



Final

## 43<sup>rd</sup> Plenary meeting 15 December 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 42<sup>nd</sup> Plenary meeting – adoption

The minutes of the previous plenary meeting were adopted unanimously. The members of the EDPB also agreed on the public version of the minutes.

#### 1.2 Draft agenda of the 43<sup>rd</sup> EDPB meeting – adoption

The draft agenda was adopted with the inclusion of a new point under AOB regarding the negotiations on the Recommendation for a Council Decision authorising the opening of negotiations for Agreements between the European Union and Algeria, Armenia, Bosnia and Herzegovina, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia and Turkey on cooperation between the European Union Agency for Criminal Justice Cooperation (Eurojust) and the competent authorities for judicial cooperation in criminal matters of those third States.

The Chair of the EDPB informed the Members of the EDPB that the IE SA uploaded on IMI its Art. 60 GDPR final decision following the binding decision 01/2020 of the EDPB and that the decision of the IE SA and the decision of the EDPB will be published today.

## 2 Consistency mechanism, Guidelines and EDPB

### 2.1 Key Provisions ESG

#### 2.1.1 Guidelines on restrictions under Article 23 GDPR – **discussion and adoption**

The lead rapporteur presented the draft guidelines and explained that they recall in a general manner the conditions surrounding the use by Member States of restrictions on the data subject rights in accordance with Article 23(1) GDPR.

The lead rapporteur explained that a member of the EDPB sent comments for a more practical approach, including examples and practical scenarios. The lead rapporteur explained that the main addressee of the guidelines is the European or national legislator, not the individual controllers. Therefore, the approach taken was different due to this particularity.

An additional remark was added at the beginning of paragraph 16.

The EDPB members adopted the guidelines unanimously.

The EDPB members also agreed that a public consultation on the guidelines will be launched for a period of eight weeks.

### 2.2 Financial Matters ESG

#### 2.2.1 Guidelines on the interplay of the Second Payment Services Directive and the GDPR – **discussion and adoption**

The lead rapporteur presented the results of the public consultation and the adjustments made to the guidelines after the public consultation.

The European Commission proposed additional wording in the document related to explicit consent required for the processing of special categories of personal data. The wording aims to clarify that initiating a payment by a payment service user can be seen as explicit consent as required by Art 9(2)(a) GDPR. The EDPB members decided to not include this additional wording as they considered that this does not meet the condition for an explicit consent.

The EDPB members unanimously adopted the guidelines as modified after the public consultation.

### 2.3 International Transfers ESG

#### 2.3.1 Guidelines 2/2020 on articles 46 (2) (a) and 46 (3) (b) of Regulation 2016/679 for transfers of personal data between EEA and non-EEA public authorities and bodies (after public consultation) – **discussion and adoption**

The rapporteurs presented the results of the public consultation. It was explained that the updated document integrates clarifications on the questions raised in the public consultation as well as necessary changes following the Schrems II judgement.

The EDPB members unanimously adopted the guidelines as modified after the public consultation.

## 3 Current Focus of the EDPB Members

### 3.1 Data Governance Act COM (2020) 767 proposal – **information**

The European Commission presented the proposal for a data governance act within the wider vision for a single digital market.

The EDPB members took note of the information provided.

### 3.2 Information about the EC request for a joint EDPS-EDPB opinion re the Data Governance Act – confirmation of mandate

The EDPB members gave the mandate to the CEH ESG to prepare a joint EDPS-EDPB opinion on the Data Governance Act.

### 3.3 EDPB strategy – discussion and adoption

The members of the EDPB adopted the EDPB Strategy. The EDPB strategy will be published after the plenary and the press release will include a sentence clarifying that the EDPB Strategy will be operationalised via the work program that will be adopted at the beginning of the 2021 on the basis of a pilot project.

### 3.4 Support Pool of Experts – discussion and adoption

The lead rapporteur recalled that the EDPB Plenary decided to establish a pilot project relating to the Support Pool of Experts within the EDPB. The goal is to provide material support to EDPB Members in the form of expertise that is useful for investigations and enforcement activities and to enhance cooperation and solidarity between EDPB Members by sharing, reinforcing and complementing strengths and addressing operational needs. The proposed Terms of Reference contain elements which outline practical arrangements among SAs, as well as elements which are still tentative in nature.

The lead rapporteur also explained that the ENF ESG will be consulted as well on the follow up stages, in order to foster the discussion and gather substantial input. The next stages will be prepared by the current drafting team.

The members of the EDPB agreed to include a reference to impartiality at the end of paragraph 33. It was further agreed that if a member of the EDPB SEC intervenes on a national case, this person cannot contribute to the drafting of the EDPB binding decision under art. 65 procedure, if any.

The EDPB members adopted the Internal EDPB Document on the Terms of Reference of the EDPB Support Pool of Experts unanimously.

The public-facing EDPB Document on the Terms of Reference of the EDPB Support Pool of Experts for publication on the EDPB Website was also adopted by the EDPB members.

### 3.5 Request for information from COM re BREXIT state of play (end of transitional period as well as the impact on EU-UK data flows and further information on possible adequacy decisions) – information

The European Commission provided an update of the state of play and underlined the confidentiality of the information provided.

### 3.6 Update of the 2019 EDPB information note re data transfers under the GDPR in the event of a “no-deal” Brexit (last update on 04. October 2019) – discussion and adoption

The EDPB Secretariat, acting as rapporteur, presented a draft information note providing up-to-date information to stakeholders in relation to transfers to the UK after the Brexit transition period ends on 31 December 2020.

The intention is to supersede the note adopted on 12 February 2019 and updated on 4 October 2019. The information note was coordinated with the statement prepared by the COOP ESG.

In the event there is any change that needs to be inserted following the negotiations, SEC is entrusted with adding this information. The same would be necessary for the Brexit statement prepared by the COOP ESG.

The EDPB members unanimously adopted the information note and entrusted the EDPB Secretariat with revising the information note in case factual inconsistencies arise due to the outcome of negotiations

## 4 FOR DISCUSSION AND/OR ADOPTION – Expert Subgroups and Secretariat

### 4.1 Cooperation ESG

#### 4.1.1 [BREXIT] Involvement of the UK SA in cooperation and consistency mechanisms – discussion and adoption

The lead rapporteurs presented the draft public statement regarding the involvement of the UK SA in cooperation and consistency mechanisms.

The EDPB Secretariat confirmed that a link would be added in the statement to the information note on data transfers under the GDPR to the United Kingdom after the transition period (item 3.6).

The EDPB members unanimously adopted the statement and entrusted the EDPB Secretariat with revising the statement in case factual inconsistencies arise due to the outcome of negotiations.

#### 4.1.2 Review of the internal document on local cases – discussion and adoption

The lead rapporteurs presented the work done by the COOP ESG on the review of the Internal EDPB Document 1/2019 on handling cases with only local impacts under Article 56(2) GDPR.

The COOP ESG explained that the document was split in two and that several other revisions were made.

The members of the EDPB unanimously adopted the revised internal EDPB Document 1/2019 on handling cases with only local impacts under Article 56(2) GDPR.

#### 4.1.3 Handling cross border complaints against public bodies or authorities – request for mandate

The rapporteur presented the request for mandate to the Cooperation ESG to work on outlining shared best practices in handling cross-border complaints against public sector bodies in the EEA.

The EDPB members unanimously adopted the mandate.

#### 4.1.4 Guidelines on handling complaints: revision of the mandate given to the ENF ESG - request for mandate

The COOP ESG was mandated in 2019 to prepare guidelines on the cooperation procedure as specified in Art. 60 GDPR, including legal and factual questions concerning the one-stop-shop mechanism. The ENF ESG was mandated in 2019 to work on the matter of investigating complaints. Both ESGs take the view that the mandates overlap with regards to the notion of ‘draft decision’ and therefore propose a transfer of part of the mandate given to the ENF ESG to the COOP ESG.

The EDPB members unanimously adopted the transfer of the part of the mandate as proposed.

## 4.2 Compliance, e-Government and Health ESG

### 4.2.1 Guidelines on certification criteria assessment – **request for mandate**

The rapporteur presented the request for mandate for the CEH ESG to work on certification criteria assessment guidance.

The EDPB members unanimously adopted the mandate.

## 4.3 Financial Matters ESG

### 4.3.1 Statement on the protection of personal data processed in relation with the prevention of money laundering and terrorist financing – **discussion and adoption**

The lead rapporteur presented the draft statement.

The EDPB members unanimously adopted the statement.

The European Commission welcomed the statement and stressed their intention to consult the EDPB on the interplay of anti-money laundering rules and data protection rules, prior to tabling further proposals.

## 4.4 International Transfers ESG

### 4.4.1 Draft opinion on the NL SA draft decision regarding the Controller Binding Corporate Rules of Equinix - **discussion and adoption**

The rapporteurs presented the state of play of the file and recalled that in 2019, Equinix received its art. 47 GDPR BCR approval from the ICO. Equinix is seeking a new approval decision from the new BCR Lead SA in the EEA (the NL SA) before the end of the transition period. The necessity of this step follows from the information note adopted by the EDPB on 22 July 2020.

The EDPB members unanimously adopted the opinion on the NL SA draft decision regarding the Controller Binding Corporate Rules of Equinix.

The EDPB members recalled that the WP256/257 referentials are currently being revised by the ITS ESG and that BCR holders will be required to duly update their BCRs to incorporate any additional commitments that may need to be included in the BCRs in accordance with such updated referentials.

## 4.5 BTLE

[LEGAL STUDIES]

## 4.6 EDPB Stakeholder event - Compliance, e-Government and Health ESG

### 4.6.1 Stakeholder event on processing of data for medical and scientific research purposes – **request for mandate**

The EDPB Secretariat presented the request for mandate for the CEH ESG to organise a stakeholder event on the processing of personal data for medical and scientific research purposes.

The EDPB members unanimously adopted the mandate.

## 4.7 Technology ESG

### 4.7.1 Mandate to draft guidelines on anonymisation / pseudonymisation – **request for mandate**

The lead rapporteur referred to the Working Party 29 Opinion 05/2014 on anonymisation techniques (WP216) and explained the need for the EDPB to issue guidelines on this topic which address recent developments in privacy engineering and anonymisation technology. The mandate covers a reflection on GDPR provisions applicable to anonymisation techniques taking into account the jurisprudence of the CJEU, as well as a reflection on requirements for effective pseudonymisation.

One modification of the mandate was discussed and agreed. The EDPB members unanimously adopted the mandate, as amended.

## 4.8 EDPB Secretariat

### 4.8.1 ██████████ BCRs – **confirmation of rapporteurs**

The EDPB Secretariat presented the state of play of the files and conformed that a drafting team has been composed to prepare the draft opinions.

The members of the EDPB gave the mandate to the rapporteurs.

### 4.8.2 2021 February plenary – **discussion and adoption**

The EDPB members decided to convene on 2 February 2021 for a remote plenary meeting.

### 4.8.3 Survey future meeting post COVID – **information**

The EDPB Secretariat invited the EDPB members to participate in a survey designed to gather views on the organisation of meetings, both on plenary and ESG level next year, in particular from the time when in person meetings resume.

## 5 AOB

### 5.1 NEW - Recommendation for a Council Decision authorising the opening of negotiations for Agreements between the European Union and Algeria, Armenia, Bosnia and Herzegovina, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia and Turkey on cooperation between the European Union Agency for Criminal Justice Cooperation (Eurojust) and the competent authorities for judicial cooperation in criminal matters of those third States.

The EDPB Secretariat informed the members of the EC letter on this subject matter and on the fact that, after contacts made with the EC and the Council, there is no expectation from the EDPB to contribute to the drafting of an opinion. The EDPS will issue an opinion in accordance with Regulation 1725/2018. The EDPB members took note of this information.

## 6 For information - Expert subgroups and Secretariat

### 6.1 Information on the guidance developed by STAR II (Support small and medium enterprises on the data protection Reform II) project – **written state of play**

The EDPB members took note of the information on the guidance developed by the STAR II project.

## 6.2 Brexit: IMI implementation – written state of play

The EDPB members took note of the written information regarding necessary implementation steps in IMI in view of the end of the Brexit transition period. The EDPB members were reminded to proceed with any necessary implementation steps before the end of December 2020.

### 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

- EDPB Secretariat