



Final

52nd Plenary meeting

12 July 2021, Remote

1 Adoption of the agenda

1.1 Draft agenda of the 52nd EDPB meeting – a adoption

The agenda was adopted without modifications.

2 Current Focus of the EDPB Members

2.1 Urgent **Binding** Decision 01/2021 on the request under Article 66(2) GDPR from the Hamburg (German) Supervisory Authority for ordering the adoption of final measures regarding Facebook Ireland Limited – **discussion and adoption**

The chair of the EDPB explained that following the conclusions of the SAESG meeting on 1 and 2 July 2021, the EDPB Secretariat prepared the draft of the urgent binding decision with alternative options for the decision of the EDPB members in this plenary meeting. The chair of the EDPB recalled that the EDPB members had already exchanged extensive arguments regarding the possible content of the urgent binding decision. Therefore, in this plenary meeting, the chair of the EDPB first invited the SAs to express their position on the key elements of the urgent binding decision. Following the interim conclusion, the EDPB members were invited to discuss the final text of the urgent binding decision.

After an exchange of views, the majority of the EDPB members agreed that the urgent binding decision in this procedure should be based on the following key elements:

- Regarding the alleged infringements, the EDPB does not have sufficient information to conclude on the alleged infringements in relation to five processing purposes identified by the Hamburg SA. However, considering the high likelihood of infringements and the lack of information relating to the five purposes, the EDPB should request the IE SA to further investigate the alleged processing.
- Regarding the existence of urgency, the EDPB considers that the conditions for urgency under Article 66(2) GDPR are not met.

The EDPB members further discussed the specific wording of the urgent binding decision.

The majority of the EDPB members agreed that in the urgent binding decision the Board will request the IE SA, as the LSA, to carry out a statutory investigation regarding the alleged processing. The majority of the EDPB members agreed that this request to the IE SA will be included in the binding decision part, i.e. the section 6 of the urgent binding decision.

Regarding section 4.1.3.2, the majority of the EDPB members agreed to incorporate proposed additional text regarding the analysis of the legitimate interest legal basis and on the wording regarding the balancing test as modified during the meeting.

The majority of the EDPB members agreed that the section 4.1.7 of the binding decision should briefly conclude that the EDPB does not have sufficient information in the present procedure to conclude whether infringements are taking place.

Regarding section 4.2.2.2, the majority of the EDPB members agreed with the text proposed by the EDPB Secretariat and as modified during the meeting in order to align this text with the wording in the other parts of the binding decision, i.e. to refer to high likelihood that Facebook IE processes WhatsApp user data as a (joint) controller for both the purpose of safety, security and integrity and the purpose of product improvement.

Regarding section 4.2.2.2, the majority of the EDPB members further agreed that the IE SA should swiftly take action to further investigate the alleged processing made by the Facebook Companies implying the combination or comparison of WhatsApp IE's user data with other data sets processed by other Facebook Companies. The majority of the EDPB members agreed that the EDPB, taking into account actions and proceedings already under-way by the IE SA to investigate matters relating to Facebook IE and WhatsApp IE, will request the IE SA to carry out, as a priority matter, an investigation to determine whether the alleged processing activities are taking place or not and, if it is the case, whether they have a proper legal basis under Articles 5(1)(a) and 6(1) GDPR.

In relation to section 5, the majority of the EDPB members agreed with the proposed wording of the conclusion that as the conditions relating to the demonstration of the existence of an infringement and urgency are not met, the EDPB sees no reason to request the adoption of final measures against Facebook IE.

The EDPB members agreed to entrust the EDPB secretariat to align, if necessary, the text of the section 6 with the wording in the previous sections of the binding decision in order to ensure consistency in the text of the binding decision.

Regarding the notification to Facebook IE and WhatsApp IE, the majority of the EDPB members considered that it is the IE SA, as the LSA, which shall notify the urgent binding decision to Facebook IE and WhatsApp IE.

The EDPB adopted the urgent binding decision under Article 66(2) GDPR as modified during the meeting. 17 EU members of the EDPB voted in favour of adoption. 3 EU members of the EDPB voted against. 2 EU members of the EDPB abstained. 2 EEA members of the EDPB expressed their view in favour of adoption.

The EDPB members entrusted the EDPB Secretariat to finalise the text of the binding decision based on the agreement reached by the EDPB members in the plenary meeting and to make the necessary editorial changes in the text of the binding decision.

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, LV SA, MT SA, NL SA, NO SA, PL SA, PT SA, SE SA, SI SA, SK SA

- European Commission

- EDPB Secretariat