

2021

ANNUAL REPORT

Enhancing the depth
and breadth of
data protection

EXECUTIVE SUMMARY



European Data Protection Board

ENHANCING THE DEPTH AND BREADTH OF DATA PROTECTION EXECUTIVE SUMMARY

Further details about the EDPB can be found on our website at edpb.europa.eu.



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. 2021 – HIGHLIGHTS

1.1. GUIDANCE FOLLOWING THE *SCHREMS II* RULING

As part of its guidance work following the Case C-311/18 *Schrems II* ruling by the Court of Justice of the European Union, the EDPB issued recommendations and a joint opinion with the EDPS. The updated [Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data following public consultation](#) complement and are consistent with the European Commission's Standard Contractual Clauses (SCCs) for international data transfers. The EDPS-EDPB Joint Opinion 02/2021 on SCCs for the transfer of personal data to third countries guides exporters on how to apply the SCCs correctly by taking into account the new requirements under the GDPR and the *Schrems II* ruling.

1.2. EDPB-EDPS JOINT OPINION ON THE ARTIFICIAL INTELLIGENCE ACT

Following the publication of the European Commission's Proposal for a Regulation laying down harmonised rules on artificial intelligence (AI), the EDPB and the EDPS adopted the [Joint Opinion 05/2021 on the proposal for a regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence \(Artificial Intelligence Act\)](#). The joint opinion covers points regarding the proposal's scope, risk-based approach and alignment with the GDPR, but also prohibited uses of AI, high-risk AI systems, governance and European AI Board, regulatory sandboxes and interaction with the data protection framework.

1.3. ART. 65 GDPR BINDING DECISION ON WHATSAPP IRELAND

The EDPB adopted a binding decision based on Art. 65(1) (a) GDPR, which sought to address the lack of consensus on certain aspects of a draft decision issued by the Irish SA as lead supervisory authority (LSA) regarding WhatsApp Ireland Ltd. (WhatsApp IE) and the subsequent objections expressed by a number of concerned supervisory authorities (CSAs). The EDPB concluded that the Irish SA should amend its draft decision on WhatsApp IE regarding infringements of transparency, the period to bring processing operations into compliance and the calculation of the fine.

1.4. FIRST URGENT BINDING DECISION UNDER ART. 66 GDPR

The EDPB adopted its first urgent binding decision under Art. 66(2) GDPR following a request from the Hamburg SA, which had adopted provisional measures against Facebook Ireland Ltd. (Facebook IE) under Art. 66(1) GDPR. The provisional measures prohibited Facebook IE from processing, for three months, the data of German residents using WhatsApp for Facebook IE's own purposes, following a change in the Terms of Service and Privacy Policy applicable to European users of WhatsApp IE.

The EDPB decided that the conditions to prove the existence of an infringement to the GDPR and the urgency to adopt final measures were not met, hence stating that the Irish SA did not need to adopt final measures against Facebook IE. The EDPB, however requested the Irish SA to perform, as a matter of priority, a statutory investigation; to determine whether such processing activities were taking place or not and, if they were, whether they had a proper legal basis under Art. 5(1)(a) and Art. 6(1) GDPR; and to further investigate the role of Facebook IE.

1.5. EDPB OPINIONS ON DRAFT UK ADEQUACY DECISIONS

In 2021, the EDPB issued two opinions on the European Commission draft Implementing Decisions on the adequate protection of personal data in the UK and recommendations on the adequacy referential under the Law Enforcement Directive (LED).

[Opinion 14/2021](#) relates to the adequate protection of personal data in the UK pursuant to the GDPR. It assesses general data protection aspects of the UK legal framework. The opinion also examines the UK public authorities' access to personal data transferred from the EEA to the UK, for the purposes of law enforcement and national security. [Opinion 15/2021](#) also relates to the adequate protection of personal data in the UK but is based on the LED. It analyses the draft adequacy decision in the light of [Recommendations 01/2021](#), as well as the relevant case law reflected in [Recommendations 02/2020 on the European Essential Guarantees for surveillance measures](#). This was the first draft implementing decision on a third country's adequacy under the LED ever presented by the European Commission and assessed by the EDPB. [Recommendations 01/2021 on the adequacy referential under the LED](#) provide guidance to the European Commission on the level of data protection in third countries and international organisations under the LED.

2. EUROPEAN DATA PROTECTION BOARD ACTIVITIES IN 2021

To ensure the consistent application of the GDPR across the EEA, the EDPB issues general guidance to clarify European data protection laws. In 2021, the EDPB adopted 14 [guidelines](#) and [recommendations](#) on topics such as data breach notifications, codes of conduct as data transfer tools, storing credit card data, virtual voice assistants and the meaning of

specific terms in the GDPR. Amongst those guidelines and recommendations, the EDPB also adopted six documents after public consultation.

The EDPB also adopted 15 legislative [consultations](#) or [statements](#) addressed to the EU legislator or Member States.

The EDPB issued consistency opinions to ensure the consistent application of the GDPR by national SAs. In 2021, they issued 35 [opinions](#) under Art. 64 GDPR. These opinions mainly concerned draft decisions regarding Binding Corporate Rules, draft accreditation requirements for a code of conduct monitoring body or a certification body, as well as draft Standard Contractual Clauses.

3. SUPERVISORY AUTHORITY ACTIVITIES IN 2021

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. The EDPB also maintains a [register](#) of decisions taken by national SAs in line with the One-Stop-Shop cooperation procedure (Art. 60 GDPR).

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 2021, there were 506 entries of cross-border cases in the database out of which 375 originated from a complaint, while 131 had other origins, such as investigations, legal obligations and/or media reports.

The One-Stop-Shop mechanism necessitates 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 about the data controller or processor. Between 1 January 2021 and 31 December 2021, there were 209 draft decisions, which resulted in 141 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 prior authorisations or investigations. Between 1 January 2021 and 31 December 2021, SAs initiated 243 formal mutual assistance procedures and 2418 voluntary mutual assistance procedures.

4. STAKEHOLDER CONSULTATION

The EDPB conducted a survey as part of the annual review of the EDPB's activities under Art. 71(2) GDPR. Questions centred on the EDPB's work and output in 2021, with a focus on its guidelines and recommendations, all with a view to understanding the extent to which stakeholders find the EDPB's guidance helpful in interpreting the GDPR's provisions, and in order to identify future paths to better support individuals and organisations as they interact with the EU data protection framework.

5. STRATEGY AND OBJECTIVES FOR 2022

The EDPB's *Strategy for 2021-2023* includes four main pillars, as well as a set of three key actions per pillar to help achieve these goals. In early 2021, the EDPB adopted its two-year *work programme* for 2021-2022, according to Art. 29 of the EDPB Rules of Procedure. The work programme follows the priorities set out in the Strategy and will put these into practice.

CONTACT DETAILS

Postal address
Rue Wiertz 60, B-1047 Brussels

Office address
Rue Montoyer 30, B-1000 Brussels