EDPB Best practices for the organisation of EDPB Plenary meetings

Version 2.0

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Version history

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The European Data Protection Board has adopted the following internal best practices:

Having regard to Article 68 and Article 70 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, (hereinafter "GDPR"),

Having regard to the EEA Agreement and in particular to Annex XI and Protocol 37 thereof, as amended by the Decision of the EEA joint Committee No 154/2018 of 6 July 2018[1],

Having regard to Article 2, 3, 18, 19 20, 22, 24, 25, 26, 27 and 28 of its Rules of Procedure "RoP" as amended on 23 November 2018,

Has adopted the following internal best practices

EDPB BEST PRACTICES ON ORGANISATION OF ITS PLENARY MEETINGS

[1] References to "Member States" made throughout this document should be understood as references to "EEA Member States".

1 Purpose and scope

1 This document aims at providing guidance on how the EDPB Plenary meetings should be organised, considering in particular its interaction with the EDPB Expert Subgroup (ESG) and Taskforce (TF) meetings. Specifically, the objectives of this document are to focus and prioritise the work of the Plenary, to improve the flow and sharing of information and to increase the efficiency of the plenary meetings paragraph with number use Num. paragraph - EDPB style

2 Roles and responsibilities

2 The Board is tasked with ensuring the consistent application of applicable EU data protection laws, by performing a number of tasks pursuant to Article 70 of the GDPR and Article 2 of EDPB RoP.

3 The Plenary meetings are responsible for:

- Discussing developments or policy questions in relation to issues of significant strategic importance and deciding on any necessary action required;
- Facilitating certain high-level exchanges between EDPB members and their representatives, such as active exchanges on enforcement priorities, best practices and solutions found in their respective competences and which could be leveraged by other Members;
- Granting mandates, e.g. to ESGs, TFs or the EDPB Secretariat[2] ;
- Receiving information and state of play updates on the progress of the work made by ESGs, TFs or the EDPB Secretariat;
- Giving directions to the ESGs, TFs or the EDPB Secretariat and deciding on concrete proposals and options prepared by them (see also Article 28.2 RoP); and
- Adopting EDPB documents, generally prepared by the ESGs, TFs or the EDPB Secretariat

4 In this context, the Plenary will generally have a more strategic, policy and high-level focus compared to the ESGs and TFs, who may explore issues more extensively in order to prepare, inform and support the Plenary's decisions.

3 Plenary agendas

3.1 Scheduling

5 Without prejudice to extraordinary meetings that may take place due to unforeseen and unplanned circumstances, the meetings should in principle take place every month. Different topic within the same section.

[2] During October 2019 plenary meeting, the Chair was entrusted with allocating letters to the Secretariat or to the appropriate ESG or TF

3.2 Submission of agenda items and circulation of documents

6 As regards the submission of agenda items, the estimated time that will be needed for discussion, should be indicated by the coordinator(s)/rapporteurs(s) at the moment of the submission. The agenda can then be prepared accordingly.

7 Submissions of items for the agenda of Plenary meetings must respect the established deadlines communicated by the Secretariat. Exceptionally, when rapporteur(s) or coordinator(s) know that documents will be late for circulation to the members, they should inform the Chair and the Secretariat in advance and explain the reason for such late submission. Unless there is a specific need of urgency, items submitted after the deadline should not be taken into account for the specific Plenary meeting and may need to be resubmitted for a subsequent meeting.

8 Article 19(1) of the RoP sets out the deadlines for circulating the agenda of the upcoming Plenary meetings to the members of the Board. Similarly, Article 20(1) of the RoP sets out the deadlines for circulating the corresponding documents.

3.3 Structure of the agenda

9 The agenda of plenary meetings should be divided into the following parts[3] :

Point I: Adoption of the minutes and of the agenda, Information given by the Chair

10 This point will cover preliminary matters and any information which should be communicated to the Members, such as news about the appointment of new Members and about activities on behalf of the EDPB.

Point A: **Adoption with no discussion[4]**

11 The document is fully ready for adoption, with a consensus at the ESG or TF level if relevant. In this case, in principle neither presentation nor discussion at the Plenary will be necessary. In exceptional cases, requests for mandate may be included under Point A, provided that the substantive content has already been clearly discussed and approved by the EDPB Plenary[5]. Recurrent Article 64 (1) GDPR opinions, such as on BCR or on the requirements for accreditation of code of conduct monitoring bodies or certification bodies[6] shall in principle be placed on the agenda as point A items. Strategically important documents should not be placed under point A, even if they enjoy consensus[7].

[3] While respecting those four parts, the Chair and EDPB Secretariat should make its best effort to combine items observers can attend, while bearing in mind also the need to smoothly and effectively structure the agenda.
[4] There will be no discussion in principle. If an EDPB member requests an item to be discussed, this item will remain in Point A, but will be flagged for discussion.
[5] This could, for example, include the formal granting of a mandate which simply implements a previous agreement of the EDPB Plenary, or minor clarifications to the written terms of an existing mandate. The inclusion in A items should be proposed by the relevant coordinators and agreed by the EDPB Chair.
[6] Documents enjoying consensus at the ESG or TF level could also be adopted via written procedure instead, which would mean that they would not be part of the Plenary agenda (see section 4 below).
[7] Strategically important documents may for example include adoption of an opinion under Article 64(2), a binding decision pursuant to Article 65(1), EDPB-EDPS Joint Opinions, or new guidelines

12 The EDPB Secretariat will circulate the draft agenda and the respective, above-mentioned documents to the EDPB participants[8] in line with the deadlines set out in the RoP[9]. The agenda items under point A shall be submitted, together, to a single vote.

13 During the voting procedure, the Chair will ask who is in favour of adopting all the items put forward for adoption without discussion. The Chair then asks if there are any votes against or abstentions. Should that be the case, the EDPB member(s) in question will have the opportunity to specify to which document the vote against or abstention relates so that this can be noted by the EDPB Secretariat.

14 However, any EDPB participant may, at any time before the adoption of the agenda, ask the Chair to disjoin a draft which, in its view, should be debated or amended. This participant should share this request as soon as possible and should indicate the specific issue that needs to be discussed in order to enable the other participants to be prepared for the discussion. The disjoined draft will remain under point A, but will be flagged as being subject to a specific debate and vote, and if needed, may be placed on the agenda of one of the following Plenary sessions.

Point B: Discussion

B.1: Discussion with a view to adoption

15 This point relates to document that are in principle ready for adoption and can include those which might still require a final decision on strategic issues clearly defined as requiring arbitration. The EDPB members are requested to decide on the matters identified for discussion, on the basis of the concrete options precisely described in the info note. The Plenary nevertheless remains free to combine the options proposed or to choose another one. Unless decided otherwise by the Chair, items affecting the EDPB work programme, such as requests for mandates, should in principle be classified as B.1 items.

B.2: Policy debate and high-level discussions

16 This point allows for the involvement of the EDPB participants for instance in policy debates. Questions can be referred to the Plenary if there is a need for strategic direction to facilitate the work on a document, or if it is deemed useful to hold a policy debate on another issue at Plenary level[10]. During the discussion of agenda items under this point, all the attending EDPB participants are encouraged to share their views (including by supporting another participant).

17 When a strategic item is ready for discussion, the lead rapporteur, together with the competent ESG or TF Coordinator(s), should assess whether the discussion is better suited for the Plenary, for the Strategic Advisory Expert Subgroup, or at the level of the other ESGs or TFs. Unless the latter is the case, the Chair should be contacted via the EDPB Secretariat, so that the Chair can take a decision.

[8] EDPB participants, in the context of this Document, shall mean participants to plenary meetings: EDPB members, observers, the EFTA Surveillance Authority, the European Commission and the EDPB Secretariat. This is without prejudice to rules on confidentiality which may restrict participation by observers in certain matters and agenda items.

[9] The circulation of documents to the observers depend on the scope of their right as observer and on the applicable confidentiality rules.

[10] Where necessary, a Strategic Advisory ESG meeting should be set up before the Plenary meeting to discuss important strategic matters. This could for example be the case when legal deadlines are applicable (e.g. Article 65 decisions – dispute resolution procedure) or when there is a need to organise an in-depth discussion at a higher, more strategic level than the level of the other ESGs or TFs, and the rapporteurs need those decisions to finalise the document for the Plenary meeting.

18 This item may also be used for high-level discussions between EDPB members and their representatives, including active exchanges on enforcement priorities, best practices and solutions found in their respective competences and which could be leveraged by other Members.

Point C: Organisational matters

C.1: Updates by EDPB ESGs and TFs

19 This point should primarily include updates on the progress of existing work items, primarily from coordinators of ESGs and TFs, or from lead rapporteurs of specific work items where appropriate. These updates should cover, for example, information about the overall workload of the ESG or TF in question, whether the ESG or TF's work items are progressing according to schedule, and the reasons for any delays on work items. This may also lead to the need to agree on a change of the level of priorities set in the work programme. Regular updates should be provided according to a schedule agreed by the EDPB Plenary and may also be provided on an ad hoc basis where appropriate.

C.2: General organisational matters

20 This point will cover organisational matters such as i) designation/renewal of coordinators by the EDPB; ii) announcement of ad hoc Plenaries; and iii) matters relating to the EDPB Strategy and Work Programme.

Point D: Information

D.1: Updates by EDPB participants

21 Where EDPB participants wish to share important information points of general interest that are relevant for the Plenary (e.g., recent developments at national level and important ongoing projects), they are invited to request it to be added under this section[11]. This can include recent developments in their jurisdictions, relevant ongoing projects, and enforcement priorities, best practices and solutions which do not require discussion under Point B.2. Such information should be provided briefly. EDPB participants remain free to consider other appropriate channels to share their information points, such as via the most relevant ESG, TF or in written form. An info note should in principle be provided for D.1 points. Except for important urgent matters, this section cannot be used to request new mandates[12].

D.2: AOB

22 EDPB participants can request to add an AOB point in case they wish to orally share important information of relevance for the EDPB participants for which no written information has been shared in advance due to, for example, the proximity of the reported event with the meeting. They should still consider whether information can be shared with the other participants ahead of the meeting, and the oral intervention can also be supplemented with written information afterwards as appropriate.

[11] Information shared on important cases by members during the Plenary meeting does not replace the need to share information in the Enforcement ESG as well as, for cases subject to cooperation, via IMI.
[12] Any request of mandate should respect the conditions of section 5.4 below.

Point E: Written state of play

E.1: Outcome of written procedures or urgent decisions

23 The outcome of any written procedures or urgent decisions taken by the Chair since the last Plenary will be placed under this point of the agenda and recorded in the minutes.

E.2: Other Written state of play

24 Documents shared only for information. In principle no discussion is expected on these documents, unless a participant has comments to the documents shared. In this case, any participant should be able to share their comments orally during the meeting.

4 Written procedure

25 Except for strategically important documents, where a document is ready for adoption and supported by consensus, it will normally be placed under point A of the Plenary agenda, as explained above under point 3.3. This will ensure maximum transparency towards the public, who can access the Plenary agenda or press release.

26 However, there may be an urgent need to adopt such a document in circumstances where it is not feasible to organise an ad hoc Plenary. In this case, the rapporteur(s) and/or Coordinator(s) may request the Chair to propose the document to the Board for an adoption by written procedure. To do so, the coordinator(s) will notify the EDPB Secretariat about this request, who will submit it for the Chair's approval. According to Article 24 RoP, it is also possible for the Board to decide, on its own initiative, to launch a written procedure.

27 Where time permits, the Secretariat will circulate any documents among the members before launching the written procedure and indicate a specific deadline, as decided by the Chair, until when the members may provide final written comments. This ensures that all members, including those not taking part in a particular ESG or TF activity if relevant, have the opportunity to comment on the document before voting.

28 During this stage, final comments may be put forward. The rapporteurs should assess whether these comments indicate that the document is not supported by general consensus or that it has not yet reached a sufficient level of maturity for adoption, or whether the comments can be easily resolved so that written procedure can be launched by the EDPB Secretariat upon the Chair's decision[13].

29 The EDPB Secretariat will inform the EDPB members and the relevant ESG or TF of the results of the written procedure.

5 Maturity of agenda items

5.1 Focus of the Plenary

30 In order to enable an efficient functioning of the Plenary meetings, the Plenary should only address work items that are sufficiently prepared. If the Plenary considers that an agenda

[13] Article 24(4)–(6) RoP sets out the rules for suspension of a written procedure once initiated. Members who disagree with the adoption of a document may vote against it during the written procedure.

item lacks the sufficient level of preparation it may choose to postpone the agenda item until the necessary amendments have been carried out. Participants attending the discussions in the Plenary should also ensure they are well prepared and informed on the work items discussed in the Plenary. The Plenary should focus on the discussion points identified in advance, as provided in the respective info note.

5.2 Info notes

31 In line with Article 20(2) RoP, all Plenary agenda items under points A, B and D.1 shall be accompanied by an info note. An exemption may apply for urgency procedures of Article 66 GDPR. Items under point C may also be accompanied by an info note where considered appropriate by the rapporteurs/speakers or where requested by the Chair.

32 An info note should be as clear and concise as possible, and it should include the following elements:

- The background of the agenda item, shortly outlined;
- A short summary of the document and its main objectives, where appropriate[14];
- Any discussion that took place during the drafting for which a participant flagged their intention to still raise the issue at Plenary level and shared its view succinctly in writing;
- The discussion points, clearly explained, with concrete options to decide between together with an explanation of their strategic consequences, in line with Article 28 RoP; and
- If relevant, it may include the results of the indicative votes expressed during the detailed drafting discussions of the document (i.e., in an ESG or a TF), where appropriate.
- Where relevant, an overview of the main practical impacts of the document for the target audience (e.g. in terms of change of practice that would be required from such audience).
- Where relevant, information about the possible need to invite an EEA DPA or the EDPS to align its guidance with the EDPB guidance.
- Where relevant, information about proposed follow ups, e.g. a possible public consultation, review period or targeted coordinated enforcement action.

33 Info notes should be prepared by the lead rapporteur with the input of the other rapporteurs, the Coordinator(s) and the EDPB Secretariat.

5.3 Requests for mandates

- Any request for mandate shall be provided in writing and include at least a lead rapporteur. Without lead rapporteur, the request shall not be made;
- Any request for mandate should follow the relevant template and should at the very least:
    - explain the motivation behind the item and include an explanation of the topic's relevance for the tasks of the EDPB;
    - underline the expected impact of the guidance and the level of importance;

[14] This short summary is not needed for short documents as letters and for guidelines for which an executive summary is provided.

- highlight the relationship between the topic and the EDPB Strategy and the EDPB Work Programme, or, where no such relationship exists, explain why the mandate should nevertheless be granted;
- include the scope for the work, including the identification of the questions or issues to the subgroup/task force would intend to tackle; tackled;
- identify when possible the questions that already appear to require an early strategic orientation by Commissioners;
- identify the target audience for the final work item, as well as any considerations that must be taken into account due to this choice of audience;
- identify the possible format of the document considered (e.g. guidelines, recommendations, best practices, statement) and possible complementary documents (e.g. to target non-expert audience);
- indicate if, how and when stakeholders will be consulted;
- identify the maximum size of the drafting team considering the relevant circumstances (e.g. the length of the document);
- include the expected length of the document and the timeline for delivery; and
- identify the possible actions after adoption, including possible coordinated enforcement; if relevant, explain how we intend to measure the success of the project.

- The relevant ESG or TF, its Coordinator(s) and the EDPB Secretariat will assess the request for mandate, consider its level of importance, evaluate it in light of the EDPB Strategy and the workload at the ESG or TF level, and make a proposal to the Plenary meeting to either adopt or refuse the request. If the level of importance is high, but the workload of the respective ESG or TF is heavy, the EDPB Secretariat and the Coordinator will discuss how this mandate will impact the other work items currently dealt with by the ESG or TF and which of them should be de-prioritised.

6 Plenary discussion

6.1 Structure of the discussions

34 Discussions at Plenary level should be structured as follows:

- Clear and concise presentation by the rapporteur(s)[15], focusing on the specific issues for arbitration/discussion and following the EDPB guidance available on the EDPB hub for presenting your document to the EDPB plenary;
- EDPB participants indicate their intention to react by raising their signs;
- The Chair should ensure that all participants can intervene and that the distribution of interventions remains fair and balanced. For each item of discussion, the Chair may allocate a maximum speaking time to participants for their respective interventions – for instance, depending on the circumstances, it may be appropriate to ask participants to aim to limit their intervention to two minutes. In any case, the allocated speaking time should always take into account the topic at hand and the foreseen duration of the discussion in the agenda.

[15] Could be the ESG or TF Coordinator(s) or one of the rapporteurs of the file.

35 The discussion should facilitate the exchange of views between all EDPB participants with an opinion on the matter in a timely manner.

6.2 Scope of the discussions

36 In principle and to the extent possible, all comments of the participants should be made and addressed in advance of the Plenary. This allows the Plenary to focus on the discussion points identified as requiring the Plenary's attention. Any discussion at this point should aim at solving matters of strategic importance on which the ESG, TF or drafting team could not find an agreement. Those matters, clear options to decide between, and the results of any indicative votes should be described in detail in the info note as outlined above in point 5.2.

37 Where there are different options to decide between, those will be specified in the info note. To the extent possible, the Plenary should in principle avoid deciding between more than two options at a time so as to facilitate the reaching of a majority. The Plenary nevertheless remains free to combine the options proposed or to choose another one.

38 Where necessary, the EDPB participants should not be prevented from raising new issues at Plenary level, in particular where they did not have the opportunity to raise them earlier. Any issue should be raised as soon as possible to ensure that the other EDPB participants as well the rapporteurs can be fully prepared for the discussions.

7 Outcome of the Plenary

39 After the Plenary, the EDPB Secretariat will circulate a draft press release to be circulated to the EDPB Communications Network. A deadline for feedback will be indicated by the EDPB Secretariat. After the approval of the Chair, the press release will be published on the EDPB website.

40 Before any documents adopted by the EDPB Plenary can be published, the EDPB Secretariat, in liaison with the rapporteurs where necessary, will proofread the documents and carry out editorial changes as necessary.

8 Periodic evaluation

41 Periodic evaluations of working methods should be carried out once every three years unless the Plenary decides otherwise. Evaluations should be supported by surveys, which can be anonymous. The surveys should be based on metrics that allow for comparisons to be made over time.

For the European Data Protection Board

The Chair

Anu Talus