



Final

93rd Plenary meeting

23 May 2024, Remote

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 92nd Plenary meeting – adoption

The minutes of the previous EDPB plenary meeting were adopted unanimously, with an editorial correction in the A items and some amendments in item B.1.4. One EDPB member requested to explicitly include its position under item B.1.4. It was recalled that, in accordance with Article 64(7) GDPR, regardless of such position being recorded in the minutes, all SAs shall take utmost account of the EDPB Consistency Opinion.

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

I.2. Draft agenda of the 93rd EDPB meeting – adoption

The draft agenda was adopted with the inclusion of two new points under AOB - one from the EDPS concerning an update on the EDPS decision on the investigation into the European Commission's use of Microsoft 365 and one from the EU COM concerning information shared by SAs on large-scale cross-border inquiries.

One EDPB member requested to debate item A.5 of the agenda: "Article 64(1)(b) opinion on the draft decision of the French Supervisory Authority regarding the "Code of Conduct for Service Providers in Clinical Research" submitted by EUCROF". In accordance with the EDPB Best Practices for the organisation of plenary meetings, considering the need to discuss the matter, the EDPB members

decided to postpone this point to the next plenary meeting. The discussions relating to agenda points A.2, A.3, B.1.2 and B.1.3 were declared confidential according to Art. 33 EDPB RoP.

A. Agenda items for adoption

The Chair introduced the A items for adoption:

- A.1. Request for a mandate – Generative AI (Technology and Key Provisions ESGs)
- A.2. Opinion on the RO SA's draft decision on the Genpact BCR-P (International Transfers ESG)
- A.3. Article 64(1)(c) opinion on the draft decision of the competent supervisory authority of Sweden regarding the approval of the requirements for accreditation of a certification body pursuant to Article 43.3 (GDPR) (Compliance, E-Government and Health ESG)
- A.4. Draft Statement on the financial data access and payments package (Financial Matters ESG)
- A.6. Designation of IT users ESG coordinators (IT users ESG)

A single vote was organised for the remaining 5 point A agenda items and they were all adopted unanimously.

B. Agenda items for discussion

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

B.1.1. Article 15 Consumer Profiling Reports

The chair recalled that, at the end of March 2024, the independently audited descriptions of consumer profiling techniques submitted by the six designated gatekeepers were transmitted by the EU COM to the EDPB, in accordance with Article 15 DMA. The EU COM invited the EDPB to express its views on the content of the consumer profiling reports. The chair reminded the members of the EDPB that this topic is also discussed in the DMA high level group in which the EDPB and the EDPS are members. The TF C&C, in charge of this file, prepared a reply letter to the EU COM.

The TF C&C coordinator indicated that several EDPB members have already expressed interest to analyse the submitted consumer profiling reports in order to identify areas that would warrant further follow-up from the perspective of GDPR enforcement, to prepare possible suggestions to the EU COM for amendments to its current templates and/or to make recommendations in relation to an implementing act laying down the procedure and methodology for the audit under Article 15(2) DMA. Other EDPB members were invited to contribute as well.

The EDPB members adopted the reply letter unanimously and validated the course of action suggested by the TF C&C.

B.1.2. Report of the work undertaken by the ChatGPT Taskforce

The chair recalled that during the EDPB plenary meeting of 16 January 2024, it was decided to request the ChatGPT Taskforce to prepare a report outlining the results of its work and make it public. The chair also underlined that the report will not be an EDPB report, as in this action the EDPB is mainly providing a platform for Supervisory Authorities to collaborate on the matter.

Following this, one of the coordinators of the taskforce presented the report and explained the work done by Taskforce so far. He recalled that a sample questionnaire to the controller has been prepared for the use by the SAs. This questionnaire is included as an annex to the report. He further explained that report provides preliminary views on certain aspects discussed between SAs and does not

prejudge the analysis that will be made by each SA in their respective investigation. Pending legal questions will continue to be discussed in the Taskforce.

The EDPB members took note of the report and decided to publish it.

B.1.3. Article 64(2) Opinion on the use of facial recognition to streamline airport passengers' flow and its compatibility with Articles 5(1)(e) and (f), 25 and 32 GDPR

The EDPB Chair reminded the members of the EDPB that the opinion was requested by the FR SA and that it relates to the use of facial recognition to streamline passengers' flow in airports. The EDPB Chair highlighted the importance of the subject for many stakeholders and the impact of the EDPB opinion in practice. The EDPB Chair thanked the EDPB Secretariat, the drafting team and TECH subgroup and gave the floor to the EDPB Secretariat to present the current draft and the options for discussion.

The EDPB Secretariat explained that the opinion analyses the compatibility of the processing with the storage limitation principle (Article 5(1)(e) GDPR), the integrity and confidentiality principle (Article 5(1)(f) GDPR), data protection by design and default (Article 25 GDPR) and security of processing (Article 32 GDPR), in the context of the four scenarios presented in the request. The EDPB Secretariat clarified that the lawfulness and conditions for valid consent under the GDPR do not fall under the scope of the request even if all the scenarios are based on an assumption that the individuals consent to such processing. Scenario 1 is about the storage of enrolled biometric templates only in the hands of individuals, under their control, and passengers are authenticated when going through specific checkpoints at the airport. Scenario 2 is about centralised storage of enrolled biometric templates in the database at the airport, but with the encryption key solely in the hands of the passengers who consented to the processing of their personal data. Scenarios 3.1 and 3.2 concern centralised storage without the encryption key in the hands of individuals. In Scenario 3.1, the data would be stored within the airport under the control of the airport operator, typically for 48 hours, and in Scenario 3.2, data would be stored in the cloud under the control of the airline company and possibly for a considerably longer storage period.

After providing more details on each of the scenarios, the EDPB Secretariat explained that, based on the SAESG's orientations, the current draft Opinion includes two options regarding Scenarios 1 and 2 for decision by the EDPB. For each scenario, these options can be summarised as being either that the scenario could not be compatible with Article 25 and would not be compatible with the other listed provisions within the scope of the opinion (option 1) or that the scenario could be compatible with all of the GDPR requirements in scope of the opinion, subject to the implementation of appropriate safeguards (option 2). Regarding Scenarios 3.1 and 3.2, the draft Opinion concludes that they cannot be compatible with the specific GDPR provisions.

After the discussion, the EDPB members expressed their views on the different scenarios.

Following this discussion, the EDPB members decided that the opinion should use the second option (compatible with the relevant GDPR requirements, subject to the implementation of appropriate safeguards) for Scenarios 1 and 2.

Prior to the plenary, one EDPB member suggested amendments nuancing the conclusions for scenario 3.1, but this proposal did not receive sufficient support.

The EDPB members adopted the opinion with 16 EU members voting in favour of adoption, 5 EU members voting against and 5 EU members abstaining. The 3 EEA SAs expressed their support in favour of adoption.

B.1.4. Request for a mandate – Guidelines on Consent or Pay models

The chair recalled that the need for guidance on this topic has been discussed and agreed during previous plenaries, but that the adoption of the mandate was postponed until after the adoption of the Article 64(2) Opinion on 'Consent or Pay' models. The chair further recalled that at the EDPB plenary meeting of 17 April 2024, the EDPB has decided to engage with stakeholders by seeking their input at the beginning of the work on the guidelines. The chair thanked the drafting team for preparing the request for mandate in such a timely manner and gave the floor to the rapporteur.

The rapporteur presented the request for mandate and explained that the guidelines would be a continuation of Opinion 08/2024 but would explore additional points where necessary and would be applicable to controllers and services in general. The rapporteur also recalled the EDPB decision to engage with stakeholders early in the drafting process, which is why the request for mandate suggests keeping the scope of the guidelines open in order to take the input from the stakeholders' event into account. Currently, the KEYP ESG intends to have the first version of the guidelines ready for adoption in the first semester of 2025.

Following the presentation, one member of the EDPB volunteered to join the drafting team as a rapporteur. Another EDPB participant highlighted the importance of organising the stakeholders' event and expressed full support for the initiative.

The EDPB members unanimously adopted the request for mandate.

B.1.5 Request for a mandate – EDPB statement on Proposal for a Regulation laying down additional procedural rules relating to the enforcement of Regulation (EU) 2016/679

The chair recalled that in January 2024 the members of the EDPB had a discussion concerning the new Procedural regulation and had agreed on the importance of sharing updates concerning the legislative procedure. She also recalled that since then, the co-legislators have made some progress. The EDPB members were also informed that the EDPB Chair has received an invitation to take part in the Working Party on Data Protection of the Council on 5 June 2024 to exchange views on the EDPB annual report and upcoming priorities, and possibly on the Procedural regulation. The chair then passed the floor to the rapporteur to present the request for mandate.

The rapporteur presented the request for mandate and explained that the suggested approach is to prepare a public statement as a follow-up to the Joint Opinion 01/2023 on the basis of the position of the European Parliament and, when available, Council position. The rapporteur also explained the approach suggested by the EDPB Chair and approved by the COOP ESG of having the EDPB Secretariat as a sole rapporteur on behalf of the whole COOP ESG, in order to avoid parallel discussions at drafting team and subgroup level and maximise the efficiency of the process.

One EDPB member expressed its view that the drafting team should be open for all EDPB Members and reiterated its wish to join the drafting team aiming to bring in the perspective and experience of enforcement on the Member States level to this important legislative project. The member further expressed its view that the proposed procedure would also not lead to more efficiency, because the discussions would then have to be conducted in detail in the ESG.

The EDPB members adopted the request for mandate with 17 EDPB Members voting in favour of having the EDPB Secretariat as a sole rapporteur, 3 EU members voting in favour of entrusting a drafting team and 7 EDPB Members abstaining. 3 EEA SAs expressed their support in favour of having the EDPB Secretariat as a sole rapporteur.

The EDPB members adopted the request for mandate and entrusted the EDPB Secretariat with working as a sole rapporteur on behalf and in consultation of the whole COOP ESG.

B.1.6 Reply to the United Nations letter dated 6 February 2024

The chair recalled that, in February 2024, the EDPB received a letter from the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel. In the past, the EDPB has had several exchanges with the UN, the latest one being on November 2021. The chair then gave the floor to the rapporteur to present the draft reply letter.

The rapporteur outlined the content of the draft reply letter, which, among others, 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.

The EDPB adopted the reply letter to the UN unanimously.

The chair also made reference to a request from NATO to meet the EDPB and the members agreed to answer positively to this request.

B.1.7 Request for a mandate – Statement on DPAs' role(s) in the Artificial Intelligence Act framework

The chair recalled that the EU AI Act will be officially published soon and highlighted that some member states have already identified competent authorities for the AI Act at national level, while in most this is still being discussed. The chair further recalled that in the Joint Opinion on the AI Act proposal, the EDPB already stated that the SAs could be best placed to act as competent authorities also for the AI Act, considering their experience and expertise.

Following this, the rapporteur presented the proposal to issue an additional EDPB statement on the SAs role(s) in the Artificial Intelligence Act framework. Two EDPB members volunteered to work as co-rapporteurs on the file.

The EDPB adopted the request for mandate unanimously.

C. Organisational matters

C.1. Appointment of EDPB Representative to Article 7 DMA Subgroup

The chair recalled that the EDPB has already appointed three representatives for the Article 7 DMA Subgroup (from the ES, IT and BE SAs) and stressed that the EDPB-EDPS delegation should be composed of 6 representatives, 5 of which from the EDPB. For this reason, there is a proposal for the appointment of an additional representative for the EDPB, namely ██████████ from the EDPB Secretariat. The chair invited the members of the EDPB to also propose additional representatives in order to reach the number of six. The EDPB members were also informed that ██████████ has taken part, with the approval of the EDPB Chair, to the first subgroup on Article 7 DMA as “ad hoc” representative, pending confirmation of their appointment by the EDPB Plenary.

The EDPB members unanimously appointed ██████████ from the EDPB Secretariat as one of the six representatives of the EDPB-EDPS delegation for the Article 7 DMA Subgroup.

D. Agenda items for information

D.3. Any other business

D.3.1. WhatsApp lowers minimum age in Europe to 13

The ES SA recalled that WhatsApp has lowered the minimum age to use its services in the EU from 16 to 13 years of age. It also recalled that EU COM has opened procedures to investigate whether Meta has breached the Digital Services Act and invited the EDPB members to monitor the related issues in order to fulfil the SAs duty to protect minors. The EDPB members took note of this and decided that further discussions on the matter should take place at subgroup level.

D.3.2. EDPS Anniversary Summit

The EDPS recalled that on 20 June 2024, the EDPS will celebrate its 20th anniversary. At this occasion, the EDPB members are invited to join the European Data Protection Summit and pre-event Garden Party on 19 June 2024. More detailed information has been sent to the members via email.

D.3.3. EDPS update on its decision on the investigation into the European Commission's use of Microsoft 365

The EDPS informed that the EU COM and Microsoft have both appealed the EDPS decision of 8 March 2024 finding infringements by the EU COM of several key data protection rules in relation to its use of Microsoft 365.

D.3.4. Reminder from the EU COM to send information on large-scale cross-border inquiries by all SAs

The EU COM informed that not all SAs are providing regular information on large-scale cross border inquiries and asked those SAs which are not already doing it to provide this information as soon as possible. The EU COM also insisted on the need to provide the information regularly.

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, 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, RS SA. In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points A.2, A.3, A.5 and B.1.3 of the agenda.

EDPB Secretariat

Note: Deputy-Chair Nicolaidou chaired the meeting on 23 May 2024 for all items except item B.1.3.