

Minutes



Final

37th Plenary meeting

2 September 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 36th EDPB meeting – **adoption**

The Chair of the EDPB congratulated the new FI Commissioner, who will take office in November, the new IT Commissioner and the new CZ Commissioner.

The minutes were adopted unanimously.

1.2 Draft agenda of the 37th EDPB meeting – **adoption**

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

1.3 Appointment of Mr. Pasquale Stanzione, the new president of the Italian DPA – **information**

The Chair of the EDPB informed the members of the appointment of the new IT Commissioner. As the new IT Commissioner was not present, this point will be postponed to next plenary meeting. It will be also the occasion to welcome the new CZ Commissioner.

1.4 Exchange of views with the LIBE Committee on the recent CJEU Schrems II judgment – **information**

The Chair of the EDPB explained that there will be an exchange of views with the LIBE Committee, together with EC Commissioner Reynders and Max Schrems (NOYB). Each of the participants will give a 10 minutes speech, which will be followed by questions. The Chair of the EDPB will talk about the EDPB adopted documents.

2 Current Focus of the EDPB Members

2.1 101 lodged complaints in the context of the CJEU Schrems II judgement – discussion (Rapporteur: Chair)

The Chair of the EDPB presented the topic and the concerns it raises. A total of 101 identical complaints have been lodged with EEA Data Protection Authorities against several controllers in the EEA member states regarding their use of Google / Facebook services which involve the transfer of personal data. Specifically the complainants, represented by the NGO NOYB, claim that Google/Facebook transfer personal data to the U.S. relying on the EU-U.S. Privacy Shield or Standard Contractual Clauses and that according to the recent CJEU judgment in case C-311/18 the controller is unable to ensure an adequate protection of the complainants' personal data. The Chair of the EDPB highlighted the importance to have a strong cooperation in this case, since the 101 complaints have all the same content but have been filed with thirty different SAs.

The members of the EDPB agreed on the importance of coordinating closely and supported the idea of creating a taskforce to deal with this specific matter. The members of the EDPB decided to create a taskforce under the ENF ESG, with the mandate to look into the complaints and [REDACTED]. The EDPB Secretariat will also support the taskforce. Based on the outcome of the discussions within the taskforce, the need to request an opinion under Art. 64.2 GDPR will be assessed.

If members of another ESG would like to participate in the ESG, they are invited to inform the EDPB Secretariat.

2.2 Schrems II: next steps and follow-up on guidance on supplementary measures – request for mandate (Rapporteurs: [REDACTED] SA, [REDACTED] SA)

The rapporteurs explained that, following the Schrems II judgement, the plenary gave a mandate to the BTLE and ITS ESGs to jointly undertake follow up actions. In this respect, and in order to move efficiently regarding recommendations, the ITS, BTLE and TECH ESGs' coordinators proposed to establish a dedicated taskforce with experts from TECH ESG to assess practical and technical aspects.

The taskforce will prepare recommendations to assist controllers and processors with, inter alia, the case by case evaluation of the circumstances of the transfer, their duty to identify and implement appropriate supplementary measures to ensure adequate protection when transferring data to third countries, procedural requirements for the implementation of the supplementary measures in addition to an existing transfer tool.

The members of the EDPB agreed on setting up the taskforce. Finally, the members of the EDPB agreed to make public the creation of the taskforce.

With regard to the consultation with stakeholders, the members of the EDPB agreed that a decision will be taken once the discussion within the taskforce is more advanced.

2.3 e-Privacy Regulation and the role of the EDPB – discussion (Rapporteur: SA)

The SA gave an update on the state of play in this regard. The German Presidency of the Council aims at achieving a clear approach in September. The current draft proposal provides for considerable restrictions to the competences of the SAs and the EDPB.

The members of the EDPB stressed the importance of adopting a political statement on this matter soon, before the end of the process at the Council, which will be followed by a more in-depth analysis once the draft is public. Additionally, the members of the EDPB highlighted the importance of liaising with the national authorities in this regard.

Taking this into account, the members of the EDPB gave a mandate to the TECH ESG to work on a political statement before the Council adopts its position, followed by an in-depth assessment of the final draft once it is published.

2.4 Update of the European Commission – information (Rapporteur: COM)

The European Commission provided an update on the work being done regarding transfers of data to the US and on the new set of SCCs. Regarding the latter, the EU COM stressed the importance to work in convergence with the EDPB. In this regard, the EU COM referred to the communication shared during summer, and informed the members of the EDPB that the updated SCCs will be sent to the EDPB in the coming weeks.

The EU COM also provided an update with regard to ongoing negotiations on adequacy decisions.

The European Commission will keep the EDPB informed of new developments regarding the matters above.

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

3.1 Key Provisions ESG - Guidelines on the concept of controller and processor in the GDPR – discussion and adoption

The lead rapporteur presented the different parts of the guidelines and the work carried out. A stakeholder event took place last year (March 2019) in order to gather input from external stakeholders. The new revised draft is divided into two main parts. The first part explains the concepts as such, whereas the second part assessed the consequences of having each of the roles. An executive summary and flowchart are also included.

The guidelines were adopted unanimously. They will be submitted to public consultation for 6 weeks.

In the meantime, the KEYP ESG, in consultation with the COOP ESG will assess the possible need to update the LSA Guidelines.

3.2 Social Media ESG - Guidelines on the targeting of social media users – discussion and adoption

The lead rapporteur presented the content of the guidelines and the practical approach taken. The guidelines follow a clear pattern: 1) presentation of an example, 2) analysis of the roles and responsibilities and 3) analysis on the potential applicable lawful basis and other considerations to take into account. This approach aims at enabling stakeholders to quickly identify the scenario that is closest to the targeting process that they intend to deploy.

Several discussion points were raised and some changes were made in the text.

The guidelines were adopted unanimously with the changes agreed during the meeting. They will be submitted to public consultation for 6 weeks.

3.3 RoP Drafting Team: Internal guidance on the drafting of plenary minutes – discussion and adoption (Rapporteur: [REDACTED] SA)

The EDPB members agreed with the content of the document. The discussion on the potential publication of the document was postponed to the next Plenary.

Taking into account the possibility to publish the document, the members of the EDPB agreed that some slight changes can be made in the text to adapt the language.

3.4 Strategic Advisory ESG: EDPB strategic plan: draft paper and possible seminar –

information and discussion (Rapporteur: [REDACTED])

The lead rapporteur explained the content of the document and the proposed next steps. There will be an initial brainstorming session at the end of September, where the draft will be further discussed. Afterwards, another brainstorm session will take place, if possible in person. The focus of the second session will be the practical implementation of the EDPB strategy as well as the definition of the EDPB work programme. The intention is to finalise and publish both documents by the end of the year.

The members of the EDPB agreed on the way forward.

3.5 Secretariat

3.5.1 Art. 65 procedure regarding TIC – state of play

The Secretariat informed the triggering of the art. 65 procedure. Currently, the completeness of the file is being assessed. The broadcast of the file is expected to take place early next week. The next steps would be to discuss the matter in the relevant ESG.

4 AOB

4.1 NEW: Information point on ongoing enquiry regarding [REDACTED]

The [REDACTED] SA provided an update on an ongoing enquiry regarding [REDACTED]. Currently, the [REDACTED] SA is in the process of contacting them, due to the media attention raised in the country. The [REDACTED] SA invited the members of the EDPB to share information in case they have received similar complaints.

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The next Plenary meeting will take place on 14 September 2020, at 12h. There will be another Plenary meeting on 8 October 2020, from 13h to 16h and on 20 October 2020.

The brainstorming session will take place on 29 September 2020, at 12h.

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, HRSA, HU SA, IE SA, IS SA, ITSA, 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

- EDPB Secretariat