



Final

66th Plenary meeting

14-15 June 2022, Brussels

1 Adoption of the minutes and of the agenda, Information given by the Chair

1.1 Minutes of the 64th 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 Minutes of the 65th 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.

1.3 Draft agenda of the 66th EDPB meeting – adoption

The draft agenda was adopted without modification.

The discussions relating to agenda point 4.1 were declared confidential according to Art. 33 EDPB RoP.

1.4 EDPB Budget – information from the Deputy Chair

On 12 May 2022, the Chair of the EDPB and the Director of the EDPS informed the EDPB members about the refusal by the European Commission of the first budget proposal presented to the EDPB plenary meeting on 6 April and shared the revised budget proposal sent to the European Commission.

The Chair indicated that the EDPB was informed on 30 May about an additional cut made by the European Commission on this revised version of the budget. In practice, all new permanent positions (EU officials) for 2023 were refused.

On 3 June 2022, the EDPB Deputy Chair intervened - together with the EDPS Wojciech Wiewiórowski - in front of the Council to defend the budget proposal. The few Member States who took the floor defended the cut made by the European Commission.

12/07/2022

The EDPB Deputy Chair's intervention highlighted that the EDPB Secretariat plays an important role in the functioning of the EDPB and there is a clear need for reinforcement, considering the increase of work, in particular due the increased number of meetings (from 100/year in 2019 to 400/year today), the number of Art. 65 GDPR procedures and sharp increase in access to documents requests. The EDPB Secretariat also plays a key role in supporting the EDPB's strategy to support cooperation and enforcement, notably by enabling strategic decisions - such as the ones agreed in Vienna - to be transformed into concrete actions.

The Chair of the meeting called on the EDPB members to contact their government and national representatives at the EU parliament to support the EDPB Secretariat's second budget proposal, as shared on 12 May 2022, and in particular to insist on the need to reverse the additional cut made.

2 Consistency mechanism, Guidelines and EDPB RoP

2.1 Guidelines on certification as tool for transfers – discussion and adoption (ITS)

The rapporteur presented the work done on the draft guidelines by the ITS ESG and recalled that the CEH ESG was consulted during the process. These draft guidelines complement the EDPB guidelines 1/2018 on certification, which provide more general guidance on certification.

The rapporteur explained that the guidelines are composed of four parts, each focusing on specific aspects regarding certification as a tool for transfers, such as the purpose, scope and the different actors involved; implementing guidance on accreditation requirements for certification bodies; specific certification criteria for the purpose of demonstrating the existence of appropriate safeguards for transfers; and the binding and enforceable commitments to be implemented. An annex to the draft guidelines contain some examples of supplementary measures in line with those listed in Annex II of Recommendations 01/2020 *on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data* in the context of the use of a certification as a tool for transfers.

The European Commission expressed their appreciation to the rapporteurs and the ITS ESG for preparing guidelines that address both substance and procedure.

The European Commission proposed a modification to certification criterion 2.a in order to express that contractual agreements may in practice also mean inclusion of terms in an existing service level agreement. Though the need to circumscribe to which transfers the certification applies is understood, the European Commission explained that in their view this does not necessarily imply that additional contracts need to be concluded.

Following a discussion, the EDPB members agreed to add, by way of example, that contractual agreements can be included in an existing service contract.

The European Commission further proposed to add a cross-reference in paragraph 34 - on the need for the certification body to ensure it has the necessary resources to be able to verify that the importer has in a duly and in a correct way carried out the necessary assessment of the legal situation and practices of the third country/ies where it is located - to paragraph 12 which confirms the certification body might subcontract activities to local experts or establishments outside the EEA which will perform audit activities on its behalf. The EDPB members agreed with this modification.

The guidelines on certification as tool for transfers were adopted by the members of the EDPB unanimously.

Considering the coming summer period, the guidelines will be subject to a public consultation until the end of September 2022.

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

3.1 Secretariat

3.1.1 Publication of EDPB Internal Documents – discussion and decision

The Chair recalled that this matter is a follow-up item from the 12 May 2022 EDPB plenary meeting, in light of an access to documents request to obtain all of the 15 EDPB Internal documents. The Chair highlighted the importance of pro-actively publishing documents in order to be transparent about the work of the EDPB.

The EDPB Secretariat explained that the request to the EDPB members is distinct from the access to documents procedure, which is currently under assessment. The EDPB Secretariat requested the EDPB members to decide on whether the EDPB Internal Documents mentioned in the infonote should be published on the EDPB website.

Following a discussion, the EDPB members decided unanimously to publish all the internal documents listed with their original date and with the eventual limited need of redaction, and to entrust the EDPB Secretariat with adding a disclaimer to them which explains that the documents were initially written for internal use among the EDPB members and where appropriate that the document is outdated.

The EDPB Secretariat recalled that the EDPB website is designed to make a link from superseded documents to the replacing document, where available.

3.1.2 Follow up on Commissioners' meeting in Vienna - information

The EDPB Secretariat provided a state of play on actions taken since meeting in Vienna in 2022, in particular:

- A drafting team within the ENF ESG is working on a document specifying criteria to select cases of strategic importance, as well as the process to be followed on these cases. The intention is to adopt the criteria and process documents in July 2022, and to select a test case, with a limited scope, possibly as soon as July 2022;
- A list of future topics for the Coordinated Enforcement Framework 2023 is currently under discussion in the ENF ESG;
- The EDPB Secretariat is consolidating the input received on potential procedural improvements. The next step is to consolidate the input and include it in a draft letter for discussion in the COOP ESG in September (and eventually the plenary in October 2022);
- A table of contents of the EDPB-Hub is being prepared and discussions on how to further improve IMI will continue within the IT Users ESG;
- The COOP ESG started to discuss proposals to accelerate cases not considered strategic, and will soon start discussing a template for complaints;
- The EDPB envisages to increase external communication on One-Stop-shop final decisions and this will be discussed within the EDPB network of communications officers;
- Enforcement priorities at national level will be discussed at EDPB plenary level towards the end of the year.

The EDPB Secretariat further explained that the external experts of Support Pool of Experts program will be operational very soon.

3.1.3 Procedural clarification: recording individual votes – discussion and decision

The EDPB Secretariat explained that the minutes of plenary meetings include the numerical result of vote(s) to approve or adopt final documents or adopt decisions (as per Art. 21.2 of the Rules of Procedure). Beyond this record in aggregate form (i.e., how many EDPB members voted in favour, against or abstained, but not their identity), individual votes cast (in application of Art. 22 of the Rules of Procedure) are not systematically recorded (other than in the context of written procedures), especially where there is not a systematic call of vote by each member.

The EDPB Secretariat requested the EDPB to provide clarity on whether or not the Secretariat is expected to systematically keep records of individual votes cast, if and when such records are created, as neither the EDPB RoP, nor the guidance document on plenary meeting minutes address this.

The Chair recalled that there is a degree of flexibility in the voting process. When a decision can be taken by consensus, there is no need to create a record with individual votes cast. When there is near-consensus, the practice has been to invite those EDPB members who wish to abstain or dissent to come forward, without inviting all EDPB members to cast their vote individually.

Following a discussion, the EDPB members decided the current approach is balanced, as in any case dissenting views can be recorded in the minutes upon request. A proposal to ask the EDPB Secretariat to systematically keep records of those instances where votes are cast individually did not attain the simple majority, thus current practice will be maintained.

3.2 COOP ESG

3.2.1 Draft reply letter to EDRI - discussion and adoption

The Chair recalled that on 16 March 2022, the European Digital Rights (NGO) and its members sent a letter addressed to the EDPB Chair, Commissioner Reynders and the members of the LIBE Committee containing a call and recommendations for concrete solutions to GDPR enforcement shortcomings. The Chair entrusted the COOP ESG with drafting the reply.

The rapporteur presented the draft letter and informed the EDPB members of a few editorial changes proposed by the EDPB Secretariat to the draft.

Following a discussion, a further few editorial modifications were agreed and the letter was adopted unanimously by the members of the EDPB.

One member proposed to further engage in a dialogue with EDRI and other non-governmental organisations. A discussion followed, concerning the modalities, scope and content of this exchange. The importance of openness towards civil society and dialogue to better understand the needs of citizens was highlighted, while at the same time the need for impartiality and caution were also raised. Following a vote, the members of the EDPB approved the idea of organising an exchange with NGOs and entrusted the EDPB Secretariat with preparing a more detailed proposal for discussion in cooperation with the EDPB Chair.

3.3 BTLE ESG

3.3.1 New Studies on data protection laws in third countries - discussion and adoption

The Chair recalled that in the past, the EDPB commissioned studies on government access to data in China, Russia and India. The BTLE ESG has prepared a proposal to commission further studies.

On behalf of the BTLE coordinator, the EDPB Secretariat presented the requests the EDPB to approve the conduct of a study on government access to data in [REDACTED] based on the description of the study provided.

Two SAs raised that there is a pressing need to gather information via the proposed studies, in order to have a resource available for the data exporters - in particular SMEs - as they need information on this matter. One SA added that besides the data exporters, also SAs need information for inevitable situation where an SA is called upon to assess transfers to these third countries.

A third SA took that view that aside from accuracy, the studies offer a snapshot view and thus may be quickly outdated.

The EDPB members decided to proceed with the studies as described in the proposal submitted by the BTLE ESG. 17 EU members of the EDPB voted in favour. 7 EU members of the EDPB voted against and 3 abstained. 1 EEA members was in favour, 1 was against and 1 abstained.

The Chair invited the BTLE ESG to reflect further on the matter of quality control of the studies.

3.4 FM ESG

3.4.1 Draft response to the EC targeted consultation on a digital Euro - discussion and adoption

The rapporteur presented the draft response to the European Commission's public consultation on the digital euro. The draft addresses data protection issues and in particular aims to ensure data protection by design and by default, in light of the European Commission's announced intention to issue a proposal of regulation in the near future.

One SA suggested an editorial change to the wording, which was accepted by the EDPB members.

The response was adopted by the members of the EDPB unanimously. The EDPB members decided unanimously to publish the response on the EDPB website.

One SA informed the EDPB members that International Working Group on Data Protection in Technology intends to draft a paper on digital currencies, planned to be finalised in 2023, and invited EDPB members to come forward as rapporteur.

3.5 ITS ESG

3.5.1 Data transfers to the Russian Federation – request for mandate

The rapporteur presented the request for a mandate to be granted to the ITS ESG.

Following a discussion on the content and objective of the statement, the EDPB members granted the mandate to the ITS to draft a statement on data transfers to the Russian Federation. 18 EU members of the EDPB voted in favour of the decision to grant the mandate. 5 EU member of the EDPB voted against and 4 abstained. 2 EEA members of the EDPB were in favour, 1 abstained.

The EDPB members decided that a message of solidarity with Ukraine will be prepared by the EDPB Chair separately from the statement.

3.5.2 Revised template for BCR approval decision by a supervisory authority - discussion and decision

The ITS coordinator presented the revised template for national BCR approval decisions. The new template takes into account the consequences of the CJEU Schrems II ruling as well a clarification of

the scope of BCR approval decisions, namely that the approval does not entail the approval of specific transfers of personal data to be carried out on the basis of the BCRs, but is an approval of a governance framework put in place by the applicant.

The members of the EDPB unanimously approved the revised template for national BCR approval decision.

The ITS coordinator explained that the revised wording will be mirrored in the template for EDPB opinions regarding national BCR approval decisions.

3.5.3 Trans-Atlantic Data Privacy Framework - information

The European Commission referred to the agreement on principle reached with the U.S. government on 25 March 2022, which addressed two aspects raised by the CJEU in the Schrems II ruling, namely additional safeguards for law enforcement access to personal data and ensuring that data subjects have access to a redress mechanism that meets criteria set out by the CJEU.

The next step in the process is for the agreement on principle to be implemented in legal texts, which is ongoing.

The European Commission recalled that the aim of the negotiations is broad, namely to arrive at an adequacy decision that would cover all personal data transfers to the U.S.

The EDPB members took note of the information provided.

3.6 TECH ESG

3.6.1 Update of the DBN Guidelines on the OSS mechanism – request for mandate

The coordinator of the TECH ESG presented a request for mandate to make a targeted change to the existing guidelines on data breach notifications, namely on the notification of data breaches by controllers outside the EEA. Some controllers interpret the guidelines as saying they only have to notify to the SA where it has its representative. However, this interpretation is in contradiction of the position of the EDPB that a representative alone does not grant access to the one-stop-shop mechanism.

The EDPB members adopted the mandate unanimously.

3.6.2 Guidelines related to the technical scope of Article 5(3) of ePrivacy Directive 2002/58/CE – request for mandate

The coordinator of the Tech ESG presented a request for mandate for guidelines related to the technical scope of Art. 5.3 of ePrivacy Directive 2002/58/CE. The proposed guidelines would aim to describe which technical read/write operations fall within the scope of Art. 5.3 of the ePrivacy directive, considering that controllers are using other technologies than cookies. The coordinator confirmed that the proposed guidelines do not intend to revisit the position of the EDPB on the interplay between the GDPR and the ePrivacy framework.

The EDPB members adopted the mandate unanimously.

3.7 IT Users ESG

3.7.1 IMI and Statistics – information

The EDPB Secretariat as co-coordinator explained the work done in the IT Users ESG following the request made by the █████ SA to have a possibility to reflect in the IMI statistics the cross border

complaints which do not fall under One-Stop-Shop procedure and for which they have concluded amicable settlements.

The IMI system was adapted to allow users to share information to CSAs on the resolution of those cross-border complaints which are not falling under Art. 60 GDPR. The information will be shared via voluntary mutual assistance procedures and the user will have the possibility to indicate the purpose of the voluntary mutual assistance procedures launched, by introducing a field called "Type of Request". The list of purposes was validated in the IT Users ESG and then implemented in the system by the EDPB Secretariat with the help of DG GROW. This modification will make it possible in the future to create more granular statistics differentiating the purpose for which Art. 61 voluntary mutual assistance was used.

The EDPB Secretariat informed the EDPB members that the IT Users ESG is currently working on a modification of the Art. 60 procedures in IMI, with a similar aim to be able to produce more granular statistics.

One SA expressed the view that for final decisions taken following the one-stop-shop, there should also be a distinction made between those that follow from an amicable settlement versus other decisions, so as to be able to distinguish them in the statistics. The coordinator confirmed that this can be discussed at the next IT Users ESG meeting.

The members of the EDPB took note of the work done and of the information provided.

3.8 Secretariat (continued)

3.8.1 Establishing a network of information security contacts - discussion and adoption

The Chair presented the background of the matter. The EDPB has been confronted with phishing attacks, in which the addresses of multiple SAs, of the EDPS and of the EDPB Secretariat were impersonated.

The EDPB Secretariat proposed to create a network of contacts for information security purposes, with the aim to exchange information, in particular ensuring that the right people within the authorities are notified in case of incidents. This would allow the SAs to take measures without undue delay.

The members of the EDPB unanimously decided to establish an EDPB network of information security contacts.

3.8.2 Secondments Program - information

The Chair recalled that the EDPB together with the EDPS adopted a Joint Decision to create the EDPB secondments program to enable staff exchanges between SAs. The program was suspended in 2020 due to the Covid-19 crisis.

The EDPB Secretariat informed the EDPB members that the secondments program pilot phase has been extended until 31 July 2023. An assessment of the pilot will be done by the end of October 2023 and the definitive secondments program is planned for launch before 1 July 2024.

The aim of the secondments program is to exchange employees (civil servants and contract staff) between EEA Supervisory Authorities (SAs) and the EDPS, including the EDPB secretariat staff. The duration may vary from 2 weeks to 6 months.

A call for participation was sent to the EDPB members in February 2022, with a deadline to express their interest on 22 March 2022. A high number of candidates (41) applied to the program, of which

31 were approved by the selection panel. Some applications could not be approved because there was no match between requests and offers.

A two days training will be organised for the participants in Brussels on 21-22 September 2022. This will include presentations by EDPB, EDPS and the EU Commission, as well as visits of the Parliament, Commission and Council. The travel costs for the training will be borne by the EDPB budget.

One SA raised the issue that no funding was available for participants, in particular for flights and accommodation to travel to the hosting SA. The EDPB Secretariat explained that this is in accordance with the rules laid down in the current joint decision, in particular given that as a general rule, all SAs participating in the programme should be ready to act both as a host and a sending authority. This issue can however be flagged in the assessment report due in October 2023 with a view of analysing if this rule should be revisited in the definitive programme to be launched in 2024.

4 Consistency mechanism (continued)

4.1 Decision 01/2022 on the dispute arisen on the draft decision of the French Supervisory Authority re ACCOR according to Art. 65(1)(a) GDPR – discussion and adoption

The EDPB Secretariat presented the dispute arisen on the draft decision of the French Supervisory Authority and the main content of the binding decision, thanking the 2 SAs that helped on the drafting. It was clarified that no pending issues were being presented for arbitration by the EDPB.

The EDPS did not participate in the vote as the decision was not considered to concern principles and rules applicable to the EU institutions, bodies, offices and agencies which correspond in substance to those of the GDPR in line with Art. 68.6 GDPR.

The European Commission raised some general comments concerning the need to take into account, for the purposes of calculating the amount of the fine, the turnover of the year preceding the decision.

The PL SA requested to receive an urgent translation in their national language pursuant to Art. 11.6 of the Rules of Procedure and motivated this request in light of the need to provide information to the complainant. The decision will therefore be urgently translated in FR and PL and urgently proofread by the FR SA and PL SA before being formally notified to all the CSAs.

The binding decision was unanimously adopted by the members of the EDPB having voting rights on the matter. 27 EU members of the EDPB voted in favour of adoption. The 3 EEA members of the EDPB voted in favour of adoption.

4.2 Chairing of ad hoc meetings on Article 65 GDPR matters - discussion and decision (ENF)

The EDPB Secretariat provided a presentation of the issue arising from the large number of meetings scheduled for the ENF ESG in the next few weeks aimed at discussing ongoing dispute resolution procedures, as well as the proposal from the █████ SA to create a list of ad-hoc chairs for meetings focusing on Art. 65 decisions. This proposal consists in the possibility of asking these ad-hoc chairs to lead the ESG meetings concerning specific disputes in case of need.

This proposal was approved by the EDPB members. The EDPB Secretariat will make a call of interest for ad-hoc chairs.

The ■ SA clarified that due to a lack of resources they have taken the decision to withdraw as co-coordinator of the ENF ESG. The EDPB members expressed their appreciation for the efforts made by the ■ SA co-coordinators during the previous years. The ■ SA volunteered to become co-coordinator of the ESG together with the ■ SA. A general call of interest for co-coordinators will be sent by the EDPB Secretariat.

5 Possible discussion points still open from day 1

The discussion on agenda point 3.2.1 was completed.

6 AOB

6.1 DE SA update

The DE SA provided information to the EDPB members regarding ongoing cases.

The EDPB members took note of the information given.

7 For information - Expert subgroups and Secretariat

7.1 Access to documents requests – written state of play

The EDPB members took note of the written state of play concerning the work being carried out on access to documents requests by the Secretariat.

Annex: Attendance List

SAs:

AT SA, BE SA, BG 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.

The CY SA delegated their voting rights to the EL SA and the SK SA delegated voting rights to the HU SA, pursuant to Art. 22.5 RoP.

- European Commission

- Observers: AL, MD; In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points 4.1 and 6.1 of the agenda.

- EDPB Secretariat