



Final

61st Plenary meeting 22 February 2022, 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 60th 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 61st EDPB meeting – adoption

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

The discussions relating to agenda points 3.2 and 3.3 were declared confidential according to Art. 33 EDPB RoP.

2 Consistency mechanism and Guidelines

2.1 Guidelines 4/2021 on codes of conduct as tools for transfers (after public consultation) – discussion and adoption

The rapporteur presented the guidelines that were revised in light of the input received during the public consultation.

Following a discussion, the EDPB members agreed to clarify in paragraph 30 of the guidelines that the commitment of the Code members outside the EEA, with regard to the level of protection, guarantees that the level of data protection provided for in the GDPR is not undermined. It was also agreed to clarify in the last paragraph of the guidelines that the EDPB will evaluate the functioning of the guidelines in light of the experience gained with their application.

The guidelines, as modified during the meeting, were adopted by the members of the EDPB unanimously.

3 Current Focus of the EDPB Members

3.1 EU COM request for EDPS-EDPB Joint Opinion on the extension of Covid-19 certification Regulation – information

The rapporteur presented to the EDPB members the recent request from the European Commission for an EDPS-EDPB joint opinion on the proposals extending the EU Digital Covid Certificate regulation. CEH ESG will work on the preparation of the joint opinion.

3.2 “101 Taskforce”: AT decision on Google Analytics – information

AT SA shared information with the EDPB members about recent decisions by AT SA and FR SA regarding Google Analytics following the work of the 101 Taskforce.

3.3 EDPB Commissioners’ meeting on cooperation – information

The chair of the EDPB informed the EDPB members about the planning of the meeting of the Commissioners, which will take place on 27 April (full-day) and 28 April (half-day) in Vienna. Dinners will be organised in the evenings of 26 and 27 April.

The chair of the EDPB proposed the following four major topics for discussion during the meeting: 1) cooperation on files of strategic importance (including lessons learned, the role of different EDPB initiatives); 2) compliance and enforcement strategies (including national approaches); 3) tools, statistics and IMI; 4) communication on the decisions reached. The official invitation will be shared in the second half of March 2022.

3.4 EDPB Coordinated Action for 2022 on the use of cloud based services by public bodies

The coordinator of the ENF ESG informed the EDPB members about the launch of the coordinated action, including a joint press release, and stressed the very constructive cooperation between SAs so far. The answers to the circulated questionnaires will provide a basis for analysis in a coordinated manner and preparation of an EDPB report before the end of 2022. The plenary might be informed and consulted about a number of overarching issues during the action’s run-time.

The Secretariat highlighted that it is important that the press release gives information on the number of participants, in order to illustrate the broad participation of SAs in the CEF. Additionally, the EDPB's press release contains links to press releases published by participating SAs and which may provide more detailed information on the action of individual SAs.

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

4.1 BTLE ESG

4.1.1 Letter to Chair of the LIBE Committee on the Protocol to the Cybercrime Convention – discussion and adoption - **discussion and adoption**

The coordinator of BTLE ESG presented to the EDPB members the draft letter which was prepared in response to the request from the chair of the LIBE Committee. On the basis of the EDPB's previous positions, assessed against the final provisions of the Protocol accompanied by the explanatory report and on the basis of the EDPS Opinion, the draft letter highlights the following elements: the effect of the Protocol, the measures for enhanced cooperation and the conditions and safeguards related to the protection of personal data.

The letter, as prepared by the BTLE ESG, was adopted by the EDPB members. 26 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 voted in favour of adoption.

4.2 Compliance, E-Government and Health ESG

4.2.1 Designation of representative and alternative to the SCCG – **adoption**

The coordinator of CEH ESG presented to the EDPB members the proposal to appoint Georgia Panagopoulou, from EL SA, as the EDPB representative, and Konstantinos Limniotis, from EL SA, as the substitute representative, to the ENISA's Stakeholder Cybersecurity Certification Group (SCCG).

The proposal to appoint the EDPB representatives was adopted by the members of the EDPB unanimously.

4.3 Technology ESG

4.3.1 Letter on AI liability - **discussion and adoption**

The lead rapporteur presented to the EDPB members the letter which was prepared by TECH ESG in light of the possible revision of the EU Product Liability Directive. The letter reiterates certain elements from the EDPS-EDPB joint opinion on the proposal for AI Act, as well calls for clarification on several issues regarding the liability regime, such as the role of AI system providers, transparency and legal remedies for individuals.

The letter was adopted by the members of the EDPB unanimously. The lead rapporteur was entrusted to finalise the formatting of the letter.

4.4 Secretariat

4.4.1 Secondments program – **information**

The chair of the EDPB and the EDPB Secretariat shared information about the EDPB secondments programme for which a pilot was launched in June 2019. It is an exchange programme to foster cooperation between SAs, by allowing them to discover the organisation and working methods of

another SA, or by working on a common project. The programme applies to the employees of SAs and of the EDPS including the EDPB secretariat staff.

Due to Covid pandemic, the pilot phase was interrupted. The pilot program was extended until mid-2023.

A new procedure will be launched to call for interested candidates as well for the SAs which will be able to specify their hosting preferences.

Secondments vary from 2 weeks to 6 months depending on the objectives pursued. Candidates who had been selected in 2019-2020, but for which Covid interrupted the process, should apply again, because the environment and their project may have changed in the meanwhile.

4.4.2 Processing personal data through IMI in the context of the cooperation and consistency procedures: legal assessment – information

The EDPB Secretariat presented the main outcomes of the legal assessment, which was finalised by the EDPB DPO Network, of the processing of personal data in the context of cooperation and the consistency mechanism through IMI.

4.4.3 April 2022 Plenary meeting date - decision

The EDPB members agreed that the plenary meeting will take place on 6 April 2022 in a remote format.

5 AOB

5.1 BE SA update

BE SA informed the EDPB members about recent developments regarding the organisation and functioning of their authority. BE SA also explained their concerns about a pre-draft of law under preparation by the Belgium government, which, according to BE SA, could significantly impair the independent functioning of BE SA. Following a discussion, the chair of the EDPB concluded that the way forward on this matter could be discussed by the EDPB members when more details about the new Belgium legislation are available.

5.2 Information on eIDAS regulation

The EDPS shared information about provisions regarding the GDPR certification in the eIDAS regulation. It was agreed that matter will be further discussed by CEH and TECH ESGs.

5.3 Information about meeting with DG Competition

The EDPB Secretariat shared information with the EDPB members about the planned meeting with DG Competition of the European Commission regarding

6 For information - Expert subgroups and Secretariat

6.1 Guidelines on Certification as a tool for transfers - written State of Play

The EDPB members took note of the written state of play concerning the draft guidelines on certification as a tool for transfers.

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

- Observers: AL SA, MD SA, RS SA. In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points 3.2 and 3.3 of the agenda.

- EDPB Secretariat