



Final

46th Plenary meeting

9 March 2021, 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

1.1 Minutes of the 45th Plenary meeting – adoption

The members of the EDPB agreed with the changes proposed in points 4.4.1 and 4.6.1 of the minutes.

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

1.2 Draft agenda of the 46th EDPB meeting – adoption

The draft agenda was adopted with the inclusion of new points in AOB: 1) Call for topics for the EDPB CEF; 2) Questionnaires from EC to EDPB members on the national implementation of some GDPR and LED provisions.

2 Current Focus of the EDPB Members

2.1 Request for an EDPB Opinion on the two draft implementing decisions of the COM on the adequate protection of personal data by the United Kingdom – information

The BTLE ESG coordinator informed that there are two drafting teams: one within the ITS ESG and the other within the BTLE ESG. The coordinator of the BTLE ESG informed the members of the EDPB that

the European Commission had presented the draft in a joint ITS-BTLE meeting. The BTLE ESG coordinator recalled that, given the short deadline to provide an opinion, the drafting teams will only be able to focus on key points identified. The drafting teams are meeting weekly and next week the work will be presented at the ESG level. The rapporteurs will present the opinion for adoption at the next Plenary in April, since the deadline set by the European Commission is 19 April. The Chair of the EDPB made a call for rapporteurs and emphasised the importance of the work.

The ITS ESG coordinator also informed of the state of play at the ITS ESG level. A document will be provided by the end of the month. The BTLE coordinator also confirmed that more joint meetings ITS-BTLE are planned to discuss this file.

The European Commission thanked the drafting team for their efforts, including in light of the short deadline. The EC highlighted that this adequacy process presents some differences compared to others, given that the UK has integrated the GDPR and the Law Enforcement Directive within its legal system. The EC also explained the reasoning behind the “sunset clause” and the implications thereof, and recalled that, as a third country, the UK should not be subject to an identity test of the legal provisions but to the essential equivalence test. Finally, the EC underlined the importance of the UK’s adherence to the ECHR and its submission to the jurisdiction of the Strasbourg’s Court, in particular with respect to government access to data.

2.2 US order for airlines on COVID-related health data – information

The EDPB Secretariat informed the EDPB members that several airlines had reached out to different SAs regarding a new order issued by the US Center for Disease Control and Preventions, whereby airlines are required to collect, store and provide health information related to COVID-19 from the passengers travelling to the US. The practicalities of such collection are however not clear.

Given the data protection concerns and the lack of practical information, the members of the EDPB were requested to identify the relevant ESG to deal with the matter, including contacting IATA in order to obtain more information.

One member of the EDPB recalled the relevance of the Opinion 4/2006 of the A29WP in this situation.

The European Commission informed the members of the EDPB that they had been approached on that matter and expressed their willingness to share information with the EDPB.

The members of the EDPB gave the mandate to the CEH ESG, including contacting IATA in order to obtain more information. The need to have rapporteurs was emphasised. 2 SAs volunteered to act as co-rapporteurs during the meeting and 1 via e-mail.

2.3 Joint Opinion on Data Governance Act – discussion and adoption

The EDPB members adopted unanimously the Joint EDPB-EDPS Opinion.

The EDPB members also gave a mandate to the drafting team to monitor the developments of the legislative process and draft further statements, when necessary.

3 Consistency mechanism and Guidelines

3.1 Enforcement ESG

Guidelines on relevant and reasoned objections (after public consultation) – discussion and adoption

The EDPB Secretariat, acting as rapporteur presented the work done on the guidelines following the public consultation.

The guidelines were adopted by the members of the EDPB. 23 EU members of the EDPB voted in favour of adoption. 1 EU member of the EDPB voted against. The 3 EEA members of the EDPB voted in favour of adoption

3.2 Cooperation ESG

Guidelines on the application of Article 60 (1) and (3) GDPR (review) – discussion and adoption

The rapporteur presented the work done on the document which represents the second step of the work on guidance on Article 60 GDPR. The rapporteur explained the request to ask for the approval of the Plenary regarding individual sections of the guidance (and specifically now the Step 2 paper) and recalled that the full document will also be presented to the Plenary when ready, in order to ensure consistency among the different sections. The rapporteur further thanked the delegations having answered the rapporteurs call and recently joined the drafting team for their contributions.

The members of the EDPB agreed to have a preliminary vote on the Step 2 paper.

The members of the EDPB approved the Step 2 paper. 22 EU EDPB members were in favour. 1 EU EDPB member was against and 3 EU EDPB members abstained. The 3 EEA EDPB members were in favour.

3.3 Technology ESG

3.3.1 Statement on the draft ePrivacy regulation – discussion and adoption

The lead rapporteur presented the draft statement on the ePrivacy Regulation, which was prepared as a reaction to the recently adopted negotiating position of the Council of the EU and aims to provide the EDPB input to the upcoming trilogue negotiations.

During the discussion, several changes to the draft statement were agreed.

The EDPB members adopted the statement unanimously, and entrusted the rapporteurs to add the changes agreed during the meeting.

3.3.2 Guidelines on virtual voice assistants – discussion and adoption

The rapporteur presented the draft guidelines.

The Guidelines were adopted by the members of the EDPB unanimously. The guidelines will be subject to a public consultation for a period of six weeks.

3.3.3 Guidelines on connected vehicles (after public consultation) – discussion and adoption

The rapporteur presented the work done following the public consultation.

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

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

4.1 International Transfer ESG

4.1.1 Position paper on supplementary measures (TF SuppM)- discussion and adoption

The EDPB Secretariat presented the state of play on the review of the Recommendations 01/2020 following the public consultation.

The Taskforce on Supplementary Measures has made progress analysing the submissions calling for a risk-based approach as well as those stating there was a need for further alignment between the draft SCCs and the Recommendations.

A number of questions were put to the SAESG on the topic of 'practical experience'.

The EDPB members took note that the next step following the SAESG is a meeting to be held with the European Commission at technical level on concrete wording that could allow for convergence of the draft SCCs and the Recommendations. The European Commission raised that work on the revision of the draft SCCs is ongoing and can serve as a concrete basis for an exchange of views.

4.1.2 Statement on international agreements involving transfers – discussion and adoption

The rapporteur presented the draft statement.

The members of the EDPB decided to postpone the adoption of the statement, in order to provide more time to the ESGs involved to discuss.

4.2 Compliance, e-Government and Health ESG

4.2.1 Guidance on vaccination certificates – request for mandate - discussion and adoption

The EDPB Secretariat informed that the EC will consult the EDPB on the draft regulation on this matter.

The EC informed the members of the EDPB that the regulation will address the issuance, verification and acceptance of the green certificates. The EC aims at adopting the proposal for the regulation on 17 March. The EDPB and EDPS will then be requested to provide a Joint Opinion with a deadline of 2 weeks.

The members of the EDPB gave the mandate to the CEH ESG to work on guidance on vaccination certificates, including the future joint opinion on the matter. The coordinator of the CEH ESG informed that so far, only 2 SAs volunteered as rapporteurs and underlined the need to have more rapporteurs. 2 additional SAs also volunteered as co-rapporteurs.

4.2.2 EDPB letter to ENISA on European Cybersecurity Scheme for Cloud Services - discussion and adoption

The rapporteur presented the draft EDPB letter to ENISA.

The EDPB members unanimously adopted the draft letter.

4.2.3 Response letter to MEP Halicki on elections in Poland - discussion and adoption

The rapporteur presented the draft reply to MEP Halicki and explained there were three different options regarding the reference to data protection principles and national courts.

The EDPB members voted in favour of option 2. The letter was adopted unanimously with the changes agreed at the Plenary.

4.3 Secretariat

4.3.1 EDPB work program 2021-2022 - discussion and adoption

The EDPB Secretariat presented the EDPB work program 2021/2022.

The plenary agreed that the items to be adopted after public consultation will be retained in the public-facing work program (with an asterisk marking them as such).

The EDPB members unanimously adopted the public work program 2021-2022.

4.3.2 EDPB budget proposal for 2022 - discussion

The EDPS (HR, budget and administration unit) and the EDPB Secretariat presented the state of play on the budget proposal for 2022.

The EDPB members took note of the information provided.

4.3.3 EDPB Plenary dates for 2022 - discussion and adoption

The EDPB Secretariat presented the list of plenary dates for 2022, including a change on the October Plenary dates.

The EDPB members took note of the information provided and agreed on the dates proposed.

5 AOB

1) The ENF ESG coordinator raised the attention of the EDPB members to point 6.3 of the Agenda and informed that the ENF ESG is looking for topics to deal with in the context of the coordinated enforcement framework. The ENF ESG coordinator underlined the importance to engage and reply to the call for topics launched by the ENF ESG.

2) The EC informed the SAs they have received 12 replies to the questionnaire sent in February, in the context of the continuous monitoring of the national laws implementing the GDPR or transposing the LED. They asked the SAs, which haven't sent their replies yet to answer to the questionnaire.

6 For information - Expert subgroups and Secretariat

6.1 DE SA (Federal)

Ruling of the Regional Court Bonn on telecommunication service provider - written state of play

The EDPB members took note of the written state of play concerning the Ruling of the Regional Court Bonn on telecommunication service providers.

6.2 International Transfer ESG

Approval of procedures for ad hoc clauses – written state of play

The EDPB members took note of the written state of play concerning the approval of procedures for ad hoc clauses.

6.3 Enforcement ESG

Call for topics for the EDPB coordinated Action 2021 – written state of play

The EDPB members took note of the written state of play concerning the call for topics for the EDPB coordinated Action 2021.

6.4 Financial Matters ESG

Anti-money laundering and counter terrorist financing legislation (Interplay with the GDPR) – written state of play

The EDPB members took note of the written state of play concerning the anti-money laundering and counter terrorist financing legislation.

6.5 Secretariat

Update on Brexit IMI transition – written state of play

The EDPB members took note of the written state of play concerning the Brexit IMI transition.

Annex: Attendance List

SA: 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, MT SA, NL SA, NO SA, PL SA, PT SA, RO SA, SE SA, SI SA, SK SA

- European Commission

- EFTA Surveillance Authority

- Observers: Moldova; Albania; Serbia. In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points 2.1, 3.1, 3.2, 6.2, 6.5 of the agenda.

- EDPB Secretariat