



Preparatory meeting and 1st EDPB Plenary meeting¹

24-25 May 2018

Albert BORSCHETTE Conference Center, Room 4B-1A, Rue Froissart 36, 1040 Brussels
Final

24 May 2018- EDPB preparatory meeting

1. Chairing the meeting and adoption of the agenda

1.1 Chairing of the meeting – decision

The Plenary confirmed the agreement of the WP29 April plenary and Andrea Jelinek was asked to chair the meeting.

1.2 Draft agenda of the preparatory meeting – adoption

Draft agenda of the 1st meeting of the EDPB – **discussion**

The Plenary adopted the agenda of the preparatory meeting before agreeing to discuss the ICANN statement under point 3.1.8 of the agenda. The Plenary also discussed the agenda of the first meeting of the EDPB.

2. Preparation of the Setting up of the EDPB

2.1 Exchange of views on the existence of a new Board and working methods – discussion

The following suggestions were made:

- increase the use of technical means for meetings, e.g. videoconference system, electronic vote in order to make sure that all supervisory authorities, especially the small ones, are able to participate more actively in the meetings.
- the need to focus on the most important issues at the moment and to elaborate a strategic/business plan in order to identify priorities while remaining flexible. The number of points

¹ When reference to draft documents for discussion / adoption is made in the agenda, the documents are those uploaded and circulated to the members via CIRCA.

of the agenda should be reduced accordingly. State of play should be provided in writing. Fundamental and strategic questions should be clarified in the plenary meetings while the substantive work should take place in the subgroups.

- the need to review the structure of the subgroups as well as their mandates in order to avoid overlaps and to find more flexible and pragmatic working methods. Coordinators know best where the resources can be pooled and should be involved in the rethinking of the structures.

2.2 National implementation of the GDPR – tour de table

A tour de table was made on the national laws implementing/complementing the GDPR as well as on the transposition of the Police Directive as of 25 of May.

The EDPS informed the members that a political agreement has been found on the new version of the 45/2001 Regulation. It will be applicable around October.

2.2.1 Rules of Procedure - discussion before future adoption (Rapporteur: AT DPA)

After final discussion points regarding the deadlines relating to Articles 64 and 65 GDPR were resolved, the Plenary agreed on the Rules of Procedure. The Commission expressed concerns as to the legality of the interpretation given to article 65(2) GDPR. The Rules of Procedure were submitted for adoption on 25 May.

2.2.2 Memorandum of Understanding (MoU) – discussion before future agreement and signing (Rapporteurs: Chair, EDPS)

The Plenary finalised the wording of the MoU, after including certain remarks made by the Internal Audit Service of the EU Commission. The MoU was submitted for approval and signature on 25 May.

The EDPS announced its proposal to select Isabelle Vereecken as the Head of the EDPB Secretariat and asked the Plenary whether they have any objection. No objection was raised.

2.2.3 Observers of the EDPB – invitation letter to the first EDPB meeting and future meetings – discussion before future adoption (Rapporteurs: AT DPA)

The Plenary discussed the content of the letters (the invitation to the supervisory authorities of the EEA countries, Montenegro, Serbia, Albania, FYROM, and Moldavia to attend the first EDPB meeting and to express their interest in the following plenary and subgroup meetings). The letters were submitted for adoption on 25 May.

COM emphasised the importance to have the six western Balkan countries (Bosnia Herzegovina and Kosovo in addition to the current observers Montenegro, Serbia, Albania and FYROM) as observers as they are adopting the EU acquis.

2.2.4 Press release regarding the first EDPB meeting – discussion before future adoption (Rapporteurs: AT DPA, EDPS)

The press release was agreed on taking into account minor changes made by the Plenary. The press release was adopted by the EDPB on 25 May.

2.2.5. Press Conference on 25/5 – discussion

The Chair gave practical information on the press conference on 25 May and invited the Commissioners to have a group picture during the cocktail organised in the evening of 24 May.

2.2.6. IMI developments updates – State of play (Rapporteur: EDPB Secretariat)

The system will be operational as of 25 May. The feedback regarding the training of the representatives of the DPAs was very positive. An helpdesk will be provided by the EDPB-Secretariat working together with DG Grow (EDPB-IMI-Helpdesk@edpb.europa.eu). There will be a constant follow up of the system in order to enhance the features and the IMI (IT) User Group will be in charge of the coordination. This group will be composed of IMI users and by IT experts in charge of evaluating and arbitrating the IT and business needs of the supervisory authorities. The Plenary was informed that the implementing act which allows the launch of an IMI pilot according to the IMI Regulation was adopted on the 18 May 2018.

3. Transition of the WP29 to the EDPB

3.1.1 Future of WP29 documents – discussion before future adoption

After discussions about the possible adoption of the WP29 papers/guidelines/opinions by the EDPB, the Plenary decided that the EDPB should endorse these documents.

The other documents of the WP29 like letters and statements do not need to be endorsed since they are considered WP29 documents.

The new guidelines (on derogations and certification) were adopted as EDPB guidelines and the guidelines on certification will be open for public consultation.

3.1.2 Guidelines on certification – discussion before future adoption (WP29 rapporteurs: DE DPA, EDPS, IE DPA, FR DPA, and UK DPA)

The Plenary agreed on the revised version of the guidelines. The guidelines were pre-adopted by the EDPB on 25 May.

Remark: The revised version of the guidelines on accreditation after the public consultation is expected to be submitted for adoption during the next plenary meeting in July.

3.1.3 Guidelines on derogations (Article 49 GDPR) – discussion before future adoption (WP29 rapporteurs: FR DPA, DE DPA)

The Plenary agreed on the guidelines. The guidelines on derogations were adopted by the EDPB on 25 May.

3.1.4 Guidelines on territorial scope of the GDPR – state of play (WP29 Rapporteur: FR DPA)

The Plenary was provided with a state of play emphasising the comments received from several SAs. The Key provision subgroup will continue its work on the document.

3.1.5 Position paper on the limits of reliance on Article 6(1)(b) GDPR – state of play (WP29 rapporteur: IE DPA)

The Plenary was provided with a state of play by the Key provision subgroup. A first draft of the position paper will be discussed during the next subgroup meeting.

3.1.6 Handling of local cases (Article 56 (2) GDPR) – state of play (WP29 rapporteurs: FR DPA, HU DPA)

The Plenary was provided with a state of play by the Cooperation subgroup. Work will continue on the question of definition and further development of case examples.

3.1.7 Cross border cases after May 25 – discussion (WP29 rapporteur: BE DPA)

The Plenary was provided with a state of play by the Enforcement subgroup and underlined the importance of cooperation processes in large cross-border cases between EU SAs being grounded in the GDPR. The Enforcement subgroup will continue its work on that subject matter.

3.1.8 Statement on ePrivacy – discussion before future adoption (WP29 rapporteur: FR DPA)

The Plenary agreed on the statement on ePrivacy taking into account some minor modifications suggested by the Plenary. The statement was adopted by the EDPB on 25 May.

NEW ITEM: Statement on ICANN

The Plenary agreed on the endorsement of the WP29 statement by the EDPB on 25 May and its publication on EDPB website.

3.1.9 Future of WP29 subgroups: set up, coordinators and mandates – discussion

The Plenary discussed the future structure of the subgroups as well as their mandates. In particular it was proposed to possibly merge as well as rename subgroups and create a specific group for Art. 64 and 65 GDPR matters.

In the course of the discussion the delegation from Spain proposes to become coordinator of the eGovernment subgroup which will be renamed.

Furthermore, the EDPB Secretariat underlined that the IT Task Force has its mandate ended by 25 May 2018 but the IT User Group will continue to exist.

The Plenary gave a mandate to the coordinators of the subgroups on the 25 May to discuss the future structure of the subgroups as well as their mandates.

4. Current focus of the EDPB/preparatory meeting

4.1 Social Media Working Group; Facebook/Cambridge Analytica; Facebook Contact Group – state of play

The Plenary was provided with information on the first meeting of the Social Media Working Group. During the discussions at the first meeting it emerged that the group needs to reach a common understanding of the notion “social media”.

The Plenary was provided with a state of play by the Facebook Contact Group.

The Plenary was provided with a brief update on Facebook/Cambridge Analytica. The investigations conducted by the ICO are still ongoing but close to finalisation. The first results will be presented by the ICO in June.

4.2 EU-US Privacy Shield: next steps; second annual joint review - discussion

The Plenary was provided with a brief update on the developments regarding the EU-US Privacy Shield by the Chair. A letter was prepared, agreed on by the Future of Privacy subgroup and sent to Ambassador Garber, inviting her to the next EDPB plenary meeting in July. No answer has yet been received. Furthermore the organisation of the next annual joint review taking place in Brussels is under way. The BTLE subgroup was asked to draft an internal report on the progress by 25 May on the Privacy Shield.

25th May 2018 - 1st EDPB meeting²

1. Establishment of the EDPB

1.1 Draft agenda - adoption

The Plenary adopted the agenda of the meeting.

1.2 Welcoming the members of the EDPB

1.3 Election of the Chair and Vice Chairs

The Chair and the two Vice Chairs were unanimously elected by the present members of the Board by acclamation. Andrea Jelinek (AT) was elected Chair, Willem Debeuckelaere (BE) and Ventsislav Karadjov (BG) were elected Vice Chairs.

1.4 Welcoming the observers of the EDPB

The present members of the Board unanimously approved the letters to the current Observers which were then forwarded.

1.5 Memorandum of Understanding – agreement and signing

The MoU between EDPB and EDPS was approved by unanimity of the present members of the EDPB and signed by the European Data Protection Supervisor, Mr. Giovanni Buttarelli and the Chair of the EDPB.

1.6 Press release regarding the first EDPB meeting - adoption

The present members of the EDPB adopted the press release by unanimity.

1.7 EDPB Secretariat – information and state of play

The Head of Secretariat, Isabelle Vereecken presented the Secretariat staff as well as explained the functional mailboxes of the Secretariat. It was emphasised that consistency procedure requests (Art. 64 and 65 GDPR) should be sent via the IMI system.

1.8 Rules of procedure - Adoption

The present members of the Board unanimously adopted the EDPB Rules of Procedure after incorporating the changes discussed during the preparatory meeting on 24 May.

2. Transition of the WP29 to the EDPB

2.1 WP 29 GDPR guidelines and related documents – endorsement

The present members of the EDPB unanimously endorsed the following WP 29 GDPR guidelines and other documents:

- Guidelines on Consent
- Guidelines on Transparency
- Guidelines on Automated individual decision-making and profiling
- Guidelines on Personal data breach notification
- Guidelines on the Right to Data Portability

² When reference to draft documents for discussion / adoption is made in the agenda, the documents are those uploaded and circulated to the members via CIRCA

- Guidelines on Data Protection Impact Assessment
- Guidelines on Data Protection Officers
- Position paper on Art. 30 (5) GDPR
- BCR application form: controllers
- BCR application form: processors
- Approval procedure for Binding Corporate Rules for controllers and processors
- Elements and principles to be found in Binding Corporate Rules for processors
- Elements and principles to be found in Binding Corporate Rules for controllers
- Adequacy referential
- Guidelines on Lead supervisory authority
- Guidelines on Application and setting of administrative fines

The endorsement will be published on the EDPB website.

2.2 EDPB guidelines (certification and derogations (Art. 49)) and statements

The present members of the Board unanimously pre-adopted the guidelines on certification the guidelines on derogations, the ePrivacy statement and endorsed the WP29 ICANN statement. The documents will be published on the EDPB website. The guidelines on certification will be open for public consultation for 6 weeks.

2.3 Subgroups, coordinators and mandates - Adoption

The present members of the EDPB confirmed the previous WP29 subgroups, their coordinators and their mandates. The coordinators of each of the subgroups will meet to discuss the list of subgroups, to assess the mandates and to avoid overlapping.

3. Miscellaneous

No issues raised.

Annex - List of participants

I. Members

Present:

AT
BE
BG
CY
CZ
DE
DK
EDPS
EE
EL
ES
FI
FR
HR
HU
IE
IT
LT
LU
MT
NL
PL
PT
RO
SE
SI
SK
UK

Absent:

LV both days
DK for the 25/5, but vote was delegated to SE

II. Commission

Present

III. Observers

Present:

IS
LI
NO
MD

MK
RS
AL
ME

IV. Secretariat

Present