

Minutes



Final

39th Plenary meeting

7-8 October 2020, 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.

1 Consistency mechanism, Guidelines and EDPB RoP

1.1 Art. 64 GDPR Opinion on the guarantees to be included in contractual clauses for transfers by a processor to a controller outside the EEA that is subject to GDPR in accordance with its Art. 3.2 (Art. 46.3 (a) GDPR) – discussion and adoption

The majority of the members of the EDPB decided to postpone the adoption of this opinion. They will decide on a revised version of the opinion taking into account the EDPB's ongoing work on the interplay between Chapter V and article 3.2 GDPR, supplementary measures to transfer tools, and the new draft SCCs on which the European Commission will soon consult the EDPB.

2 Adoption of the minutes and of the agenda

2.1 Minutes of the 38th EDPB meeting – adoption

The minutes of the previous plenary meeting were adopted unanimously with some changes in points 1.5, 1.6 and 4.2. The content of point 2.2 will not be disclosed.

2.2 Draft agenda of the 39th EDPB meeting – adoption

The draft agenda was adopted with the inclusion of two new points under AOB regarding the ██████████ company ██████████ and an update from the European Commission on the proposal for a legislative framework for the governance of common European data spaces. In addition, item 5.3 was removed from the agenda and postponed to a later Plenary meeting.

2.3 Update on the EDPB Secretariat - information

The Chair of the EDPB announced that the EDPB Secretariat will become a Unit (within the framework of the institutions and bodies of the European Union) as of 16/10/2020. The Chair of the EDPB thanked the EDPB Secretariat, the Head of the Secretariat and all the people involved for their effort.

2.4 Date of (remote) November plenary meeting – information

The Chair of the EDPB informed the members of the EDPB about the dates of the plenary meetings in November and December 2020: 9 and 19 November (and 20 November if necessary), and 15 December.

The EDPB Secretariat informed of the current work on updating the mailing lists and systems, which is made on a regular basis, and kindly reminded the members of the EDPB to inform the EDPB Secretariat when colleagues leave or join a SA.

3 Current Focus of the EDPB Members

3.1 Pending Art. 65 procedures – state of play (Rapporteur: SEC)

The EDPB Secretariat provided an update on the background of the file and the state of play. The rapporteur provided a brief overview on the objections raised by the concerned supervisory authorities and the procedural questions being discussed at the relevant ESGs, partially connected to the draft guidelines on relevant and reasoned objection.

The rapporteur also informed that a draft of the decision will be circulated soon with the members of the relevant ESG.

3.2 International cooperation - GPA - Application Executive Committee - state of play (Rapporteur: DE (Federal))

The DE SA informed of its candidacy to be part in the Executive Committee and its willingness to promote cooperation between the GPA and the EDPB. Since there is no member of the EDPB in the Committee, the DE SA considers that it is a good opportunity to strengthen the voice of the EDPB in the GPA.

The Chair of the EDPB and several members of the EDPB expressed their support to this candidacy and underlined the importance of keeping close cooperation with the GPA.

4 Consistency mechanism, Guidelines and EDPB RoP

4.1 Guidelines 09/2020 on the concept of relevant and reasoned objection – discussion and adoption (ENF/COOP ESG – Rapporteur: DE SA, IT SA, SEC)

The EDPB Secretariat, acting as lead rapporteur, explained that this work was carried out in the context of the drafting of a guidance on art. 60 GDPR. The aim of the document is to provide clarifications on the concept of relevant and reasoned objection.

While there were several points on which the subgroup members reached preliminary agreements during joint meetings of the Enforcement and Cooperation expert subgroups, there were three substantial points for which the Plenary was requested to take a position. In addition, the Plenary was also requested to take a position on the nature of the document. Regarding the latter, the EDPB Secretariat informed of the analysis carried out in accordance with Regulation 1049/2001.

The discussion revolved around the three substantial questions posed to the Plenary.

For the 3 questions (on the determination of the scope of the investigation in *ex officio* procedures (par. 28), on the possibility to challenge the competence of the lead supervisory authority via a relevant and reasoned objection (par. 21) and on the possibility to challenge the amount of the fine proposed by the lead supervisory authority in the draft decision (par. 34)), the majority of the members agreed on the first option proposed for each of them.

The guidelines were adopted by the members of the EDPB. 26 EU members of the EDPB voted in favour of adoption. 1 EU member of the EDPB voted against. The 3 EEA members of the EDPB voted in favour of adoption.

The members of the EDPB decided unanimously to publish the document.

4.2 EDPB RoP: Amendment to Art. 11.2 RoP – discussion and adoption (RoP Drafting Team – Rapporteur: SEC)

The EDPB Secretariat, acting as lead rapporteur, explained the reasoning behind the change, which is based on a request from the Enforcement ESG validated by the plenary and in particular on lessons learned from a previous experience and aims to improve and clarify the procedure to be applied in Article 65 procedures, including with regard to the documents necessary for the file to be complete. The rapporteur explained the options presented to the Plenary as regards to the possibility for the Board to consider additional elements once the procedure has been launched.

A majority of the EDPB members voted for the 3rd option.

The document was adopted with the support of all the members participating to the meeting and thus in line with Art. 72(2) GDPR.

4.3 EDPB document on the procedure for developing of informal Codes of Conduct sessions – discussion and adoption (CEH ESG – Rapporteurs: SEC)

This item was postponed.

4.4 Art. 64.1 Opinions on accreditation requirements for certification bodies/ monitoring bodies (AT, DK, PL) – confirmation of rapporteurs (CEH ESG – Rapporteur: SEC)

The EDPB Secretariat presented the background, recalling that the CEH ESG decided to deal with the requests of approval of accreditation requirements for monitoring bodies and certification bodies in batches. Following the decision taken by the EDPB at its 20th Plenary meeting, a team of rapporteurs has been created for each of the Opinions.

The members of the EDPB gave the mandate to the rapporteurs.

4.5 Art. 64.1 Opinions on BCRs (Novelis/Coloplast Group/Iberdrola) – confirmation of rapporteurs (ITS ESG – Rapporteur: SEC)

The EDPB Secretariat recalled the decision of the EDPB at its 20th Plenary meeting and the BCR procedure, and informed the members of the EDPB that a team of rapporteurs had been secured for the three Opinions on the referred BCRs.

The members of the EDPB gave the mandate to the rapporteurs.

5 FOR DISCUSSION AND/OR ADOPTION – Expert Subgroups and Secretariat

5.1 Cooperation ESG

5.1.1 Working group on Brexit-related matters - discussion and adoption

This item was postponed.

5.2 Compliance, eGovernment and Health ESG

5.2.1 Response letter to German research foundation on the impacts of the GDPR on research – discussion and adoption

This item was postponed.

5.3 Secretariat

5.3.1 Implementation of SEC DPO rules – discussion and adoption

This item was postponed.

5.3.2 Consistency procedure for Art. 46.3(b) GDPR administrative arrangements – discussion and adoption

This item was postponed

6 AOB

6.1 NEW - Collection of personal data by ██████████ company ██████████

A member of the EDPB addressed the case that was reported in the news some weeks ago, regarding the massive processing of personal data by a ██████████ company. The SA has received many media requests as to the action that the SA will take with regard to the processing concerning personal data of data subjects in its territory. The SA asked the other members of the EDPB whether they have investigated the case further or have taken any action. The members of the EDPB are invited to send more information to the SA on this matter.

6.2 NEW - Update from the European Commission

The European Commission referred to the Data Strategy and informed on the initiative to adopt a legislative framework for the governance of common European data spaces. The relevant documents including the Inception Impact Assessment can be found on the website of the European Commission.

Annex: Attendance List

SAs: 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

- European Commission

- EDPB Secretariat