



Final

## 91st Plenary meeting

14 March 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 90th Plenary meeting – adoption

The Chair started the meeting with congratulations to Mr Zdravko Vukić for being re-elected as the Director of the HR SA, as well as to Dr. Des Hogan and Mr. Dale Sunderland on their new roles as Commissioners with the IE SA. The Chair also welcomed Ms. Anne Debet (Commissioner, FR SA), [REDACTED] IT SA) and [REDACTED] ES SA).

The Chair then provided an update on the high level meeting with adequacy countries that took place on 4 March at the initiative of Commissioner Reynders.

Following this, the minutes of the previous plenary meeting were discussed and adopted unanimously. The members of the EDPB also agreed on the public version of the minutes.

## I.2. Draft agenda of the 91st EDPB meeting – adoption

The draft agenda was adopted with the inclusion of three AOB points: one concerning initiatives taken by the SAs at national level ahead of the upcoming European elections, one concerning the EDPS recent decision on the use of Microsoft 365 by the EU COM and one concerning EU grants for DPAs.

### A. Agenda items for adoption

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:

- Opinion on the ES SA's draft decision on the MAPFRE BCR-C (International Transfers ESG);
- Request for a mandate regarding guidelines on urgency procedure under Article 66 GDPR;
- Request for a mandate regarding financial data access and payment packages of the European Commission.

### B. Agenda items for discussion

#### B.1. Agenda items for discussion in view of adoption

##### B.1.1. Request for a mandate relating to age verification criteria

The rapporteur presented the request for mandate and explained that the aim would be to have a consistent approach with regard to the general data protection principles and criteria for age verification systems, especially considering that the deployment of such systems is required under several EU legal instruments. Following this, the EDPB members discussed the request.

The mandate was adopted unanimously.

##### B.1.2. Request for an extension of the mandate regarding guidance on Article 48 GDPR

The ITS Coordinator presented the request to extend the mandate on Article 48 GDPR guidelines to expand the scope of the guidance beyond law enforcement and national security access requests. The proposed extension for the scope would include any other areas where EU companies receive requests from third country authorities, such as from financial supervision authorities or competition authorities.

The mandate was adopted unanimously.

##### B.1.3. Renewal of EDPB observer status in the GPA

The Chair recalled that the EDPB is an observer at the Global Privacy Assembly ('GPA') and attends the GPA's annual meetings. The current observer status was granted in 2019 and will expire in April 2024. She therefore suggested that the EDPB re-applies for the observer status. The EDPB members agreed with this proposal.

#### B.2. Policy debate

##### B.2.1. Presentation of the Fundamental Rights Agency on their draft conclusions of the GDPR evaluation

The Chair recalled that the European Commission has invited the Fundamental Rights Agency ('FRA') to support the evaluation and review of the application of the GDPR, which is due by mid-2024. In this context, the FRA has carried out a research project on the experiences and practical challenges of national data protection authorities when implementing their tasks. The purpose was to assess the practical impact of the lack of resources. Representatives from the FRA were invited to the Plenary meeting to discuss this project.

The representative from the FRA thanked the EDPB members for the opportunity to discuss the project and presented the purpose, scope, methodology, as well as the key findings and opinions of FRA's research. She explained that a first report has already been shared with the EU COM in December 2023 which only outlined trends. In June 2024, the FRA will publish a full report which also contains the findings and opinions that reflect information collected during interviews with representatives of the national SAs. The FRA representative also explained the added value of the research and the limitations of the report, and emphasised that it is not a comprehensive assessment in itself but one which feeds the assessment carried out by the EU COM. Following the presentation, a discussion with the EDPB members took place. The EDPB members were also invited to share with the FRA any written input they may have on the report.

## C. Organisational matters

### C.1. Discussion on the rising number of requests for Article 64(2) opinions

One EDPB member initiated a discussion on the recent increase of requests for Article 64(2) GDPR opinions and the impact on the workload of the SAs and the EDPB Secretariat. Fully mindful of the Vienna Statement underlining the interest of this instrument, the EDPB member suggested to think about possible ways to streamline the future approach while considering the important number of Article 65 or 66 procedures. Following this, the EDPB members exchanged views on the matter. The need to distinguish situations where guidelines are more suitable, including because they are subject to public consultations, was highlighted. It was decided to organise a workshop in order to dedicate more time to exploring ways to further optimise the work of the EDPB under the consistency procedure and its efficiency.

### C.2. Appointment of representative(s) for the DMA High Level Group / subgroups

The Chair recalled that the EDPB needs to appoint one representative to the High-Level Group for the DMA following the end of the mandate of ██████████ at the IE SA and one representative to the Article 5(2) DMA Subgroup following the end of the mandate of ██████████ at the DE HH SA in March 2024.

The EDPB Secretariat then recalled that, following the call for expression of interest, two candidates have expressed an interest to represent the EDPB at the High-Level Group for the DMA - ██████████ (IE SA) and ██████████ (DE HH SA). An anonymous vote has taken place and the EDPB members have designated ██████████ (IE SA) with 18 votes.

The EDPB plenary officially appointed ██████████ (IE SA) as EDPB representative and ██████████ (DE HH SA) as alternate EDPB representative.

Then, concerning the EDPB-EDPS delegation to the Article 5(2) DMA Subgroup, the EDPB Secretariat informed the Plenary that, following a call for an expression of interest, there has been only one candidate to succeed to ██████████ (DE HH SA) at the Article 5(2) Subgroup, namely ██████████ (DE HH SA).

The EDPB plenary officially appointed ██████████ (DE HH SA) as one of the EDPB representatives to the Article 5(2) Subgroup.

The nominations are understood as being entrusted to a specific person, based on their personal qualifications, and not to the authority for which that person works.

In line with Art. 3.1 of the Commission Decision of 23 March 2023, the successful representative is appointed only for the remainder of the term left (i.e. until May 2025 for ██████████ and until

February 2026 for [REDACTED]). The mandate is renewable once, which means that if the mandate of the representative is renewed, they will then be appointed for a full two-year term. The appointed representatives will be called to represent the EDPB and, consequently, will align their positions with the taskforce on competition and consumer law.

## D. Agenda items for information

### D.2. Updates from EDPB participants

#### D.2.1. IMI – Statistics on Article 60 Decisions

The IT Users Coordinator recalled that, in addition to the IT Users ESG's general mandate on statistics, the IT Users ESG has been requested to explore ways to provide more granularity on the Article 60 Final Decisions adopted by the LSA, in particular for amicable settlements and similar decisions, in order to improve the accuracy of statistics. The IT Users ESG, after having consulted the COOP ESG, has proposed to implement functionalities in the IMI system that will allow the LSA to indicate which of three possible types of Article 60(7) GDPR final decisions it is adopting. These possible types are:

- The decision is a *sui generis* decision
- The decision closes a complaint with no action towards the controller/processor
- The decision constitutes an action towards the controller/processor

For the final option, it would also be possible to indicate the type of corrective measure imposed on the controller or processor, where applicable. Following a question of a member requiring clarification, the EDPB Secretariat proposed to discuss the matter bilaterally.

The EDPB members discussed the proposal and agreed to endorse the way forward, as proposed by the IT Users ESG. They also agreed that indicating the type of corrective measure imposed on the controller or processor will be mandatory for the LSA.

#### D.2.2. Update on the work of ITS and BTLE ESGs regarding the EC's report on 11 adequacy decisions adopted under Directive 95/45

The ITS Coordinator recalled that the EU COM has reviewed and upheld 11 adequacy decisions adopted under Directive 95/45. As no adequacy decision has been repealed, amended or suspended, the EDPB was not asked to provide an opinion under Article 70(1)(s) GDPR. Volunteers from the ITS and BTLE ESG have agreed to go through the report and assess the need for a statement or other reaction from the EDPB. The two subgroups will discuss the way forward and the plenary will be presented with the conclusions in due time. The EDPB members took note of the way forward agreed upon by the ITS and BTLE ESGs.

### D.3. Any other business

#### D.3.1. Presentation IAB-Europe Judgment CJEU

The BE SA presented the CJEU judgement in Case C-604/22 *IAB Europe*. The BE SA explained that the Court has provided important clarifications on what can constitute personal data within the meaning of the GDPR, as well as on the qualification of a company as a joint controller. The BE SA also recalled that the action is still pending before the referring national court, which will now rule on the merits in light of the answers provided to the preliminary questions by the CJEU.

### D.3.2. Provisional measures against Tools for Humanity Corporation GMBH pursuant to Article 66(1) GDPR

The ES SA informed that, on 6 March 2024, it has adopted provisional measures against Tools for Humanity in accordance with article 66(1) GDP, ordering the company to stop the collection and processing of personal data, including of personal data already collected. The ES SA explained that they have received numerous complaints concerning the Worldcoin project due to insufficient provision of information to data subjects, the collection of data from minors and the impossibility of withdrawing consent. The ES SA underlined that their intention is to protect ES individuals but not to undermine the role of the DE BY SA as lead supervisory authority. The ES SA also informed that the measures have been challenged before the Spanish court, which has confirmed their legality.

Further updates will be provided in due time.

### D.3.3. Update on the upcoming European elections

One EDPB member informed that they are preparing a strategy to reach out to political parties ahead of the upcoming European elections in order to recall the applicable data protection rules in the context of micro targeting. Following this, the EDPB members exchanged on the different initiatives taken at national level, recalled the existence of the EDPB Statement 2/2019 on the use of personal data in the course of political campaigns and agreed that there is a need to assess a possible common action at the EDPB level.

### D.3.4. EDPS decision on the use of Microsoft 365 by the EU COM

The EDPS informed the EDPB members of its decision against the EU COM's use of Microsoft 365. In its decision of 8 March 2024, the EDPS found that the EU COM has infringed several key data protection rules under Regulation (EU) 2018/1725 and imposed corrective measures. The decision is part of the EDPS' actions in the context of the EDPS' participation in the 2022 Coordinated Enforcement Action of the EDPB. More information can be found on the EDPS website.

### D.3.5. EU grants for SAs

The EU COM recalled that they have sent a call for proposal in order to give lump sum grants to EU SAs. There has already been such a call in 2021 and the next one will take place in 2026 at the earliest. The EU COM explained that the aim of the grants is to support the activities carried out by national SAs to facilitate the implementation of GDPR obligations by small and medium-sized enterprises, as well as to raise awareness about the GDPR among the general public. The SAs were encouraged to apply.

The EDPB Chair closed the meeting by thanking [REDACTED] and [REDACTED] from the EDPB Secretariat who have been working for and actively contributing to the EDPB activities [REDACTED]

## Annex: Attendance List

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, LU SA, LV SA, MT SA, NL SA, NO SA, PL SA, PT SA, RO SA, SE SA, SI SA, SK SA.

The LT SA delegated its voting rights to the EE SA pursuant to Art. 22.5 of the Rules of Procedure.

European Commission

Observers:

- AL SA, GE SA, MD SA, MK SA. In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points A.1, D.2.2 and D.3.2 of the agenda.

EDPB Secretariat