



Final

## 79th Plenary meeting

26 April 2023, Hybrid

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 77th Plenary meeting – adoption

The minutes of the previous plenary meeting were adopted unanimously with the modifications proposed by EDPB members and by the EDPB Secretariat.

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

#### 1.2 Draft agenda of the 79th EDPB meeting – adoption

The draft agenda was adopted following the renumbering of the agenda items in section 4 and with the inclusion of additional AOB points (update on the ChatGPT Taskforce [not for observers], follow-up of the European Ombudsman's recommendation on the EDPB's refusal to grant public access to the preparatory documents for its statement on international agreements, update from the CY SA, invitation to the EDPS/BfDI/Bavarian SA event for the 5th GDPR anniversary)

The discussions relating to agenda points 2.1 and 5.3 were declared confidential according to Art. 33 EDPB RoP.

### 2 Election of the EDPB Chair and the EDPB Vice Chair

2.1 Presentation of the candidates – Each candidate has up to 15 minutes to present themselves to the EDPB members, followed by a common Q&A session.

Three candidates for the position of EDPB Chair presented their candidacy: Ventsislav Karadjov (BG SA), Anu Talus (FI SA) and Aleid Wolfsen (NL SA). Three candidates for the position of EDPB Deputy Chair presented their candidacy: Irene Loizidou Nicolaidou (CY SA), Jekaterina Macuka (LV SA) and Zdravko Vukić (HR SA).

The EDPB members took note of the information provided by the candidates, as well as of their responses to the questions raised.

### 3 Consistency mechanism, Guidelines and EDPB RoP

#### 3.1 Guidelines on the use of facial recognition technology in the area of law enforcement (after public consultation) – discussion and adoption (BTLE ESG)

The rapporteur presented the guidelines following the public consultation. The contributions from stakeholders led to a number of amendments in the text of the guidelines with none being substantial in nature.

The EDPB members adopted the guidelines unanimously.

### 4 Expert Subgroups and Secretariat

#### 4.1 TECH ESG

##### 4.1.1 EDPB Representatives in ENISA Advisory Group – discussion

The EDPB Secretariat recalled that the EDPB received a letter from the Executive Director of ENISA about the new ENISA Advisory Group (AG) inviting the EDPB to appoint its representatives (one main representative and one substitute) for the period 2023-2025.

Two candidates expressed their interest to represent the EDPB in the ENISA Advisory Group.

The EDPB members unanimously appointed Luca Tosoni (NO SA) as main EDPB representative and Thomas Häberlen (DE SA) as substitute EDPB representative in the ENISA Advisory Group and requested them to report back on their participation to the EDBP plenary on a yearly basis.

#### 4.2 COORDINATORS ESG

##### 4.2.1 Review of the list of expert subgroups and taskforces and of their mandates – discussion and adoption

The EDPB Secretariat presented the list of expert subgroups and taskforces and invited the EDPB members to review the list in accordance with Art. 25.2 EDPB RoP.

Following a discussion on the allocation of the subject matters ‘data protection impact assessment’ and ‘data protection by design and by default’, the EDPB members decided to include both matters into the general mandate of the TECH ESG, noting that where appropriate the TECH ESG should consult the CEH ESG.

The EDPB members agreed that the mandate given to the Taskforce International Engagement should include a more general reference to the activities of the Council of Europe and to the Spring Conference.

##### 4.2.2 List of the ESG/TF coordinators and designation of COOP ESG co-coordinators – discussion and adoption

The EDPB Secretariat presented the list of expert subgroups and taskforces coordinators, recalling the need to appoint a coordinator for a renewable term of two years (Art. 25.3 EDPB RoP) and underlined the need to replace some coordinators, as well to appoint some for the new taskforces recently created.

The EDPB discussed whether the role of coordinator should be understood as being entrusted to an SA as EDPB member or to a designated individual.

After discussion, the EDPB members decided that the role of coordinator should be understood as being entrusted to a specific individual taking into consideration their skills and motivation for the role. In light of the decision, when a coordinator steps down, or after two years of term, a call for candidates should be launched within the ESG or taskforce.

Following a discussion, the EDPB members also decided that every ESG and taskforce should have two co-coordinators. Where an ESG or taskforce identifies exceptional circumstances, the EDPB plenary may decide to designate a third co-coordinator.

The EDPB members unanimously endorsed the list of coordinators of the Key Provisions ESG; Enforcement ESG; International Transfers ESG; Financial Matters ESG; Border, Travel & Law Enforcement ESG with the addition of one co-coordinator; Compliance, e-Gov and Health ESG; IT users ESG; Social Media ESG; the Fining Taskforce; the 101 NOYB Complaints Taskforce; the Cookie Banner Taskforce and the Taskforce on Competition and Consumer law. The EDPB members unanimously decided to endorse a second co-coordinator for the Cooperation ESG in addition to the current coordinator.

The EDPB members requested that the members of the taskforces International Engagement and the ChatGPT first discuss the selection of the co-coordinators, considering the fact that the number of candidates exceeds the number decided. In case of absence of agreement, a decision will be taken at plenary level.

A call for candidates will be launched for a second coordinator for the Technology ESG.

The coordinators of these ESGs and taskforces are appointed for a renewable term of two years, starting from 27 April 2023. The EDPB members expressed their appreciation to all the candidates and coordinators.

#### 4.2.3 Organisation of EDPB meetings (decision on hybrid meetings) – discussion and adoption

The EDPB Secretariat recalled the decisions taken in February 2021 and October 2022 on the organisation of meetings. Since then, the EDPB Secretariat has observed a low average of physical attendance in hybrid meetings, as well as late changes requested by some delegations in the mode of participation to hybrid meetings. During the COORD ESG meeting of 27 March 2023, a majority of the coordinators expressed the wish to organise either remote or physical meetings only.

The EDPB members decided that ESG/TF meetings should take place only remotely or in person and, that to the extent possible, physical meetings of ESG/TFs should be held back-to-back with other relevant ESG/TF meetings. Further, for short meetings (less than 4 hours), preference should be given to remote meetings. The EDPB members decided that for in person meetings, delegations are not entitled to attend remotely, unless in exceptional circumstances. Examples are the lead rapporteurs facing circumstances of force majeure preventing them from joining the meeting or, on a case by case basis, representatives of authorities from EFTA EEA member states unable to attend in person as they are, pursuant to Art. 16 RoP, not entitled to the reimbursement of their travel expenses. The EDPB members agreed that the application of exemptions should be strictly interpreted and may not lead to de facto hybrid meetings.

The EDPB members decided that an in person meeting may be changed into a remote meeting only if notified to the EDPB Secretariat at least 30 calendar days before the date of the meeting, and in any

case before the official invitation to the meeting has been sent by the EDPB Secretariat, which entails the obligation for the EDPB to reimburse the travels booked.

In light of the decisions made, all coordinators will be asked to indicate their preference for hybrid meetings scheduled until the end of 2023 to be transformed into in person or remote meetings. The EDPB Secretariat will assess whether the preferences can be accommodated within the 2023 budget allocated for meetings and the opportunities to organise back-to-back physical meetings.

The EDPB plenary requested the coordinators to report on their experience with the change in organisation of meetings at the end of 2023 or beginning of 2024.

### 4.3 Secretariat

#### 4.3.1 Nomination of the EDPB Representatives to the DMA High Level Group – discussion

The Chair of the EDPB explained, that despite an initial letter from the EU Commission welcoming the EDPB's nomination of representatives to the DMA High Level Group, a second letter sent by the EU Commission indicated one of the representatives not meeting the eligibility requirements set out in the European Commission decision setting up the High Level Group. The EDPB Chair noted that the EDPB had nominated representatives in February 2023, while the European Commission decision setting out the eligibility requirements was published only in March 2023.

The NO SA noted it was unfortunate that the eligibility criteria were not published at the time the EDPB was invited to nominate representatives. While the NO SA believes that nothing in the GDPR prevents EEA members to act as representative of the EDPB bodies such as the DMA High Level Group, they withdraw their candidacy in the interest of the EDPB.

The EDPB Secretariat recalled that two further candidates had indicated their availability to represent the EDPB and explained that the European Commission decision setting up the High Level Group allowed for the nomination of an alternate representative, who participates in High Level Group meetings if one of the EDPB representatives is not able to attend. Therefore, a vote took place to appoint both the fifth and the EDPB alternate representative.

In the absence of some EDPB members with none of the candidates obtaining a simple majority, the EDPB decided to launch an additional round of votes in writing.

#### 4.3.2 EDPB Data Protection Guide for Small Business – information

The EDPB Secretariat presented the Data Protection Guide for small businesses, which aims to provide practical information to SMEs about GDPR compliance in accessible language. The EDPB Secretariat and the press and communication officers of a number of EDPB members have been working on the guide for the past 1,5 years. This awareness raising action was included as a key initiative in the EDPB's 2021-2023 Strategy.

The guide will be officially launched on 27 April 2023. Though the guide will initially be launched in English, other language versions are currently being prepared. At the time of the launch, videos with German and French subtitles will already be available. Also, the guide includes references to existing materials made available by EDPB members, including materials from joint projects.

The EDPB members took note of the information provided and expressed their appreciation for the work done.

#### 4.3.3 EDPB Secretariat reorganisation – information

The EDPB Secretariat informed the EDPB members about the internal reorganisation into 5 sectors each led by a head of sector.

The EDPB members took note of the information provided.

## 5 AOB

### 5.1 Guide to ASEAN MCCs and EU SCCs - information

The European Commission is collaborating with ASEAN to develop a joint guide on international data transfers. Specifically the aim is to assist companies operating in the ASEAN and EU regions with understanding the similarities and differences between the ASEAN Model Contractual Clauses (MCCs) and EU Standard Contractual Clauses (SCCs) and facilitate compliance with ASEAN and EU data protection laws.

This guide is expected to be published in two stages. Part 1 provides a comparison that highlights the similarities and differences between the ASEAN MCCs and EU SCCs. Part 1 of the ASEAN-EU Joint Guide for Model Contractual Clauses for Data Transfers was endorsed at the 3rd ASEAN Digital Senior Officials' Meeting (ADGSOM) in February 2023 and is expected to be published soon. Part 2, which will be drafted at a later stage, aims to offer best practices from companies that fulfil the requirements of both sets of contractual clauses.

The European Commission will keep the ITS ESG informed on the progress of this project.

One EDPB member noted that the Council of Europe and the Ibero-American Data Protection Network have also developed model clauses and asked if there were plans to prepare similar guidance comparing these with the European Commission's SCCs.

The European Commission is currently focussing on the project with ASEAN but noted it would not exclude similar projects in the future.

### 5.2 Request for information from the European Commission on large scale investigations

The European Commission had requested all SAs to send them information on a bi-monthly basis to the regarding large-scale cross-border investigations under the GDPR. This information is provided on a strictly confidential basis and will be used by the European Commission solely for the purpose of monitoring Member States' application of the GDPR.

The EDPB Chair recalled that the request for information was already discussed at the plenary meeting in February this year, especially with regards to the legal basis of the request for information, confidentiality and independence of SAs in this context. The subject was discussed in the COOP ESG on the 18th of April.

The EDPB Chair indicated that the European Ombudsman has been invited to attend the May plenary meeting in order to exchange on this matter.

### 5.3 ChatGPT Taskforce (no observers) *confidential discussion*

The ChatGPT Taskforce had a first meeting on 18 April 2023. The controller, OpenAI, currently does not have a main establishment in the EU, but a representative according to Art. 27 GDPR located in Ireland. [REDACTED]

#### 5.4 Follow-up of the European Ombudsman's recommendation on the EDPB's refusal to grant public access to the preparatory documents for its statement on international agreements

The EDPS requested clarification as to whether the EDPB intends to discuss the European Ombudsman's recommendation on the EDPB's refusal to grant public access to the preparatory documents for its statement on international agreements.

The EDPB Secretariat explained they are currently analysing the recommendation in advance of a discussion at the next plenary meeting. The EDPB has until the end of June 2023 to submit an opinion in response to the recommendation.

#### 5.5 CY SA update

The CY SA informed the EDPB members about ongoing cases involving cyber-attacks against public sector entities and universities, which resulted in personal data breaches. The controllers notified the CY SA of these breaches.

The EDPB members took note of the information provided.

#### 5.6 5th anniversary of the GDPR event

The DE SA (German Federal SA and the Bavarian Data Protection Commissioner) and the EDPS invited the EDPB members to an event to mark the 5th Anniversary of the GDPR on 23 May 2023.

### 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, ISSA, 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

In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points 5.3 of the agenda.

- Ad hoc Observer: Federal CH was present during the plenary meeting for item 3.1 of the agenda.

- EDPB Secretariat