

Rules of Procedure for the “Informal Panel of EU DPAs” according to the EU-US Data Privacy Framework

Adopted on 17 April 2024

The “Informal Panel of EU DPAs” (hereinafter: “panel”) is designed according to recital 75 of the Commission Implementing Decision C(2023) 4745 of 10 July 2023 (hereinafter: Data Privacy Framework or DPF) and the supplemental principle III.5 (Operation of DPA Panels) of the Annex II.

The panel is competent for providing binding advice to the US organisations following unresolved DPF complaints from individuals about the handling of personal information that has been transferred from the European Union¹ (hereinafter: EU) under the Data Privacy Framework. The referral to the panel can be made either directly by the individual or by the US company. The panel will seek to deliver advice as quickly as the requirement for due process allows. As a general rule, the panel will aim to provide advice within 60 days after receiving a DPF complaint from an individual or a referral from an organisation concerned. This deadline is indicative and not binding for the DPAs. However, advice will be issued by the panel only after both sides in a dispute have had a reasonable opportunity to comment and to provide any evidence they wish. The advice has the aim to bring the processing activities of personal data transferred under the Data Privacy Framework in line with the DPF. In cases of non-compliance with the advice given by the panel, the panel will refer such cases to the DoC (which may remove organisations from the EU-U.S. DPF list) or, for possible enforcement action, to the FTC or the DoT (failure to cooperate with the DPAs or to comply with the Principles is actionable under U.S. law).²

These rules do not affect the enforcement powers and actions (if any) of the Supervisory Authorities against the exporter and the rights of the data subjects in this respect.

The following rules of procedure will give guidance on how the panel will operate.

For all procedural rules that are not specified in the Data Privacy Framework and in these Rules of Procedure, the DPF complaint/referral will be handled according to the procedural rules of the Member State of the Lead DPA that will adopt the decision.

1. EVALUATION OF THE COMPETENCE OF THE EU PANEL

The Data Protection Authority (hereinafter: DPA) that received a DPF complaint or referral will assess if the panel is competent to handle the DPF complaint or referral.

The panel is only competent for organisations which have committed to cooperate with the DPAs or which process human resources data collected in the context of an employment relationship. The competence of the panel can be verified on the Data Privacy Framework website of the US Department of Commerce³.

¹ References to the EU should be understood as also including the three EEA countries not part of the EU.

² Rec. 73 DPF.

³ One can do this by typing the organisation’s name into the search bar within the Data Privacy Framework List available at <https://www.dataprivacyframework.gov/>, and then by clicking on the organisation’s name, and then on “Questions or DPF complaints?”; where the panel is competent, it is referred to as “EU Data Protection Authorities (DPAs)”.

If the panel is not competent, the DPA that received a DPF complaint/referral will assess if its competence toward the EU data exporter would make it the most appropriate body to handle the DPF complaint or referral and/or will explore possibilities to refer the case to the US Department of Commerce (hereinafter: “DoC”) or the US Federal Trade Commission (hereinafter: “FTC”)⁴ or the US Department of Transportation (hereinafter: “DoT”).

Where the panel is competent, there is a need to designate the lead DPA and co-reviewer DPAs.

2. DESIGNATION OF LEAD-DPA AND CO-REVIEWER DPAS

For the handling of each DPF complaint or referral, the panel will be formed by one DPA acting as lead DPA and other designated co-reviewer DPAs.

The decision on which DPAs will act as lead and as co-reviewers should be taken in a timely manner and should, in principle, be confirmed by the members of the panel within **two weeks’ time** from the receipt of the initial DPF complaint/referral.

Designation of the Lead-DPA

Principle

As a general rule, the lead DPA for handling a DPF complaint within the panel should be the national DPA that receives the DPF complaint by an individual.

As a general rule, the lead DPA for handling a referral by a certified US company should be the national DPA that is competent for the exporter⁵.

If the same or very similar DPF complaints are lodged with several DPAs it will be presumed that the DPA that first received a DPF complaint will act as lead DPA.

Derogations

In exceptional circumstances, another DPA can be designated as lead. This may arise when the DPF complaint concerns a data transfer that relates to a cross-border processing as set out in Art. 4 (23) of the General Data Protection Regulation (GDPR). In such situation, the lead DPA under Article 56 GDPR (i.e. the supervisory authority of the main establishment or of the single establishment of the data exporter) shall decide whether or not it will act as lead DPA also for handling the DPF complaint in the panel.

⁴ Referral to the FTC seems to be only useful for cases that have a systematic character, i.e. cases of systemic failure. This DPA will however also refer cases which, taken together with others, may then point to a failure in an US company’s systems and procedures.

⁵ As defined in the EDPB’s Guidelines 05/2021 on the Interplay between the application of Article 3 and the provisions on international transfers as per Chapter V of the GDPR.

Designation of the co-reviewer DPAs

As a general rule, there should be two co-reviewers. In appropriate circumstances the panel can be extended if more than two DPAs are interested in participating in the panel and can put forward a specific interest.

Where the supervisory authority of the main establishment or of the single establishment of the data exporter in the sense of Article 56 as outlined above decides to act as lead DPA, the concerned DPAs (Art. 4 (22) GDPR) should act as co-reviewers.

In cases where fewer than two DPA indicate an interest in acting as co-reviewer, the lead DPA has the prerogative to designate up to two co-Reviewers. When selecting the co-reviewers the lead DPA should in particular take into consideration DPAs in whose jurisdiction the EU headquarter or significant subsidiaries of the US company's group are situated, if any. Other criteria that can be considered include the place where the relevant data processing is facilitated in the EU, the place in the EU from which most data transfers take place, the place where a large number of EU individuals are likely to be affected by the alleged violation, particular expertise located with a certain DPA, and available resources.

The DPAs shall respond to the enquiry to act as co-reviewers from the lead DPA within one week.

3. DUTIES OF DPA THAT RECEIVES A DPF COMPLAINT/REFERRAL

The DPA that receives a complaint from an individual or a referral from a US company shall:

- check if the panel is the competent body for the respective DPF complaint/referral (HR-data collected in the context of an employment relationship, or commitment by the US company to submit to oversight by EU DPAs)
- if this is not the case, forward the complaint to the competent body (e.g . DPA unit responsible for handling DPF complaints under the EU-U.S. Data Privacy Framework in the area of national security, DoC, FTC) and inform complainant/referring company
- if appropriate, encourage and if necessary help complainants in the first instance to use the DPF complaint handling arrangements provided by the companies
- inform all EDPB-members about DPF complaint/referral upon reception
- take all necessary steps for the appointment of the Lead-DPA and the co-reviewers
- provide any translation needed (mostly into and from English or other languages where appropriate) emerging from the communication with the complainant and the DoC, the FTC or any other US statutory body through the panel, regardless of whether the DPA is acting as lead or not.

4. DUTIES OF THE LEAD-DPA

The duties of the lead authority include:

- act as single point of contact for the complainant throughout the entire panel procedure and facilitate communication between and with the panel, regardless of whether the DPA is acting as lead or not
- act as single point of contact towards the US-company concerned respectively the referring company throughout the entire panel procedure and facilitate communication between and with the panel
- identify or designate co-reviewers in consultation with the DPAs
- inform all EDPB -members about the participating DPAs in the panel
- inform the US-organisation in writing of the substance of the DPF complaint and any other relevant information; personal data of the complainant should only be transferred if it is necessary to resolve the DPF complaint
- before any transfer of personal data, inform the data subject and provide them with the opportunity to oppose to the transfer
- offer all sides (complainant, company) reasonable opportunity to comment and to provide any evidence they wish on the matter within a reasonable time-limit
- draft an advice including remedies (where appropriate) and circulate among co-reviewers
- take comments from co-reviewers into consideration and discuss if necessary and endeavour to reach a consensus
- issue the consolidated advice to the US-company
- inform the other EEA DPAs of the advice issued without disclosing the personal data of the individuals and respecting any obligations of commercial confidentiality
- make public the results of the consideration of DPF complaints, if appropriate and by respecting commercial confidentiality duties
- in case of non-compliance by a Data Privacy Framework certified US-company with the advice issued by the panel, prepare a draft on how to proceed given the options mentioned below and coordinate a decision in consultation with the other members of the panel
- if an US-Company fails to comply within 25 days of the delivery of the advice and has offered no satisfactory explanation for the delay, give notice of the panel's intention either to refer the matter to the FTC, DoT, or other US Federal or state body with statutory powers to take enforcement action in cases of deception or misrepresentation, or to conclude that the

agreement to cooperate⁶ has been seriously breached and must therefore be considered null and void and in the latter case, inform the DoC so that the Data Privacy Framework List can be duly amended

- act as single point of contact to FTC, DoC and other relevant public authorities in the US throughout the entire panel procedure and facilitate communication between and with the panel.

5. DUTIES OF CO-REVIEWERS

The duties of the co-Reviewers include:

- support the lead DPA when necessary or requested
- provide comments on the draft advice as quickly as possible and within two weeks maximum to allow for further enquiry; if no comments are provided within this timeframe, it will be considered that the co-reviewers agree with the draft advice prepared by the lead DPA; DPAs might request additional time if necessary and justified.

6. COOPERATION AND COMMUNICATION

Communication between DPAs will be carried out in the framework of the cooperation tools used under Article 57(1)(a), (f) and (g).

The Lead DPA and the co-Reviewer DPAs will work together to reach consensus as to the advice which will be provided to the US company. If there is difficulty in reaching the consensus, as a last resort, a vote may be cast on the existing draft advices. The draft advice that receives the simple majority of the votes of the panel members (Lead DPA and co- reviewer DPAs) will be selected. In case of a tie, the lead DPA's vote will prevail.

The same procedure applies for determining how to proceed in cases of non-compliance by the US-company with the advice issued.

⁶ Supplemental Principle 5, c ii.