

# 2020 ANNUAL REPORT

## ENSURING DATA PROTECTION RIGHTS IN A CHANGING WORLD

### EXECUTIVE SUMMARY



# ENSURING DATA PROTECTION RIGHTS IN A CHANGING WORLD

Further details about the EDPB can be found on our website at [edpb.europa.eu](https://edpb.europa.eu).



The European Data Protection Board (EDPB) is an independent European body, established by the General Data Protection Regulation (GDPR), which aims to ensure the consistent application of data protection rules across the European Economic Area (EEA). It achieves this aim by promoting cooperation between national Supervisory Authorities (SAs) and issuing general, EEA-wide guidance regarding the interpretation and application of data protection rules.

The EDPB comprises the Heads of the EU SAs and the European Data Protection Supervisor (EDPS). The European Commission and - with regard to GDPR-related matters - the European Free Trade Association Surveillance Authority - have the right to participate in the activities and meetings of the EDPB without voting rights. The SAs of the EEA countries (Iceland, Liechtenstein and Norway) are also members of the EDPB, although they do not hold the right to vote. The EDPB is based in Brussels.

The EDPB has a [Secretariat](#), which is provided by the EDPS. A [Memorandum of Understanding](#) determines the terms of cooperation between the EDPB and the EDPS.

## 1. 2020 HIGHLIGHTS

### 1.1. Contribution of the EDPB to the evaluation of the GDPR

In February 2020, the EDPB and national Supervisory Authorities (SAs) [contributed](#) to the European Commission's evaluation and review of the GDPR, as required by Art. 97 GDPR.

The EDPB considers that the GDPR has strengthened data protection as a fundamental right and harmonised the interpretation of data protection principles. Data subject rights have been reinforced and data subjects are increasingly aware of the modalities to exercise their data protection rights. The GDPR also contributes to an increased global visibility of the EU legal framework and is being considered a role model outside of the EU. In its report, the EDPB states that it believes that the GDPR's application has been successful, but acknowledges that a number of challenges still remain. For example, insufficient resources for SAs are still a concern, as

are inconsistencies in national procedures that have an impact on the cooperation mechanism between SAs.

Despite these challenges, the EDPB is convinced that ongoing cooperation between SAs will facilitate a common data protection culture and establish consistent practices.

Furthermore, the EDPB believes it is premature to revise the GDPR.

## 1.2. Issues relating to COVID-19 responses

During the COVID-19 pandemic, EEA Member States began taking measures to monitor, contain and mitigate the spread of the virus. Many of these measures involved the processing of personal data, such as contact-tracing apps, the use of location data or the processing of health data for research purposes. As such, the EDPB provided [guidance](#) on how to process personal data in the context of the COVID-19 pandemic. During this period, the EDPB also responded to letters from Members of the European Parliament asking for further clarifications on COVID-19-related matters.

## 1.3. International personal data flows after the *Schrems II* judgment

On 16 July 2020, the Court of Justice of the EU (CJEU) released its judgment in *Case C-311/18 (Schrems II)*. The CJEU examined two mechanisms that allow personal data transfers from the EEA to non-EEA countries (third countries), namely, the EU-U.S. Privacy Shield and Standard Contractual Clauses (SCCs). The CJEU invalidated the adequacy decision underlying the EU-U.S. Privacy Shield, thereby rendering it invalid as a transfer mechanism. It also ruled that the European Commission's Decision 2010/87 on SCCs for the transfer of personal data to third country processors is valid, so SCCs may still be used to enable international data transfers. This is upon the condition

that the exporter (if needed, with the help of the importer), assesses, prior to the transfer, the level of protection afforded in the context of such transfers, taking into consideration both the SCCs and the relevant aspects of the legal system of the importer's country, as regards any access to the data by that third country's public authorities. The factors to be considered for this assessment are those set out, in a non-exhaustive manner, in Art. 45(2) GDPR.

The judgment has wide-ranging implications for EEA-based entities that use these mechanisms to enable personal data transfers to the U.S. and other third countries. Accordingly, the EDPB issued multiple guidance documents, include a list of [FAQs](#) and some [Recommendations](#), on the judgment and its implementation.

## 1.4. First Art. 65 GDPR binding decision

On 9 November 2020, the EDPB adopted its first dispute resolution [decision](#) on the basis of Art. 65 GDPR. The binding decision addressed the dispute that arose after the Irish SA, acting as Lead SA, issued a draft decision regarding Twitter International Company and the subsequent relevant and reasoned objections expressed by a few Concerned SAs.

## 2. EUROPEAN DATA PROTECTION BOARD - ACTIVITIES IN 2020

In 2020, the EDPB adopted 10 [Guidelines](#) on topics such the concepts of controller and processor; and targeting of social media users, and a further three Guidelines that were adopted after public consultation. The EDPB also issued two [Recommendations](#).

The EDPB also oversaw procedures relating to consistency activities to clarify the process and aiming to ensure its efficiency for the SAs. In 2020, the EDPB issued 32 [Opinions](#) under Art. 64 GDPR. Most of these Opinions concerned draft

accreditation requirements for a code of conduct monitoring body or a certification body, as well as Controller Binding Corporate Rules for various companies.

### 3. SUPERVISORY AUTHORITY ACTIVITIES IN 2020

National Supervisory Authorities (SAs) are independent public authorities that monitor the application of data protection law. SAs play a key role in safeguarding individuals' data protection rights. They can do this through exercising corrective powers.

The EDPB website includes a selection of [SA supervisory actions](#) relating to GDPR enforcement at national level.

The EDPB published a [register](#) of decisions taken by national SAs in line with the One-Stop-Shop cooperation procedure (Art. 60 GDPR) on its website.

#### 3.1. Cross-border cooperation

The GDPR requires the EEA SAs to cooperate closely to ensure the consistent application of the GDPR and protection of individuals' data protection rights across the EEA. One of their tasks is to coordinate decision-making in cross-border data processing cases.

Between 1 January and 31 December 2020, there were 628 cross-border cases out of which 461 originated from a complaint, while 167 had other origins, such as investigations, legal obligations and/or media reports.



The One-Stop-Shop 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 towards reaching a coordinated decision about the data controller or processor. Between 1 January 2020 and 31 December 2020, there were 203 draft decisions, from which resulted 93 [final decisions](#) that are published in a public register.

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. Between 1 January 2020 and 31 December 2020, SAs initiated 246 formal mutual assistance procedures. They initiated 2,258 informal such procedures. Mutual assistance is also used by the SAs asking the competent SA to handle complaints they have received that do not relate to cross-border processing as defined by the GDPR.

### 4. STAKEHOLDER CONSULTATION AND TRANSPARENCY

During the COVID-19 pandemic, the EDPB responded to letters from Members of the European Parliament asking for further clarifications on COVID-19-related matters. The EDPB organised a stakeholder event on the concept of legitimate interest to gather input and views on this specific issue in the interest of developing future guidance.

Following the preliminary adoption of Guidelines, the EDPB organises public consultations to give stakeholders and citizens the opportunity to provide additional input, which is then considered in the subsequent drafting process. In 2020, the EDPB launched and completed seven such consultations.

For the third year in a row, the EDPB conducted a survey as part of the annual review of the EDPB's activities under Art. 71(2) GDPR. Questions centred on the EDPB's work and output in

2020, with a focus on its Guidelines and Recommendations, all with a view to understanding the extent to which stakeholders find the EDPB's guidance helpful in interpreting the GDPR's provisions, and in order to identify future paths to better support individuals and organisations as they approach data protection.

## 5. STRATEGY AND OBJECTIVES FOR 2021

The EDPB defined its *Strategy for 2021-2023*, which covers the four main pillars of its strategic objectives, as well as a set of three key actions per pillar to help achieve these objectives. In early 2021, the EDPB adopted its two-year *work programme for 2021-2022*, according to Art. 29 of the EDPB Rules of Procedure. The work programme follows the priorities set out in the EDPB 2021-2023 Strategy and will put the EDPB's strategic objectives into practice.



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