



Final

## 57<sup>th</sup> Plenary meeting

18 November 2021, Brussels

*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 56<sup>th</sup> Plenary meeting – adoption

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

#### 1.2 Draft agenda of the 57<sup>th</sup> EDPB meeting – adoption

The draft agenda was adopted with a modification to the title of agenda item 3.2 to reflect it amounts to a state of play.

The agenda was adopted unanimously by the EDPB members.

The discussions relating to agenda points 2.2, 3.2 and 5.2 were declared confidential according to Art. 33 EDPB RoP.

## 2 Consistency mechanism and Guidelines

### 2.1 Guidelines on the interplay between Article 3 and Chapter V – discussion and adoption

In April 2019, the ITS ESG was tasked by the EDPB to further consider the interpretation of the interplay between Art. 3 and Chapter V of the GDPR, including the elaboration of a definition of the notion of 'transfer'. At this meeting, the EDPB took a position on the last element of the notion of 'transfer', namely that it covers "the importer [that] is in the third country or is an international organisation, irrespective of whether or not this importer is subject to the GDPR in respect of the given processing in accordance with Article 3".

The European Commission recalled their view that the notion of "recipient" was used as term in Art. 46.3.a GDPR merely to cover all possible scenarios on the side of the importer.

Following the suggestion made by one EDPB member, a clarification was included in footnote 11 of the draft, to remove any possible doubt about the situation of self-employed natural persons.

Following a discussion among the EDPB members on situations where the controller in a third country collects data directly from a data subject in the EU, a clarification was included to emphasize that situations are meant where the data subject disclosed personal data directly and on his or her own initiative.

Several EDPB members stressed the importance of adopting guidelines on this subject matter and to invite feedback from stakeholders in the public consultation. One EDPB member asked the ITS - in the context of the follow up of the public consultation - to further work on the definition to avoid circumvention.

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

The EDPB decided to submit the guidelines to a public consultation until 31/01/2022 (for a period of approximately 10 weeks).

### 2.2 Internal Guidelines on the practical implementation of amicable settlements – discussion and adoption

The rapporteur presented the work performed within the Cooperation ESG on this document, highlighting the main elements that were agreed on, and the focus on providing practical recommendations on the best practices to be followed by SAs in the context of amicable settlements.

It was also stressed that these internal guidelines are consistent with the sections of the future EDPB guidelines on Art. 60 GDPR that were already subject to an approval.

During the discussions several EDPB members recalled that amicable settlement as outlined in the internal Guidelines is not provided for in the national legislation of all member states as an option, nor does the GDPR require member states to introduce it into their legislation. In some member states amicable settlement is considered as withdrawal of the complaint. The EDPB members decided to add an annex to the internal guidance listing the countries where amicable settlements are not possible according to national legislation.

The internal guidelines were adopted by the members of the EDPB. 22 EU members of the EDPB voted in favour of adoption. 1 EU member of the EDPB voted against. 2 EU members of the EDPB abstained. 2 EEA members of the EDPB were in favour of adoption while 1 EEA member of the EDPB abstained.

The members of the EDPB discussed the nature of the document and whether the document should be made public. Several EDPB members suggested the internal guidance, even though its content is mainly addressed to SAs, should be made public to allow them to rely on the document in their ongoing procedures and in particular to be able to fully inform complainants. The EDPB Secretariat underlined that the document demonstrates the efforts made by the EDPB to ensure cooperation among the SAs functions smoothly despite differences in national procedural law. Publishing this document would signal that the EDPB does not see amicable settlement as contrary to the GDPR - a question the European Parliament raised specifically in a resolution on the GDPR, while the EDPB Secretariat also referred to the fact that in case of public access request, it may have to disclose the document.

The EDPB members decided to keep this document internal for the moment and to discuss the matter again in 6 months, thus allowing the EDPB members to gain experience from practice during that time.

### 3 Current Focus of the EDPB Members

#### 3.1 Handling of access requests concerning cooperation procedures – request for mandate

The rapporteur presented a request for mandate concerning the establishment of a set of best practices to handle requests for access to documents and communications exchanged between SAs during cooperation procedures managed through the IMI system.

The current request for mandate was entrusted to the Access to Documents contact points and one SA proposed to act as lead rapporteur. The mandate was adopted with 26 EU members of the EDPB voting in favour and 3 EEA members of the EDPB expressing a position in favour.

The EDPB members agreed that another request for mandate will be prepared for the next plenary meeting on the right to be heard and accompanying right of access to the file, relating to documents and communications exchanged between SAs during cooperation procedures managed through the IMI system according to Art 60 GDPR. The members of the EDPB were invited to volunteer to contribute to this separate work.

#### 3.2 “101 Taskforce” - state of play

The rapporteur presented to the EDPB members the state of play of the work of the 101 Taskforce. The outcome of the work will be used as a resource on which SAs can rely when making their own assessment in the context of the national procedures.

The importance of the work carried out by the 101 Taskforce to promote consistency was highlighted.

The EDPB took note of the outcome of the work of the 101 Taskforce.

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

#### 4.1 Statement on Digital and Data Strategy - discussion and adoption

The rapporteur presented the draft statement and explained the work carried out by the drafting team within the Compliance ESG, with the aim of influencing the ongoing legislative process concerning the Digital Services Package and Data Strategy.

The members of the EDPB agreed to update the list of recipients of the statement.

The statement was adopted by the members of the EDPB. 24 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 were in favour of adoption.

#### 4.2 Follow-up and next steps on the EDPB report to LIBE Committee - **request for mandate**

A request for mandate was presented to follow up on the EDPB report addressed to the LIBE Committee, providing an overview on available resources and enforcement actions carried out by the SAs. The aim of the mandate is to reflect on how to adequately describe and communicate in a comparable manner the SAs' activities. It was agreed that the mandate will be carried out within the Enforcement ESG and two EDPB members volunteered as (co-)rapporteurs.

#### 4.3 Preparation of a letter on the EU AML/CFT proposal - **request for mandate**

This agenda item was postponed to the next plenary meeting.

#### 4.4 EDPB reply to the UN letter sent to the EDPB Chair on 15 July 2021 - **discussion and adoption**

The rapporteur presented the draft letter. After the discussion, some changes were made in the draft letter.

The members of the EDPB adopted the letter. 19 EU members of the EDPB voted in favour of adoption. 2 EEA members of the EDPB were in favour of adoption. No votes / positions were cast against and no abstentions were expressed.

#### 4.5 Letter to ENISA regarding EUCS compatibility with Schrems II - **discussion and adoption**

The rapporteur presented the draft letter, prepared by the Compliance and Technology ESGs, outlining the main messages to be conveyed. The members of the EDPB discussed the content of the letter.

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

#### 4.6 LIBE request for an opinion on the draft Second Additional Protocol to the Budapest Convention on Cybercrime - **request for mandate**

The EDPB Secretariat provided information on the request for opinion received from the LIBE Committee on the draft Second Additional Protocol to the Budapest Convention on Cybercrime.

The European Commission informed the EDPB members that the text was adopted on 17 November 2021 and that a signing ceremony should take place in May 2022. It also clarified that the positions of the EDPB as expressed in previous statements were taken into account, and that the consultation is envisaged pursuant to Art. 42 of Regulation 2018/1725.

The members of the EDPB agreed to grant a mandate to the BTLE ESG to prepare a letter in reply to the request received from the LIBE Committee

19 EU

members of the EDPB voted in favour. 1 EU member of the EDPB abstained. 2 EEA members of the EDPB were in favour.

## 5 AOB

### *5.1. Publication of the letter to DPC regarding NOYB*

The EDPB Secretariat recalled the correspondence which occurred with the IE SA.

In line with Art. 39.1 of the EDPB Rules of Procedure, the members of the EDPB agreed not to publish the Reply letter adopted by the EDPB on 4 November 2021. 16 EU members of the EDPB voted in favour of not publishing the letter, 1 EU member of the EDPB abstained, and 2 EEA members of the EDPB were in favour.

### *5.2. SA update*

The EDPB members took note of the information provided.

### *5.3. CY SA update*

The CY SA provided an update regarding one of its recent decision leading to the imposition of an administrative fine. The EDPB members took note of the information provided.

### *5.4. Spring Conference 2022*

This agenda item was postponed.

### *5.5. Call for volunteers regarding TFTP joint review*

The EDPB designated a representative from the BE SA COC (“Supervisory Body for Police Information”) and a representative from the DE-Hessen SA to participate in the next TFTP Joint Review.

The EDPS expressed willingness to provide support in this exercise. The members of the EDPB agreed with this proposal subject to its legal feasibility. The European Commission will verify this and inform the EDPB members on it.

17 EU Members of the EDPB voted in favour. 2 EEA members of the EDPB were also in favour.

### *5.6. January 2022 Plenary meeting date*

The EDPB Secretariat recalled that the next two EDPB plenary meetings will take place on 14 December 2021 and 18 January 2022 remotely.

The EDPB Secretariat will prepare a timetable for the plenary meetings in 2023 to be adopted by the EDPB members and will make it in accordance with the decision made in the plenary meeting of 02 February 2021.

### *5.7. Council of Europe Convention 108+*

An EDPB member recalled the importance of ensuring that a sufficient number of countries ratify the Council of Europe Convention 108+ by October 2023 and invited the EDPB members to invite their governments to ratify it. The European Commission also stressed the importance of encouraging national governments to move towards the ratification of the only international binding instrument in the area of data protection and underlined the fact that, as being already subject to the GDPR, this ratification will not add any duty to make changes in national laws.

### *5.8. ASEAN model clauses*

The European Commission provided information on the set of model clauses adopted by ASEAN for transfers within the South-East Asian region and on the upcoming work to be carried out to compare

the ASEAN model clauses with the SCCs adopted by the European Commission, on which the EDPB will be consulted.

## 6 For information - Expert subgroups and Secretariat

### 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, SE SA, SI SA

The SK SA delegated voting rights to the HU SA pursuant to Art. 22.5 RoP.

- European Commission

- Observers: MD; In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points 2.2, 3.2, 5.1, 5.2 of the agenda.

- EDPB Secretariat