



Final

67th Plenary meeting

12 July 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 66th Plenary meeting – adoption

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

1.2 Draft agenda of the 67th EDPB meeting – adoption

The draft agenda was adopted with the inclusion of new points under AOB 5.3 (Update by the BE SA) and 5.4 (Information about TikTok).

The discussions relating to agenda points 3.1, 4.2.1, 4.2.2 were declared confidential according to Art. 33 EDPB RoP.

1.3 Information given by the Chair

The EDPB Chair informed the EDPB members that she will not submit her candidacy for a second term after her term ends on 25 May 2023. The EDPB Chair invites the eligible members to consider putting forward a candidate.

2 Consistency mechanism, Guidelines and EDPB RoP

2.1 EDPB-EDPS Joint Opinion on the Proposal for a Regulation on the European Health Data Space – discussion and adoption (CEH ESG)

The rapporteur presented the work done on the draft joint opinion.

The EDPB members discussed enforcement of the data protection aspects of the proposed regulation and decided to emphasise more strongly that enforcement of this Regulation, when

personal data are involved, should remain a competence of the SAs. Following a discussion on the matter, the EDPB members decided to include recommendations on requirements to store personal data in the EEA in the joint opinion. These recommendations are without prejudice to the possibility to transfer specific sets of personal electronic health data in compliance with Chapter V GDPR. The European Commission sought clarification on whether such data storage requirement should apply specifically to the processing infrastructure mentioned in paragraph 106 of the joint opinion. Further, the European Commission raised concerns about the recommendation to require that controllers and processors demonstrate that they are not subject to third country legislations conflicting with EU data protection rules, in their view the reference to Art. 48 GDPR in this context ought to be sufficient.

One EDPB member proposed a modification with regards to the provision of electronic health data for secondary purposes (Art. 33 et seq. of the proposal), specifically to recommend such provision be made subject to the consent of the data subjects, or at the very least, to grant the data subjects an unconditional right to object.

The EDPB members decided not to include the proposed modification on consent or right to object.

The European Commission underlined that the draft appears to confuse the role of impact assessments accompanying legislative proposals with data protection impact assessments (Art. 35.10 GDPR).

The European Commission expressed their disagreement with the recommendations on the topic of wellness apps; on the subject of transparency by way of specific information instead of extensive general information and on data storage requirements. Furthermore, the European Commission provided their point of view on the interplay between Art. 9.2 GDPR and Art. 34 of the proposal.

The joint opinion was adopted by the members of the EDPB. 27 EU members of the EDPB voted in favour of adoption. 1 EU member of the EDPB abstained. The 3 EEA members of the EDPB were in favour of adoption.

3 Current Focus of the EDPB Members

3.1 Follow-up of the EDPS Conference – discussion

The EDPB members discussed takeaways from the EDPS conference on ‘The Future of Data Protection: Effective enforcement in the digital world’ held in June 2022. The conference underlined that the GDPR has raised high expectations from all stakeholders in terms of enforcement. With regards to the challenges of the one stop shop identified, the EDPB members took note of a general momentum for the path taken by the EDPB in Vienna, namely intensifying cooperation and greater harmonisation of procedural laws. This will help SAs enforce the GDPR more efficiently, ultimately benefiting and empowering individuals to exercise their data protection rights.

Some speakers at the conference explored the possibility of changing the GDPR system of enforcement. The EDPB members took note and recalled that this would be premature at this stage.

One SA raised also the importance for the legislator to ensure consistency between new legislative proposals and the GDPR when it comes to supervision and enforcement of personal data protection.

With regards to the statement on enforcement cooperation adopted on 28 April 2022 in Vienna, the Chair and several delegations referred to ongoing follow-up work and in particular point 4.2.2. of the agenda. Along with the European Commission, they also recalled that it was crucial to collectively

continue to support the approach agreed in Vienna and that all members should communicate in a consistent way with regard to the GDPR enforcement model.

One SA asked the next Conference of this type in 2023 to be organized by the EDPB.

3.2 The EU House of Data Protection – discussion and request for mandate

The EDPS presented the request for mandate for a joint project by the EDPS and the EDPB to promote the fundamental rights of data protection and privacy globally, in particular by creating a physical and virtual forum where legislators, regulators, experts in data protection and other fields of law worldwide can meet and exchange views. The request for mandate invited the EDPB members to decide whether the EDPB should join the initiative taken by the EDPS, to approve the joint project on principle and grant a mandate to the EDPB communications network to develop the details of the project.

The European Commission took the view that special care should be taken to avoid any confusion on the respective role of EDPS and EDPB. This view was supported by the members who took the floor.

One member asked if and how the SAs would also be involved. Several EDPB members raised concerns about availability of resources, both within their SA as within the EDPB Secretariat. In answer to a question raised, the EDPS also clarified that without a mandate to the EDPB to join, this project would be pursued on behalf of the EDPS only.

The EDPB members decided further discussion within the SAESG was necessary before deciding on the mandate.

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

4.1 BTLE ESG

4.1.1 Police Cooperation Code – request for mandate

The coordinator of the BTLE ESG presented a request for mandate for a statement on the proposal for an “EU Police Cooperation Code”. The BTLE ESG considers this legislative package as highly relevant for the protection of data in the area of law enforcement. The coordinator of the BTLE ESG added that on 11 March 2022, the EDPS published two extensive opinions on the “EU Police Cooperation Code”.

The request for mandate was adopted unanimously by the EDPB members.

4.2 ENF ESG

4.2.1 Substantive questions from the CEF members and possible approaches – discussion

The EDPB Secretariat presented a state of play on the work done within the Coordinated Enforcement Framework (CEF) in follow up of the Vienna Statement on cooperation. The EDPB decided to prioritise the use of cloud by the public sector for its 2022 Coordinated Enforcement Framework (CEF) action. Although the actions are the responsibilities of individual SAs, the members of the co-ordinated action working group have identified a number of substantive questions which warrant a discussion at EDPB level, to ensure that consistent approaches are adopted across the EEA. The EDPB Secretariat called upon the EDPB members to take note of the substantive questions

raised, the analysis made and options put forward, ahead of their discussion during the plenary meeting in September 2022.

The EDPB members took note of the information provided and decided to refer the matter to the SAESG in order to prepare the discussion before taking a decision during a plenary meeting.

4.2.2 Strategic cases – criteria, process and selection of pilot cases – discussion

The rapporteurs presented the background and the proposed criteria and process for selecting strategic cases prepared by the ENF ESG.

Following a discussion, the EDPB members decided that cases can be labelled strategic if they meet one or more of the following criteria:

-) the case concerns a structural or recurring problem in several Member States, in particular where the case concerns a general legal issue in relation to interpretation, application or enforcement of the GDPR;
-) the case is related to the intersection of data protection with other legal fields;
-) the case which affects a large number of data subjects in several Member States;
-) there are a large number of complaints in several Member States;
-) the case raises a fundamental issue falling within the scope of the EDPB strategy;
-) the case concerns a matter where the GDPR implies that a high risk can be assumed.

The EDPB members discussed the procedure for the identification of strategic cases and their follow-up. Cases can be put forward by SAs, including by CSAs; however, the EDPB members clarified that, in the selection process, the EDPB will take into consideration the position of the LSA and will not label cases as being of strategic importance without the agreement of the LSA. The EDPB members agreed that strategic cases should be dealt with within a fixed timeline, which in principle, should not go beyond 2 years in total.

The criteria were adopted unanimously by the members of the EDPB, while the selection procedure was adopted by the members, with one SA abstaining.

The EDPB members discussed an initial list of three cases put forward as potential strategic cases. All three cases were selected as strategic. With regards to one case, the LSA explained that in terms of timeline it would apply the procedure for strategic cases only once the controller will be informed about it, which should happen in the coming weeks.

4.2.3 Additional coordinator for the ENF ESG and ad hoc chairs for ENF ESG meetings - decision and information

In accordance with Art. 25.3 of the EDPB RoP, the EDPB members designated the [REDACTED] SA as co-coordinator of the ENF ESG.

The EDPB members welcomed [REDACTED] staff member of the [REDACTED] for his availability to act as ad hoc chair for ad hoc ENF ESG meetings on Art. 65 GDPR cases.

4.3 ITS ESG

4.3.1 Statement on personal data transfers to the Russian Federation - discussion and adoption

The rapporteur presented the draft statement on personal data transfers to the Russian Federation prepared by the ITS ESG. The EDPB members discussed one modification to the wording of the draft statement, replacing the term 'risk' - which might lead to misunderstanding in the context of transfers - with 'impact' in order to clearly express that SAs "will take into account the increased impact on the rights and freedoms of data subjects".

The statement was adopted unanimously by the EDPB members, with the agreed upon modification.

4.4 Coordinated Supervision Committee

4.4.1 Update on the work of the Coordinated Supervision Committee – information

The matter was postponed to the next plenary meeting or will be subject to a written update.

4.5 Secretariat

4.5.1 Engagement with NGOs – decision

In follow-up of the June 2022 plenary meeting, EDPB Secretariat presented a concrete proposal to the EDPB members for an in person meeting in September with the NGOs, which addressed the EDPB on the GDPR enforcement. The meeting would aim to address the specific topic of procedural aspects that could be further harmonised in EU law to maximise the positive impact of GDPR cooperation. To facilitate the discussion, the EDPB Secretariat would collect written input from participants in advance. The EDPB members unanimously agreed with the proposal and entrusted the EDPB Secretariat with organising the event as proposed and with inviting the NGOs to provide input in advance.

4.5.2 Date and format of the EDPB plenary meeting in October 2022 – decision

The EDPB members confirmed the EDPB plenary meeting will be held in person on 10 and 11 October 2022, subject to final confirmation of the availability of a meeting room.

5 AOB

5.1 Information on awareness raising activities for SMEs within ARC project co-funded under REC programme

The matter was postponed to the next plenary meeting.

5.2 Gender neutral language in EDPB documents

The matter was postponed to the plenary meeting in September 2022.

5.3 Update by the BE SA

The BE SA informed the EDPB members that a new Commissioner was recently appointed, while, according to some press articles, two Commissioners will face a dismissal decision in the coming week by the Belgian parliament.

In addition, the Belgian parliament has amended the proposal for a law modifying the organisation and functioning of their authority. The BE SA explained that in their view parts of the proposal would impair the independent functioning of the BE SA.

The EDPB members took note of the information provided.

5.4 Recent developments with regards to TikTok

The EDPB Secretariat referred to Access Now and BEUC letters calling upon SAs to take urgent action following TikTok's announced intention to change their privacy policy in Europe in order to change the legal basis for the purposes of personalised advertising from consent to legitimate interest.

Following this, several SAs have taken some actions toward TikTok. The IE SA informed the members about their engagement with TikTok. The IT SA shared information about the warning decision adopted on 7 July 2022 which relies on imminent violation of the ePrivacy Directive but also includes express references to the GDPR and they reserve to act pursuant to art 66.1 GDPR.

Following this, TikTok decided to temporarily suspend the change to their privacy policy in Europe. The EDPB members welcomed the swift actions undertaken and their impact.

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: MD, SR; In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points 3.1, 4.2.1 and 4.2.2 of the agenda.

- EDPB Secretariat.