

2019 ANNUAL REPORT

WORKING TOGETHER FOR STRONGER RIGHTS

EXECUTIVE SUMMARY



European Data Protection Board
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Foreword

The European Data Protection Board's (EDPB) mission is to ensure the consistent application of data protection rules across the European Economic Area (EEA). This is enshrined in the General Data Protection Regulation (GDPR), which has opened the door to a new era of respect for data subject rights.

The GDPR is not just valuable insofar as it has established a harmonised legal framework for data protection across the EEA – one that has expanded and strengthened national data protection authorities' powers. The GDPR's entry into force has also encouraged greater awareness of data protection rights among individuals and organizations alike. This is more important than ever, given the increasing presence of data-dependent technologies in almost every facet of our lives.

As we approach the two-year anniversary of the GDPR's entry into application, I am convinced that the cooperation between EEA DPAs will result in the emergence of a common data protection culture. Some challenges remain, but the EDPB is working on solutions to overcome these and to make sure that the key cooperation procedure concepts are applied consistently.

As the EDPB, we contribute to the consistent interpretation of the GDPR by adopting Guidelines and Opinions. In 2019,

we adopted five new Guidelines on topics such as privacy by design and default, and the right to be forgotten, as well as two Guidelines in their final, post-consultation versions. We also adopted 16 Consistency Opinions covering, among other topics, Data Protection Impact Assessments, accreditation requirements for code of conduct monitoring bodies, and the interplay between the ePrivacy Directive and the GDPR.

This was possible thanks to the consistent efforts of all actors within the EDPB, as well as the increased input and engagement from our stakeholders via events, workshops and surveys.

As we look forward to the coming year, we feel ready to tackle the outstanding items in our two-year working programme. We will continue to adopt guidance, to promote the cooperation on cross-border enforcement, and to advise the EU legislator on data protection issues.

More and more countries outside the EU are adopting data protection legislation. In doing so, they often base their legislation on the fundamental principles of the GDPR. I am confident that, in a not too distant future, we will see the protection of data subject rights become a global norm. This will lay the foundation for more secure data flows and increased transparency, as well as improved trust in the rule of law.

Andrea Jelinek
Chair of the European Data Protection Board

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2019 – an overview

2.1. RULES OF PROCEDURE

The [Rules of Procedure \(RoP\)](#), which outline the EDPB's most important operational rules, were adopted during the first plenary meeting on 25 May 2018.

In 2019, the EDPB adopted revised wording for Articles 8, 10, 22 and 24 of its RoP, aimed at clarifying requirements to be granted observer status, procedures following the adoption of Opinions, and voting procedures during EDPB's plenary meetings.

The EDPB also adopted a new Article 37 RoP establishing a Coordinated Supervision Committee in the context of data processing by large information systems in use within the EU institutions, as well as by EU bodies, offices and agencies.

In 2019, the Committee was in charge of the coordinated supervision of the IMI system and Eurojust. In 2020, this will be extended to include the European Public Prosecutor Office (EPPO). In the future, all coordinated supervision of large EU information systems, bodies, offices and agencies will gradually be moved to the Committee.

2.2. THE EDPB SECRETARIAT

The EDPB Secretariat ensures that all of the EDPB's activities comply with the legal framework applicable to the EDPB as an EU body and with its RoP. It is the main drafter for Consistency Opinions and Decisions, and serves as an institutional memory, ensuring documents' consistency over time. The role of the EDPB Secretariat is also to facilitate the EDPB's fair and effective decision-making and to act as a gateway for clear and consistent communication.

As part of its support activities, the EDPB Secretariat has developed IT solutions to enable effective and secure communication between the EDPB members, including the Internal Market Information System (IMI).

In 2019, the EDPB Secretariat organised 11 plenary meetings and 90 expert subgroup meetings. The different expert subgroups focus on specific areas of data protection and assist the EDPB in performing its tasks.

Finally, the EDPB Secretariat assists the Chair in preparing for and presiding over the plenary meetings, as well with her speaking engagements.

2.3. EDPB ACTIVITIES IN 2019

2.3.1. General Guidance

In 2019, the EDPB adopted **five new Guidelines** aimed at clarifying the range of provisions under the GDPR. The adopted Guidelines addressed codes of conduct and monitoring bodies at a national and European level, as well as clarifying the processing of personal data under a range of circumstances, namely during the provision of online services, through video devices, on the principles of Data Protection by Design & Default, and related to the Right to be Forgotten by search engines.

In addition, **three Guidelines** adopted in 2018 were approved by the EDPB in their final form in 2019, following public consultations. These Guidelines clarify accreditation and certification criteria and the territorial scope outlined in the GDPR.

The EDPB also issued a [recommendation](#) on the draft list submitted by the EDPS on processing operations which require a Data Protection Impact Assessment (DPIA).

2.3.2. Consistency Opinions

To guarantee the consistent application of the GDPR in cases with cross-border implications, the EDPB issues Consistency Opinions. The competent SA has to take utmost account of the opinion.

In 2019, the EDPB adopted **16 Consistency Opinions**. Eight of these concerned the draft lists submitted by SAs on processing operations requiring a DPIA, as well as those exempt from it. The remaining Opinions regarded transfers of personal data between EEA and non-EEA Financial SAs and the interplay between the ePrivacy Directive and the GDPR, as well as clarifying Standard Contractual Clauses (SCCs), Binding Corporate Rules (BCRs), SAs' competences, and Accreditation Criteria for monitoring bodies.

The EDPB also acts as a dispute resolution body and issues **binding decisions**. Since 25 May 2018, however, no dispute resolutions have been initiated. This suggests that, to date, SAs have been able to reach consensus on all current cross-border cases.

2.3.3. Legislative consultation

The EDPB advises the European Commission on any issue related to the protection of personal data, including the adequacy of the level of data protection in third countries or international organisations. In 2019, the EDPB issued reports on the [Second](#) and [Third Annual Review](#) of the EU-U.S. Privacy Shield adequacy decision, conducted by the European Commission to assess its robustness and practical implementation.

In addition, the EDPB issued an [Opinion](#) on the interplay between the Clinical Trials Regulation (CTR) and the GDPR, requested by the European Commission's Directorate-General for Health and Food Safety (DG SANTE).

The EDPB is also subject to Article 42 of [Regulation 2018/1725](#) on legislative consultation. This allows the EDPS and the EDPB to coordinate their work with a view to issuing a **Joint Opinion**. In 2019, the EDPB and the EDPS adopted a [Joint Opinion](#) concerning the data protection aspects of the eHealth Digital Service Infrastructure. This Opinion was also issued following DG SANTE's request.

The EDPB also adopted, on its own initiative, a [statement](#) on the draft ePrivacy Regulation and issued a [contribution](#) on the data protection aspects of the Budapest Convention on Cybercrime.

2.3.4. Other documents

In 2019, the EDPB adopted **two statements**. The [first one](#) concerned the US Foreign Account Tax Compliance Act (FATCA), following the European Parliament's resolution on the adverse effects of the FATCA on EU citizens. The [second one](#) regarded use of personal data in the course of political campaigns, in light of the 2019 European Parliament elections and other elections taking place across the EU and beyond.

To address issues of data protection in the event of a no-deal Brexit, the EDPB adopted **two information notes**, on [data transfers](#) from the EEA to the UK under the GDPR, and on [BCRs for companies](#) having the UK Information Commissioner's Office as Lead SA.

Following a request made by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs Committee (LIBE), the EDPB issued the [LIBE report on the implementation of GDPR](#), providing an overview of the implementation and enforcement of the GDPR covering both the cooperation mechanism and the consistency findings.

On 9 July 2019, the EDPB Chair pleaded before the Court of Justice of the European Union, which had requested an oral [pleading on Case C-311/18 \(Facebook Ireland and Schrems\)](#).

2.4. CONSULTATIONS

Following the preliminary adoption of Guidelines, the EDPB organises **public consultations** to allow stakeholders and citizens to share their views and provide additional input. In 2019, the EDPB launched [five such consultations](#), concerning its Guidelines on Codes of Conduct, Certification Criteria, processing of personal data in online services and video devices, Data Protection by Design and Default, and the Right to be Forgotten.

The EDPB organises **stakeholder events** to gather views on key issues and to inform the development of future guidance.

In 2019, the EDPB organised three such events focused on the revised Payments Services Directive (PSD2), on the concepts and responsibilities of controllers and processors, and on data subject rights.

As part of the annual review of the EDPB activities – established by Article 71.2 GDPR – the EDPB conducted a **stakeholder survey** for the second year in a row. The survey, which focused on the content and adoption process of the EDPB's Guidelines, aimed to understand to what extent stakeholders find the guidelines helpful and practical in interpreting the GDPR's provisions.

Respondents included organisations and individual companies from the financial, banking and insurance sectors, wholesale and retail trade, information technologies, human health and social work activities and fundamental rights. The majority of respondents were based in Europe, and over 60 percent represented small entities.

64 percent of stakeholders who participated in the survey found the Guidelines to be useful, while 46 percent considered them to be sufficiently pragmatic. Nearly 80 percent found the Guidelines easily accessible; this was up from 64 percent in 2018. Other positive feedback referenced the Guidelines' real-life examples and wide applicability preventing national fragmentation.

Respondents encouraged further interpretative work to clarify, among other things, the relationship between controller and processor and the legal basis of legitimate interest. Compliance with the GDPR for SMEs remains a challenge, but stakeholders noted that the EDPB's Guidelines are a useful tool in supporting its application. Overall, 40 percent of stakeholders classified the consultative process as ranging from appropriate to satisfying.

2.5. SUPERVISORY AUTHORITIES ACTIVITIES IN 2019

Under the GDPR, the European Economic Area (EEA) Member States' SAs cooperate closely to ensure that individuals' data protection rights are protected consistently across the EEA. One task for the SAs is to assist one another and coordinate decision-making in cross-border data protection cases.

During the reporting period, SAs identified certain challenges when implementing the cooperation and consistency mechanism. In particular, the patchwork of national procedural laws was found to have an impact on the cooperation mechanism, due to differences in complaint handling procedures, position of the parties in the proceedings, admissibility criteria, duration of proceedings, deadlines, etc.

In addition, SAs' effective application of the powers and tasks attributed to them by the GDPR depends largely on the resources they have available. This applies in particular to the One-Stop-Shop (OSS) mechanism, the success of which is contingent on the time and effort SAs can dedicate to individual cases and cooperation.

Despite these challenges, the EDPB is convinced that the cooperation between SAs will result in a common data protection culture and consistent monitoring practices. One single set of rules has proved to be advantageous for data controllers and processors within the EEA, having brought greater legal certainty. It has also benefitted individuals who have seen their data subject rights reinforced.

Since the entry into application of the GDPR, there have been 807 cross-border cooperation procedures in the IMI system, out of which 585 cases were started in 2019. Of these cross-border cooperation procedures, 425 resulted from a complaint, while the remaining originated from other sources, such as investigations, legal obligations or media reports.

The **OSS mechanism** demands cooperation between the Lead Supervisory Authority (LSA) and the Concerned Supervisory Authorities (CSAs). The LSA leads the investigation and plays a key role in the process of reaching consensus between the CSAs, in addition to working to reach a coordinated decision with regard to the data controller or processor. By the end of 2019, 142 OSS procedures were initiated by SAs, 79 of which resulted in a final decision.

The **mutual assistance procedure** allows SAs to ask for information from other SAs or to request other measures for effective cooperation, such as prior authorisations or

investigations. Since 25 May 2018, 2,542 mutual assistance procedures have been triggered. Of these procedures, the overwhelming majority (2,427) were informal consultation procedures, while 115 were formal requests.

In 2019, **no joint operations** were carried out by SAs.

Under the GDPR, national SAs have different corrective measures at their disposal. In 2019, SAs identified a number of **violations of the GDPR** and exercised their corrective powers accordingly.

Violations included failure to implement provisions such as privacy by default and design, right to access or right to erasure. Many cases highlighted a lack of proper technical and organisational measures for ensuring data protection, which led to data breaches. Several significant incidents involved the processing of special categories of data, such as political opinions, credit information or biometric data. The entities fined were from both the private and the public sector.



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Main objectives for 2020

By the end of 2019, halfway through its [work plan](#), the EDPB had made significant progress across its stated objectives and is advancing towards completing them in its second working year.

In 2020, the EDPB will aim to provide guidance on data controllers and processors, data subject rights and the concept of legitimate interest. It will also intensify its work in the context of advanced technologies, such as connected vehicles, blockchain, artificial intelligence, and digital assistants.

The EDPB will continue to advise the European Commission on issues such as cross-border e-Evidence data access requests, the revision or adoption of adequacy decisions for data transfers to third countries, and any possible revision of the EU-Canada Passenger Name Record (PNR) agreement.

In addition to the work outlined in the work plan, in 2020, the EDPB is to provide guidance on the implications for

data protection in the context of the fight against COVID-19, both at its own initiative and upon consultation by the European Commission.

The EDPB is also committed to deepening existing stakeholder relationships and developing new ones. The EDPB Members, as well as the EDPB Chair and Deputy Chairs, will continue participating in relevant conferences and speaking engagements.

The EDPB Secretariat will continue to ensure a harmonised communication approach. This includes continuing to drive public engagement with the EDPB's activities through its social media presence, as well as enhancing cooperation with SAs. To this end, the EDPB will maintain and strengthen the network of SAs' press and communications officers.



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