



Final

40th Plenary meeting

20 October 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 39th Plenary meeting – adoption

The minutes of the previous plenary meeting were adopted unanimously with some changes in points 1.1, 2.2 and 2.6. The members of the EDPB also agreed on the public version of the minutes.

1.2 Draft agenda of the 40th EDPB meeting – adoption

The draft agenda was adopted with the inclusion of a new point under AOB regarding the Spring Conference. In addition, item 2.3 was removed from the agenda.

2 Current Focus of the EDPB Members

2.1 Recommendation on measures that supplement transfer instruments to ensure compliance with the EU level of protection of personal data – state of play

The EDPB Secretariat, acting as lead rapporteur, provided an update on the work carried out within the task force and suggested next steps. This work is closely related with the on-going work on essential guarantees.

Following the exchange of views, it was agreed that a SAESG meeting will be organized to provide political input to the task force, with the purpose to finalize the draft recommendations for discussion and adoption in a plenary meeting in November 2020. The scope of the draft recommendations, as well as the list of relevant measures were mentioned among the topics to be discussed.

The members of the EDPB were asked by the Chair of the EDPB to submit topics for the SAESG meeting by 23 October 2020 eob.

2.2 Review of the Adequacy Decision of Japan – information

The EU COM provided an update on the review the adequacy decision concerning Japan.

The EU COM also informed that Japan in its turn is reviewing its adequacy decision of the EU data protection framework.

3 Consistency mechanism and Guidelines

3.1 Guidelines 04/2019 on Article 25 Data Protection by Design and by Default (after public consultation) – discussion and adoption

The rapporteur presented the updated version of the guidelines and further clarifications provided after the public consultation.

The EDPB members discussed a change in wording regarding the reference to privacy-enhancing technologies (PETs) and found consensus on revised wording.

It was also noted that the guidelines should consistently refer to legal obligations (“must” and “shall”) and recommendations (“should”) as appropriate. The EDPB members entrusted the rapporteur together with the EDPB Secretariat to adjust these terms in the document before its publication.

The revised guidelines were unanimously adopted by the members of the EDPB.

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

4.1 Cooperation ESG - Brexit-related matters: letter to the ICO – discussion and adoption

The EDPB Secretariat, acting as lead rapporteur, presented the background and the proposed draft letter already including the input of several members. The EDPB members discussed an editorial change in the last sentence of the draft letter which was accepted.

The EDPB members unanimously adopted the draft letter, as modified in the meeting.

4.2 Enforcement ESG - Coordinated Enforcement Framework (postponed voting on the form) – discussion and adoption

The EDPB members unanimously adopted the Coordinated Enforcement Framework.

4.3 Technology ESG - Response letter to Mr A. Dix on the copyright directive – discussion and adoption

The EDPB Secretariat, acting as rapporteur, presented the proposed draft letter.

The EDPB members unanimously adopted the draft letter, including some editorial changes discussed in the meeting.

The EDPB Secretariat explained that a request for advice may be expected from the EU COM regarding Art. 17 of the EU Copyright Directive.

The EDPB members gave a mandate to the Technology expert subgroup to prepare a response in case a request to provide guidance from the EU COM is submitted.

4.4 Financial Matters ESG

4.4.1 Statement and possible letter regarding data protection and current framework on anti-money laundering and countering terrorist financing (AML/CFT) - request for mandate

The FMESG coordinator presented the background of this item and the request for mandate.

The EDPB members gave a mandate to the Financial Matters expert subgroup to work on a statement, which may be followed up by a letter to the EU COM at a later stage.

4.5 Secretariat

4.5.1 Implementation of SEC DPO rules - discussion and adoption

The EDPB Secretariat explained the requirement of Art. 45.3 of Regulation 2018/1725, applicable to the EU Institutions and bodies, which requires the adoption of implementing rules concerning the role of the data protection officer (DPO).

The EDPB DPO team prepared a set of DPO implementing rules, taking as a starting point the EDPS implementing rules, and aimed at further clarifying the tasks, duties and powers of the EDPB DPO.

The EDPB members unanimously adopted the implementing rules.

4.5.2 Consistency procedure for Art. 46.3(b) GDPR administrative arrangements - discussion and adoption

The EDPB Secretariat presented the background of this item. According to Art. 46.4, the Art. 46.3(b) administrative arrangements need to be subject to the consistency mechanism, while the Art. 64.1 does not list the Art. 46.3(b). In a similar situation (Art. 35.5), the EDPB decided that the applicable legal basis was Art. 64.2 GDPR.

The members of the EDPB agreed that all the administrative arrangements in the scope of Art. 46.3(b) should be shared in advance by the supervisory authorities via IMI with the International Transfers expert subgroup, which will advise on the need for consistency mechanism to be triggered (i.e. on whether an opinion pursuant to Art. 64.2 GDPR is needed considering the possible cross border effect of the administrative arrangement).

The Chair noted that in light of the decision, the International Transfers subgroup will further discuss the draft decision of the SA to assess the need for the consistency mechanism to be triggered for this particular administrative arrangement.

5 AOB

5.1 Spring Conference

The HR SA recalled that they had circulated a survey on the future of the Spring Conference, concerning proposals and views on the next steps and future actions, and kindly asked the members to provide their input and proposals.

The Chair thanked the members of the EDPB for their cooperation and participation and recalled the dates of the next plenary meetings (9 November and 19 November, and in addition if necessary 10 and 20 November), kindly asking that comments on the issues open for discussion be shared in advance of the plenary meetings.

6 For information - Expert subgroups and Secretariat

6.1 Financial Matters ESG

6.1.1 OECD Common Reporting Standard (CRS) and US law Foreign Account Tax Compliance Act (FATCA) - written state of play

The EDPB members were informed about the state of play of this matter in writing.

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

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