



Final

70th Plenary meeting

10 October 2022, Brussels

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 69th Plenary meeting – a adoption

The minutes of the 69th plenary meeting were adopted unanimously with the modifications agreed upon by the EDPB members. The members of the EDPB also agreed on the public version of the minutes.

1.2 Draft agenda of the 70th EDPB meeting – a adoption

A new point 1.3 was added to the agenda - Briefing by COM on EU-US Data Privacy framework.

The draft agenda was adopted with this modification. The discussions relating to agenda points 2.2, 2.4 and 3.1 were declared confidential according to Art. 33 EDPB RoP.

1.3 Briefing by COM on EU-US Data Privacy framework

Following the adoption of a new Executive Order and Attorney General Regulation that translate into US law the agreement in principle reached in March between the EU and the US, the Commission provided a brief update on the content of these texts, their implementation and the process for a future adequacy decision. The Commission also recalled that these safeguards on national security access to data are meant to apply to all data transfers to the US falling under the GDPR, regardless of the transfer mechanism used.

2 Current Focus of the EDPB Members

2.1 “Wish list” for EU COM: Procedural aspects that could be further harmonised to enhance the positive impact of cooperation under the GDPR

The EDPB Secretariat, acting as lead rapporteur, presented the draft ‘Wish list’ and the cover letter for the European Commission prepared by the COOP ESG on the basis of the input shared by the EDPB

members following the EDPB meeting in Vienna. The document also integrates some of the input provided by the NGOs to the EDPB during the meeting on 13 September 2022. The rapporteur stressed the importance of the document and recalled that the 'Wish list' seeks to ensure further harmonisation of national procedural laws and streamline cooperation, but since some of the existing differences are beyond the EDPB's remit, a legislative initiative may be necessary, without opening the GDPR. The EDPB members agreed on some final changes in the text of the cover letter and the annex in order to further clarify certain points. It was specified that the letter will be addressed to Commissioner Reynders.

The EDPB members adopted the annex together with the cover letter, with 1 EU member of the EDPB abstaining.

2.2 Access to documents: complaints with the European Ombudsman

The EDPB Secretariat shared information about the three ongoing complaints filed with the European Ombudsman (EO) against the EDPB concerning access to documents requests. The EDPB Secretariat informed the EDPB members about its exchanges with the EO. Following these exchanges, the EDPB members decided on a way forward on the answer to be provided to these requests.

One member of the EDPB requested information on the EDPB retention periods policy at the EDPB Secretariat to be provided at the next EDPB Plenary meeting.

2.3 Statement on digital euro - discussion and possible adoption

The rapporteur presented the item and provided a state of play on the ECB's digital euro project. The EDPB members had a discussion on the maturity of the document and the appropriateness of adopting it at this stage. Several EDPB members shared their views on the necessity to take an official stance on the topic as soon as possible, in order to ensure that the rights of the citizens are protected, whereas another member considered that more information and further work on the statement are needed.

The EDPB agreed on some modifications in the text of the statement and more specifically on the inclusion of a paragraph regarding the need to ensure compliance with the Schrems II ruling in case personal data would be transferred outside the EU.

25 EU members of the EDPB voted in favour of adopting the statement. The EDPS abstained. The 3 EEA members of the EU voted in favour of adoption.

2.4 State of play on cases of strategic importance and second round of choosing cases of strategic importance: ██████████ – discussion and adoption

The ██████████ SA provided an update on the ██████████ strategic case, the ██████████ SA updated on ██████████ strategic case and the ██████████ SA provided an update on the ██████████ strategic case.

Following this, the ██████████ SA opened the discussions on the second round of strategic cases and presented the selected cases which concern ██████████. The ██████████ SA explained that they intend to start an ex officio investigation and would ask for assistance from 3 to 4 other SAs. The EDPB Members were invited to express their interest in cooperating on these cases.

The EDPB members unanimously adopted the selection of these cases which concern ██████████ as strategic.

3 Consistency mechanism, Guidelines and EDPB RoP

3.1 Art. 64 Opinion on the approval of Europrivacy certification criteria – discussion and adoption

The CEH ESG coordinator recalled the extensive work done for the assessment of this certification criteria and the agreements reached at the CEH ESG level. The EDPB Secretariat presented the two points for discussion, one related to international transfers and another related to joint-controllership.

After discussion, the EDPB members adopted the Opinion as it was presented. 22 EU members of the EDPB voted in favour, 1 EU member of the EDPB voted against and 1 abstained. The 3 EEA members of the EDPB voted in favour.

3.2 Targeted update of the Guidelines for identifying a controller or processor's lead supervisory authority – discussion and adoption

The rapporteur introduced the item and recalled that, in September 2020 when the EDPB Guidelines on the concept of controller and processor in the GDPR were adopted, the EDPB members agreed on the need to check if those Guidelines require any change in the Guidelines for identifying a controller or processor's lead supervisory authority (LSA Guidelines) regarding the interpretation of the concept of main establishment in joint-controllership situations. Following this, the KEYP ESG prepared a targeted update of the LSA Guidelines. One participant presented arguments against the update.

After discussion, the EDPB members adopted the updated Guidelines. 23 EU members of the EDPB voted in favour, 1 EU member voted against and 2 EU members abstained. The 3 EEA members of the EDPB voted in favour of adoption.

The EDPB then discussed and decided to also have a targeted public consultation on the update. 22 EU members of the EDPB voted in favour, 3 EU members voted against and 1 EU member abstained. The 3 EEA members of the EDPB voted in favour.

Regarding the next steps, it was agreed that the EDPB will assess the impact of this change on the IMI system and on the Guidelines on Article 60 GDPR.

3.3 Targeted update of the Guidelines on data breach notification – discussion and adoption

The rapporteur presented the targeted update of the Guidelines which aim to tackle an inconsistency between the Guidelines on data breach notification and the LSA Guidelines on the question of which supervisory authorities need to be notified in case of a data breach at a non-EU establishment.

One EDPB member suggested to discuss how to handle such notifications in practice in a more efficient manner. Another participant considered that there are existing divergences with regard to statistics on personal data breach notification under the GDPR and suggested to discuss how the existing Guidelines are applied in practice.

The EDPB members adopted the revised Guidelines. 24 EU members of the EU voted in favour of adoption, no EU member of the EDPB voted against and no EU member of the EDPB abstained. The 3 EEA members of the EDPB voted in favour of adoption.

The EDPB members also decided to have a targeted public consultation on the update. 21 EU members of the EDPB voted in favour and 2 EU members of the EDPB voted against. The 3 EEA members of the EDPB voted in favour.

3.4 Annual reports of SAs: dedicated Annex with standardised content and format regarding key information – information

The rapporteur suggested to have an Annex in the SAs' annual reports that includes information following a standardised format and including the same type of content, taking account of the information that is interesting for stakeholders. The EDPB members discussed the proposal and recalled that similar initiatives have previously been considered. The possible confusion stemming from lack of a common methodology and indicators in the SAs' statistics was underlined. The EDPB members agreed on the importance of communicating information on their work in a coherent and consolidated manner and suggested to liaise with the subgroup in charge of the similar initiatives.

4 AOB

4.1 Format of the 13-14 December meeting

The EDPB Plenary meeting on 13 and 14 December will be held in person in Brussels.

4.2 Organisation of ESG meetings

The EDPB Secretariat recalled the EDPB Plenary's decision to have 2 physical subgroup meetings per year. Based on experience so far, this solution does not seem to fit everyone. Following feedback received from ESG coordinators, and on the basis of the 2023 budget, more flexible options for the organisation of ESG meetings were proposed to increase the number of physical meetings and diminish the number of hybrid meetings.

The EDPB members agreed with the proposed options unanimously, which will enable each subgroup to organise up to 4 physical meetings per year.

4.3 Information on FATCA/ CRS

The rapporteur provided [REDACTED]. Following recent media publications with regard to the position taken by one of the EDPB members, the member was invited to provide further information about the background and position taken. The need to remain consistent on FATCA-related matters was highlighted.

4.4 Information on reference for a preliminary ruling to the CJEU

The NL SA provided an update on a recent referral for a preliminary ruling sent by the District Court of Amsterdam concerning reliance on legitimate interest as a legal basis for processing of personal data.

Annex: Attendance List

The CY SA delegated voting rights to the ELSA pursuant to Art. 22.5 RoP.

SAs:

AT SA, BE SA, BG 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, MT SA, NL SA, NO SA, PL SA, PT SA, RO SA, SE SA, SI SA

- European Commission

- Observers: MD; In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points 2.4 and 3.1 of the agenda.

- EDPB Secretariat