



Final

73rd Plenary meeting

13 December 2022, Brussels

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

1.1 Minutes of the 71st Plenary meeting – adoption

The minutes of the 71st 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 73rd EDPB meeting – adoption

The draft agenda was adopted with the reversal of the order of agenda points 1.3 and 1.4 and the addition of a new AOB agenda point (4.5 PT SA update).

The discussions relating to agenda points 1.3 and 1.4 were declared confidential in accordance with Art. 33 EDPB RoP.

1.3 CJEU Case regarding EDPB Binding Decision 1/2021 - information

The EDPB Chair presented the order issued by the General Court on 7 December 2022 declaring the WhatsApp action for annulment (Case T-709/21) inadmissible. The Court concluded the conditions for direct concern are not met. The EDPB Binding Decision does not in itself change WhatsApp IE's legal position. Even if the EDPB Binding Decision was binding on the Irish SA as regards the aspects to which it related, it left a measure of discretion to the IE SA as to the content of the final decision.

The European Commission explained their alignment with the General Court's conclusion. The European Commission recalled their commitment to harmonise certain aspects of procedural law. Several SAs and the European Commission noted that national courts, when in doubt of the validity of a binding decision, are under an obligation to request a preliminary ruling from the CJEU.

1.4 CJEU Case regarding EDPB Binding Decision 2/2022 - information

The EDPB Secretariat informed the EDPB members about the state of play of the action for annulment lodged by Meta IE on 14 November 2022 against the EDPB Binding Decision 2/2022 adopted on 28 July 2022. The EDPB Secretariat is working on the preparation of the defence.

On substance, the arguments raised by Meta IE are to a large degree similar to those raised in Case T-709/21, although there are some specific elements raised, notably on Art. 6(1)(f) GDPR.

In reference to the binding decisions adopted on 5 December 2022, the EDPB Chair expressed her disappointment that the content of the three binding decisions were shared with the press.

1.5 Election of the Coordinator of the Coordinated Supervision Committee - information

The EDPB Chair congratulated Clara Guerra (PT SA) on her re-election as Coordinator of the CSC for a term of 2 years and expressed her gratitude for her past and future commitment.

2 Current Focus of the EDPB Members

2.1 Presentation by the APPF Director on Art. 10a of Regulation 1141/2014

The Director of the Authority for European Political Parties and European Political Foundations (APPF), Mr. Pascal Schonard, presented the mandate and competences of the APPF and highlighted the importance of cooperation between the national Supervisory Authorities (SAs) and the APPF on European elections integrity. The APPF Director recalled the verification procedure related to infringements of rules on the protection of personal data in the context of European elections, which is triggered when a national SA informs the APPF of a decision finding an infringement of data protection rules by any natural or legal person (i.e. also other than a political party or foundation) and if it follows from that decision or if there are otherwise reasonable grounds to believe that the infringement is linked to political activities by a European political party or foundation in the context of European elections. National SAs are invited to notify the APPF after a plausibility check whether the infringement is linked to European elections. The APPF will then need to demonstrate if there are reasonable grounds to believe that the infringement is indeed linked to political activities of an European political party or foundation in the context of elections to the European Parliament (in case this doesn't follow from the decision of the national SA itself).

The notion 'decision' - in the context of Regulation 1141/2014 - is not limited to the final decision imposing corrective measures on national level in a case, but covers also preliminary decisions qualifying the facts as an infringement. Further, the APPF is competent where an infringement is committed by a third party (other than a political party or foundation), but a European political party or foundation takes advantage of it. Drawing a line between activities on national level and on EU level is sometimes difficult, however this is an aspect the APPF deals with in the verification procedure.

3 Expert Subgroups and Secretariat

3.1 BTLE ESG

3.1.1 Statement on the PNR judgement - discussion and adoption

The rapporteur presented the work done on the draft statement, explaining that a significant number of member states have not yet amended their legislation or put into practice measures to adapt the

processing of PNR data to the judgement of the CJEU. The statement is intended as a direct signal to Member States and as a reference for other actors such as NGOs on the need to take action.

One SA suggested a modification of the statement, by calling for prompt action, considering that a reasonable amount of time is necessary for the government and/or legislator to act.

One SA suggested a modification of the statement, to recall that SAs are fully competent to investigate compliance at national level.

The EDPB members adopted the statement, with the modifications discussed. 24 EU members of the EDPB voted in favour of adoption. 2 EU members of the EDPB abstained and none voted against. 2 EEA members of the EDPB were in favour, none were against and none abstained.

3.2 COOP ESG

3.2.1 Register of representatives designated under Article 27 GDPR - request for mandate

The coordinator of the COOP ESG requested the EDPB to grant the COOP ESG with the mandate to work on a register of representatives in order to improve the cooperation among SAs and the efficiency of the enforcement of the GDPR.

One SA raised that there is no legal obligation to notify SAs of the designation of a representative. Several SAs questioned the legal basis for the creation of a register and the difficulties in keeping any register up to date.

Two SAs considered that alternatives to a centrally held register should be explored under the mandate.

The COOP ESG Coordinator indicated that those thoughts will be brought to the attention of the ESG members and that, at this stage, the mandate only aimed to explore the interest and legal feasibilities.

The EDPB members adopted the mandate. 20 EU members of the EDPB voted in favour of adoption. 4 EU members of the EDPB voted against and 3 abstained. 2 EEA members of the EDPB were in favour of adoption and 1 was against.

3.3 ENF ESG

3.3.1 RRO template - request for mandate

The rapporteur requested the EDPB to grant the ENF ESG with the mandate to work on a template for relevant and reasoned objections.

Experience has shown that objections raised by CSAs are drafted in a wide variety of ways, which adds to the complexity of discussions in the ENF ESG.

The ENF ESG therefore requests a mandate to work on a template for relevant and reasoned objections, which CSAs could use on a voluntary basis to draft objections.

The EDPB members adopted the mandate unanimously.

3.4 Secretariat

3.4.1 New EDPB-HUB section to ensure continuity of communications in case of disruption of IT services - information

The EDPB Secretariat informed the EDPB members about a new 'Business Continuity' section added to the EDPB-HUB. This section is intended as an alternative official and confidential channel of

communication between the EDPB members and the EDPB Secretariat in case of a disruption of communications via e-mail. The section contains a form by which any EDPB member can alert the EDPB Secretariat and the EDPB IT team of a disruption on their side.

Besides a subsection accessible to all EDPB Members, dedicated pages for bilateral exchanges with the EDPB Secretariat are provided. The 'Business Continuity' section is intended only to overcome temporary issues. Any messages and/or files posted in this section will be permanently deleted shortly after the end of the disruption. The EDPB Members are requested to make copies of the messages/and or files as needed for their own records, at the latest within two weeks of the end of the disruption.

4 AOB

4.1 Elections of new Bureau members of the Consultative Committee of Convention 108

The rapporteur informed the EDPB members about the outcome of the elections for Bureau members of the Consultative Committee of Convention 108 as well as a Chairperson for the Bureau. Ms. Elsa Mein (Germany) was elected as Chair. Alessandra Pierucci (IT SA) served as Chair since 2016 and remains a member. Additional members from EU member states are Anamarija Mladinić (Croatia) and Pablo Manuel Mateos Gascueña (Spain). Further, representatives of Switzerland, Senegal, UK and Uruguay were elected as members of the Bureau.

The Consultative Committee of Convention 108 intends to continue developing guidance on data protection, as well as monitor the signatures to and ratification of the Protocol CETS No. 223 with a view to ensure the entry into force of Convention 108+.

The EDPS and the EDPB Chair expressed their gratitude to Alessandra Pierruci for the work she has done over the past years as Chair of the Bureau.

At the initiative of the French SA, the need to have a space at EDPB level to exchange views on the international agenda on data protection was briefly discussed. The Chair of the EDPB proposed to discuss the matter more deeply during another Plenary with an info note.

4.2 Update by SAs: "Manifesto di Pietrarsa" project

The rapporteur presented the 'Pietrarsa Manifesto' which was launched on 23 September 2022 as part of the 'State of Privacy 2022' conference organised by the Italian SA at the National Railway Museum in Pietrarsa, Naples. The manifest reaffirms the commitment to make the web a safer place for children via three main actions: fostering transparency in processing personal data; raising children's awareness; educating children to the use of digital tools. The manifest is still open for signature by all the stakeholders who wish to take up this challenge.

The rapporteur highlighted the IT SA's availability to cooperate with other EDPB Members on this topic, in particular if SAs wish to take a similar action.

One SA expressed its interest in the initiative, as they are currently developing a tool for children to learn about online safety and GDPR.

4.3 Recent decision of the Italian Court of Cassation on the scope of delisting requests

The rapporteur informed the EDPB members about a recent ruling of the Italian Court of Cassation on the geographical scope of the right to be forgotten scale (Decision No 34658/2022 of 15 November 22). The Court of Cassation ruled that Italian authorities, namely the Italian data protection authority and Italian courts, have the power to order a search engine operator to perform delisting on all the versions of that search engine, including non-European versions, after balancing the data subject's right to the protection of their private life and personal data against freedom of information. The balancing shall be carried out in accordance with the protection standards under the Italian legal system. The Court of Cassation referred in particular to CJEU cases C-507/17 and C-18/18 in its ruling.

The European Commission noted that there are several CJEU rulings which conclude that the delisting applies to search results accessible from the EU.

One SA added that the CJEU has also indicated that on this matter, national law might complement EU law.

4.4 Update by SAs: The results of the HDPAs' project "byDesign"

The EL SA implemented the project byDesign, which received funding from the European Union's Rights, Equality and Citizenship Programme (REC), from November 1, 2020 to October 31, 2022. The implementation of the project was carried out under HDPAs' coordination and in cooperation with the University of Piraeus and the IT company ICT Abovo. The project's aim was to assist SMEs in achieving compliance with the GDPR via an online toolkit and to develop a comprehensive training programme on data protection by design.

The EL SA highlighted the availability to cooperate with other EDPB Members on this topic, in particular if SAs wish to translate the material into their own language(s).

The European Commission informed the EDPB members that a new funding campaign for projects will be launched in 2023.

4.5 Update by PT SA

The PT SA informed the EDPB members of their decision to impose a fine on the National Institute for Statistics (INE) of 4.3 million euros for several violations of the GDPR. Besides infringements regarding the processing of sensitive data (health and religion), the PT SA concluded personal data was being transferred to the U.S. without having sufficient supplementary measures in place. In this respect, the decision follows from the CJEU Schrems II ruling (C-311/18). The PT SA also ordered the INE to stop the transfers of personal data. The INE has announced they will appeal the decision.

Further, Commissioner Filipa Calvão announced her departure from the PT SA in early 2023. The EDPB Chair expressed her appreciation for the longstanding commitment of the PT Commissioner both within the EDPB and before within the Article 29 Working Party.

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, MD
- EDPB Secretariat