



Final

12th Plenary meeting 9-10 July 2019, 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

1.1 Minutes of the 11th Plenary meeting – adoption

The minutes were adopted unanimously.

1.2 Draft agenda of the 12th EDPB meeting – adoption

The draft agenda was adopted with an additional item on the update from UK SA on ongoing cases.

The discussions relating to points 2.1, 2.2, 2.3, 2.5., 2.7, 2.10, 2.11, 3.1, 3.2 were declared confidential according to Art. 33 EDPB RoP.

Observers were present during the plenary meeting except for points 2.1, 2.2, 2.3, 2.5., 2.7, 2.10, 2.11, and 3.2 of the agenda.

2. Current Focus of the EDPB

2.1 Art. 64 GDPR Opinion on Standard Contractual Clauses for processors under Art. 28.8 GDPR by DK SA – adoption

The EDPB Secretariat presented the draft opinion on the standard contractual clauses submitted by the DK SA. The draft opinion of the Board aims at ensuring a consistent application of Art.28 GDPR.

The opinion was adopted with a minor modification with 24 SAs and 3 EEA EFTA SAs in favour and 3 SAs abstaining.

2.2 Art. 64 GDPR Opinion on Accreditation criteria of monitoring bodies of Codes of Conduct – adoption

The rapporteur presented the draft opinion on the draft accreditation criteria of monitoring bodies of Codes of Conduct submitted by the AT SA. All codes covering non-public authorities and bodies are required to have accredited monitoring bodies. Therefore, the Board recognises that the requirements need to work for different types of codes, applying to sectors of diverse size, addressing various interests at stake and covering processing activities with different levels of risk.

The opinion was adopted with minor modifications with 24 SAs and 3 EEA EFTA SAs in favour, 1 SA against and 1 SA abstaining.

2.3 Art. 64 GDPR Opinion on continuance of the competence of a national authority in case of change in circumstances relating to the main or single establishment – adoption

The rapporteurs presented the draft opinion on continuance of the competence of a national authority in case of a change in circumstances relating to the main or single establishment. The GDPR does not contain any specific provision relating to the case in which the main or single establishment of the controller or processor is set up on the territory of one EEA Member State and relocated mid-procedure to another Member State's territory or outside the European Economic Area. The opinion deals with the question as to the moment the LSA's competence can be considered as definitely fixed.

The second option was chosen by 16 SAs and 3 EEA EFTA SAs, which makes that version of the opinion adopted by the majority of EDPB members.

2.4 EDPB-EDPS Joint consultation by the Commission on the processing of patients' data in the eHealth Digital Service Infrastructure (eHDSI) – adoption

The EDPB Secretariat presented the draft of the first joint opinion by the EDPB and the EDPS in accordance with Art. 42.2 of Regulation 2018/1725. The opinion replies to COM's questions on the data protection aspects of the draft Implementing Decision providing for the establishment, management and functioning of the eHealth network, and repealing Commission Implementing Decision 2011/890/EU.

The EDPB members unanimously adopted the joint opinion.

2.5 Art. 64 GDPR Opinion on CY Art. 35.4 DPIA list - adoption

The rapporteur presented the draft opinion. EDPB members unanimously adopted the opinion. This was the last EDPB opinion on Art. 35.4 DPIA list as the EDPB adopted already all opinions regarding the other national lists.

2.6 Guidelines on Video surveillance – adoption

The rapporteur presented the draft guidelines on video surveillance. These guidelines clarify how the GDPR applies to the processing of personal data when using video devices and aim to ensure the consistent application of the GDPR in this regard. The guidelines cover both traditional video devices and smart video devices. For the latter, the guidelines focus on the rules regarding processing of special categories of data. In addition, the guidelines cover, among others, the lawfulness of processing, the applicability of the household exemption and the disclosure of footage to third parties.

After discussions, the opinion was adopted with some modifications with 23 SAs and 3 EEA EFTA SAs in favour and 2 SAs against.

The guidelines will be subject of public consultation.

2.7 Update

The [REDACTED] followed up on the presentations given during previous EDPB Plenary meetings and updated the information given to EDPB members regarding ongoing investigations. EDPB members took note of the information given.

[NEW] Update

The [REDACTED] provided EDPB members with the information on ongoing investigations and clarified the available information regarding the intended [REDACTED] EDPB members took note of the information given.

2.8 EDPB Hearing before the CJEU on Schrems II case on 9 July 2019 information by the Chair

The Chair of the EDPB informed EDPB members on the hearing before CJEU on Schrems II case. The EDPB was invited for the first time to provide its assessment. The Advocate General opinion is expected on 12 December 2019.

The EDPB members unanimously decided that the text of the EDPB pleading will be published on the EDPB website.

2.9 Reply to LIBE request on the implications of the CLOUD Act – adoption

The EDPB and the EDPS received two substantially identical letters from the LIBE Committee requesting guidance on the implications of the US Cloud Act. A joint response was prepared by the [REDACTED] after having been shared with the [REDACTED]

The response letter had been already discussed during the May and June Plenaries and EDPB members requested some changes to be made. The [REDACTED] received comments from the EDPB members and organized conference calls in order to prepare a new version of the draft letter.

EDPB members suggested some changes regarding the title of the letter and the order of paragraphs.

After discussion the letter was adopted with some modifications with 24 SAs and 3 EEA EFTA SAs in favour, 2 SAs against and 1 SA abstaining.

2.10 Art. 64 Opinion on Art 35.5 FR, ES & CZ lists – adoption

The rapporteur presented the draft opinions. Art. 35.5 GDPR invites national SAs to establish and make public a list of the kind of processing operations they consider exempt from the requirement of a data protection impact assessment. FR SA, ES SA and CZ SA provided the Board with their Art. 35.5 lists.

After discussion, the opinion was adopted with 24 SAs and 3 EEA EFTA SAs in favour.

2.11 Recommendation on EDPS Art. 39.4 & 39.5 lists – adoption

The rapporteur presented the draft recommendation. Under Art. 39.4 and 5 of Regulation (EU) 2018/1725, the EDPS shall adopt a lists of processing operations which are and which are not subject to the requirement for a DPIA. The EDPS consulted the EDPB, prior to adoption of these lists, as they

“refer to processing operations by a controller acting jointly with one or more controllers other than Union institutions and bodies” (Art. 39.6 of Regulation (EU) 2018/1725). The consultation request was based on Art. 70.1 e) GDPR.

EDPB members unanimously adopted the recommendation.

3. FOR DISCUSSION AND/OR ADOPTION – Expert Subgroups and Secretariat

3.1 BTLE ESG Pending Ombudsperson case – discussion

The rapporteur presented the state of play of the first case submitted by the EU Centralised Body (EUCB) to the Ombudsperson mechanism under the Privacy Shield Programme. The EDPB members discussed the issues linked to the fact that the data transfer in question took place before the mechanism was agreed between the EU and the US.

██████████ was also asked to update the EUCB rules of procedures.

In the margin of the discussion, COM informed that the dates of the 3rd annual review of the Privacy Shield have changed. New dates will be communicated soon.

The coordinator of the [REDACTED] finally informed the EDPB members that representatives for upcoming PNR reviews have been designated. EDPB members unanimously appointed those representatives.

3.2 International Transfers ESG - Internal process for the handling of BCRs - discussion

The Coordinator of the International Transfer ESG presented the draft proposal to improve the internal process for handling of BCRs. The main aim is to reflect the GDPR requirement of involving all SAs in the assessment process, in comparison to the pre-GDPR procedure when only some SAs were involved.

The EDPB Chair insisted on the fact that when a mandate is given by the Plenary, EDPB members should be ready to act as rapporteurs. This is applicable for all BCRs opinions but also for any other mandate given by the plenary.

It was also agreed that existing BCRs that SAs had already submitted should be addressed by the EDPB members as a matter of priority and avoid any duplication from the new process

3.3 Key Provisions ESG and Technology ESG - BEREC's request for guidance on review of net neutrality guidelines – request for mandate

The EDPB Secretariat presented the request for mandate to reply to BEREC's request. BEREC (the Body of European Regulators for Electronic Communications) is currently revising their guidelines on net neutrality. They have asked the EDPB for guidance on matters related to issues on traffic management and zero-rating that concern data protection also in connection with the GDPR and the ePrivacy Directive.

EDPB members gave the requested mandate to the

3.4 Enforcement ESG

3.4.1 Investigating complaints – request for mandate

presented a request for mandate to map national practices on investigating complaints.

The coordinators underlined that the analysis of the different practices of SAs could also serve as input for other work on related topics in the Cooperation ESG.

After discussion EDPB members gave the requested mandate to the Enforcement ESG and asked the ESG to work in close cooperation with the Cooperation ESG. declared their readiness to become rapporteurs for this item.

3.5 Fining Taskforce

3.5.1 Change in Coordinatorship of the Fining Taskforce – for information

The Fining TF coordinator informed EDPB members about the change in the coordinatorship of the TF. will be replaced by

EDPB members unanimously accepted the change of the Fining TF coordinatorship.

3.6 Secretariat

3.6.1 Outcome of the meeting of the Communication Officer Network in Vienna – state of play

The EDPB Secretariat reported on the first meeting of the Communication Officer Network which was held on 17 May in Vienna. The Network would like to enhance the coordination of the communication activities and to foster the release of joint communication campaigns and projects.

3.6.2 EDPB Secondment Programme – state of play

The EDPB Secretariat provided information on the EDPB Secondment Programme. Following the adoption of the EDPB-EDPS Joint Decision regarding the EDPB Secondment programme, EDPB members recently received an e-mail informing that the pilot project will take place at the end of 2019/beginning of 2020.

The email aims to call for expression of SAs readiness and availability to host secondees from other SAs and collect interest of SAs staff regarding the opportunity to be hosted.

The deadline to signal interest is 19 July 2019 and it should be send to the dedicated email address

One member emphasised the fact that the respective email should have been sent only to the relevant contact points in each SA and not directly to the staff members.

3.6.3 Creation of a DPO Network – discussion

The EDPB Secretariat proposed to create a DPO Network. The main goals are to allow for the exchange of best practices and to create a more harmonised approach towards DPO practices among the EDPB

members. It should be composed of all DPOs of SAs, the EDPB DPO and the EDPS DPO. This would also allow for a better coordination between the EDPB, the SAs and the EDPS regarding the use of tools related to their common activities.

EDPB members unanimously supported the idea of creating a DPO network.

4. Miscellaneous

- COM: letter on election package: COM sent a letter, which was forwarded to all SAs, to request their input on the efforts undertaken in the context of electoral activities, especially during the European elections. The deadline for replies is 5 August.
- COM: Communication taking stock on GDPR implementation will be issued in July. It will also cover points of relevance for the SAs and the EDPB.
- COM: In preparation of the 2020 review of the GDPR, the COM will contact different stakeholders in autumn, including the EDPB, to get input.
- UK SA: As the Chair of the International Conference of Privacy and Data Protection Commissioners, UK SA was approached by SAs, also from third countries, to prepare a letter to Facebook to express concerns on data protection and privacy in relation to Libra cryptocurrency. The letter will not be signed on behalf of the International Conference, but individually by its members.

Annex: Attendance list

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, IS SA, LI SA, LT SA, LU SA, MT SA, NL SA, NO SA, PL SA, PT SA, RO SA, SE SA, SI SA, SK SA, UK SA

European Commission

EFTA Supervisory Authority

EDPB Secretariat

Observers:

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