

EDPB Documents



EDPB Document on the procedure for the development of informal “Codes of Conduct sessions”

Adopted on 10 November 2020

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The European Data Protection Board

Having regard to Article 40, Article 70(1)(n) and Article 70(1)(u) of the Regulation 2016/679/EU of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, (hereinafter “GDPR”),

Having regard to the EEA Agreement and in particular to Annex XI and Protocol 37 thereof, as amended by the Decision of the EEA joint Committee No 154/2018 of 6 July 2018,

Having regard to Article 3 and Article 22 of its Rules of Procedure,

HAS ADOPTED THE FOLLOWING DOCUMENT

1 INTRODUCTION

1. The Guidelines 1/2019 on Codes of Conduct and Monitoring Bodies (“the Guidelines”) contain, in section 8, the procedure to follow for the submission of transnational codes.¹
2. In this respect, section 8.5 of the Guidelines (“preparation for submission to the Board”) and, specifically, par. 54, which states that “[before submission to the Board] any significant issues could be brought to the relevant EDPB subgroup for discussion”, is important for this proposal for an informal procedure regarding the development of informal Codes of Conduct sessions.
3. The Guidelines envisage the possibility to discuss significant issues “at the relevant expert subgroup (ESG)” before submitting the matter to the Board, if there are remaining issues after the comments received by all the other supervisory authorities (“SAs”). However, from a procedural point of view, a discussion at an ESG on a document that has not been formally submitted to the EDPB does not seem appropriate. The informal cooperation phase takes place before the formal procedure at the EDPB. The latter includes discussions at the relevant ESG.
4. The aim of the informal procedure proposed below is to develop the procedural aspects of section 8.5 of Guidelines 1/2019 and determine the best forum to have the discussions on Codes of conduct which have not been submitted to the EDPB yet. In accordance with Article 70(1)(u) GDPR, the Board shall promote the cooperation and the effective bilateral and multilateral exchange of information and best practices between supervisory authorities. To this effect, the present procedure aims at facilitating such cooperation between SAs before the formal procedure is triggered under Article 64 GDPR.
5. Therefore, the “Codes sessions” developed in this document will happen outside the formal remit of the EDPB.

¹ See Guidelines 1/2019 at :

https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_guidelines_201901_v2.0_codesofconduct_en.pdf

2 PROCEDURE FOR CODES OF CONDUCT SESSIONS

2.1 Aim of the Codes sessions

6. As stated in Article 40 GDPR, the drawing up of Codes of Conduct shall be encouraged by the SAs and the Board. The time needed to develop a Code of Conduct that is satisfactory for the SAs involved and for the Board, may be a deterrent for some code owners. At the same time, consistency must be observed when drawing up and approving Codes of Conduct. To this end, discussions among the SAs on remaining issues are necessary.
7. Therefore, the objectives of the sessions should be clear. Determining the aim of the sessions is important not only to tailor the discussions but also with regard to the communication with the code owners.
8. The general aim is to speak with one voice to the applicant. To this end, the “Codes sessions” should address remaining issues that were not solved during the previous phase of the informal cooperation, in order to **work out consensus** of what to demand from the applicants. In short, the aim of the sessions is to **discuss and find consensus on the standards and expectations for Codes of Conduct**.
9. Due to this and the impact that the discussions and agreements reached may have for future Codes of Conduct, all the SAs are expected to take part in the Codes sessions. For more details regarding the agreements reached at the Codes sessions, see section 2.3.2 below.

2.2 Nature of the Codes sessions

10. The Codes sessions are part of the informal cooperation phase and intend to address, before starting the formal phase, any remaining issues that may arise after the SAs and the EDPB Secretariat have sent their comments.
11. The Codes sessions are not mandatory. The Competent SA (“CompSA”) may decide to initiate the formal procedure to obtain an EDPB’s Opinion without having put the Code for discussion at a Codes session. However, it would be a matter of best practice to put the Code for discussion at a Codes session, since it will facilitate the smooth adoption of the Opinion by the EDPB.
12. In this spirit, instead of sharing the Code only with the concerned SAs, as referred in par. 54 of the Guidelines, the CompSA should share the draft code with all SAs, which should have at least 30 days to send their comments and feedback to the CompSA (see flowchart below)
13. In any case, when the CompSA intends to submit the draft decision for an Opinion of the Board, the CompSA shall comply with the provisions indicated in Section 5 of this procedure.

2.3 Format of the Codes session

2.3.1 Formal aspects

14. The sessions will take place outside the remit of the EDPB. Therefore, **they are not a formal ESG meeting**.
15. This entails the following:
 - 1) The sessions do not have a formal coordinator, unlike the ESGs.

- a. The CompSA is responsible to liaise with the CEH coordinators in due time and provide them with the necessary information, including the adequate timing for the discussion.
 - b. The coordinator of the CEH assists the members with the creation of the Agenda for the “Codes session”, based on the information provided by the SAs. The Agenda of the session will contain the list of Codes that will be discussed.
 - c. The CEH coordinator does not chair the meeting. The CompSA for each Code chairs the meeting for the discussion on that Code.
 - i. The CompSA should share, at least one week before the Codes session: 1) an updated version of the code (if applicable) that addresses some of the comments received and 2) the list of comments that have not been sent to the code owner yet, because the CompSA considers that a discussion is needed.
 - ii. The CompSA may indicate the questions and issues that are of more relevance for the CompSA and that will be addressed first during the session. The participants may raise any additional points for discussion, once the topics identified by the CompSA are addressed.
- 2) There is no obligation to have minutes of the sessions, unlike for the ESGs. However, a summary of the main agreements will be elaborated by the CompSA and the EDPB Secretariat (see section 2.3.2).
- a. Each CompSA should be responsible to keep track of the comments and discussions regarding the Code presented by the CompSA.
- 3) The participants shall be staff members of the SAs. The EDPB Secretariat will also take part in the meetings (see section 2.3.4). The CompSA may also invite the European Commission to participate in the meetings where the Code presented by that CompSA will be discussed, taking into account its role under Articles 40(8), 40(9) and 40(10) GDPR with regard to transnational codes.

2.3.2 Agreements and consensus during the Codes sessions

16. The CompSA and the EDPB Secretariat will work together to prepare a summary of the main agreements reached during the Codes session. The summary will be shared with the CEH ESG.
17. The members of the CEH ESG may discuss the agreements reached. When an agreement involves elements that may have a substantial impact on the assessment of future Codes of Conduct, the CEH ESG may decide, after discussion at the ESG level, to bring the matter to the Plenary, for guidance or approval by the Plenary. Additionally, from the discussions during the Codes sessions, it might be necessary to find agreements regarding substantial elements of the Codes of Conduct. In those cases, the specific questions may be brought for discussion at the CEH ESG and, ultimately and if necessary, to the Plenary for a decision.

2.3.3 Periodicity of the Codes sessions

18. The periodicity of the sessions will depend on the Codes that are ready for discussion at a specific moment.

19. The CompSA should liaise with the EDPB Secretariat (and, when necessary, with the co-reviewer SAs) and find a suitable time for the session. The notification of the time and place for the session should be sent to all SAs as soon as possible and at least 20 days before the session, if it takes place remotely. For in-person meetings, the minimum time to inform the SAs shall be 40 days and they should be organised back-to-back to CEH ESG meetings.
20. The creation of a “Follow-up Chart”, where the SAs add the relevant information regarding upcoming Codes, could facilitate the organisation of the sessions. Additionally, a specific mailing list including only the SAs may be created, to facilitate the exchange of information.
21. The number of sessions devoted for each Code will depend on the discussions and the possible need to address remaining issues. The CompSA will assess and decide on the need to have more Codes sessions for a specific Code, taking into account the views of the other SAs.

2.3.4 Role of the EDPB Secretariat

22. Since the sessions take part outside the formal EDPB remit, the Secretariat is not *formally* involved.
23. However, for practical reasons:
 - 1) The EDPB Secretariat *facilitates* the exchange by providing the logistical support (e.g. meeting room, shared platform, etc.).
 - 2) When the CompSA circulates the draft Code for comments to all SAs, the EDPB Secretariat will also be able to send comments, which can be taken on board by any SA. The aim is to advance any possible comment that may arise at a later stage, once the formal procedure has been triggered. The early involvement of the EDPB Secretariat would facilitate the assessment and contribute to achieve a smoother formal phase.

2.4 What happens after the Codes sessions

24. If changes to the Code are necessary, the CompSA will get back to the applicant requesting the changes agreed.
25. Once the changes are made, the CompSA may circulate the new version of the Code in clean and track changes version with all the SAs and the EDPB Secretariat, in order to get their feedback on whether the changes are sufficient. The deadline for this may be relatively short (e.g. two weeks). When the CompSA considers that the issues raised during the informal cooperation phase have been solved, it may decide to initiate the formal procedure.

2.5 Submission to the Board

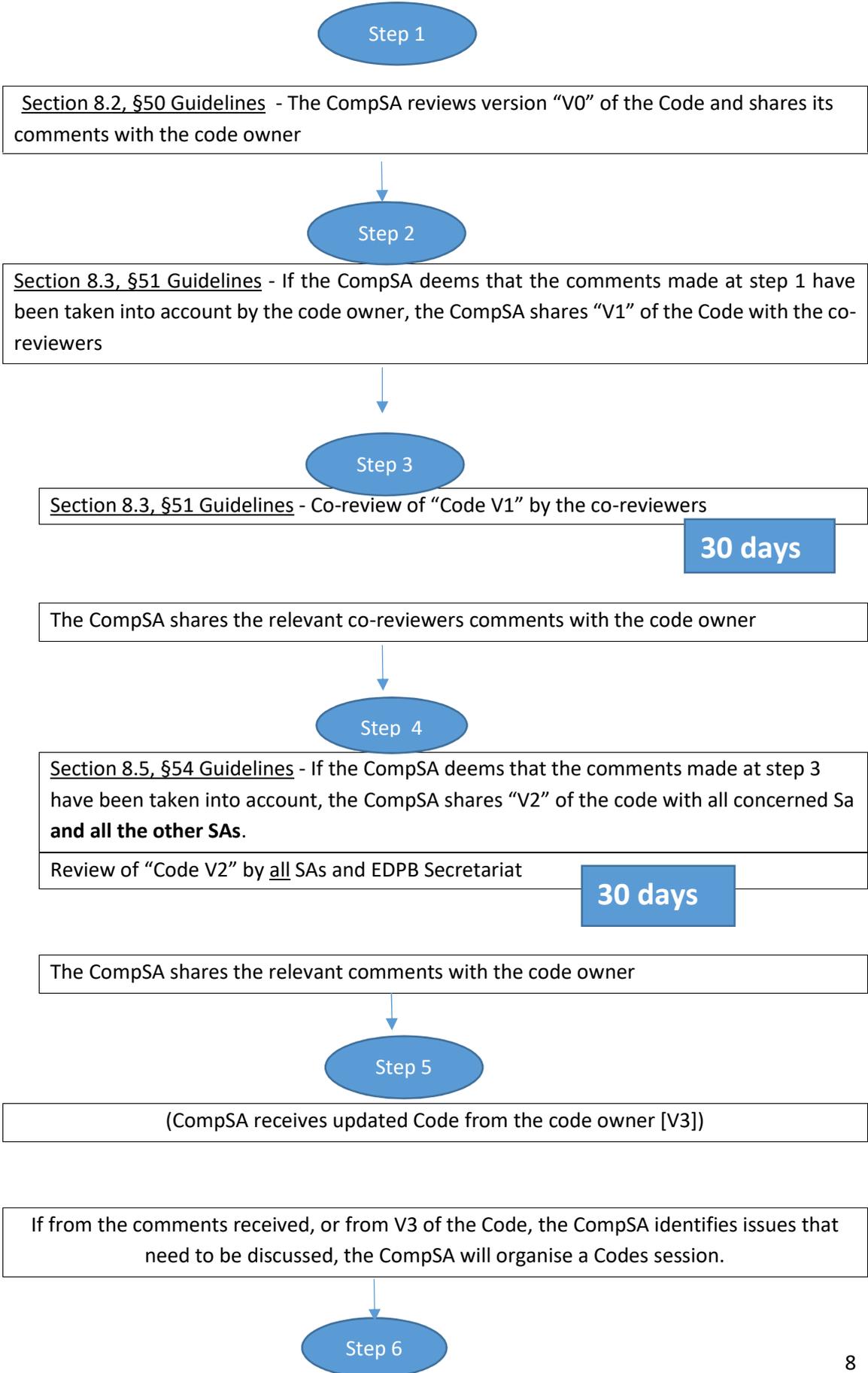
26. Before submitting to the Board a draft decision approving a Code of Conduct, the CompSA should find co-rapporteurs to be part of the drafting team, together with the EDPB Secretariat. These co-rapporteurs should be, at least: 1) one SA who took part in the cooperation phase as a co-reviewer and 2) a neutral SA who did not act as co-reviewer.
27. Submissions won't be formally shared until a team of rapporteurs, consisting of at least the EDPB Secretariat, a SA who was a co-reviewer and a neutral SA, has been formed.

For the European Data Protection Board

The Chair

(Andrea Jelinek)

ANNEX: FLOWCHART - SECTION 8 - GUIDELINES 01/2019



CompSA organises Codes session. Information 20/40 days in advance

The CompSA shares V3 of the Code (if applicable) and the comments that need further discussion, for discussion at the Codes session

**At least 1 week before
the Codes session**