

Minutes



Final

14th Plenary meeting 08-09 October 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 13th Plenary meeting – adoption

The minutes were adopted unanimously with a modification on point 2.1.3.

1.2 Draft agenda of the 14th EDPB meeting – adoption

The draft agenda was adopted with the addition of a point 1.7 relating to the status of the ePrivacy regulation and a point 1.8 on the withdrawal of the Art. 65 GDPR procedure by the LSA. A SA also required the modification of the title of item 3.3.2.

The discussions relating to points 2.1, 2.2, 2.3, 2.5, 2.6, 2.8, 2.10, 3.3.2 were declared confidential according to Art. 33 EDPB RoP. Observers were present during the plenary meeting except for points 1.1, 2.1, 2.2, 2.3, 2.5, 2.6, 2.8, 3.3.2 of the agenda.

1.3 LIBE Hearing – information by the Chair

The Chair of the EDPB informed the EDPB members that the LIBE hearing is now scheduled on 3 December 2019. The LIBE also invited the EDPB on 6 November regarding the Cloud Act.

Representatives of the DE and FR SAs will represent the Board and the assistant supervisor will represent the EDPS during this hearing.

1.4 Meetings with the new Commissioners – information by the Chair

The Chair of the EDPB informed the EDPB members that she will have a meeting with the Commissioner Ms. Jourova on 9 October 2019. The Chair of the EDPB also informed the EDPB members that she had a meeting with the designated commissioner Mr Reynders on 7 October 2019. The Chair of the EDPB reported that they discussed - inter alia - about the EDPB tasks under the GDPR and the available resources. The Chair of the EDPB invited Mr Reynders to come to one of the EDPB Plenary meetings after the new Commission is voted into office by the European Parliament.

The Chair of the EDPB informed the EDPB members that she will meet with Ms. Vestager on the 3 December 2019.

1.5 Review of the GDPR – information by the Chair

The Chair of the EDPB mentioned that this point is more about the evaluation of the GDPR than its review. The Chair of the EDPB encouraged all the expert subgroups and all the EDPB members to reflect on the evaluation of the GDPR. The EDPB Secretariat will send some questions to the expert subgroups and all the EDPB members.

As regard the monitoring of the implementation of the GDPR, the EU COM (EC) referred to the Communication issued on 24 July 2019 which was informed notably by the report of the multi-stakeholder the group on the implementation of the GDPR also published in July and the results of the May 2019 Eurobarometer on GDPR. Building on this, and in view of the 2020 evaluation, the EC would like to collect the view of the EDPB on the topic of cooperation and consistency. As regards the existing adequacy decisions, the review will evaluate whether the concerned countries/territories continue to ensure an essentially equivalent level of protection. The Finnish Presidency already launched the preparation of the Council's contribution to the 2020 evaluation by consulting Member States, with a view to adopt a position before the end of the year. The EP has still to decide on the way it will contribute to the exercise. In addition, the EC encouraged the EDPB to gather information relating to national enforcement actions (including fines) and publish it on its website since the EDPB is best placed to be the authoritative source on GDPR enforcement at EU level.

Some EDPB members asked questions to the EC about the timeline for review and evaluating the existing adequacy decisions. The EC will provide a report on this in winter 2019/2020.

1.6 ECJ Google Judgements: C-507/17 and C-136/17 - information by the Chair

The Chair of the EDPB informed the EDPB members about the four new rulings that have been published by the CJEU lately. These are the cases C - 507/17, C - 136/17, C - 673/17 and C - 18/18. The Chair of the EDPB informed the EDPB members that the EDPB SEC has summarized those cases and will upload them on Confluence.

Some EDPB members stressed the fact that it is important to reflect on these judgements in order to have a common understanding of their relevant points for the EDPB.

1.7 ePrivacy - information by the Chair

The Chair of the EDPB informed the EDPB members about the state of play of the negotiations on the ePrivacy regulation.

In view of the importance of consistency between the legislative texts, the Chair of the EDPB encouraged all the EDPB members to reflect on the content of the current version of the text and invited the EC to work on this matter together.

The EC underlined the need of consistency, for instance on the notion of consent.

1.8 Article 65 EDPB - information by the Chair

The Chair of the EDPB informed the EDPB members about the withdrawal of the Art. 65 GDPR case.

2. Current Focus of the EDPB

2.1 Internal Guidance on Art. 64.2 GDPR - discussion and adoption

One of the rapporteurs explained the content of the internal document.

2.2 Speech Assistant Systems / Transcription: [REDACTED] - discussion

[REDACTED] SA explained the actions taken at its national level on this topic and its concerns with regard to data protection, namely on the legal basis and the transparency towards the data subjects. [REDACTED] SA has the same concerns with regard to the use of speech recognition systems by another provider.

[REDACTED] SA explained that it has already written an extensive note on this topic and will send it to all the EDPB members. A suggestion was made to have a videoconference call in order to have a discussion with regard to the findings explained in this note.

All EDPB members agreed on the fact that this is an important topic to reflect on.

EDPB members agreed to ask the ██████ ESG to prepare a request for mandate for the next plenary meeting (November). In this respect, ██████ ESG and ██████ ESG should also be involved. The Chair of the EDPB insisted on the fact that, when the mandate will be granted, the lead rapporteur and the rapporteurs should be designated. As regards the current investigations, 4 SAs decided to work closely together on the issue which is not subject to the one stop shop mechanism.

2.3 Privacy Shield: 3rd Annual Review – discussion

Vice Chair of the EDPB, Ventsislav Karadjov, explained the content of the report made by the annual review team.

The EDPB members discussed the report and the EC informed the EDPB that their report should be available before 1 November 2019.

The EDPB report will be submitted for an adoption at the plenary meeting of November.

2.4 Guidelines on the lawful basis for processing under Art. 6.1 (b) GDPR in the context of the provision of online services to consumers (after public consultation) – discussion and adoption

One of the rapporteurs explained the content of the changes implemented in the guidelines after the public consultation and on the info note.

The EDPB members adopted the updated version of the guidelines. 26 SAs and 3 EEA EFTA SAs voted in favour and 1 SA against.

2.5 Art. 64 GDPR Opinion on Equinix BCRs – discussion and adoption

The EDPB Secretariat presented the opinion. As it is the first BCRs opinion - which will likely serve as a model - two editorial changes on point 1 and 6 of the opinion have been suggested.

The EDPB members discussed the need to have the name of the co-reviewers in a BCRs procedure. A vote took place on this specific aspect of the opinion. 15 SAs and 2 EEA EFTA SAs voted in favour of the deletion of the reference to the co-reviewers, 7 SAs and 1 EEA EFTA SAs voted against and 4 SAs abstained.

The EDPB members adopted the opinion with the agreed modifications. 26 SAs and 3 EEA EFTA SAs voted in favour.

2.6 Art. 64 GDPR Opinion on UK accreditation requirements for code of conduct monitoring bodies – discussion

The EDPB Secretariat presented the topic. As the draft decision was broadcasted to the EDPB members on the 4 September 2019, the EDPB Secretariat proposed to submit the text to an adoption via written procedure as the deadline of 8 weeks for having the opinion will end on 31 October 2019.

The EDPB members discussed the state of play of the work and concluded that more work is still necessary to be done at the expert subgroup level. Considering the complexity of the matter, the EDPB members decided to apply the extension of deadline of 6 weeks.

2.7 New ISO standard relating to data protection – information

■ SA made a PPP on the ISO standards relevant for the work of the EDPB. The PPP will be made available to all the EDPB members.

EDPB members took note of the information given.

2.8 Update

The ■ SA 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.

2.9 Invitation to the COM for an exchange of views on data protection and competition – discussion

■ SA presented the topic. EDPB members shared their own experiences and agreed that a cooperation with the competition authorities is important as well as supported the ■ SA initiative. The Chair of the EDPB recalled the fact that she will have a meeting with Ms. Vestager. At that occasion, the Chair of the EDPB will invite Ms. Vestager to come to one of the EDPB plenary meeting.

2.10 Facebook LIBRA - discussion

The ■ SA presented the topic and referred to the joint statement sent to the Libra association by the ■ SA together with other SAs at worldwide level.

The EDPB members discussed the topic and agreed that a common approach was needed.

The EDPB members agreed that ■ ESG, ■ ESG and ■ ESG should work on this topic and coordinate with each other. ■ ESG has been designated as lead ESG.

In addition, the EDPB members agreed to invite the CH SA to share its findings at ESG level. The Chair will meet the ■ SA in Tirana.

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

3.1 BTLE ESG - Response letter to Sophie in't Veld on PNR – discussion and adoption

The coordinator of the BTLE ESG explained the content of the letter.

The EDPB members discussed the wording of the letter following amendments suggested by the EDPS and by the EC.

The EDPB members agreed on a wording and unanimously adopted the letter.

3.2 Key Provisions ESG -

3.3 Compliance, eGovernment and Health ESG

3.3.1 Letter to the Council Working Party on Sports Anti-Doping Code – discussion and adoption

The coordinator of the CEH ESG presented the content of the letter.

The EDPB members discussed the letter and suggested some amendments.

The EDPB members adopted the letter with the suggested modifications. 24 SAs and 3 EEA EFTA SAs voted in favour.

3.3.2 Internal procedure and templates to assess the decisions on certification criteria

– discussion and adoption

One of the rapporteurs presented the content of the internal procedure as well as the templates to be filled in, in order to ease the management of such an Art. 64 GDPR opinion. Moreover, the CEH ESG is still working on a procedure for the EU seals.

The EDPB Secretariat suggested some changes in the section called “Further steps” in order to be in line with the decision taken by the EDPB during last plenary meeting on Art. 10 EDPB RoP.

The EDPB members adopted the internal procedure with the suggested modifications. 26 SAs and 3 EEA EFTA SAs voted in favour, 1 SA abstained and 1 SA voted against.

The Chair of the EDPB reminded the members that whenever they intend to submit a draft decision under Art. 64 or 65 GDPR, they should inform the EDPB in advance to enable it to better plan its work.

3.4 IT Users ESG - EDPB Plenary Register in Confluence – discussion and adoption

The EDPB Secretariat presented the suggestion to use Confluence as the repository for the plenaries as from January 2020.

The EDPB members unanimously agreed to that proposal.

3.5 Secretariat

3.5.1 Response letters to Sophie in't Veld – discussion

The EDPB Secretariat presented the content of the two letters received.

One is about unfair algorithms and the other is about the request for publication of full and unredacted Plenary minutes.

On the first letter (unfair algorithms), the mandate to draft an answer has been granted to the [REDACTED] ESG.

Regarding the second letter, the EDPB members discussed the matter at length and agreed on the fact that transparency is a very important principle for the EDPB. That being said, EDPB RoP already have some provisions on transparency.

The EDPB members concluded that the idea is not to amend the RoP but to, entrust an ESG to work on this question. No specific expert subgroup was designated but the [REDACTED] expert subgroup was mentioned several times.

The EDPB members are in favour of publishing the plenary minutes but the practicalities were not yet decided.

The [REDACTED] agreed to act as lead rapporteur to further work on this issue.

3.5.2 Translation of joint opinions – discussion

The EDPB Secretariat presented the topic and explained the need to possibly update the ROP on this question.

The majority of the EDPB members were in favour of the translation of the joint opinion in all EU languages. They agreed on the fact that the EDPS will translate in FR and DE and that the EDPB will translate into the remaining languages.

4. Miscellaneous

4.1 Report on PT implementing law

The PT SA informed the EDPB members about the adoption of their national law on data protection. It also informed the EDPB members on the fact that the PT SA has ruled that it will not apply some of the provisions of Law No 58/2019 of 8 August 2019. The reason for this is that these provisions, in the view of the PT SA, clearly contradict the provisions of the GDPR, violate the principle of the primacy

of the Union law and seriously undermine the functioning of the consistency mechanism, and the resulting uniform application of data protection rules throughout the European Union. The PT SA expects appeals in front of the Courts once it will take a decision based on their assessment of the Portuguese data protection law.

4.2 Negotiations of a Second Protocol to the Budapest Convention; Ratification process and monitoring mechanism for Convention 108

- The EC explained the state of play of the work regarding the second protocol to the Budapest Convention. The EC encourages each SA to ensure coordination with their respective government, especially regarding the question of the appropriate safeguards on data protection.

The EC informed the EDPB members on the fact that some of the provisions of the second protocol are provisionally agreed. They are therefore made public and a public consultation is open on this. The Coordinator of the █████ ESG also shared this information and suggested a coordinated response with key messages from the EDPB on this topic, with the view to the participation in the Octopus conference.

NEW Miscellaneous

- Urgent withdrawal of content from social media platform mechanism: the ES SA explained to the EDPB members the problems they encounter with videos that are posted on social media platforms (violence, sexual or criminal behaviour, for example).

Urgent measures are needed to withdraw these videos. Victims can directly go to the platforms or ask for criminal action, but now they can also use the DP law. Then the SA can intervene and interact directly with the platform. More information on this can be found on the website of the ES SA.

- The UK SA insisted on the importance of raising awareness of all stakeholders about the no deal situation regarding Brexit. Some EDPB members have already taken some steps, but it remains important that everybody does the same. The UK SA also reminded the EDPB note on Brexit.

- The CZ SA asked a clarification question to the EC concerning their recent communication on the evaluation of the GDPR and, in particular, on a specific sentence introduced by the EC on the evaluation, which the CZ SA considered to be criticism towards SAs.

Annex: Attendance list

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, LV 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:

MD