



Final

48th Plenary meeting

13 April 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 46th Plenary meeting – adoption

The members of the EDPB agreed with the changes proposed and circulated prior to the minutes.

The minutes of the 46th plenary meeting were adopted unanimously. The members of the EDPB also agreed on the public version of the minutes.

1.2 Minutes of the 47th Plenary meeting – adoption

The members of the EDPB adopted the minutes of the 47th plenary meeting unanimously. The members of the EDPB also agreed on the public version of the minutes.

1.3 Draft agenda of the 48th EDPB meeting – adoption

The draft agenda was adopted with the inclusion of new points under AOB: support pool of experts vacancy notice, GPA questionnaire on government access, update from an SA re Art.60 GDPR.

1.4 Appointment of the Mr Sreten Radonjić as president of the Montenegrin SA – information by the Chair

The EDPB Chair informed the EDPB members about the appointment of the Mr Sreten Radonjić as president of the Montenegrin SA.

1.5 LIBE hearing on Schrems II and the European Commission’s GDPR evaluation report – information by the Chair

The EDPB Chair informed the EDPB members about the LIBE Shadows’ hearing dedicated to the European Parliament’s resolutions (i) on the GDPR implementation report of the European Commission and (ii) Schrems II case. Besides the EDPB Chair, the other invited speakers were Ms Helen Dixon, DPC of Ireland and Mr Maximilian Schrems, Honorary Chairman of NOYB. The purpose of the hearing was to discuss both resolutions. Although the text of the GDPR resolution was at that time already voted in LIBE, amendments could still be submitted ahead of the vote in the European Parliament plenary meeting.

The hearing, scheduled for 18 March, was cancelled following the decision of the IE SA to decline to participate in the meeting in the proposed format.

The IE SA explained the reasons why the DPC had written to the Chair of the LIBE committee on the proposed text of the draft resolutions and the reasons why the IE SA was unable to participate in the LIBE meeting in the proposed format.

One SA regretted the letters to the LIBE committee were not shared with the EDPB members at the time, considering the views taken in them on the work of the EDPB. Also, the SA disagreed with several assertions made in the letters.

2 Current Focus of the EDPB Members

2.1 Opinions on the UK adequacy decisions – discussion and adoption

The lead rapporteurs presented the two EDPB opinions on the European Commission’s draft implementing decisions on the adequate protection of personal data by the United Kingdom (“UK”) pursuant to the GDPR and pursuant to the LED (Directive (EU) 2016/680).

In preparing the opinions, the EDPB referred to the GDPR Adequacy Referential¹ endorsed on 25 May 2018, the EPDB Recommendations 02/2020 on the European Essential Guarantees for surveillance measures² and the LED Adequacy Referential³ adopted in January 2021. The availability of the European Commission to provide all relevant information and answer technical questions to the ITS and BTLE ESGs was appreciated throughout the drafting process.

After discussion, the EDPB members agreed to revise the executive summary, adding a paragraph recognising that the UK has mirrored, for the most part, the GDPR in its data protection framework. A clear distinction must be drawn between the UK legal framework as it exists today and potential changes that might be made to it in the future - as was announced by the UK government on various

¹ Article 29 Working Party, WP254, Adequacy Referential, 6 February 2018.

² Recommendations 02/2020 on the European Essential Guarantees for surveillance measures, adopted 10 November 2020.

³ Recommendations 01/2021 on the adequacy referential under the Law Enforcement Directive, adopted on 2 February 2021.

occasions. The draft opinion addresses both aspects. The EDPB members welcomed the European Commission's decision to limit the granted adequacy in time and the intention to closely monitor developments in the UK.

The EDPB members discussed the paragraph on the Art. 48 GDPR, which is included in the onward transfers section. The European Commission stated that the standard set by Art. 48 GDPR is met in the UK through constant case law.

The EDPB members adopted the opinion pursuant to Art. 70.1.s GDPR as 21 EU members of the EDPB voted in favour of adoption. 6 EU members of the EDPB voted against. 2 EEA members of the EDPB voted in favour of adoption.

The EDPB members adopted the opinion pursuant to Art. 51.1.g LED unanimously.

2.2 Review of the Recommendations 01/2020 on supplementary measures – state of play

The EDPB Secretariat acting as the lead rapporteur presented the state of play of the review of the recommendations.

Following a question raised in the ENF ESG regarding participation in the Taskforce on Supplementary Measures, the EDBP Secretariat recalled that the SAs may decide who to send to the meetings, depending on the subject matter at hand.

The EDPB members took note of the state of play.

3 Consistency mechanism and Guidelines

3.1 Enforcement ESG

Guidelines on the application of Article 65 (1) (a) GDPR – discussion and adoption

The lead rapporteur presented the draft guidelines on the application of Art. 65.1.a GDPR as well as the background of the work carried out. The lead rapporteur also proposed to the plenary that, rather than two versions of the same document, the (public) guidelines should be complemented by a separate internal guidance on the planning and preparation of EDPB binding decisions under Art. 65.1.a GDPR.

During the subsequent discussion, some changes in wording were proposed, and some delegations expressed their disagreement relating to the approach taken in the draft guidelines. The agreements and compromises reached during the meetings of the expert subgroup were recalled.

After the discussion, it was agreed to introduce two changes in the draft guidelines. The members agreed to omit paragraph 54 from the guidelines, in order to allow further reflection on the timing of translation of the EDPB binding decisions in relation to the notification to supervisory authorities. This issue will be covered in the context of the update of the guidelines after public consultation.

The EDPB members adopted the guidelines as 24 EU and 2 EEA members of the EDPB voted in favour of adoption, 1 EU member abstained, and 2 EU members voted against.

The guidelines will be subject to a public consultation for a period of 6 weeks.

3.2 Social Media ESG

Guidelines on the targeting of social media users (after public consultation) – discussion and adoption

The rapporteurs presented proposed revisions to guidelines 08/2020 on the targeting of social media users after having considered the feedback received in the public consultation. Pending the adoption of revised guidelines 07/2020 on the concepts of controller and processor in the GDPR following the public consultation, the EDPB members agreed to not include references to specific paragraphs of guidelines 07/2020. Upon finalisation of the revision of guidelines 07/2020, an update to guidelines 08/2020 Guidelines will be prepared with updated references in the footnotes.

The EDPB adopted the guidelines. All of the EDPB members were in favor of the adoption with the exemption of one SA which abstained as they do not agree with the exclusion of article 6(1)(b), as a legal basis for the processing in the context of targeting of social media users.

3.3 BTLE/ International Transfer ESG

Statement on international agreements including transfers – discussion and adoption

The rapporteur presented the revised proposed statement. As agreed at the 9 March 2021 plenary meeting, the ITS ESG consulted the BTLE ESG on the inclusion of references to international agreements agreed within the framework of the LED. A reference was added to EDPB 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 as well as to the BTLE's upcoming preparation of guidance on Art. 37 LED.

The EDPB members unanimously adopted the statement.

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

4.1 Financial Matters ESG

Statement on privacy and data protection aspects of a possible “digital euro” – request for mandate

The rapporteur presented the request for mandate. The ECB is considering launching a project to develop a digital form of the euro currency. Recognising that the ECB report on a digital euro (October 2020) already mentions some data protection aspects, the FMESG asked a mandate in order for the EDPB to express potential concerns and views to the ECB at an early stage of the development of the project.

The EDPB members adopted the mandate unanimously.

4.2 EDPB Secretariat

Requests for Article 64 Opinions - confirmation of rapporteurs

The EDPB Secretariat informed the EDPB members about two new requests for Art. 64 GDPR opinions.

The first request is for an Art. 64.1 GDPR opinion on draft Art. 28 GDPR SCCs, a matter entrusted to the KEYP ESG. In addition to the EDPB Secretariat one SA had already volunteered to contribute as co-rapporteur to the work.

The second request is for Art. 64.2 GDPR opinion on a draft authorisation for an Art. 46.3.b GDPR administrative arrangement, a matter entrusted to the ITS ESG. One SA volunteered to contribute as co-rapporteur to the work of the EDPB Secretariat.

The members of the EDPB gave the mandate to the rapporteurs in both files.

5 AOB

5.1 Information on Facebook data set made publicly available

The IE SA provided information to the EDPB members regarding the follow-up given to media reports over the Easter weekend of an important Facebook data set made publicly available.

The EDPB members took note of the information given and were invited to send any complaints or requests of information to the IE SA via IMI.

5.2 Spring Conference of European Data Protection Authorities (postponement) – information

The EDPB members were informed that the Spring Conference of European Data Protection Authorities has been postponed until further notice with the view to hold an in person meeting.

5.3 Initiative regarding privacy policies – information

The IT SA informed the EDPB members about a competition they have launched inviting participants to design icons to illustrate privacy policies. Submissions are welcome until the end of May 2021. The IT SA will keep the informed about the outcome of the competition.

The EDPB Members decided that the information about the competition will be shared on the EDPB website.

5.4 June 2021 Plenary date

The EDPB members agreed that the June 2021 plenary meeting will take place on 15 June 2021 in a remote format. The meeting will be scheduled to last a whole day.

5.5 Support pool of experts - vacancy

The EDPB Secretariat informed the EDPB members that the position of Head of Activity for Enforcement support and coordination within the EDPB Secretariat has been opened. The Head of Activity will be tasked with the coordination of the support pool of experts and facilitate effective cooperation among EDPB Members more generally, including for example in the context of the Coordinated Enforcement Framework (CEF). Deadline for submissions is 22 April 2021. The EDPB Secretariat encouraged all EDPB members to disseminate this notice widely within their organisations to make sure the best possible candidates apply. The vacancy notice will not be published, in light of the amount of years of experience within an SA expected from candidates.

5.6 GPA survey

The GPA circulated a questionnaire to EDPB members on government access to private sector personal data. All SAs are encouraged to respond, as the feedback will serve the GPA to prepare a statement for adoption at their October 2021 plenary meeting. The feedback will also serve as input for the work of the OECD and the Council of Europe on this topic.

5.7 IE SA update on Whatsapp

The IE SA provided information to the EDPB members regarding the ongoing Art. 60 GDPR procedure concerning Whatsapp.

The DE SA provided information to the EDPB members regarding their upcoming Art. 66 GDPR procedure against Facebook/Whatsapp.

The EDPB members took note of the information given and a member express the need to discuss this important matter later on.

6 For information - Expert subgroups and Secretariat

6.1 International Transfer ESG

Draft guidelines on the codes of conduct as a tool for international transfer – written state of play

The EDPB members took note of the written state of play concerning the draft guidelines on the codes of conduct as a tool for international transfer.

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

- Observers: Moldova; Albania; In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points 2.1, 3.1, 4.2, 5.1, 5.7 of the agenda.

- EDPB Secretariat