

# Minutes



Final

## 95th Plenary meeting

16 July 2024, Remote

### I. Adoption of the minutes and of the agenda, Information given by the Chair

#### I.1. Minutes of the 94th Plenary meeting – adoption

The EDPB Deputy Chair underlined that in absence of the EDPB Chair, she will chair the meeting of today. The Chair of the meeting then congratulated Ms. Zuzana Valková for being appointed as the President of the SK SA, and Ms. Jelena Virant Burnik who has been appointed as Information Commissioner of the SI SA.

The Chair then addressed a point relating to the appointment of a new member of the GPA Executive Committee. The Chair reminded the EDPB members that the tenure of Germany in the GPA Executive Committee is coming to an end, which is the reason why the EDPB members received an invitation to apply by 23 August 2024. The Chair reminded the EDPB members that Bulgaria is currently also a member and underlined the possibility to have a second member for Europe as the rules of procedure of the GPA allow for at least one member and no more than two members to represent Europe in order to encourage diversity of the regions represented in the GPA Executive Committee. Members of the EDPB interested to apply are invited to inform the other members via the Secretariat.

Next, the Chair explained that there was a need to replace the EDPB representative at the European Data Innovation Board. The EDPB Secretariat will organise a poll inviting the EDPB members to select the candidate of their choice.

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

#### I.2. Draft agenda of the 95th EDPB meeting – adoption

The Chair proposed to clarify that point A.1 will not entail the adoption of an opinion, but rather the decision not to adopt an opinion, given that the EDPB already adopted an opinion on the same subject matter (Article 64.3 GDPR). The EDPB members agreed to add “decision to not adopt an opinion on the same matter as Opinion 5/2021”. The draft agenda was adopted with the proposed modification.

The discussions relating to agenda point B.1.3. were declared confidential according to Art. 33 EDPB RoP.

## A. Agenda items for adoption

The Chair introduced the A items for adoption:

- A.1. Request for an Article 64(2) Opinion on Autoriteit Financiële Markten (AFM)/Public Company Accounting Oversight Board (PCAOB) Administrative Arrangement - decision to not adopt an opinion on the same matter as Opinion 5/2021 (International Transfers ESG)
- A.2. Draft EU-US DPF FAQs for EU individuals and businesses (commercial aspects) (International Transfers ESG)
- A.3. Opinion on the draft decision of the EE SA on the Mercans BCR-P (International Transfers ESG)
- A.4. Opinion on the draft decision of the ES SA on the Avature BCR-P (International Transfers ESG)
- A.5 Opinion on the draft decision of the ES SA on the Avature BCR-C (International Transfers ESG)
- A.6 Opinion on the draft decision of the ES SA on the FCC BCR-C (International Transfers ESG)

There was no request to discuss the proposed A items. A single vote was organised for the six A agenda items and they were all adopted unanimously.

## B. Agenda items for discussion

### B.1. Agenda items for discussion in view of adoption

#### B.1.1. Response to Letter on Collaboration with ENISA

The Chair provided background information on the file. The Chair recalled that the EDPB invited ENISA representatives to several meetings, where the possible ways of cooperation were discussed. The CEH ESG prepared a reply letter to ENISA and the TECH ESG members were also consulted on it. The Chair then passed the floor to the lead rapporteur of this item.

The lead rapporteur presented the draft reply which refers to ENISA's suggestion to work together on certain topics, for example with regard to cybersecurity requirements. The draft reply concludes by suggesting that a joint ad hoc working group be established with the EDPB, with some proposals for the objectives of this group. A member underlined the importance of the cooperation with ENISA.

The letter was adopted by the members of the EDPB unanimously, with some editorial changes which will be made by the rapporteurs before sending the letter.

#### B.1.2. Statement on DPAs role in the Artificial Intelligence Act framework

The Chair recalled that during the EDPB plenary meeting of 23 May 2024, the EDPB members provided a mandate to the TECH ESG to prepare an additional statement on the role of SAs in relation to the AI Act.

The Chair reminded the EDPB members that the AI Act was officially published on 12 July 2024, so the Chair highlighted that if this draft statement is adopted during this EDPB plenary meeting, it would be very relevant and timely.

The Chair thanked both the drafting team and the TECH ESG for preparing this draft statement in a timely manner and invited the lead rapporteur to present the draft statement.

The lead rapporteur presented the draft statement, which refers to the role of DPAs in the Artificial Intelligence Act framework and the Chair opened the floor for discussion.

One EDPB member suggested some changes to the statement which aimed at allowing some flexibility at national level in relation to the role of SAs. Some EDPB members supported these changes, while others were in favour of maintaining the text in its current form. Some EDPB members expressed the view that the current text provided sufficient room for member state governments to consult with SAs and take a different decision with respect to the assigning of roles if they wish. The need to avoid weakening SAs' positions vis-a-vis their national governments was highlighted. The EDPB members agreed to make one change to the text of the statement.

The EDPB members adopted the modified statement with one objection and one abstention.

#### [B.1.3. Response to Letter received from FDPIC on European Commission and ICO initiatives with adequate countries](#)

The Chair informed the EDPB members of the letters received from FDPIC about the EU Commission's and the ICO's initiatives with adequate countries and invited the EDPB members to discuss and adopt the EDPB reply to the correspondences received on this topic. The rapporteur presented the content of the letter, which included a proposal for a way forward.

The members supported the Chair's proposal included in the draft letter to set up an ad hoc side meeting in the autumn alongside a plenary meeting.

The letter was adopted by the EDPB members of the EDPB unanimously.

#### [B.1.4. Reply to the European Commission regarding Guidelines on the interplay between DMA and GDPR](#)

The Chair recalled that the Task Force on the Interplay between Data protection, Competition and Consumer Law (TF C&C) is drafting EDPB Guidelines on the Interplay between the Digital Markets Act (DMA) and EU data protection law. The Chair highlighted that the objective of these EDPB Guidelines is to clarify how gatekeepers should interpret and apply the GDPR when processing personal data in the context of the DMA. The Chair informed the EDPB members that the European Commission sent a letter to the EDPB Chair to remind its role as enforcer of DMA, expressed its openness to discuss and explore the appropriate shape and form of a project aimed at providing coherent guidance in the intersection of the DMA and the GDPR, reflecting jointly the respective views of the competent regulators.

The Chair invited the EDPB members to discuss the EDPB's reply to this correspondence and thanked both the drafting team and the TF C&C for preparing the draft reply.

The rapporteur presented the content of the draft reply and the proposed way forward.

The letter was adopted with one abstention.

#### [B.1.5 Opinion on the draft decision of the AT SA regarding DSGVO-zt GmbH certification criteria](#)

The Chair highlighted the competence of the CEH ESG on drafting opinions on certification schemes and noted that the EDPB has recently adopted several opinions on certification schemes, which is a relatively new subject matter for the EDPB.

The rapporteur presented the draft consistency opinion on a draft decision of the AT SA regarding DSGVO-zt GmbH certification criteria.

The EDPB Secretariat recalled that the draft opinion was presented to the CEH ESG for discussion during two meetings and included several rounds of written comments. The EDPB Secretariat added that there were no remaining discussion points to be addressed by the EDPB.

The EDPB members adopted the opinion with one abstention.

#### B.1.6 Opinion on Europrise criteria for certification of processing by processors regarding their approval by the Board as a European Data Protection Seal pursuant to Article 42.5 (GDPR)

The Chair highlighted that as opposed to national certification criteria for which the EDPB consistency opinion is addressed to the Competent Supervisory Authority, the EDPB can also be requested to directly approve certification criteria, which allows to obtain a European Data Protection Seal. The Chair recalled that the EDPB previously approved the Europrivacy certification scheme as EU Seal in 2022 and invited the EDPB members to approve the updated EuroPrise certification scheme.

The Chair passed the floor to the rapporteur of this file to present the Opinion regarding the approval of the EuroPrise certification criteria aiming at becoming a European Data Protection Seal.

The rapporteur highlighted that contrary to Article 64.1.c GDPR opinions on national certification criteria, opinions on candidates to EU Data Protection Seal certification mechanism take place on the basis of Article 64(2) and the EDPB opinion does not contain recommendations for the Competent SA. Based on its analysis, the EDPB members either adopt or reject the certification scheme as EU Seal.

The rapporteur recalled that the draft opinion was presented to the CEH ESG for discussion during two meetings and included several rounds of written comments. The rapporteur added that there were no remaining discussion points to be addressed by the EDPB.

The EDPB members adopted the opinion with one abstention. It was agreed that the item will be added in the EDPB press release.

#### B.1.7. Recommendations of the High-Level Group on Access to Data for Effective Law Enforcement – Request for Mandate

The Chair stated that this item concerns the preliminary Recommendations of the High Level Expert Group on data access for effective law enforcement purposes, issued on 6 June 2024. The Chair reminded the EDPB members that data protection experts were nominated in July 2023 to participate to the three working groups and the plenary meetings of this Group, at their own capacity and not representing the EDPB.

The Chair informed the EDPB members that on 6 June 2024, the preliminary recommendations of this High Level Expert Group were published and that the final recommendations are expected to be concluded by the Hungarian Council Presidency and published in autumn 2024.

The Chair highlighted the importance of this item, as these Recommendations could constitute the basis of a possible legislative initiative in this area.

The Chair passed the floor to the co-coordinator of the BTLE ESG to provide more insight on the request for a mandate to the BTLE ESG to draft a statement jointly with experts from the TECH ESG. The rapporteur provided background information on the High Level Group and the discussions held on this issue during two meetings of the BTLE ESG. It was proposed that the EDPB should already comment on the preliminary Recommendations before the final recommendations are adopted. In particular, the co-coordinator of the BTLE ESG highlighted the importance of preparing a public

statement on the necessity to safeguard the fundamental rights of individuals in the context of data access by law enforcement agencies.

The members of the drafting team for the draft statement on the preliminary Recommendations were presented, and another EDPB member expressed its interest to join the drafting team.

The EDPB members unanimously adopted the mandate to the BTLE ESG to draft a statement, jointly with experts from the TECH ESG.

## B.2 Discussion (policy debate)

### B.2.1. Update on the work regarding the European Commission's report on 11 adequacy decisions and possible reaction from EDPB

The Chair stated that this item concerns an update on the work done by the ITS and BTLE ESGs and the possible reaction from the EDPB regarding the European Commission's report on 11 adequacy decisions which were adopted before the GDPR. The Chair passed the floor to the co-coordinator of the BTLE ESG to provide more insights.

The co-coordinator of the BTLE ESG reminded the EDPB members that on 15 January 2024, the European Commission published a report on the review of 11 adequacy decisions, adopted before the GDPR, and a staff working document with the 11 country reports. The co-coordinator of the BTLE ESG highlighted that the EDPB was not asked to provide an opinion, as per Art. 70 (1) (s) GDPR, as no adequacy decision was repealed, amended or suspended.

The rapporteur recalled that during the EDPB plenary meeting of 14 March 2024, the EDPB members were informed that the ITS and BTLE ESGs agreed to go through these 11 country reports and to assess if there is a need for an EDPB statement, or other reaction and that they would present their conclusions to the EDPB in due time.

On the basis of both ESGs' initial findings, further clarifications were requested to and provided by the European Commission. Both ESGs agreed to send a letter to the European Commission highlighting some aspects that the EDPB would recommend the European Commission to monitor and address in future reviews.

The content of the draft letter would then be presented for discussion and adoption to the EDPB in due time and the EDPB members were invited to take note of and agree with the way forward envisaged by the ESGs.

The EDPB members took note of and agreed to entrust the ESGs to prepare a letter for discussion and adoption to the Plenary in due time.

## **D. Agenda items for information**

### D. 2 Updates by EDPB participants

#### D.2.1 Semestrial update on the work of the Coordinated Supervision Committee ('CSC')

One of the CSC Deputy Coordinators provided an update on the CSC activities during the first half of 2024, in line with Art. 4(2) 4th point of the CSC Rules of Procedure. More specifically, the EDPB members were informed of updates on the CSC activities in relation to SIS, ETIAS, the interoperability framework, Europol, Eurojust and IMI. The CSC Deputy Coordinator also informed the EDPB members about exchanges within the CSC regarding the EES which is due to enter into operation in October 2024, and its first exchange on Prüm II.

The CSC Deputy Coordinator then paid tribute to the work and achievements of former CSC Coordinator, Ms. Clara Guerra for essentially building up the Committee and navigating it through the challenging times of expansion. The EDPB members were informed that the CSC had elected Ms. Fanny Coudert (EDPS) as coordinator at the Committee's July meeting. At its March meeting, a second deputy coordinator was elected (Mr. Matej Sironič, SI DPA) in order to put into practice measures to cope with the increased workload that stems from the increasing amount of IT systems and legal frameworks within the Committee's competence.

Finally, the Deputy Coordinator informed the EDPB members that within the last half year, the amount of systems almost doubled, with more systems are about to come. The Deputy Coordinator stressed that this needs to be reflected in the resources made available.

### D.3 Any other business

#### D.3.1. New Complaint to the European Ombudsman

The EDPB Secretariat provided information on a new complaint to the European Ombudsman from a citizen relating to the sharing of a news to PoliticoPro of an adopted opinion few hours before the news was shared on the EDPB website. The EDPB members took note of the information provided.

#### D.3.2. Update on an Access to Documents confirmatory application

The Chair informed the EDPB members of the receipt of an access to documents confirmatory application and explained the scope of the request which is about views shared at subgroup level on a document not yet adopted. It was explained that the EDPB Chair and the EDPB Secretariat are currently working on the confirmatory request. The EDPB members agreed to not disclose the remaining information because of the ongoing decision making process.

#### D.3.3. Oral presentation on the ongoing discussions within the Global Privacy Assembly (GPA) given by the BG Commissioner following the 81st Executive Committee meeting of the GPA

The Chair gave the floor to the BG SA Commissioner to inform the EDPB members about the ongoing discussions within the Global Privacy Assembly (GPA). The amount of the fees for DPA to attend the event, even remotely, and to support the functioning of the GPA secretariat was raised, as well the fact that the agenda of the closed session does not currently include data protection authorities participation and is currently not under the direct management and close oversight of the Executive Committee. The EDPB members shared the worries raised and thanked the BG Commissioner for its commitment.

#### D.3.4. Technical Support Instrument (TSI) to build capacity for the implementation of EU law (Rapporteur: European Commission)

The European Commission made a presentation to the EDPB members about the Technical Support Instrument which is aimed at providing support to public administrations, notably for developing new skills. The EDPB members took note of the information.

## 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, 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, RS SA. In line with Art. 8 of the EDPB RoP, the observers were present during the discussions of the plenary meeting except for points B.1.5, B.1.6. and B.2.1 of the agenda.

EDPB Secretariat

Note: Deputy-Chair Nicolaidou chaired the meeting.