



Final

80th Plenary meeting

24-25 May 2023, Brussels

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 78th and 79th Plenary meeting – adoption

The minutes of the 78th plenary meeting were adopted unanimously. The members of the EDPB also agreed on the public version of the minutes.

The minutes of the 79th plenary meeting were adopted unanimously. The members of the EDPB also agreed on the public version of the minutes.

The Chair welcomed the new President of the PT SA - Prof. Dr. Paula MEIRA LOURENÇO who was given the floor to present herself. She said she was looking forward to working in close cooperation with the EDPB members and building a strong relationship.

1.2 Draft agenda of the 80th EDPB meeting – adoption

The draft agenda was adopted with the inclusion of three new AOB points: on the 31st Spring Conference in Hungary, the recent Nordic DPAs meeting in Iceland and the GPA Awards nominations.

The discussions relating to agenda point 4.1.1 were declared confidential according to Art. 33 EDPB RoP.

2 Consistency mechanism and Guidelines

2.1 Guidelines 4/2022 on the calculation of administrative fines (after public consultation) – discussion and adoption

The rapporteur presented the item and provided an overview of the changes made to the Guidelines following the public consultation. One of the main changes is the addition of an annex with the

reference table summarising the different steps in the process. The reference table is for illustrative purposes only, while the guidelines remain leading in the calculation of the fine.

It was recalled that the Fining Taskforce received an extension of the mandate at the EDPB Plenary meeting on 26 April in order to keep working on outstanding issues, monitor the implementation of the guidelines and make improvements if necessary.

27 EU members of the EDPB voted in favour of adoption. 1 EU member of the EDPB voted against.

The 3 EEA members of the EDPB were in favour of adoption.

2.2 [Guidelines 3/2021 on the application of Article 65\(1\)\(a\) \(after public consultation\) – discussion and adoption](#)

The lead rapporteur presented the item and explained that a limited number of changes have been made after the public consultation in order to take into account EDPB Guidelines 02/2022, the amendment to the EDPB RoP of 6 April 2022 and the Order of the General Court (T-709/21).

One additional change has been made in Section 8.2, concerning the dies a quo for the action for annulment under Article 263 TFEU, having regard to CJEU case-law. It was suggested to assess if the subject matter would also require any change of the EDPB RoP.

27 EU members of the EDPB voted in favour of adoption. 1 EU member of the EDPB abstained.

The 3 EEA members of the EDPB voted in favour of adoption.

2.3 [Guidelines on the Use of Technologies for Detecting, Removing and Reporting Online Child Sexual Abuse – discussion and adoption](#)

The lead rapporteur presented the item and the background to the draft guidelines. The EDPB members were informed on the discussions that have taken place at sub-group level and that divergent positions have been expressed on certain aspects of the draft. The KEYP and COOP ESGs have been consulted on aspects of the draft guidelines relevant to their competence.

While some EDPB members supported the draft, some other EDPB members expressed doubts related to the application of Article 6 and Article 9 GDPR.

It was decided to refer the draft guidelines to the SAESG in order to tackle the outstanding issues and find a compromise.

3 [Current Focus of the EDPB Members](#)

3.1 [Access to documents: European Ombudsman's findings of maladministration – discussion](#)

The EDPB Secretariat recalled that the European Ombudsman (EO) has been dealing with three complaints following the EDPB's refusal to grant full access to the requested documents and the EO's proposal to disclose them. It was recalled that the EO's proposed solutions were discussed by the EDPB in October 2022, and that following the EDPB's replies sent in November 2022, the EO issued Recommendations to the EDPB in March 2023. The EDPB has to provide detailed replies on the EO Recommendations by 28 June 2023.

The EDPB members decided on a way forward for the general approach to be followed in the detailed replies. The EDPS supported full compliance with the EO's recommendations.

The EDPB Secretariat was entrusted with preparing the detailed replies to the EO's Recommendations and preparing the documents for disclosure as per the instructions given by the Plenary. The EDPB secretariat also requested support from the AtD contact points to prepare the documents. One EDPB member volunteered to contribute to the drafting of the reply.

4 Expert Subgroups and Secretariat

4.1 BTLE ESG

4.1.1 Study on government access to data in third countries: update

The lead rapporteur presented the item and recalled the process which led to finalisation of the three studies on Mexico, Turkey and Brazil. Considering the concerns expressed by the EU COM at sub-group level, the EDPB members were invited to discuss and decide on the publication of the legal study for Brazil.

Different arguments against and in favour of publication were presented. Considering the difficulty in finding a compromise, it was decided to refer the question of the publication of the studies to the SAESG.

The SAESG will be invited to decide first whether the studies would be published and if the decision is yes - also on the timing of the publication.

4.2 FM ESG

4.2.1 Mandatory user accounts on online shopping websites – request for mandate

The rapporteur introduced the item and summarised recent discussion at the FM ESG on the obligation to create an account to make online purchases as a common practice in the e-marketing sector. [REDACTED], it was proposed to join efforts in order to find a common position and adopt a harmonised approach. While the FM ESG would take the lead, it was suggested to also consult KEYP, TECH and SOCM ESG where relevant. The Coordinators of these ESGs have already given their agreement in principle.

The mandate was granted by the members of the EDPB unanimously.

4.3 Designation of coordinators (ChatGPT TF, TF on International Engagement)

4.3.1 List of coordinators - adoption (Rapporteur: SEC)

The EDPB Secretariat informed that, following the EDPB decision of 26 April, the ChatGPT TF and the International Engagement TF have nominated their Coordinators. The Plenary was requested to formally designate them.

The EDPB members unanimously designated [REDACTED] (AT SA) and [REDACTED] (IT SA) as Coordinators of the ChatGPT TF and [REDACTED] (FR SA) and [REDACTED] (EDPS) as Coordinators of the TF International Engagement.

5 AOB

5.1 The 31st Spring Conference of European Data Protection - information

The HU SA shared feedback from the 31st Spring Conference which took place in Budapest, Hungary on 10-12th May 2023 and thanked all participants for their contributions. The Members of the Spring Conference have adopted three resolutions: a resolution on the need for enhanced cooperation in the field of data protection and competition law, a resolution to accredit San Marino Data Protection Authority as member of the Conference of European Data Protection Authorities with the status of National Data Protection Authority and a resolution on the revision of the Rules of Procedures of the Conference.

The 32th of Spring Conference will be held in Latvia in 2024.

5.2 GPA Award nomination

The EDPB Secretariat recalled that every year the GPA is distributing awards in different categories and that a number of initiatives taken by the EDPB last year can be good candidates, namely the SME tools and actions related to enforcement cooperation including tools for inspections.

It was suggested that the EDPB applies for the relevant categories of awards. The EDPB members unanimously approved the idea.

5.3 Nordic DPAs meeting - information

The IS SA provided an update from the Nordic DPAs meeting which took place on 15-16 May 2023 in Iceland and informed that the Nordic DPAs have adopted the Reykjavik Declaration.

Election of the EDPB Chair and EDPB Deputy Chair

The EDPB members proceeded with the election of the new Chair of the EDPB.

In the first round, Anu Talus (FI SA) obtained 13 votes, Aleid Wolfsen (NL SA) 8 votes and Ventsislav Karadjov (BG SA) 6 votes. 1 vote was invalid. 2 EEA members supported Anu Talus and 1 supported Aleid Wolfsen.

Following that vote, Ventsislav Karadjov decided to withdraw his application.

Another round of votes was organised. Talus (FI SA) was elected as the new Chair of the EDPB with 19 votes. 8 EU EDPB members voted in favour of Aleid Wolfsen and 1 vote was invalid. 2 EEA members supported Anu Talus and 1 supported Aleid Wolfsen.

The EDPB members then proceeded with the election of a new deputy chair of the EDPB. In the first round, Irene Loizidou Nikolaidou (CY SA) obtained 13 votes, Zdravko Vukić (HR SA) 8 votes and Ekaterina Macuka (LV SA) 6 votes. 1 vote was invalid. 2 EEA members supported Irene Loizidou Nikolaidou and 1 supported Ekaterina Macuka.

Following that vote, Ekaterina Macuka decided to withdraw her application.

A second round of votes took place. Irene Loizidou Nikolaidou (CY DPA) was elected as the new deputy chair of the EDPB with 17 votes. 11 EU EDPB members voted in favour of Zdravko Vukić. 2 EEA members supported Irene Loizidou Nikolaidou, and 1 EEA member supported Zdravko Vukić.

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, ISSA, IT SA, LI SA, LT SA, LU SA, LV SA, MT SA, NL SA, NO SA, PL SA, PT SA, RO SA, SE SA, SI SA, SK SA

- European Commission

- Observers: AL SA, MD SA. In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for point 4.1.1 of the agenda.

- EDPB Secretariat