



Final

## 82<sup>nd</sup> Plenary meeting

18 July 2023, Remote

Some points have been redacted from these minutes as their publication would undermine the protection of one or more of the following legitimate interests, in particular: the public interest as regards international relations; the privacy and integrity of the individual regarding the protection of personal data in accordance with Regulation 2018/1725; the commercial interests of a natural or legal person; ongoing or closed investigations; the decision-making process of the EDPB, in relation to matters upon which a decision has not yet been taken and/or the decision-making process of the EDPB, in relation to matters upon which a decision has been taken.

### 1 Adoption of the minutes and of the agenda, Information given by the Chair

#### 1.1 Minutes of the 81st Plenary meeting – adoption

The minutes of the previous plenary meeting were adopted unanimously. The members of the EDPB also agreed on the public version of the minutes.

#### 1.2 Draft agenda of the 82<sup>nd</sup> EDPB meeting – adoption

The draft agenda was adopted with the inclusion of an additional AOB point. The NO SA proposed to add point 5.6, an update on the recent provisional measures adopted in NO.

The discussions relating to agenda points 2.1.1, 2.1.2 and 2.2 were declared confidential according to Art. 33 EDPB RoP.

The Chair provided a short update on the meeting with Commissioner Reynders of 27 June 2023. They discussed data transfers, GDPR enforcement and the EDPB SME guidance. The Commissioner expressed support to the need of additional budget for the EDPB secretariat.

#### 1.3 Procedure in case of urgent requests made to the EDPB – discussion

The Chair underlined the fact that, since she started her office as Chair, she faced several urgent matters requiring a swift decision necessitating the involvement of EDPB members needed to be taken in a very short time frame, which could not wait the next plenary meeting nor a written procedure. In those circumstances, the Chair did propose a course of action to the members, while providing them a right to object to the proposed decision within a short period of time. The Chair consulted the members on this working method. The EDPB members expressed support to the method of proceeding used by the Chair, but some members suggested that the rules of procedure should be amended accordingly. The Chair signalled to consider this suggestion.

The Chair provided information on a different matter: the EDPB strategy. The Chair indicated the need to adopt a new Strategy for 2024-2025 and invited the EDPB members to start to brainstorm in order to discuss the matter in the September plenary meeting. After the first exchange at the plenary, members will be invited to send written contributions.

## 2 Current Focus of the EDPB Members

### 2.1 EU-US Data Privacy Framework (DPF)

#### 2.1.1 Update on the Decision of 10 July 2023 on the adequate level of protection of personal data under the EU-US Data Privacy Framework - **information**

The Chair introduced the subject and remind the EDPB members of the future role of the EDPB to channel complaints relating to national security. The Chair informed the members about a coming meeting organised with the ODNI CLPO on this matter.

The EC summarised the timeline of the adoption of the EU-US adequacy decision and gave a detailed presentation of the changes made in the adequacy decision throughout the adoption process, including to address the points raised by the EDPB opinion, the European Parliament and EU Member States.

The Chair thanked the EC for the comprehensive presentation.

A question was asked to the IE SA on the state of play of the court action in Ireland relating to its Meta decision on international transfers to the US, as well on the planned actions of the IE SA about the Meta data transfers decisions following the new adequacy decision.

The IE SA indicated that the Irish court had granted an interim stay on the coming into effect of the DPC's final decision, and that the Irish court would hear arguments in relation to the stay at the end of July..

#### 2.1.2 Information note on data transfers under the GDPR to the United States after the adoption of the Adequacy Decision – **adoption**

The rapporteur explained that the aim of the document is to provide high-level information and clarifications to individuals and entities transferring data to the US.

The rapporteur presented the different questions addressed in the draft information note.

The information note was adopted by the members of the EDPB unanimously.

### 2.2 EDPB Statement on the first joint review of the European Commission's Adequacy Decision regarding Japan - **adoption**

The Chair introduced the subject underlining that once an adequacy decision is adopted, it is essential that it is closely monitored. This would be primarily the role of the EC but the EDPB participated to these reviews. The Chair seized the occasion to thank the authorities that have contributed to this important work.

The rapporteur presented the draft statement on the first review of the functioning of the adequacy decision for Japan. The EC and Japanese representatives had a review meeting in October 2021 and EDPB representatives participated. The scope of Japanese data protection authority was broadened to cover processing activities relating to research and the public sector. The adequacy decision might be extended in the future. The EC recalled that the EC adequacy decision was not an end point but it could be a starting point creating more convergence.

The statement was adopted by the EDPB members unanimously.

### 3 Consistency mechanism and Guidelines

#### 3.1 Recommendations on simplifying the handling of cross-border cases – discussion and adoption

The EDPB Chair recalled that, in the course of the EDPB's meeting in Vienna in 2022, the need to simplify the handling of straightforward cross-border cases was identified. The aim being to allow SAs to save time and resources for the more strategic and complex cases.

The rapporteur presented the draft recommendations and noted the proposed pilot period of 9 months in order to test the recommendations in practice. Following an evaluation, improvements may be proposed if necessary.

The EDPB members were called to decide on the adoption of the document, on whether the document should be “recommendations” and on its publication.

27 EU members of the EDPB voted in favour of the adoption. 3 EEA members of the EDPB voted in favour of the adoption.

The majority of the EDPB members voted in favour of renaming the document “EDPB document”. One member abstained.

The majority of EDPB members voted against the publication of the document, considering the fact it is a pilot project.

### 4 Expert Subgroups, CSC and Secretariat

#### 4.1 CSC

##### 4.1.1 4.1.1. Semestrial update on the work of the Coordinated Supervision Committee - information

The CSC Coordinator updated the members of the EDPB on the CSC activities carried out during the first half of 2023, pursuant to Article 4 (2) of the CSC Rules of Procedure. During the first half of 2023, the CSC met twice: on 22 March in hybrid format and on 14 June in-person.

The most significant event was the entry into operation (EiO) of the enhanced Schengen Information System. The new legal framework became fully applicable since 7 March 2023. Switzerland joined the CSC ESG as a new member. The Committee is currently ensuring the coordinated supervision of five European information systems: IMI, Eurojust, EPPO, Europol and the Schengen Information System.

The CSC adopted two Guides for the exercise of Data Subjects Rights. The coordinator also illustrated some ongoing activities. The CSC has been playing its role as a privileged platform for cooperation and mutual assistance among DPAs in performing inspections, as well as to promote a closer engagement between the central and national level. The Committee has also been a forum for exchange of information, experiences and ideas.

The EDPB members took note of the information provided.

## 4.2 BTLE ESG

### 4.2.1 Guidelines on data subject rights under the LED – **request for mandate**

The coordinator of the BTLE ESG presented a request for mandate for guidelines on data subject rights under the LED, with a particular focus on the limitations to the right of access. Several EDPB members already volunteered to be co-rapporteurs.

With the adoption of guidelines on data subject rights, the EDPB would provide guidance on a very important subject for citizens and equally assist SAs in one of its key areas of competence.

The EDPB members adopted the mandate unanimously.

## 4.3 COOPERATION ESG

### 4.3.1 Designation of a second coordinator for COOP ESG - **decision**

Following the departure of one of the coordinators of the COOP ESG, a call for interest was circulated among the COOP ESG members. The COOP ESG had nominated a second coordinator. The Plenary was requested to formally designate them.

The EDPB members unanimously designated ██████████ (HR SA) as second coordinator for the COOP ESG.

## 4.4 Financial Matters ESG

### 4.4.1 Information service providers used by obliged entities for AML/CFT purposes – **request for mandate**

The coordinator of the Financial Matters ESG presented a request for mandate for guidelines on the use of watchlists (provided by information service providers) by obliged entities for AML/CFT purposes. At a later stage, once the review of the legislative framework for the AML/CFT is concluded, the FMESG could work on more general guidance. The EC adopted four legislative proposals (on anti-money laundering). The purpose was to strengthen the EU action on anti-money laundering and combating terrorist financing. These watchlists raised important data protection issues. On 5<sup>th</sup> December 2022, the Council adopted its position on this Regulation.

The EDPB members adopted the mandate unanimously.

## 4.5 Compliance, eGovernment and Health ESG

### 4.5.1 Letter to Accredia - **adoption**

The Secretariat presented the subject. On the 3<sup>rd</sup> May, Accredia (the Italian national accreditation body) sent a letter to the former Chair with five questions concerning the interpretation and application of the GDPR with regard to certification and accreditation procedures and in particular relating to the EDPB Opinion on the approval of the Europrivacy certification criteria as European Data Protection Seal. Accredia explained that they wished to receive clarifications from the EDPB as they are exchanging with the European co-operation for Accreditation association (EA) and the International Accreditation Forum (IAF).

The EDPB members adopted the letter with the changes discussed during the plenary.

## 4.6 Secretariat

### 4.6.1 1<sup>st</sup> EDPB Bootcamp Organized by the EDPB Secretariat - information

The EDPB Secretariat informed the members about the 1<sup>st</sup> EDPB Bootcamp in June 2023 organised to train SAs enforcement staff on website auditing. Many SAs participated and found the event very useful. Similar events will be organised in the future as well other initiatives to share knowledge on inspection methodologies and tools.

The EDPB members congratulated the EDPB Secretariat on the work accomplished. The EDPB Secretariat indicated that the event was a result of a collective work of the EDPB Secretariat and some SAs.

## 5 AOB

### 5.1 CJEU judgement in case C-252/21 - information (Rapporteur: EDPB SEC)

The Chair presented the main elements of the CJEU's ruling in case C-252/21 on the respective roles of SAs and competition authorities and on the appropriate legal basis for behavioural advertising.

The coordinator of the TF C&C highlighted further the consequences of the ruling for the cooperation between Competition and Data protection authorities. The interplay between Competition and Data protection authority is reciprocal, DPAs can use competition concepts in their own assessment, such as dominant positions and the respect of data protection is also a parameter for competition authorities. In short, the ruling enshrined a form of "regulatory dialogue" by validating the cross-use of concepts between DPAs and national competition authorities and laying down an obligation to consult each other in this respect, without mixing up the mandates of the different authorities. This corresponds exactly to the work program of the task force.

The EDPB members took note of the information provided.

### 5.2 FR SA update - national recommandations on mobile applications (Rapporteur: FR SA)

The FR SA informed the EDPB members about recently issued national recommendations on mobile applications.

These recommendations target five kinds of layers identified in the ecosystem. The action plan was based on three steps: ensuring dialogue with the global sector of mobile apps (big and small players); writing the set of recommendations; once these guidelines are widely accepted by different players, implementing an inspection programme on targeting mobile apps. The file is accessible on CNIL website. FR SA offered to provide the file to other EDPB members in different formats for their own use upon request.

The EDPB members took note of the information provided.

### 5.3 CJEU case C-416/23 – Information (Rapporteur: AT SA)

The AT SA informed the members about case C-416/23. On 27 June 2023, the Federal Administrative Court referred questions for a preliminary ruling to the CJEU.

The questions were about the term "requests" or "request" in Art. 57 para. 4 of GDPR. The referring court wonders if they shall be interpreted in such a way that "complaints" according to Art. 77 para. 1 GDPR should be included. Then, the referring court wonders if Art. 57 para. 4 GDPR shall be interpreted in such a way that it is already sufficient for the existence of "excessive inquiries" that a

data subject only makes a certain number of inquiries within a certain period of time (complaints according to Art. 77 Para. 1 GDPR ) addressed to a SA, regardless of whether the facts involved are different and/or the inquiries (complaints) relate to different persons responsible, or if there is a need for frequent repetition of inquiries (complaints) as well as an intention to misuse the data subject. Lastly, the referring court wonders if Art. 57 para. 4 GDPR shall be interpreted in such a way that, in the event of a “manifestly unfounded” or “excessive” request (complaint), the SA is free to choose whether to charge a reasonable fee based on the administrative costs of processing it or their processing can be refused from the outset. If not, which circumstances and which criteria the SA has to take into account, in particular whether the SA is obliged to demand a reasonable fee as a more lenient means and is only entitled to withhold manifestly unfounded or excessive inquiries (complaints) if there is no chance of collecting a fee.

The EDPB members took note of the information provided.

#### 5.4 EDPB participation to High-level Group on Access to data for effective law enforcement (Rapporteur: EDPB SEC)

The EDPB Secretariat informed the EDPB members about the participation of the EDPB in the first meeting of the High-level Group on Access to data for effective law enforcement on 19 June 2023 created by the EU Commission. The aim of this High-level Group is to develop a set of recommendations for concrete EC's actions on access to data for effective law enforcement. The work will be done in the context of three Working Groups, dealing with legal and technical challenges (for data at rest, data in providers' systems and data in transit).

It is foreseen that this group will hold 3 or 4 plenary meetings throughout a timeline of about one year. The status of the EDPB was not clear in the EC Rules of procedure. In a latest update, the EC stated EDPB would have the status of expert and would be invited in all plenaries.

The EDPB does not have yet clear information about which types of meeting it would take part in.

The EDPB was invited to propose representatives to the Commission. However, the EDPB members decided that it will nominate the EDPB representatives only after further clarification on the type meetings it will be invited, in particular if it will relates to HLG plenary meetings or subgroups as well.

The EDPB Secretariat noted that the EU Commission would not cover the costs of the participants and therefore, in order for the EDPB to cover the travel costs of the EDPB members, the EDPB Secretariat would need invitations and meeting agenda's sufficiently long in advance, such as 1 month.

#### 5.5 General Court ruling in case T-557/20 (Rapporteur: TECH ESG)

The rapporteur informed the EDPB members about the appeal lodged by the EDPS (C-413/23 P) following the General Court's judgment in case T-557/20. The case has implications for the notions of personal data, anonymization and pseudonymisation on the one hand, and the accountability principle on the other. EDPS had lodged an appeal on 5 July 2023. The rapporteur put forward the possibility for the EDPB as well as individual SAs to apply for a leave to intervene.

The EDPB members took note of the information provided and decided by majority - with three EDPB members abstaining - to apply for a leave to intervene.

The EDPB Secretariat proposed to take the lead on the drafting of the application for leave to intervene and to collaborate with other EDPB members for the drafting of the statement in intervention. The proposal was agreed.

Several EDPB members indicated their availability to participate in preparing an EDPB intervention.

In this context, the Chair encouraged the TECH ESG to finalise its work on its guidelines on anonymization and pseudonymisation.

## 5.6 NO SA update - provisional measures

The NO SA provided an update on the provisional measures it recently issued, taking effect as of 4 August 2023, banning Meta from processing personal data of data subjects in Norway for behavioural advertising on the basis of Articles 6.1.b GDPR or 6.1.f GDPR in context of its Facebook and Instagram services.

The IE SA cited the uncertainty created by two parallel processes now running - one led by the IE SA that had already presented provisional conclusions on compliance that took account of all CSA views and now a separate overlapping procedure by the NO SA. The IE SA clarified that it intended to conclude out the process it had started and per the August timeline already provided to CSAs.

The EDPB members took note of the information provided.

## Annex: Attendance List

### **SAs:**

AT SA, BE SA, BG SA, CY SA, CZ SA, DE SA, DK SA, EDPS, EE SA, EL SA, ES SA, FI SA, FR SA, HR SA, HU SA, IE SA, IS SA, IT SA, LISA, LT SA, LU SA, LV SA, MT SA, NL SA, NO SA, PL SA, PT SA, ROSA, SE SA, SI SA, SK SA

- European Commission

- Observers: AL SA, MD SA, RS SA, GE SA.

In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points 2.2 and 3.1 of the agenda.

- Ad hoc Observer: Federal CH was present during the plenary meeting for item 4.2.1 of the agenda.

- EDPB Secretariat