

FINAL

17th Plenary meeting

28-29 January 2020, 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 16th Plenary meeting – adoption

The minutes were unanimously adopted with two modifications: the discussions relating to items 2.3 and 3.4 are not flagged as confidential anymore and item 5, first point, has slightly been completed.

1.2 Draft agenda of the 17th EDPB meeting – adoption

The Chair of the EDPB encourages the EDPB members to give relevant and timely information to the Chair's team and the EDPB Secretariat when they want an item to be added on the Agenda.

The draft agenda was adopted with some modifications and additions. Item 4.1 and 4.2 have been swapped. An item has been added on the next meeting of the informal forum on the contractual relations of public authorities with cloud providers, on the letter sent to the Chair of the EDPB on TikTok, on two referrals made to the EFTA Court.

The discussions relating to points 2.1, 2.2, 3.1, 3.2, 3.6, 3.7 and 3.9 were declared confidential according to Art. 33 EDPB RoP. Observers were present during the plenary meeting except for points 1.4, 2.2, 3.2, 3.6 and 3.7 of the agenda.

1.3 LIBE hearings - information by the Chair

The Chair of the EDPB informed the EDPB members about the LIBE hearing that took place on 8 January 2020. She explained to the LIBE Committee the functioning of the EDPB and answered all the questions of the MEPs.

A member also informed the EDPB members about another LIBE hearing that took place the day after the hearing with the Chair of the EDPB and in which it participated together with other EDPB members, on the third annual review of the Privacy Shield carried out in September 2019. The EDPB representatives presented to the LIBE Committee the EDPB report on the EU - U.S. Privacy Shield Third Annual Joint Review and answered the questions of the MEPs on this topic.

1.4 Brexit - information by the Chair

This was an EU 27 format item.

The EDPB Secretariat presented the current state of play on the presence of the ICO at the EDPB meetings as well as the current state of play of the IT tools that are at present in use by the Board.

During the transition period, the UK will still be bound by the GDPR (Art. 127 WA) and has to meet its obligations for administrative cooperation. Therefore, the UK will continue participating in Administrative cooperation during the transition period. However, as of February 1st, the membership of the UK's Information Commissioner ("ICO") in the EDPB will cease and the possibility for the ICO to attend (part of) a meeting of the EDPB is exclusively regulated by the Withdrawal Agreement.

2. Current Focus of the EDPB Members



2.1 Evaluation of the GDPR under Art. 97 – discussion and adoption **CONFIDENTIAL**

The Chair of the EDPB presented the state of play of the file after the meeting in the SAESG held on 8 January 2020.

In order to have the report ready for the next Plenary meeting, the EDPB members agreed on a new methodology: the document will be split in two - on one hand the policy messages and on the other hand the coordinated answers to the EU COM questions. A drafting team will work on those two parts and suggest a drafting to the EDPB members for the next plenary meeting.

The EDPB members also discussed about the need to communicate with one voice when it comes to the one-stop-shop mechanism and the evaluation of the GDPR. The EDPB members agreed that there were no need to modify the GDPR. The EDPB is aware of the challenges relating to the cooperation and the need to use the possibilities to its fullest extent.

2.2 Update **CONFIDENTIAL**

The  SA followed up on the presentations given during previous EDPB Plenary meetings and updated the information given to the EDPB members regarding ongoing investigations. The EDPB members took note of the information given. The EDPB members also stressed the importance of cooperation in cross-border cases and the  SA repeated that they would welcome any request of joint operation.

The [REDACTED] SA updated the EDPB members regarding ongoing investigations. The EDPB members took note of the information given.

3. Consistency mechanism, Guidelines and EDPB RoP

3.1 Art. 64 GDPR Opinion on accreditation requirements for Monitoring bodies of code of conduct (BE, ES, FR) - discussion and adoption **CONFIDENTIAL**

The [REDACTED] presented the three draft opinions. The CEH ESG reached an agreement on the draft opinions, so no specific question was raised on those three drafts.

The draft opinions were adopted with 26 votes in favour from EU SAs, joined by 3 EEA EFTA SAs taking position in favour of the draft. 1 EU SA member abstained.

3.2 Internal EDPB document on the procedure for the approval of certification criteria by the EDPB resulting in a common certification, the European data protection Seal - discussion and adoption **CONFIDENTIAL**

The rapporteur presented the work done on this issue.

The EDPB members discussed as well the nature of the document and decided to make it public with 22 EU SAs and 3 EEA EFTA SAs in favour. 4 EU SAs voted against the publication and 2 EU SAs abstained.

The document will be amended to make clear that the informal cooperation phase takes place outside the remit of the EDPB, and that the formal phase is the start of the procedure at the EDPB level. Finally, the acronym CSA should not be used for “competent SA” as it is already used to refer to the concerned SA.

The document was adopted with 22 votes in favour from EU SAs, joined by 3 EEA EFTA SAs taking position in favour of the draft. 1 EU SA member voted against and 4 abstained.

3.3 Guidelines on connected vehicles - discussion and adoption

The rapporteur presented the work done on these guidelines.

21 EU SAs joined by 3 EEA EFTA SAs voted against the deletion of this §. 5 EU SAs voted in favor of the deletion.

The draft guidelines were adopted with 19 EU SAs and 3 EEA EFTA SAs in favour of option 2. 8 EU SAs were in favour of option 1.

Those guidelines will be submitted to public consultation for the period of 6 weeks.

3.4 Guidelines 3/2019 on processing of personal data through video devices (after public consultation) - discussion and adoption

The rapporteur presented the work done on this issue after the public consultation. The EDPB members discussed some requests to amend for example the reference to Art. 14 GDPR when it comes to data collected through video devices, the examples mentioned in section 5 of the document, the reference to biometric data in Art. 9 GDPR and the use of facial recognition.

The draft guidelines were adopted with 25 votes in favour by EU SAs, joined by 3 EEA EFTA SAs taking position in favour of the draft. 1 EU SA member voted against and 1 abstained.

3.5 Cookies – discussion

The majority of the EDPB members were in favour of the first way of proceeding - meaning to update the WP259 guidelines. This will turn those Art 29 WP guidelines into EDPB guidelines.

██████████ offered to act as co-rapporteur for the update of the guidelines. The coordinators of the subgroups will be in charge of finding the lead rapporteur on this matter.

3.6 Art. 64 GDPR Opinions on accreditation requirements for Certifications Bodies (LU, UK) - discussion and adoption **CONFIDENTIAL**

The ██████████ presented the two draft opinions.

The CEH ESG reached an agreement on the draft opinions so no specific question was raised on those two drafts. Paragraph 19 of the Opinion on the UK SA will be amended to clarify that it is an encouragement, and the recommendation on paragraph 24.1 will be corrected to refer to subsection 4.1.1 of the draft accreditation requirements.

The draft opinions were adopted with 27 votes in favour from EU SAs, joined by 3 EEA EFTA SAs taking position in favour of the draft.

The Chair of the EDPB reminded the EDPB members of the importance to send staff to EDPB activities to help with the workload.

3.7 Art. 64 GDPR Opinion on Fujikura Group Controller BCRs - discussion and adoption **CONFIDENTIAL**

The EDPB Secretariat presented the draft opinion. The name of the entity has been updated in the draft opinion following a material mistake.

The draft opinion was adopted with 28 votes in favour from EU SAs, joined by 3 EEA EFTA SAs taking position in favour of the draft.

3.8 EDPB Rules of Procedure: Revision of Art. 64.3 last sentence – discussion and adoption

The rapporteur presented the work done within the RoP drafting team and the changes suggested within the current version of the EDPB RoP to clarify the understanding of the last sentence of Art. 64.3 GDPR.

The new version of Art. 10 EDPB RoP was adopted with 28 votes in favour from EU SAs, joined by 3 EEA EFTA SAs taking position in favour of the draft.

4. Expert Subgroups and Secretariat

4.1 TECH ESG: Response letter to Sophie in't Veld on unfair algorithms – discussion and adoption

The rapporteur presented the draft letter. The content of the letter explains the existing provisions in the GDPR and guidelines that address the concerns raised by the MEP. The EDPB members agreed to change the words “*multilateral approach*” into “*Interdisciplinary approach*”, p. 5 of the draft letter.

The draft letter was adopted with 27 votes in favour from EU SAs, joined by 3 EEA EFTA SAs taking position in favour of the draft.

4.2 BTLE ESG

4.2.1 Letter to Council of Europe on Cybercrime Convention Compliance - discussion and adoption

The rapporteur presented the content of the draft letter. The aim of it is to send a message to the CoE on the importance of ensuring strong safeguards providing a high level of data protection within the final text of the Second Additional Protocol to the Budapest Convention on Cybercrime.

The draft letter was adopted with 28 votes in favour from EU SAs, joined by 2 EEA EFTA SAs taking position in favour of the draft.

4.2.2 Review of the EU-US Umbrella Agreement - information and discussion

The EU COM presented the topic. Art 23 of the agreement requires a joint review 3 years after its entry into force.

4.3 Secretariat

4.3.1 Frequency of EDPB 2021 plenary meetings – discussion

The [REDACTED] consulted the EDPB members about the frequency of the plenary meetings, as there is a need to prepare the draft schedule for the meetings in 2021.

4.3.2 EDPB Budget updates – discussion

The EDPB Secretariat updated the EDPB members on the budget.

The EDPB Secretariat proposed to discuss in February the 2020 adopted EDPB budget and the 2019 Budget execution. A new exercise should soon been undertaken to prepare the draft budget for 2021 including a multiannual framework for 7 years (2021-2027). In this framework, the EDPB Secretariat asked for some orientations from the EDPB members.

As regard the translations, the EDPB Secretariat made a compared exercise to see what versions of the EDPB documents have the most downloads on its website. The practice shows that very few downloads are done in other languages than English. The system of proofreading by the EDPB members led to many delays in publication of translation.

The EDPB members were of the opinion that the current practice for translations should remain. Indeed, most of the EDPB members directly put the EDPB documents on their national website. This might explain the few downloads on the EDPB website. The EDPB members agreed that the translation of documents will be uploaded on the website after the deadline for proofreading has passed (with a label making clear that it is not proofread). If and when the document is proofread after publication, it will be updated on the EDPB website. The EDPB members agreed with this methodology.

As regards the IT cooperation and consistency tool, the EDPB Secretariat indicated to need the inputs from the EDPB members. The EDPB Secretariat may work together with DG Grow on some modifications. However, if the EDPB members want to have a new system, this information should be known by the EDPB Secretariat by the 5th February (date of a IT user meeting) to be in a position to anticipate the budget implication of this. However, the EDPB Secretariat referred to the fact that the

GDPR always refer to EC implementing act for the standardised system of exchange of information. The EDPB members agreed to provide input by maximum the 5th February.

5. Miscellaneous

5.1 Support small and medium enterprises on the data protection reform (STAR II project) (■■■ SA)

The ■■■ SA explained the project with the view to have a handbook for SMEs based on received questions. They informed the EDPB members that a workshop will be organized in March on this topic. The intention is to translate the handbook into English and to share it with all the EDPB members. This project is 80% co-financed through EU grants.

5.2 ECJ Schrems II case: Conclusions of the advocate general (■■■ SA)

The ■■■ SA informed the EDPB members about the opinion of the AG on this case. The ■■■ informed the EDPB members that a summary of this opinion is available on the EDPB wiki exchange system.

5.3 European Commission

5.3.2 Update on the review of the OECD Privacy Guidelines – Questionnaire

The EU COM informed the EDPB members on the review of the guidelines. In order to prepare the review, a questionnaire was sent to all OECD members (to be checked only States or also directly to the SAs). The EU COM encourages all the EDPB members to be involved in the preparation of the replies to this questionnaire. The deadline expires in mid February.

NEW IT SA: TIK TOK Letter

The IT SA informed the EDPB members about the letter they sent to the Chair of the EDPB on TiK ToK. They mentioned that a reply to an MEP letter on this topic is under drafting within the SOCM ESG.

NEW EDPS: Update on next meeting of the Hague forum

The EDPS informed the EDPB members that the next meeting of the EU software and cloud suppliers customer council (Hague forum) will be held on 18 March 2020 and encourages all the EDPB members to participate. An official invitation will soon be sent to all the EDPB members.

In addition, the EDPS informed the EDPB members about the event that will take place in March about the strategy of the EDPS for the 5 years to come.

NEW Liechtenstein - Information Board of Appeal

LI SA informed the EDPB members about two questions that have been submitted to the EFTA Court on the compatibility between administrative procedural law and GDPR. These two questions concern the admissibility of an anonymous complaint and the reimbursement of costs when the case is appealed. The decision of the EFTA Court will be given at the end of this year or beginning 2021.

NEW COM - EU funds

The EU COM informed the EDPB members that the new wave of call for proposals for grants, restricted to DPAs, is opened until 1 April and invited DPAs to apply. Those grants aim at providing a 80% co-financing to DPAs initiatives aimed at reaching out to stakeholders, both businesses (in particular SMEs) and individuals. The conditions are the same as last year.

Annex: Attendance list

AT SA, BE 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, SK SA, UK SA

European Commission

EDPB Secretariat

Observers:

AL, MD, RS

Delegations:

LV SA was not present and has not delegated its vote.