



Final

41st Plenary meeting

9-10 November 2020, Remote

[9 November 2020, remote](#)

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 40th Plenary meeting – adoption

The minutes of the previous plenary meeting were adopted unanimously with some changes in the point 2.2.

The public version of the minutes will be agreed in the next plenary meeting.

1.2 Draft agenda of the 41st EDPB meeting – adoption

The draft agenda was adopted with the inclusion of a new point under AOB relating to a possible mandate on future Art. 65 guidelines.

2 Current Focus of the EDPB Members

2.1 Art. 65 ongoing procedure

2.1.1 Draft Art. 65 Decision - discussion and adoption

The EDPB Secretariat, acting as lead rapporteur, explained the steps taken in preparation of the draft decision and recalled the discussions that occurred during six meetings of the ENF ESG and the strategic decisions reached in SAESG on the extent to which the cooperation procedure occurred before the issuance of the draft decision should be analysed, on the motivation of relevant and reasoned objections, and on the role of the EDPB and its decision-making power. It was also recalled that, during the meeting of the ENF ESG on 6 November, the members reached conclusion on whether each of the objections raised by the CSAs are reasoned and relevant in accordance with the Art. 4(24) GDPR and the EDPB guidelines on reasoned and relevant objection. Regarding the objection(s) deemed not to meet the requirements stipulated by Art. 4(24) GDPR, the draft binding decision did not take a position on the merit of the substantial issue(s) raised by the objection(s).

Finally, the EDPB Secretariat highlighted that, after the adoption of the draft binding decision, some minor changes amounting to technical finalisation and proofreading would be inserted in the draft binding decision. The members of the EDPB agreed to this course of action.

Some EDPB members suggested that the EDPB should develop guidelines on Art. 65 GDPR procedure that should address “lessons learned” from the procedure in the case at hand (see also under AOB).

The decision as modified during the meeting was adopted by the members of the EDPB by the required two-thirds majority. 21 EU members of the EDPB voted in favour of adoption of the draft decision. 1 EU member of the EDPB voted against the draft decision. 5 EU members of the EDPB abstained. The 3 EEA members of the EDPB voted in favour of adoption.

The confidential nature of the discussion was recalled. The adopted EDPB decision will only be published when the LSA decision is finalized.

The DE SA expressed the need of clear procedural rules on Art. 65(1) GDPR especially concerning the requirements for the draft decision and the objections. The DE SA recalled that this is necessary for the EDPB to be in a position to fulfil the task of ensuring the correct and consistent application of the GDPR and to apply Art. 65 GDPR consistently, ensuring equal treatment and a level playing field for companies within and outside the EU.

It was therefore suggested that a mandate would be given to the ENF ESG for the development of guidelines on the Art. 65 GDPR procedure by taking into account the recommendations made in the SAESG to this topic in parallel with the ongoing work of the COOP ESG on the guidelines for Art. 60 procedures and to present it to the Plenary for adoption (see under AOB).

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

3.1 Recommendation on measures that supplement transfer instruments to ensure compliance with the EU level of protection of personal data – discussion and adoption

The Chair thanked the EDPB Secretariat, acting as lead rapporteur, and all the members who contributed to the work on the draft documents.

The EDPB Secretariat, acting as lead rapporteur, made an overview of the background of the file and presented the draft recommendation.

The EDPB Secretariat presented the **issues submitted by the taskforce to the plenary for discussion**, due to the lack of consensus on them at the taskforce level.

The discussion then focused on the **text of the draft recommendation**. It was agreed that the example in paragraph 20 should be modified and refer to the “Schrems I” judgment of the Court of Justice of the EU.

It was agreed that the disclaimer in paragraph 1 would be repeated in each sub-section, so as to refer to each group of measures rather than to specific ones.

The EDPB members **adopted the full text of the recommendation** as modified during the meeting, with 26 EU and 3 EEA votes in favour, no abstention and no vote against.

The EDPB members agreed that a **public consultation** should be held on the draft recommendations. (22 EU members and 2 EEA members voted in favour, whereas 6 EU members and 1 EEA member voted against).

The scope and modalities of the **public consultation** were then discussed. It was agreed that the whole document would be subject to a written public consultation until the end of November 2020.

The EDPB members entrusted the EDPB Secretariat with the technical finalisation of the document.

The EDPB Chair recalled the need to respect the confidentiality of the document until the moment it will be made publicly available by the EDPB Secretariat.

3.2 Update of the European Essential Guarantees recommendations – discussion and adoption

The coordinator of the BTLE ESG presented the draft Recommendations on the European Essential Guarantees, which amount to an update of the Working Paper 237 of the WP29, written in the aftermath of the Schrems I judgment.

The discussion then focused on whether the document should be subject to public consultation. A majority of the members of the EDPB voted against having a public consultation on the document. It was then agreed that it will not be subject to public consultation.

The EDPB members unanimously adopted the updated recommendations with the slight modifications made during the meeting.

4 AOB

The EDPB members agreed that a mandate would be given to the ENF ESG for the development of guidelines on the Art. 65 GDPR procedure by taking into account the recommendations made in the SAESG to this topic in parallel with the ongoing work of the COOP ESG on the guidelines for Article 60 procedures and to present it to the Plenary for adoption.

Annex: Attendance List

SAs:

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, 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

- European Commission
- EFTA Surveillance Authority
- EDPB Secretariat