should not affect the cooperation between SAs. It also refers to the EDPB "Wish list" and to the EDPB-EDPS Joint Opinion. The draft reply concludes by saying that the EDPB welcomes the proposal for an EU harmonised solution and the EDPB will keep monitoring developments on the matter of confidentiality.

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

4.2 BTLE ESG

4.2.1 Legal study on government access to data in third countries: update – decision on possible publication

The EDPB Chair recalled the previous discussions at the plenary meeting of 24-25 May 2023 and at the SAESG meeting on 17 July 2023, where no majority for the publication of the study was reached. The BTLE ESG Coordinator also recalled the EDPB decision of 14 December 2021 to publish all studies initiated with approval by the EDPB members. The Members discussed whether the specific studies in this case should be published.

The EDPB members confirmed to continue in general to proactively publish all studies initiated with approval by the EDPB members.

As regards those particular studies, the EDPB members decided to proactively publish all three studies relating to Mexico, Türkiye and Brazil. 15 EU members of the EDPB voted in favour of publication. 9 EU member of the EDPB voted against. 2 EEA members of the EDPB were in favour of publication. 1 EEA member of the EDPB was against.

The EDPB members also agreed to add, on each page of the study, a disclaimer stating that it does not represent the views of the EDPB.

4.3 Taskforce on Competition and Consumer law

4.3.1 EDPB/EDPS joint contribution to the European Commission's public consultation on the template relating to the audited description of consumer profiling techniques pursuant to Article 15 DMA - discussion and adoption

The rapporteur introduced the topic and recalled that on 31 July 2023, the EU COM launched a public consultation concerning the template for the description of consumer profiling techniques and audit of reports that designated gatekeepers will have to submit in accordance with Art 15 of the DMA. This draft template aims at specifying the minimum information that the Commission expects all gatekeepers to provide in order to enhance transparency and accountability surrounding gatekeeper's profiling techniques, and to facilitate the fairness and contestability of their respective core platform services. While this template is primarily intended to provide elements for the Commission to carry out its tasks under the DMA, it shall be transmitted to the EDPB and can be used to inform the enforcement of the GDPR. The EU COM has agreed to extend the deadline until 29 September.

The rapporteur then outlined the main points of the draft contribution. More specifically, it recalls that the template can be used to inform enforcement action but should not serve as a replacement for the implementing act which the EU COM may adopt under Articles 15(2) and 46(1)(g) of the DMA to develop the methodology and procedure of audit.

The joint contribution was adopted by the members of the EDPB unanimously.

5 Meeting with Data Protection Authorities from the Western Balkans and Eastern Partnership Region

The EDPB Chair welcomed the representatives of the data protection authorities from the Western Balkans and Eastern Partnership Region (from Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Kosovo, Moldova, Montenegro, North-Macedonia, Serbia and Ukraine), as well as the representatives of the four organisers of the "*Data-protection in the Western Balkans and Eastern*

Partnership Region" initiative: the Support for Improvement in Governance and Management Programme (SIGMA), the Regional School of Public Administration (ReSPA), the Regional Cooperation Council (RCC) and the Eastern Partnership Regional Fund for Public Administration Reforms (GIZ).

The SIGMA, ReSPA, RCC and GIZ representatives briefly presented their activities and explained that the initiative targets legal, policy, institutional and methodological issues that data protection oversight bodies from the economies of the Western Balkans and Eastern Partnership Region are currently facing.

Following this, the representatives of the data protection authorities from the Western Balkans and Eastern Partnership Region outlined key challenges and opportunities that they encounter in their work. They also made presentations of the regulatory framework applicable in their countries, as well as of their authorities' structure, organisation and powers. Then, a Q&A Session with the EDPB members took place. They exchanged on the presentations made, as well as on the importance of creating convergence and exchanging expertise and best practices, as well as on the need to ensure the authorities' financial and political independence

The meeting was followed by a networking event hosted by ReSPA.

20 September 2023 [9:30 – 13:30]

Centre de Conférences Albert Borschette (CCAB), meeting room 0A, rue Froissart 36, Brussels

Possible discussion points still open from day 1 [9:30 – 10:30]

4. Expert Subgroups, Taskforces and Secretariat - continued [10:30 – 13:00]

4.4 FMESG/ITS ESG

4.4.1 Letter to MEP In 't Veld on FATCA (Rapporteur: EDPB Secretariat)

The rapporteur introduced the letter, including an editorial amendment proposed by one EDPB member.

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

4.5 Taskforce on ChatGPT

4.5.1 Discussion on the scope of the mandate - discussion

The EDPB Chair introduced the topic and invited the EDPB members to exchange on the scope of the taskforce's mandate, and whether it should be extended. The EDPB members agreed that they should ensure an appropriate forum for discussions on AI-related topics. They also agreed that it would be important to define the scope of the taskforce's mandate and to clarify the interplay with the mandate of ESGs. Some members expressed the view that the taskforce should work as a practical get-together focusing on a specific topic, while more general guidance on generative AI should be provided by an ESG (TECH or a newly created one). The discussion led to the conclusion that the EDPB members need to reflect further on the matter.

The ChatGPT TF will further think about which issues should be for an ESG to work on and which topics should be for the taskforce. The taskforce will come up with a concrete proposal at a future plenary meeting.

4.6 EDPB Secretariat

4.6.1 EDPB Decision on records management - discussion and adoption

The EDPB Secretariat informed that, in order to systematically manage records throughout their entire lifecycle, the operational decision had been made to migrate to the European Commission's HAN (Hermes, Ares, NomCom) document management system. Prior to migration, the EDPB must put in place internal record management rules compatible with the EU COM's rules on electronic archiving and document management (e-Domec). The draft 'EDPB decision on records management' aims to fulfil this requirement, by setting out a number of definitions, specifying its scope of application and assigning roles and responsibilities to relevant actors. The EDPB Secretariat will publish the decision on the EDPB website.

The decision on records management was adopted by the members of the EDPB unanimously.

4.6.2 Date of the EDPB Plenary meeting in June 2024 - decision

The EDPB Chair informed that the EDPB plenary meeting for June 2024 is scheduled for 11-12 June 2024, which overlaps with the Venice Privacy Symposium. As the EDPS will celebrate its 20th anniversary with an event on 20-21 June 2024, the EDPB members unanimously decided to change the date of the EDPB plenary meeting to 18-19 June 2024.

6 AOB

6.1 EL SA Update

The EL SA provided an update related to the ex officio investigation [REDACTED]

6.2 BG SA update

The BG SA informed that it is applying to become member of the Executive Committee of the GPA. The voting will take place from 25 to 27 September. The BG SA recalled that DE SA (BfDI) already is an active member of the GPA Executive Committee and expressed the view that the participation of another member of the EDPB is important.

6.3 DE SA update

The DE SA informed about IMI case [REDACTED], in the course of which, it has become known that [REDACTED]. The [REDACTED] has shared documents [REDACTED]

6.4 EU COM update - 2024 GDPR evaluation report

The EU COM informed that the preparation of the 2024 GDPR report on the application of GDPR has already started and that they will ask for the input of the EDPB. The EU COM is planning to send a questionnaire to gather the input. The EU COM will provide further information in due time.

The EU COM will also include in the report the results of the interviews conducted by the Fundamental Rights Agency with individual SAs. Furthermore, it will take into account the Council's position and

findings currently under preparation, as well as the input from stakeholders through the Commission's GDPR multi-stakeholder group and, possibly, through a Call for evidence (similarly to what was done for the report on the application of LED). The EU COM aims for adoption and publication of the report before the summer of 2024.

The EDPB Chair assigned the work on this item to the Strategic Advisory Expert Subgroup.

Annex: Attendance List

SAs:

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, LV SA, MT SA, NL SA, NO SA, PL SA, PT SA, RO SA, SE SA, SI SA, SK SA

- European Commission

- Observers: AL SA, MD SA, GE SA, CH SA. In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points 4.2.1, 6.1 and 6.3 of the agenda.

- EDPB Secretariat