

EDPB Documents



SELECTION OF CASES OF STRATEGIC IMPORTANCE

I. CRITERIA FOR THE SELECTION OF CASES BY THE EDPB

1. Introduction

At a two-day high level meeting in Vienna in April 2022, EDPB members have agreed to further enhance cooperation on strategic cases, and to diversify the range of cooperation methods used. In particular, it was decided that EDPB members will collectively identify cross border cases of strategic importance in different Member States on a regular basis, for which cooperation will be prioritised and supported by EDPB.

The purpose of this part of this document is to lay down criteria to assess whether a case qualifies as a case of “strategic importance”, in accordance with the Statement on enforcement cooperation ([Statement on enforcement cooperation | European Data Protection Board \(europa.eu\)](#)). Participation is voluntary and all SA’s are allowed to submit proposals.

It is recalled that cases of strategic importance should in principle and by priority be one-stop-shop cases and that they should be handled following a flexible and pragmatic approach, in the spirit of good cooperation between SA’s. In the same spirit, SA’s will exchange information and cooperate in informal ways at an early stage when handling cases.

Lastly, it should be noted that the handling of cases of strategic importance will eventually take place in accordance with - and by making full use of - the procedures and instruments for achieving cooperation and consistency between SA’s, as laid down in Chapter VII of the GDPR.

2. Criteria to prioritise case of strategic importance

Cases of strategic importance are cases where it is likely that a high risk to the rights and freedoms of natural persons in several Member States exists.

SAs can propose any case that meets at least one of the criteria listed below to the other SAs (hereafter: EDPB members) within the framework of the EDPB, in order to be identified as a case of strategic importance for which cooperation will be prioritised and supported by EDPB.

Proposals can be submitted by using the standardised form included in the section “Process and timeline for the selection of cases”. The EDPB members will ultimately decide which of the proposed cases will be identified as a case of strategic importance at European level.

While it is sufficient for a proposal to meet only one of criteria listed below, the EDPB members will take into consideration the total number of criteria that are fulfilled in the proposals when identifying cases. It should be noted that the degree of public debate and media attention are not included as separate criteria. These factors can nevertheless be taken into account by the EDPB members when making a selection. Lastly, it should be noted that the list of criteria below is not exhaustive and that SAs may include additional reasoning in their proposals.

A proposal may qualify as a case of strategic importance if it concerns:

- A **structural or recurring problem** in several Member States (based on Vienna statement) in particular where the case concerns a general legal issue with regards to the interpretation, application or enforcement of the GDPR;
- A case related to the **intersection of data protection with other legal fields** (based on Vienna statement);
- A case which affects a **large number of data subjects** in several Member States (based on Vienna Statement);
- A **large number of complaints** in several Member States;
- A **fundamental issue falling within the scope of the EDPB strategy**;
- A case **where the GDPR implies that a high risk can be assumed**, such as:
 - The processing of special categories of data as referred to in Articles 9 and 10 of the GDPR;
 - A processing regarding vulnerable people such as minors;
 - Situations mentioned in Article 35 (3) of the GDPR where a data protection impact assessment (DPIA) is required, or situations where a DPIA is required based on the criteria¹ for processing operations that are likely to result in a high risk as laid down in the Guidelines on Data Protection Impact Assessment².

¹ These criteria are: 1) Evaluation or scoring, including profiling and predicting 2) Automated-decision making with legal or similar significant effect 3) Systematic monitoring 4) Sensitive data or data of a highly personal nature 5) Data processed on a large scale 6) Matching or combining datasets 7) Data concerning vulnerable data subjects 8) Innovative use or applying new technological or organisational solutions 9) When the processing in itself “prevents data subjects from exercising a right or using a service or a contract”.

² Guidelines on Data Protection Impact Assessment (DPIA) and determining whether processing is "likely to result in a high risk" for the purposes of Regulation 2016/679, wp248rev.01, as endorsed by the EDPB on 25 May 2018.

II. PROCESS AND TIMELINE FOR THE SELECTION OF CASES BY THE EDPB

1. Identification of cases by DPAs

As agreed upon during the Vienna meeting in April 2022, the EDPB members will select cases of strategic importance for which cooperation will be prioritized on short notice. This will be done on the basis of the criteria defined by the EDPB (see the previous section) and using the template provided below.

Participation is voluntary and all SAs are allowed to submit proposals. More specifically, proposals of cases of strategic importance can be submitted:

- Either by the lead supervisory authority (LSA), for instance where it needs technical support or investigations to be carried out;
- Or by a supervisory authority concerned (CSA) to prioritize the work on a specific case where it is not the LSA.

When a case is submitted by a CSA, the LSA will be informed in a spirit of good cooperation, a fundamental principle of EU law. However, this information will not be a request for approval to submit the case for discussion and assessment within the EDPB. The EDPB will take into consideration the position of the LSA before taking a decision and will not take a decision on the selection of cases of strategic importance without the agreement of the LSA.

2. Preselection of cases to be sent to the PLEN by the ENF subgroup

To build on the outcome of the meeting in Vienna, an ad hoc meeting of the ENF subgroup was organized at the end of June 2022 to select already 2 to 5 cases for submission to the July 2022 Plenary as “pilot projects”.

At least one of the criteria identified in the previous section had to be met for the cases to be considered for discussion and preselection in order to be proposed to the Plenary.

The following planning should be followed:

- Following the ENF ESG meeting on the 24 May 2022, it was agreed that SAs can submit proposals for cases to the drafting team in writing by the 15 June 2022, with a form presenting the criteria met by the case to be proposed for selection as a strategic case, to reason the proposal (see draft form attached at the end), and a proposed timetable for the handling of the case/estimated deadline for the procedure in this case;
- SAs should inform in advance the LSAs of the cases they propose for discussion to the drafting team;
- The drafting team will then examine the cases proposed and submit proposals for discussion at an ad hoc ENF ESG meeting to be planned by the end of June;

- Each SA should be in a position to analyze the cases on the agenda before the meeting to ensure informed discussions;
- During this ad hoc ENF ESG meeting, SAs discuss the cases based on their analysis with the objective of selecting the cases to be submitted to the PLEN, along with proposals for members to be part of the working teams on each case;
- During the ENF ESG meeting, members of the subgroup select 2 to 5 cases maximum to be proposed as pilot projects for final selection to the EDPB July 2022 Plenary;
- In order to divide the work and to be able to actually achieve the desired results within the agreed upon timeframe, the selected cases should be divided over different LSAs and CSAs.
- As a second step, SAs will also be invited to provide proposals of additional cases over the summer in order to present them to the EDPB Plenary in September/October 2022 in order to complement the selection of strategic cases.
- The same process involving the drafting team and the Enforcement subgroup to examine the proposals shared should then be followed before submitting proposals to the EDPB Plenary, to allow for the selection of a total number of 5 strategic cases, including the pilot projects selected in the July Plenary.

3. Submission and final selection of strategic cases to the EDPB July 2022 plenary

The July 2022 EDPB PLEN should select up to 3 cases among all the cases submitted to be handled within an agreed upon timeframe which in principle should not go beyond 2 years.

The PLEN should decide on the following:

- which cases to be included in the first set of strategic cases cooperation mechanism;
- which authorities will compose the working team on each case and which SA will be in charge to coordinate the group (this should preferably be a small team of 3/4 authorities and should in OSS cases, include the LSA but does not have to include every CSA in order to remain agile);
- regular consultations with the CSAs not in the working team will be held to report on the progress of the work and to submit key points for arbitration, if necessary through the PLEN;
- the planning on which each case should be processed under the direction of the LSA (delays for investigations, for deliverables...) within a fixed timeline, which in principle should not go beyond 2 years.

In order to ensure that the desired results can be achieved within the agreed upon timeframe, the cases and workload should be divided over different LSAs and CSAs.

The future handling of these strategic cases, once they are selected by the EDPB Plenary, should try to avoid rigidities and formalities as much as possible. DPAS involved in each one of these cases should strive to exchange information and cooperate closely³ since their earlier stages.

³ This will also involve informal cooperation, and the formal cooperation of GDPR will be fully complied with.

TEMPLATE

Proposal for cooperation on strategic cases

Applicant SA (insert the name of your SA)

A. Background information

1. **Data controller/processor's name:**
2. **LSA:**
3. **CSAs:**
4. **IMI number (if any) :**

B. Summary of the case

1. **Facts and current status** (i.e. investigations already led by the applicant, key dates, number of complaints, of data subjects, etc.):
2. **Legal References** (e.g. Transparency (Article 12), Right of access (Article 15), etc.):
3. **Subject Matter** (e.g. Biometric data, Health care, etc.):
4. **Key Findings** (max 150 words):

C. Why does this case qualify as a strategic case?

- It concerns a structural or recurring problem in several Member States
Which one?
- Case related to the intersection of data protection with other legal fields
Explain briefly:
- A large number of data subjects in several Member States are affected by the processing operation
How many?

- A large number of complaints have been received by your DPA
How many?
- A fundamental issue falling within the scope of the EDPB strategy
- Case where the GDPR implies that a high risk can be assumed (processing of special categories of data as referred to in Articles 9 and 10 of the GDPR ; processing regarding vulnerable people such as minors ; or situations mentioned in Article 35 (3) of the GDPR where a data protection impact assessment (DPIA) is required, or situations where a DPIA is required based on the criteria for processing operations that are likely to result in a high risk as laid down in the Guidelines on Data Protection Impact Assessment.
Explain briefly:

D. What is the added value of this cooperation and what kind of help do you expect/offer?

For instance: what kind of expertise is required, is there a proposed timeframe, how much support / capacity do you expect is needed, will you ask assistance from the pool of experts)