



Final

54th Plenary meeting

14 September 2021, 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 51st Plenary meeting – adoption

The minutes of the 51st plenary meeting were adopted unanimously. The EDPB members also agreed on the public version of the minutes.

1.2 Minutes of the 52nd Plenary meeting – adoption

The minutes of the 52nd plenary meeting were adopted unanimously. The EDPB members also agreed on the public version of the minutes.

1.3 Minutes of the 53rd Plenary meeting – adoption

The minutes of the 53rd plenary meeting as amended during the meeting were adopted unanimously. The EDPB members also agreed on the public version of the minutes.

1.4 Draft agenda of the 54th EDPB meeting – adoption

The draft agenda was adopted with inclusion of additional points under AOB.

2 Consistency mechanism and Guidelines

2.1 [ITS ESG] Guidelines on the interplay between Art. 3 and Chapter V – discussion

The lead rapporteur shared information about the state of play and the progress of the discussions on the draft guidelines on the interplay between Article 3 and Chapter V GDPR.

During their discussion the EDPB members highlighted the importance of this work and exchanged their views on the notion of a transfer, the relevant criteria to define this notion and examples to be included in the draft guidelines. They underlined the importance to quickly finalise those guidelines. The EU COM confirmed, that, after the draft guidelines are adopted, they intend to develop a specific set of SCCs regarding transfers to importers subject to Article 3(2) GDPR.

3 Current Focus of the EDPB Members

3.1 [CEH ESG] Statement on Digital and Data Strategy – request for mandate

The lead rapporteur presented the request for mandate to draft an EDPB statement on overarching concerns regarding legislative proposals in Digital Services Package (DSA and DMA) and EU Data strategy (DGA and Data Act). The EU COM proposed to share additional information with the expert subgroup regarding the related legislative proposals.

The members of the EDPB adopted the mandate unanimously.

3.2 [TECH ESG] Expert exchange on Mobile Apps – request for mandate

The rapporteur presented the request for mandate regarding expert exchange on mobile apps audits.

The members of the EDPB adopted the mandate unanimously.

4 AOB

4.1 NOYB Complaints on the issue of cookies and dark patterns

Several SAs considered that coordination between the SAs which have been addressed with the NOYB complaints should be established, for example, in a form of a taskforce.

One SA volunteered to prepare a request for mandate regarding the cooperation between SAs concerning these complaints for discussion and adoption at the next EDPB plenary meeting.

The chair of the EDPB concluded that this point will be added to the agenda of the next EDPB plenary meeting on 24 September 2021.

4.2 October plenary meeting (format and date)

The EDPB members agreed that the plenary meeting will take place on 13 October 2021 in a remote format.

Regarding the planned plenary meeting in November 2021, the majority of the EDPB members preferred a physical meeting in Brussels. The final decision on the date and format of the meeting will be made by the chair of the EDPB depending on the availability of a meeting room.

4.3 Exchange on wearables (smart glasses)

IE SA informed the EDPB members that information about initial exchanges with Facebook regarding smart glasses was shared with CSAs via IMI.

4.4 European Grants to Data Protection Authorities - 2021 Call for proposals - deadline extension

The EU COM informed the EDPB members that the call for proposals for the European grants to data protection authorities has been extended until 8 December 2021. The EU COM encouraged the SAs to make use of this opportunity. The EU COM also offered to organise a briefing to interested SAs about the application procedure.

4.5 IE SA update

The IE SA informed the EDPB members that on 14 September 2021 the IE SA commenced two inquiries in relation to TikTok. The first inquiry focuses on applicable data protection settings for users under age 18, age verification measures for persons under 13 and implementation of transparency obligations in relation to users under age 18. The second inquiry focuses on international data transfers, in particular to China, and related transparency obligations. Official documents related to the commencement of the two inquiries will be shared in IMI.

One SA queried whether the measures regarding minor users applied by TikTok in Italy would be extended to the EU level. The IE SA clarified that the above mentioned inquiry is focusing on the general age verification design.

The EU COM shared information with the EDPB members about the EU pilot project called “EU consent” which aims to establish appropriate technical tools for age verification.

4.6 Confidentiality and occurrence of leaks

The EU COM raised concerns that confidential information about internal discussions within the EDPB was shared publicly. The EU COM recalled the importance of confidentiality obligations and considered that the EDPB should take follow up actions to prevent such leaks in the future.

The chair of the EDPB stressed the paramount importance of confidentiality of the discussions within the EDPB and recalled to the EDPB members that such disclosures seriously undermine the effective functioning of the Board.

During the discussion it was recalled that the GDPR itself explicitly refers to the duty of professional secrecy of members and staff of the supervisory authorities.

The EDPB Secretariat recalled that an internal investigation was conducted after a leak of information in a previous instance and explained the limits of such investigations.

The chair of the EDPB proposed to the EDPB members to consider developing an internal EDPB code of conduct on this matter. The EDPB members agreed with the proposal.

4.7 G7

The EU COM welcomed the active participation of DE, FR and IT SAs in the recent G7 meeting of the data protection authorities and their contribution to the outcome of that meeting. The EU COM recalled the importance of the EU level participation and of coordinated EU positions in such G7 meetings.

The DE SA noted that in 2022 Germany will hold the G7 presidency, thus the DE SA has plans to work on data protection related matters in this important forum and will liaise with other EU colleagues in this respect.

4.8 Access to documents with regards to documents shared in the course of cooperation procedures

In the context of access to documents requests both at national and EU levels related to cooperation between SAs under the GDPR, one SAs suggested to develop common best practices in relation to handling of such requests. Among other issues, this could address situations when information shared between the SAs in the course of cooperation procedures could be subject to an access to documents request submitted to one SA at national level.

During the discussion it was highlighted that all SAs can already share information about applicable national rules on access to documents in IMI and that the SAs can consult each other when dealing with a specific request. It was also recalled that national rules on access to documents applicable to SAs are currently divergent.

Following the discussion, the EDPB members agreed that the EDPB Secretariat will organise a meeting between access to documents contact points of SAs to discuss a possible request for mandate for further work regarding this matter.

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

- EFTA Surveillance Authority

- Permanent 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 4.5 of the agenda.

- EDPB Secretariat