

Internal EDPB Documents



Internal EDPB Document 07/2020 on the Terms of Reference of the EDPB Support Pool of Experts

Adopted on 15 December 2020

Important note:

This document was originally written for internal use among EDPB members. At its Plenary meeting of 14 June 2022, the EDPB has decided, in the interests of transparency, to make this document available to the public by publishing it on its website. Some of the information in this document may not be up to date.

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1 TERMINOLOGY

1. For purposes of these Terms of Reference, the following terminology is used:
 - **Support Pool of Experts:** a pool of experts established in the context of the EDPB in order to assist in the carrying out of investigations and enforcement activities of significant common interest, comprising both EDPB experts and external experts.
 - **EDPB expert:** an expert employed by an EDPB member¹ or the EDPB Secretariat who is available to provide expertise relevant to an investigation or enforcement activity carried out by another supervisory authority.
 - **External expert:** an expert who is not employed by any member of the EDPB or EDPB Secretariat who is requested to provide expertise relevant to the investigation or enforcement activities of a supervisory authority against a fee, following the successful completion of the relevant selection process.

2 OBJECTIVES

2. The objective of the SPE is to contribute to a high and consistent level of protection of personal data throughout the EEA Member States by:
 - (1) **Providing material support** to EDPB members in the form of expertise that is useful for investigations and enforcement activities of significant common interest and thereby promote better protection of data subjects; as well as
 - (2) **Enhancing the cooperation** and solidarity between all EDPB members by sharing, reinforcing and complementing strengths and addressing operational needs.

3 SCOPE

3. The SPE will be deployed in order to support **investigations and enforcement activities of significant common interest** for the members of the Board.
4. Investigations and enforcement activities of significant common interest may for example concern cases involving major global companies whose activities have a substantial impact on the protection of personal data of individuals across the EEA.
5. While the need for additional support may be greatest in large and complex cases, the SPE may also be useful for smaller, yet strategically important matters. For example, there may be cases that are in first instance only of national importance, yet could set an important precedent for other EDPB

¹ For purposes of these Terms of Reference, the term “EDPB member” should be understood as referring to all EEA national supervisory authorities (including the DE Länder SAs) as well as the EDPS.

Members as regards the interpretation of the GDPR.² The complexity of the subject matter or the fact that it will be likely to be resource-intensive will, however, remain an important consideration.³

6. In other words, the possible deployment of the SPE is not limited to cases involving processing activities with EU-wide impact. Deployment in cases with primarily local (or regional) impact may also be envisaged, provided it relates to matters of significant common interest.
7. The SPE should not replace or pre-empt the ordinary discussions or exchanges that take place at the level of expert subgroups or via Confluence, where EDPB members can discuss both practical issues related to investigation and enforcement as well as matters of legal interpretation of the GDPR. For the SPE to be deployed there should also be an actual **operational need** (i.e. the supervisory authority in charge would have difficulty to proceed with its investigation or enforcement activity without receiving additional support going beyond the mere exchange of views or general discussion of the experiences from other supervisory authorities).⁴
8. **N.B.: Relationship to Coordinated Enforcement Framework (CEF):**
 - The SPE has no direct relationship with the CEF.
 - Whereas the CEF provides a framework provides a structure for coordinating recurring annual activities by EDPB members, the SPE provides a framework for sharing and combining resources.
 - Whereas the CEF identifies topics for coordinated action on an annual basis, deployment of the SPE is determined on an ad hoc (case-by-case) basis, in light of the operational needs of individual EDPB members in relation to a particular case.

It is not excluded that the SPE is deployed to support the operational needs of one or more EDPB members in the context of a particular coordinated action, to be decided on a case-by-case basis and as further specified in Section 8.⁵

4 SUPPORT ACTIVITIES

9. Supervisory authorities may require different types of expertise at different stages of their investigation and enforcement activities. As a result, there are **many different types of support activities** (types of expertise) that can be provided which include, without being limited to:

² This may be particularly relevant in the absence of relevant guidelines or other common position of the EDPB on the matter. Specific examples might include: licence plate tracking on highways, use of facial recognition in schools, use of video-surveillance cameras (so-called “dash-cams”) installed in commuters’ cars,

³ See also section 8.1 (allocation criteria).

⁴ Chapter VII GDPR sets out various mechanisms for cooperation among supervisory authorities that include a.o. exchange of information, mutual assistance and joint operations. The precise purpose and nature of the support activity will be determinative in identifying the appropriate cooperation mechanism. See also Section 5.2 (Deployment of SPE).

⁵ During the pilot phase of the SPE, it might be appropriate to consider the topics for coordinated action in the context of the CEF as relevant for the initial scope of the SPE, but this is not a requirement. As indicated earlier, the pilot project is likely to have a more limited scope at the outset, possibly also in terms of the types of cases. Once there has been a proof of concept, the deployment of the SPE should be more flexible and not limited to a limited set of topics. Moreover, we should avoid creating parallel coordination mechanisms.

- **analytical support** (e.g., sharing /explaining of a methodology for the carrying out of an inspection or calculating an administrative fine, legal analysis of a matter of EU law, a survey of the state of the art in a particular type of technology, ...) ⁶;
 - assisting in the **performance findings** of a forensic nature (e.g., in the context of an on-site or remote data protection audit);
 - assisting in the preparation of **investigative reports** on the basis of evidence collected.
10. Experts can only support investigations and enforcement activities in accordance with the legislation applicable to the EDPB member responsible for the investigation or enforcement activity. Any deployment of the SPE must comply with the legal framework for the GDPR ⁷ as well as any limitations imposed by national law. For example, certain national laws may preclude the involvement of external experts or subject the involvement of EDPB experts to additional conditions, depending on the precise nature of the support activity provided. ⁸
 11. In any event, the precise nature of the support activity (i.e., the ‘mandate’ of the expert for a particular support activity) will need to be clearly defined and agreed prior to deployment. ⁹ It should also be recalled that many support activities can be provided remotely and will therefore not require physical meetings or travel.
 12. The need for additional expertise is not always clear at the outset of an investigation or enforcement activity. Additional expertise may also be needed at later stages in the investigative and/or enforcement process (e.g. when preparing a fining decision; or in the context of an appeal).
 13. The SPE may also have a more limited scope in terms of the types of support activities during the pilot phase (e.g. limited to the investigative phase).
 14. It should be noted that the demand for certain types of expertise may be higher than for other types of expertise. For example, certain types of investigations may more easily be confronted with a lack of technical expertise, rather than legal support. It is therefore appropriate to map both the available expertise and demand for expertise, followed by a gap analysis (e.g., it could be that the greatest needs are situated in the domains of shortages of auditors and ICT-experts). ¹⁰ In order to map both the available expertise and demand for expertise, a **questionnaire will be developed** and circulated among EDPB members. ¹¹

⁶ Such support analytical support may also be provided on a consultative basis (as opposed to drafting of specific acts) and may relate to only one particular aspect of the investigation or enforcement action (e.g. analytical support to help correctly apply a particular fining methodology).

⁷ See also Section 5 (Legal basis).

⁸ For example, national laws may prohibit or restrict such an involvement, as evidence collection or forensic interventions may be submitted to specific national procedures. In addition, it is also important to take into account requirements concerning conflict of interests or functional separation (e.g. in terms of participation in investigation vs. enforcement stage).

⁹ See also Section 8.2 (Requests for allocation).

¹⁰ See also Section 7 (Composition of the SPE).

¹¹ See also Section 10 (Next Steps). The questionnaire will also serve to identify and assess potential limitations or obstacles to use of SPE resources at national level (e.g., as regards the use of external experts). For example, certain national laws may preclude the involvement of external experts or subject the involvement of EDPB experts to additional conditions, depending on the precise nature of the support activity provided.

5 LEGAL BASIS

5.1 Creation of the SPE

15. The legal basis for the creation of the SPE within the context of the EDPB can be found in Article 70 (1) (u) and (v) and Article 75 of the GDPR:
16. **Article 70(1)(u) GDPR** provides that the Board shall *“promote the cooperation and the effective bilateral and multilateral exchange of information and best practices between the supervisory authorities”*.
17. **Article 70(1)(v) GDPR** provides that the Board shall *“promote common training programmes and facilitate personnel exchanges between the supervisory authorities and, where appropriate, with the supervisory authorities of third countries or with international organisations”*.
18. **Article 75** of the GDPR provides that the Secretariat shall provide analytical, administrative and logistical support to the Board and shall be responsible for the communication between the members of the Board.

5.2 Deployment of the SPE

19. The legal basis for EDPB members to contribute to and receive assistance from the SPE can be found in Articles 57(1)(g) and (t) GDPR, Section 1 of Chapter VII of the GDPR (Articles 60-62) as well as Article 61 of Regulation (EU) 2018/1725 (EUDPR).
20. **Article 57(1) (g) GDPR** provides that each supervisory authority shall *“cooperate with, including sharing information and provide mutual assistance to, other supervisory authorities with a view to ensuring the consistency of application and enforcement of this Regulation”*.¹²
21. **Article 57(1) (t) GDPR** provides that each supervisory authority shall contribute to the activities of the Board.
22. **Article 61(1) GDPR** provides that supervisory authorities *“shall provide each other with relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective cooperation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior authorisations and consultations, inspections and investigations.”*
23. **Article 62(1) GDPR** provides that supervisory authorities *“shall, where appropriate, conduct joint operations including joint investigations and joint enforcement measures in which members or staff of the supervisory authorities of other Member States are involved.”*
24. As indicated earlier, experts can only support investigations and enforcement activities **in accordance with the GDPR and other applicable legislation**. Much like the CEF, the SPE supports and builds on

¹² Article 61 Regulation (EU) 2018/1725 (EUDPR) provides that *“[t]he European Data Protection Supervisor shall cooperate with national supervisory authorities and with the joint supervisory authority established under Article 25 of Council Decision 2009/917/JHA to the extent necessary for the performance of their respective duties, in particular by providing each other with relevant information, asking each other to exercise their powers and responding to each other’s requests.”* See also Art. 26 of the Rules of Procedure of the EDPS, available here: https://edps.europa.eu/sites/edp/files/publication/20-06-26_edps_rules_of_procedure_en.pdf (“Cooperation with national supervisory authorities under Article 61 of the Regulation”).

mechanisms for cooperation that are in the GDPR. This means that the SPE is without prejudice to the functioning of the cooperation- and consistency mechanisms under the GDPR and the other tasks and the powers of the EDPB and EDPB members.¹³ There is also **no obligation** whatsoever for EDPB members to submit a request or offer of support via the SPE prior to initiating any of the cooperation mechanisms provided by GDPR. In other words: the creation of the SPE in no way precludes SAs from extending support to one another in any case they consider appropriate.¹⁴

25. Chapter VII GDPR sets out various mechanisms for cooperation among supervisory authorities that include a.o. exchange of information, mutual assistance and joint operations. The precise purpose and nature of the support activity will be determinative in identifying the appropriate cooperation mechanism. In practice, the involvement of EDPB experts may take the form of a sharing of information (Article 57(1)g, mutual assistance (voluntary/formal¹⁵) (Article 61), or joint operation (Article 62)¹⁶. As a result, the appropriate cooperation mechanism (i.e. the legal basis for a particular form of cooperation) will need to be determined on a case-by-case basis prior to deployment, taking into account also any limitations imposed by national law.
26. The GDPR does not contain any provisions concerning the use or possible role of external experts. The extent to which an external expert may be mandated to advise or provide support to a supervisory authority, or to perform to investigatory findings, is dependent entirely on national law.¹⁷ As indicated above, any deployment of the SPE must respect both the legal framework of the GDPR¹⁸ as well as any limitations imposed by national law.¹⁹
27. Finally, in light of the possible expenditure of EU budget²⁰, a separate administrative decision may also be necessary.

¹³ Any involvement of the SPE must therefore be mindful of the division of competences between EDPB and national SAs, making the most of the tasks and competences allocated to both. In the same vein, the establishment of the SPE shall be without prejudice to any other existing provisions or arrangements on cooperation or the setting up or operation of joint operations.

¹⁴ The SPE primarily seeks to *facilitate* the matching of available expertise with operational needs. It does not in any way prevent EDPB members and national supervisory authorities from directly providing each other with support whenever the operational need arises in accordance with cooperation mechanisms of the GDPR.

¹⁵ The ability to seek (and the obligation to give) mutual assistance applies to any case in which an SA requires the assistance of another SA for the performance of its tasks. Article 61 GDPR does not have to concern cross-border processing in order to be triggered. Article 61 GDPR can be used, for example, as a tool to share findings between the SAs involved.

¹⁶ Article 62 GDPR provides rules for joint operations by the supervisory authorities, including joint investigations and joint enforcement measures. The application of Article 62 GDPR is not limited to cross-border cases. In case of a joint operation within the meaning of Article 62 GDPR, any investigative powers conferred upon an EDPB expert may only be exercised with the approval, under the guidance and in the presence of members or staff of the host supervisory authority and insofar the law of the Member State of the host authority permits. The EDPB expert shall be subject to the Member State law of the host supervisory authority. The scope of application of Article 62 is limited to supervisory authorities. As a result, only experts employed by EDPB members can participate in Article 62 joint operations. Experts employed by the EDPB Secretariat cannot participate in Article 62 Joint Operations in the same manner as EDPB members.

¹⁷ Several SAs have the explicit possibility under their national law to be assisted by external experts.

¹⁸ See also Section 5 (Legal basis).

¹⁹ For example, certain national laws may preclude the involvement of external experts or subject the involvement of EDPB experts to additional conditions, depending on the precise nature of the support activity provided.

²⁰ See also Section 9 (Financial Support).

6 KEY PRINCIPLES

6.1 Voluntary

28. The involvement of EDPB experts or external experts requires the agreement of the EDPB member responsible for the investigation and/or enforcement activity. In case of EDPB experts, it also requires the agreement of their employer.
29. Any EDPB member may request or propose the involvement of one or more experts from the SPE to support an investigation and/or enforcement activity.
30. Experts will provide their expertise in accordance with the purpose, nature and duration of the support activity agreed by the EDPB member responsible for the investigation and/or enforcement activity.
31. Each EDPB member remains responsible for investigations and follow-up enforcement action in their respective jurisdictions.

6.2 Confidentiality and applicable law

32. Experts will be required to support investigations and enforcement activities in compliance with the legislation applicable to the EDPB member responsible for the investigation and/or enforcement activities.
33. Experts will be required to respect at least equivalent rules of confidentiality as the staff of the EDPB member responsible for the investigation or enforcement activities, which may require the signing of a non-disclosure agreement and to provide further guarantees of impartiality.

6.3 Burden sharing

34. As a general rule, all EDPB members should be willing to contribute expertise to the SPE. This principle must be understood as a willingness of EDPB members contribute to a balanced functioning of the programme and has to be applied flexibly. For instance, it does not imply that every member must offer the same number of experts every year or that each EDPB member should contribute the same number of experts.
35. During the pilot phase, each EDPB member and the EDPB Secretariat (SEC) should make best efforts to ensure that they can fulfil at least one request for support made by an(other) supervisory authority. In the longer term, it would be desirable to ensure more substantial and consistent availability of expertise. For example, each EDPB member and the EDPB SEC could strive, if possible, to ensure an availability of at least one full-time equivalent (1 FTE) expert to support investigations and/or enforcement activities meeting the criteria of the SPE, provided this is proportionate to their respective number of staff and effective capacity.²¹
36. Each EDPB member and the EDPB SEC will be asked to designate at least one contact point for the SPE, in order to facilitate information sharing and coordination relevant to the SPE (e.g. transmitting

²¹ For both EDPB members and the EDPB SEC, the ability to dedicate one or more FTE would of course require appropriate provisioning in their future budgets. The indication provided here is therefore also subject to future budget availability. It is also not necessary that the FTE relate to one dedicated staff member. For example, it would also be possible to internally assign one or more individuals, subject to availability and depending on subject matter, selected from a pool of more senior agents. It is also not required to designate individual experts by name (an indication of available expertise is sufficient).

requests for support to the right manager within the organisation, ensuring available expertise is communicated in the right manner and appropriately kept up to date).²²

37. While availability may not always be guaranteed, EDPB members should try to ensure that the relevant experts are available and can effectively provide support when their assistance is requested (subject to a reasonable timeframe following the receipt of the request).²³
38. A fair rotation of experts should be applied, meaning that efforts should be made to avoid that it would always be the same experts or authorities making available their experts in practice.²⁴

6.4 Flexibility

39. The precise purpose, nature and duration of the support activity, as well as the appropriate cooperation mechanism (where applicable), are to be determined on a case-by-case basis in writing and before the starting of the activity.
 - The appropriate mechanism for cooperation will be determined by mutual agreement between the EDPB member responsible for investigation or enforcement activity and the EDPB member(s) providing support, taking into account any additional requirements or limitations imposed by national law.²⁵
 - EDPB members may choose to request only one or a combination of several different types of support activities from the SPE.

6.5 Coordination

40. The SEC will be charged with ensuring coordination of the SPE, in accordance with Articles 70(1)(u)-(v) and 75(5)-(6) GDPR.
41. The SEC will liaise with the contact points of the SPE in order to help fill requests for support (i.e. to match experts with the operational needs articulated in the requests).
42. Templates will be created to allow EDPB members to indicate the available expertise of experts under their employ, as well to submit requests for SPE deployment in a standardised way.

7 COMPOSITION OF THE SPE

7.1 EDPB experts

43. An EDPB expert is an expert employed by an EDPB member or the EDPB Secretariat who is available to provide expertise relevant to an investigation or enforcement activity carried out by an(other) EDPB member.

²² Each EDPB Member can decide freely who it will designate as a contact point (e.g., its representative to the ENF ESG, a Head of Unit, ...), taking into account its own organisational structure.

²³ As the experts will be working on ongoing investigations and enforcement actions for their employer, they may not always be immediately available. Requests for SPE deployment should therefore envisage a reasonable timeframe (e.g. 2 to 3 months) for the time between application and expertise needed.

²⁴ Cfr. Rotation system for the Schengen evaluation – if you make available one person that should be used at least once every 2 years.

²⁵ In case of external experts, the manner in which support shall be provided shall be determined by EDPB member responsible for the enforcement activity taking into account any requirements or limitations imposed by its national law.

44. EDPB experts continue to be employed by their respective employer but provide assistance to an(other) EDPB member for the purposes, activities and duration agreed between their employer and the EDPB member responsible for the investigations and/or enforcement activity.

7.2 External experts

45. An external expert is a person who is not employed by any member of the EDPB or the EDPB Secretariat, yet has demonstrated expertise that is relevant to the needs of an investigation or enforcement activity.
46. External experts provide their services against the payment of a fee.²⁶ External experts are admitted to the Support Pool of Experts following a call for expressions of interest and the successful completion of the selection process (see section 8.4). The list drawn up on the basis of the call for expression of interest does not imply any obligation on the part of the EDPB to award a service contract (by the use of an order form) to the successful applicants.
47. The involvement of external experts may be necessary to ensure that highly specialised knowledge (e.g., in relation to forensics) can be made available to complement the expertise present in the supervisory authorities in order to address the operational needs of a specific case. As a result, external experts should only be selected on a subordinated basis and taking into account the specific needs of the requesting EDPB member, after it has been determined that no EDPB expert is available to provide the necessary support to the requesting EDPB member within the requested timeframe due to reasons of capacity.
48. In order to determine which types of expertise should be included in the call for expression of interest, it should first be assessed what expertise is available among EDPB members. Once an initial mapping of available expertise has been carried out, a gap analysis should be carried out by comparing the operational needs of EDPB members with the available expertise (e.g., it could be that the greatest needs are situated in the domains of shortages of auditors and ICT-experts²⁷).

8 GOVERNANCE AND MANAGEMENT

8.1 Allocation criteria

8.1.1 Criteria for deployment of SPE

49. The overarching criterion for allocation of SPE resources is whether or not the request concerns investigations and enforcement activities of significant common interest for the members of the Board. In addition, it should be considered to what extent the investigation or enforcement concerns matters which are complex or likely to be resource-intensive (see also section 3).
50. The EDPB PLEN may set further criteria for the allocation of experts of the SPE and possible priority areas on an annual basis, on the basis of proposals developed by the ENF ESG.
51. Absent further criteria, the following questions may be used to determine whether or not the request concerns an investigation or enforcement activity of **significant common interest**:

²⁶ Without prejudice to particular specifications agreed for a specific assignment, which will be enclosed with the request sent to the expert selected, the volumes, deadlines and remuneration for the various forms of expertise are set out in a table included with the call for expressions of interest, as well as the maximum total amount that can be paid to each individual expert.

²⁷ In this context, the gap analysis should be carried out with a sufficient level of granularity. For, example in the domain of IT there is great diversity: mainframe, oracle, java, network, security, architecture, etc..

- Does the case involves major global companies whose activities have a substantial impact on the protection of personal data of individuals across the EEA?
 - Is the possible threat to the protection of personal data likely to occur in a recurrent manner in all (or a substantial number) of Member States?
 - If it is primarily a local (or regional) case, is it a strategically important matter, i.e. that could set an important precedent for other EDPB Members as regards the interpretation of the GDPR²⁸?
52. If there is a need to choose between different actions, criteria relating to the **potential impact** will also be relevant:
- How severe is the impact of the (possible) threat?
 - Are citizens aware of the severity of this threat, and if not, should they be?
 - Is the successful completion of the enforcement activity likely to significantly improve the position (reputation) of the SAs and the EDPB as a whole? Is it likely to help demonstrate the importance of data protection for society?
53. Last but not least, deployment of SPE resources is predicated upon an **operational need**, i.e the supervisory authority in charge would have difficulty to proceed with its investigation or enforcement activity without receiving additional support going beyond the mere exchange of views or general discussion of the experiences from other supervisory authorities.

8.1.2 Criteria for the selection of individual experts

54. The selection of expert will take into account the following criteria:
- The expert meets the expectations of the requesting EDPB member in terms of expertise, availability and language spoken;
 - There is no indication of any conflict of interest²⁹;
 - In case of EDPB expert, the proposed cooperation mechanism/basis for cooperation to be applied;
 - If an external expert is proposed, it is following the determination that no EDPB expert is available and confirmation by the requesting EDPB members that the applicable legislation allows such support to be provided by an external expert.

8.2 Requests for allocation

55. Any EDPB Member seeking to make use of SPE resources submits a request to the EDPB SEC. Requests for allocation of members of the SPE should indicate:
- the purpose of the request (i.e. subject of the investigation/enforcement activity);
 - a justification of the need to make use of the SPE (such as substantiating the existence of a significant common interest as well as substantiating why the request meets the priorities/criteria as set by the EDPB);
 - A justification of the operational need;

²⁸ This may be particularly relevant in the absence of relevant guidelines or other common position of the EDPB on the matter. Specific examples might include: licence plate tracking on highways, use of facial recognition in schools, use of video-surveillance cameras (so-called “dash-cams”) installed in commuters’ cars,

²⁹ It should however be born in mind that the duty of cooperation and of confidentiality provided by the GDPR, as well as the procedures foreseen to allow cooperation between DPAs, imply there is no risk of conflict of interests simply because an employee of a SA who provides support as an EDPB expert to another SA , even if the investigation or enforcement activity eventually leads to an application of the dispute resolution mechanism.

- whether either only support from EDPB experts is sought, or whether the support may also be provided by external experts in case no EDPB members is available;
- the nature of the expertise requested (e.g., legal advice, specific technical findings, specific form of auditing expertise, ...) from an EDPB expert or from an external experts in case no EDPB members is available;
- where reliance on EDPB experts is envisaged: the proposed cooperation mechanism/basis for cooperation (e.g. whether the requesting supervisory authority is seeking support in the form of a joint operation, mutual assistance or sharing of information)³⁰;
- the envisaged duration of the activity;
- an estimation of the time to be allocated (expressed in person months or days);
- whether physical presence of the expert is required for any of the relevant support activities and its duration; and
- the request as regard language spoken by the expert and whether any translations of the expertise provided will be necessary (in particular into language of the national proceedings).

56. Each EDPB Member may also request the EDPB SEC to informally assess the suitability of the request and advise on a possible approach. The EDPB SEC may also liaise with contact points as appropriate (e.g. to obtain further clarification regarding the expertise that is available).

8.3 Allocation decisions

57. The decision to allocate SPE resources will be made by a Selection Panel, which consists of three EDPB members. In order to gain experience and ensure continuity, the Selection Panel will initially be composed of the EDPB Chair and the two Deputy Chairs. Two additional EDPB members will be designated as alternates, who may substitute either the EDPB Chair or Deputy Chair.

58. Once a request for involvement of the SPE has been submitted, the SEC assesses the eligibility of the request on the basis of the allocation criteria (point 9.1) and informs the Selection Panel of its assessment. If the Selection Panel agrees that the request concerns a case of significant common interest, the SEC circulates the request to all contact points with a view of seeking relevant experts. Communication of a call for experts may take place via Confluence.

59. In case one or several EDPB experts volunteer, the SEC will, together with the supervisory authority requesting assistance, assess the suitability considering the request made. The requesting authority will confirm that the proposed expert(s) meet its needs and that there is no appearance of conflict of interest. Based on the information received, the EDPB SEC will prepare a file for final approval by the Selection Panel, as well as the EDPS Budget Authorisation officer³¹.

60. If no EDPB experts volunteer, an assessment will be made whether any of the external experts who have successfully completed the selection process may be of assistance, provided that the supervisory authority responsible for the investigations and/or enforcement activity indicated that the support may also be provided by external experts in case no EDPB experts are available. The SEC will, together with the supervisory authority requesting assistance, assess the suitability of the external expert(s)

³⁰ The EDPB members concerned remain responsible for implementation of the formal modalities to apply those cooperation mechanisms, taking into account the internal guidance documents as well as possible templates developed in the context of the ENF and COOP ESG, as well as any additional requirements imposed by applicable (national) law. Where templates are used, duplication should be avoided.

³¹ Idem.

considering the request made. The requesting authority will confirm that the proposed expert(s) meet(s) its expectations in terms of expertise, availability and language spoken; and that there is no appearance of conflict of interest³².

8.4 Selection of external experts

8.4.1 Procedure for the creation of the list of experts

61. External experts are admitted to the SPE following a call for expressions of interest and the successful completion of the selection process.
62. Applicants will be invited to apply for one or several specified areas (to be specified by the applicant when expressing their interest), such as:
 - branches of law (e.g. data protection law, European Union law, administrative law,);
 - technical expertise (e.g., web tracking measurement, cryptography, privacy-enhancing technologies, ...);
 - auditing; or
 - forensics.
63. The specific areas that will be identified in the call for expressions of interest will be determined on the basis of the gap analysis between the available expertise and demand for expertise (on the basis of the questionnaire to be circulated to EDPB members).
64. On the basis of the applications received, a list will be drawn up of experts who meet the criteria. The list of experts will be valid for a period of four years from publication in the Official Journal. Inclusion in the list of external experts does not imply any obligation on the part of the EDPB to award a service contract (by the use of an order form) to the successful applicants.
65. New calls for expressions of interest, in one or more specified areas, may be issued on an as-needed basis.
66. The SEC will be charged with issuing the call for expressions of interest, receiving applications and publishing the list of external experts.³³

8.4.2 Selection criteria to be included in the list of experts

67. The specific selection criteria to be included in the list of experts will be set out in the call for expression of interest. Generally speaking, experts will be selected for the list of external experts on the basis of their professional and technical ability to carry out the tasks described. In order to be placed on the list of external experts, the applicant will:
 - have a sound professional background, with at least seven years' professional experience, including at least five years clearly related to the area of expertise in question;³⁴

³² Idem.

³³ In accordance with the Financial Regulations, the call should remain open for new expressions of interest throughout the implementation period.

³⁴ Documents required to provide evidence of their ability, skills, experience and competence for performing the work by means of: a motivation letter of no more than two pages (max. 500 words), in which the applicant sets out on his/her reasons for applying and the principal reasons why he or she should be admitted; a full curriculum vitae specifying relevant qualifications and background, relevant expertise and experience, and knowledge of languages, as well as, in annex, a copy of the most relevant certificates, namely university degrees and language

- have distinguished themselves professionally and/or academically in the branches areas relevant to the call for expression of interest (evidence, for example, in membership of networks of experts, certifications, awards, publications, etc.);
- have an excellent written and verbal command of the English language or the language of the Member State requesting support³⁵;
- have the economic and financial capacity to provide the services in question (i.e. be able to ensure continuity throughout the duration of the assignment).

68. The expert must notify the SEC of any previous services performed for national and international public or private entities, including European Union Institutions and Agencies, in the past five years, in the area which is the subject matter of the request.

69. When carrying out each specific expertise the expert may not be affected by any conflict of interest, within the context of a specific request, arising in particular from any economic interests, from political or national associations, from family or other personal links, or from any other relationships or common interests.

8.4.3 Convocation

70. The Selection Panel will ensure that expertise is commissioned in a fair manner on the list based on the applicants' professional profiles, taking into account the support activities requested, based on the recommendation provided by the EDPB SEC.

71. Whilst maintaining the principle of selecting the most qualified experts, the Selection Panel will ensure obtain a balance in accordance with the principles of non-discrimination, equal treatment and absence of conflict of interest.

8.5 Reporting and evaluation

72. For each allocation of SPE resources, a report shall be made up by the EDPB member responsible for the investigation or enforcement activity, documenting the allocated resources (human and financial) providing an evaluation of the support provided³⁶.

73. The SEC will provide regular reports (minimum twice a year) at the level of the ENF ESG and at PLEN level. For example, in case the number of requests risks to exceed available resources, the Plenary may be informed to help determine priorities, taking into account also the resources that remain for the relevant period.

74. The SEC will also make an annual evaluation report of the SPE initiative. For assisting the SEC in its tasks, all the EDPB members will contribute to this evaluation by completing a survey. As part of the evaluation, particular attention will be made to whether there may be ways in which to simplify the governance and management of the SPE.

8.6 Budget and accountability

diplomas; a full record of publications or writing samples on the subjects relevant to the call for expression of interest, differentiating between general publications and texts published in peer-reviewed journals and/or monographs accepted for publication after a similar review process. Where appropriate, the call for expression of interest may include specific further requirements for professional experience, similar to the one for language requirements.

³⁵ The call for expression of interest may include specific further language requirements for written expertise.

³⁶ A template may be provided by the EDPB SEC.

75. The funding of eligible expenses of the SPE will be part of the EDPB budget³⁷. The decision to support a particular investigation or enforcement activity will be taken by the Selection Panel, with the additional agreement of the EDPS Budget Authorisation officer.

9 FINANCIAL SUPPORT

9.1 EDPB experts

76. The salary of EDPB experts remains covered by their employer, as they remain part of the staff of their employer. Each EDPB Member as well as the EDPB SEC will therefore need to consider this in their respective budget plans.
77. Upon confirmation of eligibility, the EDPB may, subject to budget availability, assist by reimbursing the costs of two common areas of expenditure:
- (1) travel and, subject to further assessment, accommodation and/or daily allowances (in case physical presence is required)³⁸,
 - (2) translation (e.g., of investigative reports) in specific cases.³⁹

9.2 External experts

78. Upon confirmation of eligibility, the EDPB may assist by reimbursing the costs relating to travel and daily allowance (in case physical presence is required).
79. Fees of external experts may also be eligible for reimbursement, subject to budgetary availability and approval of the EU Budgetary Authority as regards allocation of EDPB Budget and provisioning of the necessary financial resources.⁴⁰ Contact may also be made with the European Commission in case the SPE could also rely EU funding programmes (e.g., in the form of a project grant).

10 NEXT STEPS

80. Upon approval of the present Terms of Reference, the following steps are envisaged:

10.1 Definition of pilot project

³⁷ The EDPB Secretariat will plan for the inclusion of additional budget for SPE in the preparation of 2022 Budget that will be carried out beginning of 2021.

³⁸ It should be noted that, depending on the nature of the investigation, experts may also be able to contribute remotely and therefore their involvement does not necessarily require a physical presence.

³⁹ While the working language of the EDPB remains English, it may be necessary to translate official investigative reports into the language employed by the supervisory authority in charge of the investigation. In addition, it cannot be excluded that certain EDPB experts are not proficient in English. As a result, at most two translations can be provided: (1) into English; (2) into the language of the enforcement proceedings. However, English being the working language of the EDPB, priority should still be given to the use of English as working language. An appropriate language policy will need to be developed when it comes to the support of translation costs, subject again to budget availability.

⁴⁰ Any expenditure of EDPB Budget must occur in accordance with the relevant financial regulations and guidelines applicable to EUIs. The procedure with a call for expression for described in this document is premised on the assumption that external experts will only apply as natural persons and the total amount of payments remains below the threshold of the Directive on public procurement (2014/24/EU), which then allows for exception from normal procurement procedures.

81. During the pilot project, the SPE will be limited to EDPB experts.
82. The precise scope of the pilot project is still to be determined, both in terms of
 - types of cases (e.g. by focusing first on smaller yet strategically important cases or on a limited set of topics); and/or
 - in terms of the types of support activities (e.g. limited to the investigative phase).
83. To be discussed at the level of the ENF ESG and submitted for approval by PLEN.

10.2 Questionnaire

84. Development of a questionnaire to map both the available expertise and demands for additional expertise among EDPB members, to be circulated among and completed by EDPB members. The questionnaire will also seek to identify and assess potential limitations or obstacles to use of SPE resources at national level (e.g., as regards the use of external experts).⁴¹
85. Gap analysis (between available needed expertise and needed expertise) and determination of relevant criteria (including areas of expertise) for the call for external experts.

10.3 Preparation of documents, templates and workflows

86. Prepare documents necessary to administer requests for support (forms/templates), reimbursement, etc.

10.4 Network of contact points and overview of available expertise

- Identification of contact points by EDPB members
- Specification of FTE experts available for SPE pilot project deployment

10.5 Launch pilot project

87. The initial pilot project will be launched in 2021. In parallel to the pilot project, a first Call for Expression of interests for external experts will be launched, taking into account the outcome of the gap analysis in step 10.2.

10.6 Evaluation

88. After one year, the functioning of the SPE will be evaluated. The annual evaluation report will be prepared by the EDPB SEC, on the basis of the reports submitted and a survey that will be circulated for completion by all EDPB members.

⁴¹ The questionnaire should address questions such as

- What different types of support activities (types of expertise) can be made available by your supervisory authority to support the investigations or enforcement activities of other EDPB members?
- For which types of type of expertise does your supervisory often experience an operational need which can not easily be met by your current employees?
- To what extent do national laws either explicitly authorise or preclude involvement of external experts?
- etc.