



Final

89th Plenary meeting

16 January 2024, 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.

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

I.1 Minutes of the 88th 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.

The Chair provided an update concerning the publication on the EDPB website of the EDPB response to the letter of the Personal Information Protection Commission of Republic of Korea (Korean SA). The publication of the reply has been delayed at the request of the Korean SA, in light of an ongoing court case in Korea. The letter was published in January.

The Chair also shared information concerning the bilateral meetings that the Belgian Presidency of the Council is currently organising with the Member States' governments on the topic of the EU COM Proposal for a Regulation laying down additional procedural rules to the enforcement of the GDPR.

I.2 Draft agenda of the 89th EDPB meeting – adoption

One member of the EDPB requested to have, under AOB, an update from the EU COM on the ongoing negotiations on the EU COM Proposal for a Regulation on procedural rules that currently take place in the Council. Another member of the EDPB suggested discussing the ongoing negotiations at the Council and streamlining cooperation between SAs which are consulted by their respective government.

The draft agenda was adopted with the inclusion of an AOB point on the EC Proposal for a Regulation on procedural rules.

The discussions relating to agenda points A.3 and B.1.2 were declared confidential according to Art. 33 EDPB RoP.

A Agenda items for adoption

The Chair recalled that the changes introduced in the format of the agenda is a consequence of the 'Best practices for the organisation of EDPB Plenary meetings' document adopted in November 2023. Point A items are in principle adopted together via a single vote, without the need to have a presentation nor a discussion on the matter at the Plenary meeting. Any member may, at any time before the adoption of the agenda, ask to disjoin a draft which, in its view, should be debated or amended. This type of request should be made as early as possible, in order to allow the members to prepare for the discussions.

There was no request to discuss the proposed A items. A single vote was organised for the three point A agenda items and they were all adopted unanimously:

- Article 64 opinions windows' approach for accreditation and certification opinions;
- Request for mandate regarding Guidelines on the Interplay Between the Digital Services Act (DSA) and the GDPR;
- Draft Opinion on the draft decision of the NL DPA regarding the Processor Binding Corporate Rules of the Booking.com Group.

B. Agenda items for discussion

B.1.1. Confirmation of mandate of the ChatGPT Taskforce and work on generative AI

The Chair recalled previous discussions on the topic and the state of play. Then, the rapporteur presented the info note and the discussion points on the confirmation of the current mandate of the ChatGPT Taskforce, the possible extension of this mandate to other generative AI tools, and the preparation of a new mandate regarding work on the topic of generative AI in general within the EDPB. The rapporteur also explained that the taskforce members have agreed to prepare a report covering only ChatGPT-related matters.

After exchanging views on the mandate of the ChatGPT Taskforce, the EDPB members took a vote and decided to keep the current mandate of the Taskforce as clarified in the info note, including the idea of preparing a report on the activities of the Taskforce, which will then be made public.

17 EU members of the EDPB voted in favour of keeping the mandate of the ChatGPT Taskforce as clarified in the info note, 1 EEA member was in favour of this. 10 EU member of the EDPB voted in favour of extending the mandate of the ChatGPT Taskforce to other generative AI tools and 2 EEA members of the EDPB were in favour of such extension. 1 EU member of the EDPB abstained.

Then, as to the mandate on generative AI in general, the EDPB members unanimously decided that the KEYP and TECH ESG will jointly prepare a request for mandate, which would outline the proposed actions and distribution of tasks depending on each of the two ESGs fields of expertise.

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

The Chair recalled the previous discussions on the topic and the agreement to task the KEYP ESG with the preparation of a request for mandate to start working on EDPB guidance and recalled that the NL

SA recently communicated their intention to request an Opinion under Article 64(2) GDPR, together with the NO SA and DE Hamburg SA. Following this, some members of the board suggested to put parallel work at the KEYP ESG on hold, until the EDPB delivers its opinion.

The EDPB members discussed the possible way forward and decided not to vote on the request for mandate from the KEYP ESG today and postpone the discussion to the next EDPB plenary meeting in order to enable the KEYP ESG to take into consideration the Opinion under Article 64(2) GDPR.

B.1.3. EDPB Report on the Coordinated Enforcement Framework on the Position and Designation of DPOs and national reports

The Chair introduced the item. The rapporteur explained that the conclusions of the report are encouraging and that, overall, DPOs are regularly consulted. Yet, there is room for improvement and the report provides a list of recommendations and points of attention aimed at different stakeholders - at controllers and processors, at individual SAs and at the EDPB. The rapporteur also informed that two minor updates have been made in the version after it has been shared with the members in order to correct inaccurate figures, clarify the chronology and correct some footnotes.

One EDPB member commented that it is also important to discuss, in future, how the SAs coordinate their actions and aggregate data, as the data collection and investigation methods might be heterogeneous at times.

The EDPB members adopted the report unanimously.

C. Organisational matters

C.1. Designation of new co-coordinator for Key provisions ESG

The Chair informed that the KEYP ESG has nominated [REDACTED] as second coordinator of the KEYP ESG and has requested the EDPB plenary to endorse the nomination.

The EDPB members unanimously designated [REDACTED] as second coordinator of the KEYP ESG.

D. Agenda items for information

D.2 Updates from EDPB participants

D.2.1. Semestrial update on the work of the Coordinated Supervision Committee

The CSC Coordinator informed that Sebastian Hümmeler (DE SA) has been elected Deputy Coordinator of the CSC for a term of two years.

In accordance with Article 4(2) of the CSC Rules of Procedure, the Deputy Coordinator presented the final report on the work of the CSC carried out during the second half of 2023. More specifically, the EDPB members were informed that the entry into operation of the European Travel Information and Authorisation System (ETIAS) has been postponed, presumably to mid-2025. The CSC Deputy Coordinator then provided updates on the CSC activities in relation to SIS, Europol, the EPPO, Eurojust, and IMI. He highlighted that the CSC has been playing a key role as a platform for cooperation and mutual assistance among SAs, as well as in performing inspections and promoting a closer engagement between the central and national level. It has also been a forum for exchange of information, experiences and ideas. In line with its Work Programme 2022-2024, the Committee has also fostered the dialogue and the engagement with stakeholders and extended its role as a forum for exchange to members of the civil society. The Deputy Coordinator stressed that the Committee will need to ensure efficient and resourceful coordinated supervision also in the future, when it will have

seven additional EU information systems to supervise (VIS, EES, ETIAS, ECRIS-TCN, Eurodac and CIS). Finally, the Committee has allocated more time for its meetings in 2024.

D.2.2. EC update on adequacy findings and tools for international transfers

The EU COM provided an update on adequacy findings and tools for international transfers. It informed the EDPB members that it has published its report containing findings on the first review of the eleven adequacy decisions adopted on the basis of Article 25(6) Directive 95/46/EC. The EU COM will provide a more detailed presentation at the ITS ESG but would also be available to discuss at plenary level, should the EDPB members have any questions. The EU COM stressed that adequacy decisions remain an important tool but not to the exclusion of other tools allowing to bridge differences, and that it is actively working with regional and international organisations in order to create a network effect. The EU COM also highlighted that the EU is broadening all of the tools in the transfer toolbox, including Codes of Conduct and certification.

Two EDPB members suggested to also start thinking about the role the EU can play in the promotion of personal data transfers among third countries and in the debates about the use of non-EU-based ways to exchange data. Another EDPB member highlighted the importance of not lowering the high level of standards that apply in the EU.

Finally, the EU COM ensured that it will keep the EDPB updated on developments concerning the UK.

D.2.3. OSS Case Digest on Security of Processing and Data Breach Notification

The EDPB Secretariat informed that the OSS case Digest on Security of Processing and Data Breach Notification, which was prepared as an SPE project, is now finalised and will be published on the EDPB website soon, together with its Annex. The Secretariat will make a more detailed presentation at the EDPB plenary meeting in February.

D.3 Any other business

D.3.1. Publication of the EDPB website auditing tool

The EDPB Secretariat informed that the code of the EDPB website auditing tool will be published soon on code.europa.eu under an Open Source Licence (EUPL 1.2+) and recalled that version 1 was already presented and made available to the SAs. A boot camp was also organised in June 2023. In the meantime, some bugs have been fixed and the plan is to publish the Code on 29 January. A new version of the tool with more functionalities is also being developed as a new SPE project. The Secretariat will provide additional updates in due time.

D.3.2. Updates on the EU COM Proposal for a Regulation laying down additional procedural rules to the enforcement of the GDPR

The EU COM informed that the discussions on the Proposal are ongoing at the Council and the European Parliament and that the Belgian Presidency is committed to making progress on the file. The EU COM also informed that the European Economic and Social Committee has published an overall positive Opinion on the Proposal. The EU COM also informed that the EP has adopted a draft report in December 2023 and a final report is to be expected soon.

One EDPB member then shared feedback and raised additional questions on the ongoing negotiations at the Council. Another EDPB member encouraged SAs to be active in providing clarifications to their national governments and defending the EDPB position, as presented in Joint Opinion 01/2023. It was also suggested to consider ways for the EDPB members to keep each other informed on the negotiation process and latest developments.

The EDPB members decided to create a dedicated thread in the EDPB Hub.

At the end of the meeting, the Chair congratulated Dr. Matthias Schmidl and Elisabeth Wagner from the AT SA on their recent appointment as Commissioner and Deputy Commissioner respectively. She also thanked François Pellegrini from the CNIL for his cooperation and valuable contribution to the work of the EDPB.

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: AL, GE, MD, MK; In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points A.3, B.1.2, D.2.2 of the agenda.

- EDPB Secretariat