



Final

## 50th Plenary meeting

18 June 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 49th Plenary meeting – adoption

The members of the EDPB agreed with the change proposed in the minutes on point 2.3.

The minutes of the 49<sup>th</sup> plenary meeting were adopted unanimously. The members of the EDPB also agreed on the public version of the minutes.

#### 1.2 Draft agenda of the 50th EDPB meeting – adoption

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

The discussions relating to agenda points 2.1, 3.2 and 3.5.1 were declared confidential according to Art. 33 EDPB RoP.

### 2 Current Focus of the EDPB Members

#### 2.1 [101 TF] Update on the progress in the 101 Taskforce – state of play

The rapporteur presented an update about the current work of the 101 taskforce.

Several EDPB members expressed their support for the work of the taskforce and highlighted the importance of the work made to deliver concrete outcomes while maintaining a common approach among the SAs regarding the parallel proceedings. The chair of the EDPB invited all EDPB members to actively contribute to the work of the taskforce.

The outcome of the work done by the taskforce will have to be approved by the EDPB members. The EDPB members also discussed whether a SAESG meeting should be organised on this matter before a decision at the plenary meeting. The EDPB members concluded that, a SAESG on this topic meeting could take place on 20 July 2021, if needed, depending if there are still points to be discussed before the plenary meeting. The need for such SAESG meeting will be confirmed at a later stage.

## 2.2 [TF SuppM] Recommendations on Supplementary Measures after public consultation – discussion and adoption

The EDPB Secretariat, acting as lead rapporteur, presented the version 2.0 of Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data.

The EDPB Secretariat also explained that, on the request of SAESG, a group of members of the taskforce met with the EU COM to discuss draft Clause 14 of the new SCCs with a view to ensuring consistency and complementarity between this clause and the Recommendations.

The final version of the Recommendations includes several changes to address comments and feedback received during the public consultation and places a special focus on the practices of a third country's public authorities.

The EDPB members agreed with an editorial modification in paragraph 31 of the Recommendations. The EDPB members also agreed to make a change in paragraphs 94 (3) and 96 (3) of the Recommendations to be consistent with paragraph 82 and to add clarity for data exporters.

The EDPB members unanimously adopted the Version 2.0 of Recommendations 01/2020 with the changes agreed during the meeting.

## 2.3 EDPB-EDPS Joint Opinion on the proposed AI regulation – discussion and adoption

The rapporteurs presented the draft EDPB-EDPS joint opinion on the proposed AI regulation which was prepared following a request for a joint opinion from the EU COM. The rapporteurs explained that while the draft joint opinion welcomes for the proposed AI regulation, it raises several concerns regarding the proposal, for example, on the approach of the proposal related to prohibited uses of AI and rules for “high risk” AI systems. The draft joint opinion also addresses the need to ensure independency of supervisory authorities, designation of supervisory authorities and the role of the newly proposed AI Board.

The EDPB members exchanged their views on the designation of data protection authorities as supervisory authorities under the proposed AI regulation. A majority of the EDPB members agreed that the joint opinion should propose designation of data protection authorities as national supervisory authorities pursuant to Art. 59 of the proposal.

The EDPB members discussed the prohibited uses of AI pursuant to the proposal and agreed that in the joint opinion the EDPB and the EDPS should call for a general ban on certain uses of AI systems listed in the proposal.

The EDPB members adopted the joint opinion as agreed during the meeting. 27 EU members of the EDPB voted in favour of adoption. 1 EU member of the EDPB abstained. 3 EEA members of the EDPB voted in favour of adoption.

## 2.4 Designation of two members as EDPB representatives to the ETIAS Fundamental Rights Guidance Board – discussion and adoption

The EDPB Secretariat informed the EDPB members of the request received from FRONTEX to designate EDPB representatives to assist FRONTEX in the informal stage of preparing the entry into operation of the ETIAS Fundamental Rights Guidance Board. Three SAs (DE SA, FI SA and LI SA) presented their candidates to act as such EDPB representatives.

The EDPB members agreed to designate the proposed three candidates as the EDPB representatives for this informal stage of setting up the ETIAS Fundamental Rights Guidance Board.

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

### 3.1 Technology ESG

#### Territorial application of the e-Privacy Directive – discussion and adoption

The lead rapporteur explained that the document aims to present common criteria regarding the territorial competence of supervisory authorities (SAs) under Art. 5(3) the e-Privacy Directive, especially in situations where a controller/service provider has establishments in several Member States.

The lead rapporteur explained some editorial changes that will be made to the document after the plenary meeting.

One EDPB member highlighted that the document will have significant practical implications. One other EDPB member suggested to clarify in the document that it only concerns processing that falls within the scope of Art. 5(3) of the e-Privacy Directive. The lead rapporteur was entrusted to incorporate this clarification in the final version document after the plenary meeting.

25 EU members of the EDPB voted in favour of adoption of this document. 1 EU member of the EDPB voted against. 1 EU member of the EDPB abstained. 3 EEA member of the EDPB voted in favour of adoption.

The EDPB members agreed to adopt this document as an internal document.

### 3.2 Cooperation ESG

### 3.3 Compliance, e-Government and Health ESG

#### Opinion on Tobacco Traceability System – discussion and adoption

On 3 March 2021, the EU COM requested the opinion of the EDPB, on the basis of Article 70(1)(b) GDPR, on three questions related to the different roles of the actors involved in the tobacco traceability system established under Directive 2014/40/EU ( “Tobacco Products Directive”).

The EDPB Secretariat, acting as lead rapporteur, presented the draft opinion on the tobacco traceability system, including its scope and nature. In particular, the lead rapporteur highlighted that the draft opinion provides general advice and contains elements to be considered by the EU COM instead of providing definitive views and legal analysis of the specific processing situation.

The EDPB members adopted the opinion unanimously.

### 3.4 Financial Matters ESG

#### Letter to EU institutions on the privacy and data protection aspects of a possible digital euro – discussion and adoption

The rapporteur presented the draft letter regarding the privacy and data protection aspects of a possible digital euro. Once adopted, the letter will be published on the EDPB website and sent to the relevant EU institutions.

The EDPB members adopted the letter unanimously.

### 3.5 Secretariat

#### 3.5.1 Update on ongoing Art. 65 procedure(s) – state of play

The EDPB Secretariat provided an update on the ongoing Art. 65 procedures.

As to one of the ongoing procedures, the LSA and CSAs found an agreement. Therefore, the LSA decided to withdraw the Art. 65 procedure and will circulate the agreed final decision to the CSAs.

#### 3.5.2 BCR opinions– confirmation of rapporteurs

The EDPB Secretariat recalled that ██████ requested an Art. 64(1) GDPR for an opinion on ██████ BCR for controllers (BCR-C) and BCR for processors (BCR-P). The ██████ requested an Art. 64(1) GDPR for an opinion on the ██████ BCR-C and BCR-P.

The EDPB members confirmed the rapporteurs for each of the opinions who will work together with the EDPB Secretariat.

## 4 AOB

### 4.1 GPA strategic plan

The DE SA shared information with the EDPB members about the GPA strategic plan and its priorities. The consultation with GPA members on the plan is on-going until June 25 2021 and the EDPB members were encouraged to reply to this consultation.

The DE SA also explained the discussion regarding the GPA secretariat and that the consultation with GPA members is open on this issue. All EDPB members who are GPA members were encouraged to respond to this consultation until 30 June 2021.

### 4.2 Information in the public domain

One of the members of the EDPB complained that information was shared to the media. The chair of the EDPB recalled the utmost importance of keeping the work of the EDPB confidential in relation to specific cases, as sharing confidential information with third parties about on-going specific cases undermines the integrity and functioning of the Board in its entirety.

### 4.3 CJEU judgement in case C-645/19

The BE SA presented to the EDPB members the recent CJEU judgement in case C-645/19 (Facebook Ireland and others). The CJEU in its judgement addresses several aspects related to the functioning of the cooperation and consistency mechanism under Chapter VII GDPR and clarifies the jurisdiction of competent supervisory authorities.

### 4.4 Complaint to European Ombudsman

The EDPB Secretariat shared an update with the EDPB members about a complaint submitted to the European Ombudsman regarding a request for access to some of the preparatory documents for the EDPB guidelines 2/2019 on the processing of personal data in the context of the provision of online services to data subjects. In this context, the chair of the EDPB decided to grant partial access to these documents as the fact that there were differing views was already publicly known.

### 4.5 Announcement by the commissioner of the Hamburg SA

The commissioner of the Hamburg SA made a personal announcement to the EDPB members.

## 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

- Observers: AL, MD, RS. In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for points 2.1., 3.2., 3.5.1. and 3.5.2. of the agenda.

- EDPB Secretariat