

ANNUAL REPORT 2022

STREAMLINING ENFORCEMENT THROUGH COOPERATION

EXECUTIVE SUMMARY



edpb



European Data Protection Board

INTRODUCTION

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 SAs of the EEA countries (Iceland, Liechtenstein and Norway) are also members of the EDPB, although they do not have the right to vote. 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. 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. 2022 – HIGHLIGHTS

1.1. ENFORCEMENT COOPERATION

The EDPB plays a key role in enforcing data protection laws. It ensures consistent enforcement and promotes enforcement cooperation amongst SAs. In 2022, numerous initiatives were taken to streamline enforcement cooperation, such as :

- A number of taskforces working on key topics with a cross-border dimension;
- 22 SAs undertaking coordinated investigations into around 100 cloud services used in the public sector throughout the EEA; and
- The creation of a Support Pool of Experts to support and increase SAs' capacity to supervise, investigate and enforce.

In line with the EDPB's 2021-2023 Strategy and its pursuit of developing a comprehensive and collaborative approach to address issues related to GDPR enforcement, the EDPB Members met in Vienna in April 2022 and reiterated their commitment to close cross-border cooperation. A Statement, which was agreed upon during the meeting, highlighted the Members' agreed action to further enhance cooperation on strategic cases and diversify the range of cooperation methods used to guarantee the strong enforcement of the GDPR.

Additionally, in view of fostering effective interactions between SAs, the EDPB and third parties, the EDPB adopted [Guidelines 02/2022 on the application of Art. 60 GDPR](#). The aim is to provide guidance on terms of cooperation and the One-Stop-Shop (OSS) mechanism. In practice, this helps SAs to enact their own national procedures in a manner consistent with the cooperation under the OSS mechanism.

Lastly, to harmonise the approach used by SAs in calculating fines, the EDPB adopted the first version of [Guidelines 04/2022](#). Within the guidelines, the EDPB devised a systematic and chronological five-step methodology that SAs across the EEA can use for calculating administrative fines for infringements of the GDPR. This work contributes to an important part of the EDPB's strategy in creating more efficient cooperation among SAs on cross-border cases.

1.2. DECISION 01/2022 ON THE DISPUTE ARISEN ON THE DRAFT DECISION OF THE FRENCH SUPERVISORY AUTHORITY REGARDING ACCOR SA UNDER ART. 65(1)(A) GDPR

In its Decision 01/2022, the EDPB settled a dispute regarding a fine against the French hospitality company Accor SA. The French Lead Supervisory Authority (LSA) issued a draft decision against Accor SA following complaints relating to a failure to consider the right to object to the receipt of marketing messages by mail and/or difficulties encountered in exercising the right of access. The EDPB decided that the French LSA needed to reassess the elements it relied upon to calculate the amount of the fine in order to ensure that it meets the criterion of dissuasiveness. As a result, the GDPR fine issued to Accor was increased from the initial EUR 100,000 imposed by the French LSA to EUR 500,000 following the EDPB's binding decision.

1.3. BINDING DECISION 2/2022 ON THE DISPUTE ARISEN ON THE DRAFT DECISION OF THE IRISH SUPERVISORY AUTHORITY REGARDING META PLATFORMS IRELAND LIMITED (INSTAGRAM) UNDER ART. 65(1)(A) GDPR

The EDPB adopted a binding decision based on Art. 65(1)(a) GDPR, which sought to address Instagram's policy of maintaining public-by-default profiles of

children and the mandatory public disclosure of their contact details when operating business accounts. The EDPB concluded that Instagram, a unit of Meta Platforms Ireland Limited (Meta IE), unlawfully processed children's personal data and it further instructed the Irish LSA to amend its draft decision by including the infringement of Art. 6(1) GDPR.

Following the EDPB's binding decision, the Irish LSA adopted its final decision against Meta IE. It was determined that Meta IE had infringed Art. 6(1) GDPR. The final fine was the maximum of the EUR 202-405 million range which was initially envisaged in the draft decision.

Binding Decision 2/2022 constitutes the first EU-wide decision on children's data protection rights, making it clear that companies processing children's data have to take special precautions when doing so.

1.4. BINDING DECISION 3/2022 ON THE DISPUTE SUBMITTED BY THE IRISH SA ON META PLATFORMS IRELAND LIMITED AND ITS FACEBOOK SERVICE (ART. 65 GDPR) AND BINDING DECISION 4/2022 ON THE DISPUTE SUBMITTED BY THE IRISH SA ON META PLATFORMS IRELAND LIMITED AND ITS INSTAGRAM SERVICE (ART. 65 GDPR)

The EDPB adopted two binding decisions on the basis of Art. 65(1)(a) GDPR, concerning the lawfulness and transparency of Facebook's and Instagram's processing activities for the purpose of behavioural advertising. The binding decisions were adopted after the Irish SA (acting as LSA) triggered two dispute resolution procedures concerning objections raised by concerned supervisory authorities (CSAs).

The EDPB concluded that in both cases, Meta IE lacked a legal basis for processing and therefore infringed Art. 6(1) GDPR. It instructed the Irish SA to include, in its final decisions, an order for Meta IE to bring its processing of personal data for behavioural advertising in the context of the Facebook and Instagram services into compliance with Art. 6(1) GDPR within three months.

Furthermore, regarding sensitive data, it disagreed with the Irish SA's proposed conclusion that Meta IE is not legally obliged to rely on consent to carry out the processing activities, as this could not be categorically concluded without further investigations. Therefore, the EDPB decided that the Irish SA must carry out a new investigation. In addition, the EDPB instructed the Irish SA to include in both final decisions a finding of infringement of the principle of fairness and adopt appropriate corrective measures.

With respect to sanctions, the EDPB found that the proposed fines did not fulfil the requirement of being effective, proportionate and dissuasive, and that an administrative fine for the additional infringement of Art. 6(1) GDPR should be imposed. This led to the Irish SA significantly increasing the fines in its final decisions (from a maximum of EUR 36 million and EUR 23 million for the Facebook and Instagram draft decisions, to EUR 210 million and EUR 180 million in the final decisions respectively).

1.5. BINDING DECISION 5/2022 ON THE DISPUTE SUBMITTED BY THE IRISH SA REGARDING WHATSAPP IRELAND LIMITED (ART. 65 GDPR)

In December 2022, the EDPB adopted a binding decision addressing a complaint-based inquiry on the lawfulness and fairness of WhatsApp IE's processing for service improvement purposes. The EDPB concluded that WhatsApp IE inappropriately relied on contract as a legal basis to process personal data, and thereby infringed Art. 6(1) GDPR. Additionally, the

EDPB held that WhatsApp IE's activities violated the principle of fairness under Art. 5(1)(a) GDPR.

The EDPB requested that the Irish SA carries out an investigation into WhatsApp IE's processing operations in order to determine whether it processes special categories of personal data (Art. 9 GDPR); whether it processes data for the purposes of behavioural advertising, for marketing purposes, as well as for the provision of metrics to third parties and the exchange of data with affiliated companies for the purposes of service improvements.

In terms of the corrective measures, the EDPB requested the Irish SA to include in its final decision an order for WhatsApp IE to bring its processing of personal data for the purposes of service improvement in the context of its Terms of Service into compliance with Art. 6(1) GDPR within a specified period of time, and to cover the infringements of Art. 6(1) GDPR with an administrative fine.

Finally, EDPB binding decisions are being challenged in Court, and the EDPB Secretariat prepares the defence. A CJEU General Court ruling of 7 December 2022 stated that the action for annulment brought by WhatsApp Ireland Ltd (WhatsApp IE) against [binding decision 01/2021](#) of the EDPB is inadmissible.

2. EUROPEAN DATA PROTECTION BOARD - ACTIVITIES IN 2022

To ensure the consistent application of the GDPR across the EEA, the EDPB issues general guidance to clarify European data protection laws. In 2022, the EDPB adopted 12 [guidelines](#) and [recommendations](#) on topics such as personal data breach notifications, codes of conduct as tools for transfers, data subject rights, deceptive design patterns, calculation of administrative fines and practical implementation of amicable settlements. Amongst those guidelines

and recommendations, the EDPB also adopted two documents after public consultation.

The EDPB also adopted 8 legislative documents addressed to the EU institutions or national authorities. This includes 4 joint opinions on EU draft legislation, adopted together with the EDPS.

The EDPB issued consistency opinions to ensure the consistent application of the GDPR by national SAs. In 2022, this represents 32 [opinions](#) under Art. 64 GDPR. These opinions mainly concerned draft decisions regarding Binding Corporate Rules and draft accreditation requirements of a certification body or a code of conduct monitoring body.

3. SUPERVISORY AUTHORITY ACTIVITIES IN 2022

National SAs are independent public authorities that ensure the consistent application of data protection law. They play a key role in safeguarding individuals' data protection rights, especially through exercising corrective powers. The EDPB website includes a selection of [SA supervisory actions](#) relating to GDPR enforcement at a national level.

Additionally, the EDPS maintains a [register](#) of decisions taken by national SAs in line with the OSS mechanism (Art. 60 GDPR). The register is a valuable resource to showcase how SAs work together to enforce the GDPR. It offers an exceptional opportunity to read final decisions taken by, and involving, different SAs relating to specific data subject rights.

The 2022 report includes a thematic case digest analysing decisions relating to Art. 17 GDPR (right to erasure) and Art. 21 GDPR (right to object).

3.1. CROSS-BORDER COOPERATION

One of the SAs' tasks is to coordinate decision-making in cross-border data processing cases.

Between 1 January and 31 December 2022, there were 310 entries in the database, out of which 254 originated from a complaint, while 56 had other origins, such as investigations, legal obligations and/or media reports.

The OSS mechanism demands cooperation between the LSA and the CSAs. The LSA leads the investigation and plays a key role in the process of reaching a consensus between the CSAs, in addition to working towards reaching a coordinated decision. Between 1 January 2022 and 31 December 2022, there were 714 OSS procedures, which resulted in 330 [final decisions](#).

The mutual assistance procedure allows SAs to ask for information from other SAs or to request other measures for effective cooperation, such as requests to carry out prior authorisations and consultations, inspections and investigations. Between 1 January 2022 and 31 December 2022, SAs initiated 248 formal mutual assistance procedures and 2924 voluntary mutual assistance procedures.

4. STAKEHOLDER CONSULTATION

The EDPB conducted the fifth annual survey as part of its review of activities under Art. 71(2) GDPR. The survey focused on EDPB's work and output in 2022 – particularly its guidelines, joint opinions and consultation work – to determine the usefulness of its guidance for interpreting GDPR provisions and to identify better ways to support organisations and individuals in navigating the EU data protection framework. Among the individuals surveyed were privacy and IT experts, representatives of EU DPO organisations, as well as academics and lawyers in the field of data protection and privacy rights.

5. STRATEGY AND OBJECTIVES FOR 2023

In the coming year, the EDPB aims to take even greater steps toward the completion of key actions pertaining to the four pillars of its [2021-2023 Strategy](#). This includes: advancing harmonisation and facilitating compliance (Pillar 1), supporting effective enforcement and efficient cooperation between national supervisory authorities (Pillar 2), taking a fundamental rights approach to new technologies (Pillar 3) and ensuring a global dimension (Pillar 4). In line with Art. 29 of the EDPB Rules of Procedure, the EDPB developed, in early February 2023, its two-year [work programme](#) for 2023 and 2024, based on the EDPB Strategy and the needs identified by the members as a priority for stakeholders.



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