

European Data Protection Board



At a glance



- The old Article 29 Working Party, whose members were the EU's national supervisory authorities, the European Data Protection Supervisor ("EDPS") and the European Commission, has been transformed into the "European Data Protection Board" ("EDPB"), with similar membership but an independent Secretariat.
- The EDPB has the status of an EU body with legal personality and extensive powers to determine disputes between national supervisory authorities, to give advice and guidance and to approve EU-wide codes and certification.



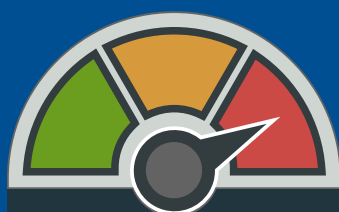
To do list



No immediate action is essential – unless perhaps you are a member of a national supervisory authority.



Nevertheless, the EDPB will be a major influence on EU Data Protection law and practice and you may wish to learn how to influence or challenge its decisions.



Degree of change

Commentary

The Article 29 Working Party, which was established by Directive 95/46/EC (the “Data Protection Directive”) and consists of representatives from EU Member State supervisory authorities together with the Commission and the EDPS, will be abolished by the GDPR. It is to be replaced by the EDPB, which will similarly be made up of the heads of national supervisory authorities (or their representatives) and the EDPS.

The Commission representative on the EDPB is a non-voting member and in states (such as Germany) with multiple supervisory authorities, the national law must arrange for a joint representative to be appointed. In dispute resolution cases, where a binding decision is to be given, the EDPS’s voting powers are restricted to circumstances in which the principles of the case would be applicable to the EU institutions.

The EDPB has a much enhanced status. It is not merely an advisory committee, but an independent body of the European Union with its own legal personality.

It is formally represented by its Chair, who has the chief role in organising the work of the EDPB and particularly in administering the conciliation procedure for disputes between national supervisory authorities. The Chair and two Deputies are elected from the membership of the EDPB and serve for five years, renewable once.

The EDPB normally decides matters by a simple majority, but rules of procedure and binding decisions (in the first instance) are to be determined by a two-thirds majority.

The EDPB is to adopt its own rules of procedure and organise its own affairs. The independence of the EDPB is emphasised. There seems to be an implicit suggestion that the Commission has exercised too great an influence over the Article 29 Working Party in the past and was seeking to consolidate this power.

The Secretary to the old Article 29 Working Party was a Commission official. The new EDPB will have its own Secretariat provided by the EDPS, but which acts solely under the direction of the chair of the EDPB.

The EDPB is given a long and detailed list of tasks, but its primary role is to contribute to the consistent application of the GDPR throughout the Union. It advises the Commission, in particular on the level of protection offered by third countries or international organisations, and promotes cooperation between national supervisory authorities. It issues guidelines, recommendations and statements of best practice: for example, on matters such as when a data breach is “likely to result in a high risk to the rights and freedoms” of individuals or on the requirements for Binding Corporate Rules. It is to encourage Codes of Practice and Certification, both of which will assist controllers and processors in demonstrating compliance with the GDPR.

Much of this list of tasks is an elaboration or formalisation of the activity of the current Article 29 Working Party, but the views and activities of the EDPB will have greater force and effect.

The EDPB’s most distinctive new role is to conciliate and determine disputes between national supervisory authorities. For more about that activity, see the section on [competence, tasks and powers](#). The old Article 29 Working Party was often criticised for not consulting adequately before taking decisions. The new EDPB is required to consult interested parties “where appropriate”. Notwithstanding the “get-out” qualification, this is a major benefit to those who may be affected by opinions, guidelines, advice and proposed best practice.

EDPB discussions are to be “confidential where the Board deems it necessary, as provided for in its rules of procedure”. This suggests that meetings and discussions will, in principle, be public unless otherwise determined.

Finally, the EDPB has to prepare an Annual Report.



Where can I find this?

Recitals 139 & 140, and Chapter VII Section 3