

Minutes



34th Plenary meeting

17 July 2020, 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

1.1 Minutes of the 33rd Plenary meeting – adoption

The minutes were unanimously adopted with the modifications proposed and circulated prior to the meeting. In section 2.2 of the minutes, the EDPB members agreed with the wording suggested by the Chair of the EDPB to accommodate the change requested by one SA.

1.2 Draft agenda of the 34th EDPB meeting – adoption

The draft agenda was adopted. The ■ SA requested to address the confidentiality of documentation under AOB. The ■ SA requested an addition under AOB on a ruling it has addressed to Google.

1.3 Appointment of Mr. Zdravko Vukić, new director of the Croatian DPA – information

The Chair of the EDPB welcomes the new director of the Croatian SA. Mr. Vukić addresses the EDPB expressing he is looking forward to fruitful collaboration. He notes the 2020 Spring Conference was going to be organised by the Croatian SA, however due to the COVID-19 pandemic the conference will be postponed to 2021. Taking the opportunity that the delay offers, the Croatian SA will send out a questionnaire to the EDPB members with questions about the conference.

2 Current Focus of the EDPB Members

2.1 SCHREMS II decision by the European Court of Justice – discussion

The Chair of the EDPB presented a state of play after the Court judgement (C-311/2018 Data Protection Commissioner v Facebook Ireland and Maximilian Schrems, hereafter ‘Schrems II’) was issued on 16 July 2020. A reactive EDPB’s statement for the press was prepared by the EDPB Secretariat together with the Chair and communicated in response to questions from the press.

The EDPB members discussed a draft EDPB statement prepared by ██████████ and further discussed by the ██████ and ██████ ESG which presented it to the EDPB plenary for adoption.

The ██████ coordinator presented the work done and outlined a proposal for the next steps to be taken by the EDPB. The first step proposed is the adoption of an EDPB statement immediately. The second step proposed is the elaboration of a document containing key clarifications of the consequences of the Schrems II judgement (FAQs), which ideally should be adopted in the following week.

The EDPB members discussed the consequences of the judgement for the use of standard contractual clauses (SCCs), as well as other mechanisms, as tools for transfers to the United States and other third countries.

The EDPB members discussed the matter of expected demands for a moratorium on enforcement. The Chair of the EDPB pointed out that the Article 29 Working Party after the Schrems I judgement did not instate a moratorium on enforcement. Furthermore, the GDPR does not allow for the SAs to decide on a grace period.

The EU COM welcomed the EDPB Chair’s reactive statement to the press.

The EDPB members discussed modifications to the wording of the draft statement prepared by the ██████ and ██████ ESGs and unanimously adopt the statement with the revisions discussed.

The EDPB members mandated the ██████ and ██████ ESGs to jointly prepare a document with clarifications (FAQs) for discussion at the plenary meeting of 23 July 2020.

2.2 Decision of the French Council of State (Conseil d’Etat) on the CNIL cookie guidelines – information

The FR SA provided information to the EDPB members regarding the decision of the French Council of State on the CNIL cookie guidelines. The FR SA stressed that the CNIL cookie guidelines were upheld on nearly all points by the French Council of State, notably with regards to the competence of the FR SA to issue guidelines, the required easiness of withdrawal of consent, the need for consent per purpose, the need for information to be provided about the identity of the controllers at the time when consent is obtained, as well as the requirement that controllers must be able to demonstrate that they obtained consent.

Only one sentence on cookie walls was struck down by the Council of State. The Council of State decided that an absolute ban cannot be instated by in soft law alone. However, the Council of State did not take a position on the substance for or against cookie walls.

The EDPB members took note of the information given.

2.3 Decision of the French Council of State (Conseil d'Etat) on the Google sanction – information

The FR SA informed the EDPB members that the sanction imposed on Google was confirmed by the French Council of State. The EDPB members took note of the information given.

2.4 GOOGLE/FITBIT merger – request of EC DG Competition – discussion

The Chair of the EDPB recalled the statement issued by the EDPB on 19 February 2020, expressing the readiness to contribute advice on the proposed merger to the Commission if requested.

2.5 Proposal for a support pool of experts

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

3.2 Financial matters ESG

3.2.1 Guidelines on the interplay between the PSD2 and the GDPR – discussion and adoption

The rapporteur presented the work done by the ESG and the state of play.

The EDPB members decided on the options presented by the ESG and adopted the guidelines with the modifications discussed during the meeting with 20 EU SAs and 2 EEA EFTA SAs voted in favour. 1 EU SA voted against and 3 EU SAs and 1 EEA EFTA SA abstained. A majority of the EDPB members vote in favour of adopting the guidelines.

Considering the public holidays, the guidelines will be submitted to public consultation for a period of 8 weeks.

3.3 International Transfers ESG

3.3.1 Impact of Brexit on BCRs and management of ICO-led BCRs– discussion and adoption

The matter was postponed to the next plenary meeting.

3.4 Technology ESG

3.4.1 Follow up response letter to MEP Duris on contact tracing, interoperability of apps and DPIAs– discussion and adoption

The rapporteur presented the draft reply.

The EDPB members unanimously adopted the draft letter.

3.5 Secretariat

3.5.2 September plenary meeting – discussion (Rapporteur: SEC)

The EDPB Secretariat requested instruction from the EDPB members on whether or not to prepare for an in person plenary meeting in September.

Several SAs confirmed they are in favour of an in person meeting, however the option to participate remotely should be available.

As circumstances may change quickly, there may be a need to cancel the in person meeting at short notice. The EDPB Secretariat therefore proposed to cancel the booking of the meeting room in the EC COMs premises immediately and to plan to host the meeting in the EDPS' building.

The Chair proposed to the EDPB members to further discuss the matter during the next plenary meeting. In the meantime, the EDPB members agreed with the immediate cancellation of the meeting in the EC COMs premises.

4 AOB

The Chair of the EDPB decided that an additional remote plenary meeting will be held on 22 July 2020 in order to discuss the topics which were postponed in this meeting.

4.1 Updates on GPA COVID 19 Taskforce

The matter was postponed to the next plenary meeting.

4.2 [REDACTED] case: Google

The [REDACTED] SA informed the EDPB members that it has imposed a sanction on Google in a delisting case. More details about the substance as well as about the jurisdiction of the [REDACTED] SA in this case will be shared with the [REDACTED] ESG.

The EDPB members took note of the information given.

4.3 [REDACTED] confidentiality of documentation

The matter was postponed to the next plenary meeting.

Annex: Attendance List

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, MT SA, NL SA, NO SA, PL SA, SE SA, SK SA, UK SA

- European Commission

- EDPB Secretariat