

# Minutes



Final

## 44<sup>th</sup> Plenary meeting

14 January 2021, Remote

### 1 Adoption of the minutes and of the agenda

#### 1.1 Minutes of the 43<sup>rd</sup> EDPB meeting – adoption

The EDPB Chair welcomed the new Commissioner of the MT SA, Mr. Ian Deguara. The EDPB Chair also welcomed the new head of the legal department of the SE SA.

The minutes of the previous plenary meeting were adopted unanimously. The public version of the minutes was also adopted.

#### 1.2 Draft agenda of the 44<sup>th</sup> EDPB meeting – adoption

Two additional points were added under AOB: a new point on the AG Opinion in case C 645/19 and a point regarding the update of the privacy policy of Whatsapp. The draft agenda was adopted with the additional points.

### 2 Current Focus of the EDPB Members

#### 2.1 EDPB – EDPS joint opinion on Standard contractual clauses between controllers and processors– discussion and adoption

The lead rapporteur presented the draft joint Opinion and explained that there were no remaining discussion points. A member of the EDPB proposed an additional remark in the joint opinion regarding processors within the EU bound by third country laws or practices affecting the compliance with the SCCs. The members of the EDPB agreed with the addition, with some slight changes in the wording.

The joint opinion was adopted unanimously.

#### 2.2 EDPB-EDPS Joint Opinion on standard contractual clauses for the transfer of personal data to third countries - discussion and adoption

The lead rapporteur presented the draft joint Opinion and explained the remaining discussion points. The first one is about one sentence on the liability remark in par. 114 of the joint opinion linked to the Controller to Controller relationship. In that regard, the members of the EPDB agreed on the need to call for reinforcement of the liability regime.

The members of the EDPB also discussed a slight change proposed in par. 24 and 25, regarding the replication of the EUDPR requirements in the SCCs. The members of the EDPB agreed with the change.

Finally, the EDPB members also discussed the section relating to the assessment of the legislation in the third country. The existence of many reactions provided under the public consultation of the recommendations on supplementary measures was underlined. However, those responses will be fully analysed in the context of the finalisation of the recommendations. In this context, the members of the EDPB agreed to include a general remark inviting the Commission to refer to the final version of the EDPB recommendations on supplementary measures, should the final version of the recommendations be adopted before the EC SCC decision.

The joint opinion was adopted unanimously.

### 2.3 Update on the EU-U.K. Trade and Cooperation Agreement re data protection and data flows – information

The European Commission provided explanations on the provisions of the EU-U.K. trade and cooperation agreement that are relevant from a data protection perspective. The EU COM explained that there are 3 parts in the Agreement where data protection is addressed: 1) in the digital trade chapter, which contains in particular a provision recognising the Parties' regulatory autonomy in the area of data protection law; 2) in the part on cooperation in law enforcement and justice (e.g. PNR chapter in line with the CJEU Canada PNR Opinion); and 3) in the "bridging provision", according to which the UK essentially continues to apply the same rules for maximum 6 months, ensuring thus free data flows between the EEA and the UK during that period.

The EU COM informed the members of the EDPB that the two draft adequacy decisions will be shared with the EDPB in the following weeks.

## 3 Consistency mechanism and guidelines

### 3.1 Technology ESG

#### 3.1.1 Guidelines on Examples re Data Breach Notifications – discussion and adoption

The coordinator of the TECH ESG presented the background and the purpose of the document, which aims at providing a practical-oriented, case-based guidance on the matter. The guidelines provide examples of data breach notifications and the entailing risk assessment. The members of the EDPB agreed to include, in the introductory part of the guidelines, that they are a reaction to requests of stakeholders to provide additional guidance on data breach notifications. The rapporteurs were entrusted with adding this clarification.

The guidelines were adopted unanimously and the members of the EDPB decided to launch a public consultation for a period of six weeks.

### 3.2 Cooperation ESG

#### 3.2.1 Internal document on the application of Art. 62 GDPR (joint operations) – discussion and adoption

The rapporteur presented the document, which aims to establish a common harmonized model for carrying out joint operations, setting up a clear and transparent framework on the roles and responsibilities of the SAs participating in a joint operation.

The members of the EDPB agreed on keeping the document internal and adopted it unanimously.

## 4 AOB

### 4.1 Request from OECD re international data transfers to third countries – discussion

A member of the EDPB explained that it was approached by the Ministry of Justice regarding a question on international transfers raised in the context of an OECD working group. The member also referred to a letter from the OECD to the EDPB about data transfers to the OECD more generally.

The coordinator of the ITS ESG provided further information on the letter received from the OECD and shared the proposal to invite the OECD to an ITS ESG to discuss the query in detail.

The members of the EDPB agreed on the proposal to invite the OECD to an ITS ESG meeting.

### 4.2 NEW AG Opinion in case C 645/19

The BE SA provided an overview of the case and of the main elements of the opinion of the AG. A short summary will be circulated to the EDPB members.

### 4.3 NEW Update of the privacy policy of Whatsapp

The members of the EDPB asked the LSA for some information regarding the planned changes. The LSA recalled that relevant information was shared on IMI with the members of the EDPB and offered to answer possible further questions. One member of the EDPB highlighted the need to address the matter in a timely manner and raised the possibility to rely on art. 66 urgent procedure.

The members of the EDPB will address the matter again at the next plenary meeting on February 2<sup>nd</sup>.

## 5 FOR INFORMATION – Expert Subgroups and Secretariat

### 5.1 Social Media ESG

#### 5.1.1 Guidelines on Data Protection in social media platforms : practical recommendations (work item 3) – written state of play

The EDPB Chair asked the members to take note of the written state of play.

### 5.2 International Transfer ESG

#### 5.2.1 First review of Japan adequacy decision - written state of play

The EDPB Chair asked the members to take note of the written state of play.

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The next Plenary meetings will be on 2 February 2021 and 9 March 2021. The Chair of the EDPB recalled the agreement to stick to the already agreed dates for 2021, choosing one of the two dates decided.

The Chair of the EDPB also reminded the members of the EDPB of the deadline to submit the items for the next Plenary meeting (15/01 eob).

## 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,

- EFTA Surveillance Authority

- European Commission

- EDPB Secretariat