



Final

49th Plenary meeting

19 May 2021, 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 Adoption of the minutes and of the agenda, Information given by the Chair

1.1 Minutes of the 48th Plenary meeting – adoption

The members of the EDPB agreed with the changes proposed in the minutes of the 48th plenary meeting: some changes were made in point 1.5, 3.1, 5.5 and 5.7. The minutes of the 48th plenary meeting were adopted unanimously.

The members of the EDPB also agreed on the public version of the minutes, with some redactions in point 3.1.

1.2 Draft agenda of the 49th EDPB meeting – adoption

The members of the EDPB adopted the agenda of the 49th plenary meeting with the inclusion of new points under AOB: 5.4) Invitation to a conference organised by the HR SA; 5.5) Article 66 procedures and 5.6) Information from the European Commission on grants.

The Chair of the EDPB also reflected on the high workload due to the current and upcoming art. 65 GDPR requests and underlined the importance of organising the work and submitting requests taking that into consideration.

2 Current Focus of the EDPB Members

2.1 Statement on Data Governance Act – discussion and adoption

The rapporteur presented the statement on Data Governance Act and explained that it is aimed at reinforcing the messages contained in the EDPB-EDPS Joint Opinion, in light of the legislative developments. The rapporteur also informed the members of the EDPB of the intention to send the statement via e-mail to the Presidency of the Council and the Chairs and rapporteurs of the LIBE and ITRE Committees.

The members of the EDPB agreed on changing the title to “Statement on the DGA in light of the legislative developments”. In addition, the members of the EDPB entrusted the drafting team to amend the formatting with regard to the parts in bold.

The EDPB members adopted the statement unanimously.

2.2 Response letter to United Nations – discussion and adoption

The rapporteur presented the draft letter and its background. During the subsequent discussions, some changes in wording were agreed to clarify the role of the Board to assess concrete transfer tools.

The EDPB members adopted the response letter unanimously.

2.3 Criteria of territorial competence of SAs under e-privacy - request for a mandate

The rapporteur presented the request for a mandate to prepare a document on the territorial competence of the SAs when enforcing the ePrivacy directive in view of the adoption of a position at the Plenary. Some members of the EDPB noted that not all SAs have the competence to enforce the provisions of the ePrivacy Directive. The rapporteur explained the proposal to present a position document for adoption at the June Plenary.

The EDPB members gave a mandate to the TECH ESG to prepare this document.

3 Consistency mechanism and Guidelines

3.1 Cooperation ESG

3.1.1 Review of Art. 60 internal guidelines regarding Art. 60 (4), (5) and (6) – discussion and adoption

The rapporteur presented the draft of the third Step of the Art. 60 Guidance, which deals with Art. 60(4) - Art. 60(6) GDPR, outlining the different scenarios that follow the submission of a draft decision by the LSA according to Art. 60 (3) GDPR. This part of the art. 60 Guidance provides a consistent approach to the procedure between the submission of a draft decision and either the triggering of the binding effect in the absence of relevant and reasoned objections or the submission to the dispute resolution procedure. The rapporteur recalled that the full document will also be presented to the Plenary when ready, in order to ensure consistency among the different sections. The members of the EDPB agreed to have a preliminary vote on the Step 3 paper.

The members of the EDPB agreed to have a preliminary vote. The members of the EDPB approved the third step of the Art. 60 Guidance. Two EEA members of the EDPB abstained.

The EDPB Secretariat highlighted that, according to paragraph 132 of the document, in situations where the LSA wishes to follow some objections, but does not wish to follow others, the LSA should submit a revised draft decision incorporating the objections it wants to take on board. This might be

relevant for the upcoming art. 65 procedures and might have to be considered by the LSAs. The next step for this guidance document will concern Art 60(2) and 60(7-12) GDPR.

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

4.1 Financial Matters ESG

4.1.1 EDPB letter to the European Commission on the protection of personal data in the AML-CFT legislative proposals - **discussion and adoption**

The rapporteur presented the EDPB letter to the European Commission on the protection of personal data in the AML-CFT legislative proposals. The letter identifies the elements to be integrated or reinforced into the forthcoming legislative proposal to correctly articulate the interplay between the data protection framework and the AML-CFT framework.

Some members of the EDPB underlined the importance to engage at national level with the national authorities.

The EDPB members adopted the letter unanimously.

4.1.2 Recommendations on the legal basis for the storage of credit card data for facilitating further online transactions - **discussion and adoption**

The rapporteur presented the recommendations on the legal basis for the storage of credit card data for facilitating further online transactions. The draft recommendations cover the situation where a data subject buys product or pays for a service via a website or an application, and provides his/her credit card data, generally on a dedicated form, in order to conclude a unique transaction. In this regard, the recommendations underline that consent appears to be the sole appropriate legal basis for the storage of credit card data by online providers of goods and services, for the sole and specific purpose of facilitating further purchases by data subjects.

The EDPB members adopted the recommendations unanimously and agreed not to submit them to public consultation.

4.2 Key Provision ESG

Opinion on the draft Standard Contractual Clauses submitted by the Lithuanian SA (Art. 28 (8) GDPR) - **discussion and adoption**

The lead rapporteur presented the Opinion on the draft Standard Contractual Clauses submitted by the Lithuanian SA.

The EDPB members adopted the opinion unanimously.

4.3 Cooperation ESG

4.3.1 Answer letter to Access Now regarding clarification on the process to identify a controller's main establishment under the GDPR - **discussion and adoption**

The rapporteur presented the answer letter to Access Now regarding the process to identify a controller's main establishment under the GDPR. The rapporteur explained the approach to prepare a broad and general reply specifically highlighting the EDPB Strategy 2021-2023 and Work Program,

the permanent monitoring of the necessity to review guidelines as well as the relevant cooperation and consistency procedures.

The EDPB members adopted the letter unanimously.

4.4 Compliance, e-Government and Health ESG

4.4.1 Opinion on the draft decision of the Belgian Supervisory Authority regarding the “EU Data Protection Code of Conduct for Cloud Service Providers” submitted by Scope Europe - **discussion and adoption**

The rapporteur presented the Opinion on the draft decision of the Belgian Supervisory Authority regarding the “EU Data Protection Code of Conduct for Cloud Service Providers” submitted by Scope Europe. The Rapporteur underlined that this code does not aim to be used as a tool for international transfers.

The importance of codes of conduct as an accountability tool was underlined by the members.

The EDPB members adopted the opinion unanimously.

4.4.2 Opinion on the draft decision of the French Supervisory Authority regarding the European code of conduct submitted by the Cloud Infrastructure Service Providers - **discussion and adoption**

The rapporteur presented the Opinion on the draft decision of the French Supervisory Authority regarding the European code of conduct submitted by the Cloud Infrastructure Service Providers. The Rapporteur underlined that this code does not aim to be used as a tool for international transfers.

The EDPB members adopted the opinion unanimously.

4.5 Secretariat

4.5.1 Requests for Article 64 Opinions - confirmation of rapporteurs - **discussion and adoption**

The EDPB Secretariat explained the current situation regarding the requests for Article 64 Opinions on accreditation requirements. Three SAs have submitted their draft accreditation requirements for an opinion of the EDPB.

The experience and work at the CEH ESG level has brought a good level of consistency on the Opinions (26 opinions adopted so far). So far, the EDPB Secretariat has taken the lead for the preparation of the Opinions. However, considering the already good level of consistency developed and given the increase on the workload due to the current and potential requests for a binding decision of the EDPB, the EDPB Secretariat asked the members to take the lead for the drafting of those 3 opinions.

The members of the EDPB showed their support and agreed that, given the situation, the work on the Opinions will go ahead only if the lead can be taken by another rapporteur. For 2 of the requests, a lead rapporteur was found. For the last request, the members were invited to share their interest by email to the EDPB Secretariat.

4.5.2 Rules for remote meetings - **discussion and adoption**

The EDPB Secretariat presented the draft procedural rules and recommendations for EDPB ESG and drafting team remote meetings, and the reasoning to draft this proposal. The number of remote meetings increased a lot in 2020 and even more in 2021. Some challenges were identified (e.g. excessive length of the meetings, lack of break and very short notice to organise the meetings). This has had significant implications to other work tasks / activities and to the services and the members’

ability to cope with an ever-increasing workload. For this reason, the EDPB Secretariat, together with the Chair, have prepared a document with rules to address these shortcomings.

The EDPB Secretariat underlined the fact that some exceptions were provided for urgent meetings organised to meet short legal deadlines.

The members of the EDPB expressed support to the proposal and underlined the positive impact that it may have on the efficiency of the work. The addition of exceptions was also welcomed. In this regard, the members of the EDPB agreed on allowing more flexibility with the addition of the word “in particular” regarding the exceptions.

The members of the EDPB adopted the rules unanimously.

4.5.3 Translation of adopted Art. 64 GDPR opinions - discussion and adoption

The EDPB Secretariat explained that the EDPB requests for translation have increased significantly in 2021 in terms of the number of documents and their length. As a result, the EDPB is currently very close to reaching the yearly maximum number of pages under the SLA with the EU COM translation service. In addition, the budget allocated in 2021 for translation will be soon reached.

To continue to be able to translate important documents into all EU languages (i.e. EDPB Guidelines, Opinions in the context of legislative consultations requested by the European Commission), the EDPB Secretariat proposes to limit the translation of consistency Opinions (art. 64.1 GDPR) into the language of the SA to whom the opinion is addressed, for the rest of the year 2021.

In parallel, the EDPB Secretariat will enquire with the translation service of the EU COM concerning an increase in the yearly quota of pages for translation.

The members of the EDPB discussed whether other SAs, to whom the Opinion is not addressed, should also be able to request the translation in their national language. The members of the EDPB underlined that the proposal should be temporary and, therefore, the Rules of Procedure won't be changed.

The members of the EDPB agreed that, as a temporary solution, the consistency opinions under art. 64.1 GDPR will only be translated into the language of the SA that submitted the request for an Opinion, and into the national language of other SAs upon request. If a consistency opinion under art. 64.1 GDPR is of general interest, the EDPB will be invited to translate it in all EU languages.

5 AOB

5.1 July 2021 Plenary date

The EDPB members agreed that the July 2021 plenary meeting will take place on the 7 July 2021 as a full day meeting.

5.2 IMI Uploads by the ██████ - discussion

The EDPB members discussed the recent uploading of cross-border complaints resolved through amicable resolution by the ██████. The members agreed that they were not Art. 60 decisions and should not be taken into consideration within the statistics of Art. 60 (One Stop Shop).

The EDPB members agreed to give a mandate to the IT Users ESG to work on the following topics, with the contribution of the COOP ESG:

- to agree on a wording that can reflect in the statistics complaints that were handled outside of the Art. 60 procedure, and

- to further explore technical means on how these complaints could be reflected in a more visible manner.

With regard to the current statistics, the members of the EDPB agreed to not include the cases in the statistics for the moment. One EEA member of the EDPB abstained.

5.3 SA's power to order the deletion of unlawfully processed personal data under GDPR

The HU SA informed the EDPB members on a national case law of the highest judicial authority of Hungary with regard to a HU SA's decision.

The highest court decided that the HU SA of its own motion cannot order the data controller to delete the personal data and that it is only possible at the request of the data subject. The HU SA regrets this reasoning and underlines the importance that the EDPB look into the matter in a rapid manner, given the impact it has in ongoing cases at the HU SA. Thus, the HU SA will request an Opinion of the EDPB under art. 64.2 GDPR, for which the HU SA volunteers as rapporteur. The HU SA invited other SAs to express their interest in joining the drafting team.

5.4 Information on conference by HR SA

The HR SA informed the members of the EDPB about the conference to be held on 25 May 2021, organised by the HR SA and their partners in the ARC project: the IE SA, the VUB and in cooperation with the Croatian Chamber of Economy. The members of the EDPB were invited to participate in the event.

5.5 Article 66 requests

The IT SA explained the background of the case and the reasoning for the withdrawal of their request.

Some members underlined the need to ensure a harmonised approach in all the Member States.

The DE Hamburg SA explained the order they issued against Facebook and underlined that the consent mechanism used by Facebook gives way to important transfer of data between Whatsapp and Facebook, since behind this consent, the privacy notice allows Whatsapp to transfer data because of its legitimate interest to transfer data to Facebook. Thus, the Hamburg SA considers that there is a need for an urgency procedure to safeguard the rights of 16 million German users. The Hamburg SA envisages to ask an urgent decision from the EDPB under Article 66 (2) GDPR.

In this perspective, the members of the EDPB addressed the need to discuss some abstract questions regarding the procedure of Article 66 (2) GDPR and agreed to have an additional meeting of the SAESG ESG for this purpose.

5.6 Information from European Commission on grants

The EU COM invited the SAs to apply to the open call for grants.

6 FOR INFORMATION – Expert Subgroups and Secretariat

6.1 International Transfer ESG

OECD Administrative Arrangement– written state of play

The EDPB members took note of the written state of play concerning the OECD Administrative Arrangement. The members of the EDPB were also invited to join the drafting team regarding this matter.

One of the members volunteered.

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, LT SA, LU SA, LV SA, MT SA, NL SA, PL SA, PT SA, RO SA, SE SA, SI SA, SK SA

- European Commission

- Observers: AL, MD, ME; In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points 3.1., 4.2., 4.4.1., 4.4.2., 4.5.1., 5.2., 5.3., 5.5 and 6.1. of the agenda.

- EDPB Secretariat