



Final

90th Plenary meeting

13 February 2024, in person

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.

I. Adoption of the minutes and of the agenda, Information given by the Chair

I.1 Minutes of the 89th 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.

I.2 Draft agenda of the 90th EDPB meeting – adoption

One member of the EDPB requested to provide an update regarding their mandate under AOB,

The draft agenda was adopted with the inclusion of the requested additional AOB point.

The discussions relating to agenda point B.1.1 was declared confidential according to Art. 33 EDPB RoP.

I.3 Information on the future election of a Deputy-Chair due to expiry of Aleid Wolfsen's mandate

Before introducing this point, the Chair welcomed the new Commissioner of the PL SA, Mirosław Wróblewski, and invited him to take the floor. The Chair then congratulated Marie-Laure Denis, who

was reappointed as president of the FR SA for a second mandate. Finally, the Chair paid tribute to Helen Dixon, whose mandate as Commissioner of the IE SA will end on 19 February.

The Chair then introduced the next item, the organisation of the elections for an EDPB Deputy Chair. The Chair informed the members that the term of Aleid Wolfsen will end on 15 May 2024, and took the opportunity to thank him for the work done and the fruitful cooperation over the last year. Given that the elections of the EDPB Chair and deputy Chairs have to take place by secret ballot, the Chair shared her preference to organise the election during the in-person meeting in June (on the second day, 19 June). The EDPB members agreed that the election would take place during the June plenary meeting.

A Agenda items for adoption

In accordance with the agenda, one A item relating to a mandate on Open Finance was postponed to a future plenary meeting. A single vote was organised for the two remaining point A agenda items and they were adopted unanimously:

- Draft Opinion of the BCR-Controller of Telefonica
- Draft Opinion of the BCR-Processor of Accenture

B. Agenda items for discussion

B.1.1. Draft opinion art. 64(2) on the notion of main establishment

The Chair recalled previous discussions on this topic at the plenary and the state of play. Then the Secretariat, acting as rapporteur, presented the info note. No other comments had been shared with the Secretariat. Two members intervened to recall previous discussions and to state that they would be abstaining as they did not agree on all the points of the opinion.

24 EU members of the EDPB voted in favour of adoption, 4 EU members abstained, and 3 EEA members voted in favour of the adoption.

B.1.2. Request for mandate on Pay or OK model

The Chair recalled the previous discussions on the topic and the agreement following the last plenary to send the draft request for mandate back to the KEYP ESG to be revised, in light of the expected request for an Art. 64.2. opinion, which has in the meantime been received and broadcast to the members. The lead rapporteur then presented the info note and the two discussion points regarding the timeline and the scope of the guidance. All members agreed on the importance to work on the guidance that will complement the work on Art. 64.2. opinion, which will address the Consent or Pay model in the context of large online platforms. Several members expressed a preference for first concluding the work on the Art. 64.2 opinion before working on these guidelines for different reasons: to avoid potentially overlapping scope between the two documents, to avoid coordination difficulties, to avoid possible insufficient resources to work on both documents in parallel but also on the possible difficulty to set a clear scope of the guidance before the work on the opinion has been concluded. Several members stressed the importance of the topic and the urgent need for consistency on the matter, considering the fact that they have national cases to be dealt within a certain deadline.

20 EU members of the EDPB voted in favour of postponing the adoption of the request for mandate, 7 EU members voted against and 1 EU member abstained. 3 EEA members of the EDPB voted in favour of postponing the adoption of the request for mandate.

Considering the fact that, although no mandate was not approved, all the members agreed on the importance to work on the Guidance after the Art. 64.2 opinion, the Chair proposed to include a sentence in the press release mentioning the need to consecutively develop Guidelines with a broader scope than the opinion. The Members agreed with this proposal.

B.1.3. EDPB Secondment Program: Report and decision to launch a definitive programme

The EDPB Secondment Program aims to facilitate staff exchanges between data protection authorities, the EDPS and the EDPB Secretariat. A pilot program was launched in June 2019, was temporarily suspended due to the pandemic and restarted in February 2022. Between the summer of 2022 and the summer 2023, 22 officers visited 15 host authorities.

The EDPB Secretariat presented the assessment of the pilot secondment programme, and the feedback collected, which was very positive. The EDPB Secretariat then presented the draft EDPB-EDPS Joint Decision which would transform the pilot programme into a regular one. In accordance with this draft decision, a call for applications would be launched every two years. A call for expression of interest would be published. The SAs willing to host secondees will be able to express their interest and interested staff would have the opportunity to apply through their authorities. If the members agree on the way forward, the Chair would sign the Joint Decision on behalf of the EDPB. Several members intervened to underline the value of the secondment programme, both as host and sending authority. The members expressed their general support and the Chair will therefore sign the Joint Decision.

B.1.4. 2023 SPE annual report

The EDPB Secretariat presented the report, summarised the topics covered during 2023, and highlighted some changes which had been done to the dedicated space in Confluence to give access to projects which have been finalised. The plenary took note of the information provided.

One member suggested examining the possibility of making a public version of the report. The EDPB Secretariat will work on this and will liaise with SPE contact points and the relevant ESGs as needed.

B.1.5. EDPB statement on legislative developments regarding the CSAM proposal

The lead rapporteur presented the state of play and the key elements of the statement. The EC intervened to underline the importance of detection for the protection of children and that that this is a measure of last resort in the proposal. The EC also highlighted the need to strike a balance between all fundamental rights at stake. There were no further comments on the draft statement and the EDPB members adopted it unanimously.

C. Organisational matters

C.1. Appointment of EDPB representatives for DPF review team

The EDPB Secretariat explained that the EC had invited the EDPB to appoint its representatives for the DPF review team. The appointed representatives will be called to represent the EDPB and, consequently, will align their positions with the ITS and BTLE ESGs. The EDPB Secretariat asked the plenary to decide on two matters: first, the appointment of the representatives and second, that the appointment is understood as being entrusted to a specific person, based on their personal qualifications, and not to the authority they are working for. Therefore, if one of the representatives leaves their post, the EDPB would have to appoint a new representative.

The EDPB members agreed to appoint the following five candidates for the DPF review team: [REDACTED] (DE Hessen SA); [REDACTED] (DE Federal SA); [REDACTED] (DE Federal SA); [REDACTED] (DK SA) and [REDACTED] (EDPS).

C.2. Appointment of EDPB Representatives to the DMA HLG Subgroup on Article 5.2 DMA

The Chair recalled that the EDPB had previously appointed 5 representatives and an alternate for the DMA High Level Group, and explained that a call for interest would soon be shared to replace the permanent position of Helen Dixon at the HLG DMA.

The Chair then explained that the present request relates to a subgroup of this High Level Group which focuses on Art. 5.2 DMA, and is an important point of connection between the DMA and the GDPR. The Chair then gave the floor to the EDPB Secretariat.

The EDPB Secretariat explained that the EC had invited the EDPB to appoint 5 representatives. Together with the EDPS representative, they will constitute the EDPB-EDPS delegation. The appointed representatives will be called to represent the EDPB, and, consequently, will align their positions with the taskforce on competition and consumer law.

The EDPB Secretariat also informed the members that a kick off meeting had already taken place on 5 February which was attended by ad hoc representatives from the EDPS, DE-Hamburg SA, IT SA and IE SA, as well as a representative of the EDPB Secretariat.

The EDPB Secretariat asked the plenary to decide on two matters: first, the appointment of the five permanent representatives and two alternates, and second, that the nomination is understood as being entrusted to a specific person, based on their personal qualifications, and not to the authority they are working for. Therefore, if one of the representatives leaves their post, the EDPB would have to appoint a new representative.

The EDPB members agreed to appoint the following five candidates as EDPB permanent representatives: [REDACTED] (DE Hamburg SA), [REDACTED] (ES SA), [REDACTED] (IE SA), [REDACTED] (IT SA) and [REDACTED] (NL SA). In addition, [REDACTED] (ES SA) and [REDACTED] (IT SA) were appointed as alternates. The EDPB members also confirmed the willingness to have support from a staff member of the EDPB Secretariat.

C.3. Appointment of EDPB Representatives to the DSA Age verification taskforce Subgroup

The EDPB Secretariat explained that the EC has invited the EDPB to appoint 3 representatives with expertise in age verification. It was also agreed that two alternates can also be appointed. The appointed representatives will represent the EDPB, and consequently, will align their positions with the relevant ESGs (KEYP, TECH, SOCM) and liaise with them, when necessary.

The EDPB Secretariat also informed the members that a kick off meeting had already taken place on 23 January, which was attended by ad hoc representatives from the FR SA and ES SA, as well as a representative of the EDPB Secretariat.

The EDPB Secretariat asked the plenary to decide on two matters: first, the appointment of three representatives and two alternates, and second, that the appointment is understood as being entrusted to a specific person, based on their personal qualifications, and not to the authority they are working for. Therefore, if one of the representatives leaves their post, the EDPB would have to appoint a new representative.

The EDPB members agreed to appoint the following three candidates as EDPB permanent representatives: [REDACTED] (ES SA), [REDACTED] (FR SA), and [REDACTED] (IE SA). In addition, [REDACTED] (ES SA) and [REDACTED] (IT SA) were appointed as alternates.

C.4. EDPB Plenary dates for 2025

The EDPB Secretariat presented the indicative meeting dates for plenaries in 2025, with the suggestion to hold in person and remote meetings in rotation, with 5 in person meetings.

The EDPB members unanimously adopted the timetable of dates for plenary meetings in 2025.

D. Agenda items for information

D.2 Updates from EDPB participants

D.2.1. OSS Case Digest on Security of Processing and Data Breach Notification

The EDPB Secretariat presented the project, which was carried out in the context of the support pool of experts (SPE) last year, and consisted in summarising the relevant one stop shop decisions regarding security and data breaches to better inform the SAs and the general public. 90 decisions were analysed and were divided in three groups: data breaches due to malicious attacks by external parties, data breaches due to poor security practices and data breaches due to human errors. The case digest has been published on the EDPB website, and members were encouraged to share it internally, and especially with their teams working on enforcement and security. A new case digest will be commissioned this year and the topic has not yet been decided. The plenary took note of the information provided, and the Chair invited the members to share any proposals for the topic of the next case digest with the EDPB Secretariat.

D.3 Any other business

D.3.1. CJEU judgment on C-33/22

The AT SA briefly presented the background of the case, and highlighted its relevance for SAs. The Court of Justice clarified the scope of application of GDPR and the monitoring competence of data protection authorities to activities carried out by a committee of inquiring set up by the parliament of a Member State. The members took note of the information and underlined the importance of sharing these updates within the EDPB.

D.3.2. Update from the Commissioner of the DE Federal SA

Ulrich Kelber, Federal Commissioner of the DE SA, informed the members that, following the end of his first mandate last month, he is currently acting Commissioner and it is not yet known whether he will be reappointed. He therefore took the opportunity to thank all the EDPB members for the good cooperation during the last years. The Chair paid tribute to Mr. Kelber's contribution as a valuable member of the Board and thanked him for all the work done.

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, 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: GE, MD, MK, RS; In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for point B.1.1 of the agenda.

- EDPB Secretariat