



Final

74th Plenary meeting

17 January 2023, 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 72nd and 73rd Plenary meetings – adoption

The minutes of the 72nd and 73rd plenary meetings were adopted unanimously. The members of the EDPB also agreed on the public version of the minutes.

1.2 Draft agenda of the 74th EDPB meeting – adoption

The draft agenda was adopted with the inclusion of two new points under AOB - 4.1. State of play on the BE SA's IAB Europe Decision and 4.2. EDPB Representatives for the DMA High Level Group.

In addition, the EDPB Chair informed that an ad hoc plenary meeting will take place on 28 February 2023 which will be dedicated to the EDPB opinion on the European Commission's draft adequacy decision on the EU-US Data Privacy Framework.

The discussions relating to agenda points 2.1, 2.2, 3.2.1, 3.2.2 were declared confidential according to Art. 33 EDPB RoP.

2 EU-US Data Privacy Framework

2.1.1 EDPB Opinion on the draft adequacy decision – state of play

The BTLE Coordinator updated the EDPB members on the organisation of the work on the draft EDPB opinion. Two drafting teams have been set up, one composed of members of the ITS ESG and another one composed of members of the BTLE ESG. The drafting teams have already started working on the draft opinion and will continue to meet on a regular basis. They will present the draft for adoption at the EDPB plenary meeting on 28 February, as the European Commission has agreed to extend the deadline by this date. In addition, the US Mission to the EU has suggested to facilitate a meeting with US experts at technical level in order to respond to questions. The meeting will take place next week, in accordance with the conditions of Art. 9(2) of the EDPB Rules of procedure.

2.1.2 Commissioner Didier Reynders: Draft adequacy decision on the EU-US Data Privacy Framework - **presentation and exchange of views with the members of the EDPB**

Commissioner Didier Reynders presented the draft adequacy decision for the EU-U.S. Data Privacy Framework proposed by the Commission on 13 December 2022. In particular, he explained that the new US legal framework, comprising an Executive Order complemented by regulations adopted by the US Attorney General, addresses the points raised in the *Schrems II* judgment, both regarding the limitations and safeguards for access to data for national security purposes (compliance with the principles of necessity and proportionality) and the availability of effective redress (through the creation of a new redress mechanism).

In response to questions from EDPB members, Commissioner Reynders clarified that the draft adequacy decision, as its text expressly provides, will not enter into force until EU data subjects have access to the new redress mechanism and the internal rules and procedures of intelligence agencies have been updated to implement the Executive Order's requirements. The EDPB members also discussed and supported the idea to meet the Chair of the PCLOB.

Commissioner Reynders also informed the EDPB members that following the Vienna meeting and the adoption of the EDPB procedural "wish list", the European Commission is working on a legislative initiative to harmonise certain procedural elements in cross-border cases.

3 Expert Subgroups, CSC and Secretariat

3.1 CSC

3.1.1 Semestrial update on the work of the Coordinated Supervision Committee - **information**

The CSC Coordinator updated the members of the EDPB on the CSC activities carried out during the second half of 2022. The EDPB members were informed that the envisaged entry into operation of the Schengen Information System recast has been delayed to March 2023 and that the ETIAS is expected to enter into operation by May 2023. The CSC will be monitoring closely how the 6 systems of the European Interoperability Framework will become interoperable.

The CSC's tasks include the general coordination of activities but also mutual assistance for audits and inspections. The CSC will soon discuss the EDPS annual inspection of Europol and later in 2023, it will organise a pilot project between SAs and the EDPS regarding the data processing by the European Delegated Prosecutors of EPPO. The SAs are invited to volunteer as rapporteurs.

Finally, the importance of having dedicated teams dealing with law enforcement and criminal justice matters was stressed, as they are essential for the protection of data subjects' rights.

3.2 ENF ESG

3.2.1 Update from the Cookie Banner TF and orientation of the work - **discussion and adoption**

As agreed at the EDPB Plenary meeting in November 2022, the task force presented a report of their work, including feedback on the outcome of the analysis of the different types of violations referred to in the complaints. Several EDPB members recalled that different national guidelines on cookie banners have been published and, since the applicable rules are laid down in national laws transposing the ePrivacy directive, and the one-stop-shop is not applicable, divergences among the SAs remain. Nevertheless, the EDPB members agreed that the task force has managed to find a strong common ground.

23 EU members of the EDPB voted in favour of adopting the report, 4 EU members of the EDPB abstained. 1 EU member of the EDPB motivated its abstention with its lack of competence for ePrivacy matters. All three EEA members of the EDPB voted in favour of adoption.

The members of the EDPB unanimously agreed to publish the report.

3.2.2 Cases of strategic importance - state of play

The rapporteurs updated the EDPB members on the cases previously selected as having strategic importance. The [REDACTED] SA provided an update on the “[REDACTED]” case, the [REDACTED] SA provided an update on the “[REDACTED]” case, the [REDACTED] SA on the “[REDACTED]” case and the [REDACTED] SA on the “[REDACTED]” case.

3.2.3 CEF Cloud Report - discussion and adoption

The rapporteur introduced the report, including an Annex of national report on the CEF cloud action, which reflects on the actions undertaken by competent SAs following the selection by the EDPB of “the use of cloud in the public sector” for its 2022 Coordinated Enforcement Action. Some investigations are still ongoing and the SAs will continue reporting.

The rapporteur presented a timeline of the work done, the main challenges encountered by the public bodies, as well as actions already taken by the SAs. One major outcome of the report is that it gives practical recommendations to public bodies when they engage with cloud service providers.

It was specified that the report may need to be updated at the end of 2023. In addition, the methodology elaborated in 2022 is also paving the way for the 2023 action.

The EDPB members were informed of some editorial changes sent ahead of the meeting. The EDPB Secretariat is entrusted with incorporating these corrections into the final version of the report after the plenary meeting. In addition, a new paragraph was added in the executive summary, as proposed by one EDPB member. Another EDPB member will send their contributions after the meeting and they will be integrated in the part of the report on statistics as well as in the Annex to the report.

The EDPB members adopted unanimously the report and unanimously agreed to publish it.

4 AOB

4.1.1 IAB Europe Decision - State of Play (BE SA)

The BE SA followed up on its decision in the IAB Europe case and recalled that IAB Europe had sent an action plan for the implementation of corrective measures. However, the competent Belgian appeal court has sent questions for a preliminary ruling to the CJEU. The Litigation Chamber of the BE SA has decided not to wait for the CJEU ruling and has formally validated the action plan, giving the controller six months to implement the corrective measures.

4.1.2 Nomination of EDPB representatives for the DMA High Level Group - discussion and adoption

The EDPB Secretariat presented a letter from the European Commission inviting the EDPB (5) and the EDPS (1) to nominate representatives for the High Level Group for the Digital Markets Act (DMA) established under Article 40 DMA. The representatives will be selected for a two-year term. They have to be at the level of head of authority or equivalent and ensure a high level of expertise, as well as a geographical balance. So far, 7 SAs have sent proposal of representatives for the EDPB. The EDPS has already confirmed its nomination.

The EDPB members exchanged on the role of the representatives and agreed that they will be expressing the common position of the EDPB. Therefore, they will have to coordinate their

participation within the CEH ESG and SAESG/Plenary level, as appropriate. The CEH ESG deals with questions on the additional powers of the SAs in view of the new legislative acts. A few EDPB members took the floor to briefly present their candidates.

Prior to the meeting, the EDPB sent a request to the European Commission to extend the deadline. On the basis of the answer, the EDPB Secretariat will organise a vote via written procedure.

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, SR SA, MK SA

In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points 2.1, 2.2, 3.2.1, 3.2.2 of the agenda.

- EDPB Secretariat