



Final

## 45th Plenary meeting

2 February 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, Information given by the Chair

### 1.1 Minutes of the 44th Plenary meeting – adoption

The minutes of the previous plenary meeting were adopted unanimously with the modifications proposed and circulated prior to the meeting. The members of the EDPB also agreed on the public version of the minutes.

### 1.2 Draft agenda of the 45th EDPB meeting – adoption

The draft agenda was adopted with the inclusion of new points in AOB.

## 2 Consistency mechanism and Guidelines

### 2.1 BTLE ESG

#### 2.1.1 Recommendations on the adequacy referential under the Law Enforcement Directive – discussion and adoption

The rapporteur presented the recommendations.

The recommendations follow an "abstract" approach, focused on the principles the LED contains and integrating the latest CJEU jurisprudence. In a version sent in the morning before the plenary, one small change was added to paragraph 9 to clarify the application of national law adopted pursuant to the LED.

The European Commission welcomed the work done by the EDPB on this topic. The European Commission takes the view that adequacy decisions deserve a prominent role for transfers in this context. The referential assists in this and it has been taken into account in the draft UK adequacy decision.

The recommendations were adopted by the members of the EDPB unanimously.

### 3 Current Focus of the EDPB Members

#### 3.1 101 Task Force – state of play – information

The rapporteur presented the state of play of the work of the 101 Task Force.

The EDPS informed the EDPB members that several MEPs, joined by NOYB, lodged a complaint similar in content on the basis of Regulation 2018/1725.

The EDPB members took note of the information provided and recalled the possibility of organising a SAESG meeting if needed.

#### 3.2 Response letter to TikTok's letter regarding confidentiality breach – discussion and adoption

The rapporteur presented the draft letter in response to TikTok's letter regarding a breach of confidentiality. On the basis of the information gathered, there is no reason to question the integrity of the taskforce members.

After agreeing to remove a repeated sentence from the draft, the EDPB members unanimously adopted the draft letter.

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

### 4.1 International Transfers ESG

#### 4.1.1 EDPB Opinion on the H3C/PCAOB Administrative Arrangement - discussion and adoption

The rapporteur presented the draft EDPB opinion on the FR SA draft decision on administrative arrangements, as provided by Art. 46.3.b GDPR.

The EDPB takes due note of the request to treat some documents confidentially.

The EDPB members adopted the opinion unanimously.

### 4.2 BTLE ESG

#### 4.2.1 Statement on new draft provisions on Cybercrime Convention - discussion and adoption

The rapporteur presented the proposed statement, recalling that the discussed 2nd Additional Protocol to the Budapest Convention will have the value of an international agreement and supersede EU data protection law in this area. The T-CY is reaching the end of the negotiation and the provision

on data protection has still not been made public. The statement recalls the principle of proportionality and the importance of the provision on data protection, whose safeguards should apply to all those provisions involving the transfer of personal data. The application of data subject rights should also be ensured. The statement also calls for the involvement of data protection authorities in the drafting process as soon as possible.

The EDPB members unanimously adopted the statement.

### 4.3 CEH ESG

#### 4.3.1 Response to EC questionnaire on processing personal data for scientific research, focusing on health related research - **discussion and adoption**

The rapporteur presented the proposed response to the EC questionnaire.

After discussion, the EDPB members agreed to remove one sentence in order not to prejudice the outcome of future discussions on a specific question.

The EDPB members unanimously adopted the proposed response as modified during the plenary meeting.

#### 4.3.2 Request for mandate regarding input to ENISA on Draft SCA Cloud Scheme - **discussion and adoption**

The EDPB members unanimously gave a mandate to the CEH ESG to prepare the EDPB input to ENISA on Draft Cloud Scheme.

### 4.4 Enforcement ESG

#### 4.4.1 Internal document on investigating complaints - **discussion and adoption**

The rapporteur presented the internal document on investigating complaints and on own volition investigations.

The European Commission raised that its understanding of the document is that it discusses the degree to which investigations will be conducted, without prejudice to the right for data subjects to complain under Art. 77 GDPR.

The EDPB members unanimously adopted the internal document.

### 4.5 Secretariat

#### 4.5.1 EDPB Work Program 2021/2022 - **discussion and adoption**

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

The EDPB members noted that for many topics, the EDPB is under a legal duty to act. The European Commission pointed out that experience shows it is not feasible to plan long in advance which legislative proposals will be sent to the EDPB for an opinion.

The EDPB members decided to continue the discussion on the work program in a SAESG meeting to be held on 11 February 2021.

#### 4.5.2 Future post Covid EDPB meetings - **discussion and adoption**

The EDPB members discussed the organisation of EDPB meetings in the future, in order to allow the Secretariat to prepare the budget for 2022.

The EDPB members agree that plenary meetings should either be physical meetings or remote meetings, and no mixed plenary meetings are to be planned.

The EDPB members further agree that 6 physical plenary meetings will be held per year, and further 5 remote plenary meetings will be planned. Any remaining meetings and exceptional meetings will be organised as fully remote meetings.

On ESG meetings, the EDPB members agree that as a rule two physical meetings will be held per year by each ESG, the remaining meetings will be remote or mixed, at the discretion of the coordinator. ESGs that meet less than 4 times a year will hold a minimum of one physical meeting per year.

One of the EDPB members raised the need to find solutions to be able to welcome again observers.

#### 4.5.3 EDPB DPO network - ██████████ assessment - discussion and adoption

The EDPB Secretariat presented the assessment made by the DPO network concerning the use of ██████████ by the EDPB and the SAs. The assessment was done on the basis of public sources, complemented with information voluntarily provided by SAs.

This assessment is no guidance to the public in general, as it consists of advice prepared by the EDPB DPO Network to EDPB and SAs in their role as controllers.

The EDPB members took note, in their role as controllers of the conclusions reached and recommendations made by the EDPB DPO Network. The EDPB members voted in favour to confirm the legal analysis in relation to the use of ██████████. One SA voted against and another SA abstained.

#### 4.5.4 EDPB DPO Network - Discussion on Network's role, mandate, tasks and relationships with ESGs - discussion and adoption

The EDPB Secretariat presented the discussions with the DPO Network regarding its role, tasks and relationships with ESGs. The EDPB plenary confirmed that the Network and DPOs within it have an advisory role towards the Plenary and individually towards SAs, as controllers. They remain independent in such role and, whenever a request from the Plenary arrives, the Network provides its views, which are then validated by the Plenary. The EDPB DPO implements the decision for the EDPB and at national level, each SA - as data controller - is in charge of implementing the decisions as deemed appropriate for its organisation.

Concerning the relationship between the Network and ESGs, whenever a request for analysis is made, the Network contacts ESGs in advance to gather information, but remains independent, in accordance with its role, to decide on the appropriate advice to be provided.

The EDPB members also confirmed the legal basis for the Network's work: article 70(1)(u) GDPR, article 39 GDPR ("Tasks of the Data Protection Officer") specifically for the SA's DPOs and article 45 ("Tasks of the Data Protection Officer") of Regulation 2018/1725 specifically for the EDPB and the EDPS DPOs.

## 4.6 Updates by SAs

### 4.6.1 Whatsapp updated privacy policy - discussion

The EDPB members exchanged their views about the Whatsapp updated privacy policy. The ██████████ SA updated the information given to the EDPB members regarding ongoing investigations

## 5 AOB

### 5.1 IT SA Update

The IT SA informed the EDPB Members about the Art. 66 GDPR procedure launched regarding TikTok.

IT SA has requested clarification from TikTok on the measures they have put in place to unambiguously determine the user's age.

### 5.2 HU SA: conflict between enforcement of GDPR and national procedural rules

The HU SA informed the EDPB Members that under Hungarian procedural rules no sanction can be imposed, including the application of the GDPR, once a procedure has run longer than 150 days. HU SA is considering approaching the HU supreme court or considering an Art. 64.2 GDPR opinion.

The EDPB members took note of the information provided and invited the ENF ESG to exchange information with SAs, in particular the SAs confronted with similar procedural rules.

The European Commission underlined its role to monitor the implementation of EU law and invited all SAs to contact them when confronted with a potential problem with the implementation of the GDPR in their country according to national legal provisions.

### 5.3 DE SA Update

The DE SA provided information to the EDPB Members regarding two recently launched investigations.

The DE SA (Hamburg) opened an administrative procedure against Clearview, regarding the demand made by a complainant to delete their biometric template.

The DE SA (Hamburg) informed the EDPB members that a case was opened regarding Clubhouse, as their privacy policy seems to contain provisions manifestly not in line with the GDPR, regarding both users and non-users.

The EDPB members took note of the information given.

### 5.4 EU COM - draft adequacy decisions on the UK

The European Commission informed the members of the EDPB that the two draft adequacy decisions regarding the UK will be shared with the EDPB on 17 or 18 February 2021.

### 5.5 April 2021 Plenary date

The EDPB Chair informed the EDPB members that the remote April plenary meeting will be held on 13 April 2021. The EDPB Secretariat will cancel the planned in person meeting on 13 and 14 April 2021.

## 6 For information - Expert subgroups and Secretariat

### 6.1 Cooperation ESG

#### 6.1.1 EDPB Work Program 2021-2022 - Deadlines on Article 60 related guidelines - **written state of play**

The EDPB members took note of the written state of play concerning deadlines on Art. 60 GDPR related guidelines. The EDPB Chair called for more rapporteurs on this important subject matter.

## 6.2 Secretariat

### 6.2.1 EDPB DPO Network - Overview of network's work in 2020 and Network's 2021 Work Plan – **written state of play**

The EDPB members took note of the written state of play concerning the EDPB DPO Network's work in 2020 and the Network's work plan for 2021.

### 6.2.2 Adopted 2021 EDPB Budget and MFF for 2021-2027 - **written state of play**

The EDPB members took note of the information regarding the adopted 2021 EDPB budget.

## 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