



Final

58th Plenary meeting

14 December 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 57th Plenary meeting – adoption

The minutes of the previous 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 58th EDPB meeting – adoption

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

The discussions relating to agenda points 1.3, 2.1, 3.1.1, 3.1.2, 3.6.3, 4.3, 4.4 and 4.5 were declared confidential according to Art. 33 EDPB RoP.

1.3 CJEU case regarding EDPB Binding Decision 1/2021 - information

The chair of the EDPB informed the EDPB members that on 1 November 2021 WhatsApp Ireland filed an application for the annulment of EDPB's Binding Decision 1/2021, pursuant to Article 263 TFEU to the EU General Court. The chair of the EDPB instructed the EDPB Secretariat to prepare the EDPB's

defence with the support of a law firm, Deprevernet. The chair of the EDPB further explained the key elements of the application for the annulment.

2 Consistency mechanism and Guidelines

2.1 Art. 64(2) GDPR Opinion on supervisory authorities using Art. 58(2)(g) GDPR as a legal basis to order ex officio the erasure of unlawfully processed personal data – discussion and adoption

The rapporteur presented the draft opinion which was prepared following the request from an SA to the EDPB to examine and issue an opinion whether Article 58(2)(g) GDPR could serve as a legal basis for SAs to order ex officio the erasure of unlawfully processed personal data, in a situation where such a request was not submitted by the data subject.

The members of the EDPB adopted the opinion. 27 EU members of the EDPB voted in favour of adoption. 1 EU member of the EDPB voted against. The 3 EEA members of the EDPB voted in favour of adoption.

PT SA explained that it does not support the adoption of this opinion as PT SA disagrees with this legal interpretation. PT SA is of the opinion that different legal bases under the GDPR could be used instead.

2.2 Guidelines 01/2021 on Examples regarding Data Breach Notification (after public consultation) – discussion and adoption

The coordinator of the Technology ESG presented the guidelines which were modified after the public consultation in order to take into account the comments received.

The members of the EDPB adopted the guidelines unanimously.

2.3 Guidelines on certification as tools of transfers – state of play

The rapporteur presented the state of play of the work on the draft guidelines. The focus is on the specific aspects regarding certification as a tool of transfers and the specification of the application of Articles 46(2)(f) and 42(2) GDPR by providing practical guidance. The objective of the rapporteurs is to present these draft guidelines for adoption at the EDPB plenary in February 2022.

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

3.1 BTLE ESG

3.1.1 Evaluation of the Law Enforcement Directive (LED) - discussion and adoption

The rapporteur presented the process undertaken to prepare the EDPB contribution following the request from the European Commission on the LED evaluation, which included a questionnaire prepared by the European Commission. The consolidated contribution of the EDPB was prepared on the basis of the responses provided by all 27 EU SAs. The EDPB contribution includes policy messages that were developed on the basis of the input provided by the EDPB members.

The EDPB members discussed the methodology for the reporting and the need for LED specific statistics in the future.

The members of the EDPB adopted the EDPB contribution on the LED evaluation unanimously.

3.1.2 Response to MEP Ujhelyi on Pegasus - discussion and adoption

The coordinator of BTLE ESG presented the draft response letter to the MEP regarding the Pegasus revelations.

Following an exchange of views, all EDPB members except one considered that the EDPB's response should specify that the EDPB has competence on the alleged use of the Spyware Pegasus insofar as it is deployed for purposes under the GDPR and the LED. All EDPB members except one agreed that the EDPB's response should include a statement on the importance of the protection of journalists and their sources for the freedom of the press.

The response letter was adopted by the members of the EDPB. 27 EU members of the EDPB voted in favour of adoption. 1 EU member of the EDPB voted against. The 3 EEA members of the EDPB voted in favour of adoption.

3.2 Cooperation ESG

3.2.1 Draft model administrative arrangement: administrative cooperation between EU and Supervisory Authorities in third countries - discussion and adoption

The rapporteur presented a draft model administrative arrangement that could be used in the context of administrative cooperation with foreign SAs or reflected in an international agreement. The rapporteur explained the additional changes that were made in the document regarding the reference to EEA countries and clarifications in the text regarding further sharing and further transfers.

The EDPB members discussed the document and agreed that its title and structure as well as the issue of judicial redress should be further clarified.

The majority of the EDPB members agreed to postpone the item to the next EDPB plenary meeting. It was agreed that the Cooperation ESG and the International Transfers ESG should further work on this document.

3.3 Enforcement ESG

3.3.1 Lack of rapporteurs for Guidelines on Article 65(1)(b) GDPR - discussion

The members of the EDPB agreed to postpone the work on the guidelines until an SA is available to assume the role of the lead rapporteur on the guidelines.

3.3.2 Lack of lead rapporteur for the mandate on LIBE report follow-up - discussion

The members of the EDPB agreed to postpone the work on the basis of the mandate until an SA is available to assume the role of the lead rapporteur.

3.4 Key Provisions ESG

3.4.1 Remuneration against personal data - discussion and possible decision

The rapporteur presented the work on this topic. During the discussion in the SAESG on 30 November 2021, it emerged that the vast majority of representatives supports the suspension of the work on the draft.

The EDPB members agreed to suspend the work on this topic. 25 EU members of the EDPB voted in favour. 1 EU member of the EDPB voted against. 2 EU members of the EDPB abstained. The 3 EEA members of the EDPB voted in favour.

3.5 Technology ESG

3.5.1 AI - request for mandate

The coordinator of the Technology ESG presented a request for mandate for the preparation of EDPB statements regarding ongoing EU legislative developments on AI. This work would be a follow-up to the EDPB-EDPS joint opinion on the proposed AI regulation. One SA volunteered to act as lead rapporteur.

The EDPB members adopted the mandate unanimously.

3.5.2 Lack of lead rapporteur for Guidelines on child sexual abuse material detection tools - discussion

The EDPB members agreed that, considering the lack of a lead rapporteur, the work on the guidelines can be started by the team of co-rapporteurs. The EDPB Members are still invited to act as lead rapporteur. The importance of the work on these guidelines and the need to conduct it swiftly were highlighted during the discussion.

3.6 Secretariat

3.6.1 Project plan of Support pool of experts (SPE) 2021 - discussion and adoption

The coordinator of the SPE presented the project plan, which is based on the terms of reference of the SPE. The document describes the objectives of the SPE pilot project as well as its implementation methodology. It identifies possible topics and activities to be addressed and prioritised for 2022. The aim of the SPE is to enhance cooperation by complementing the strengths of individual SAs and to support the work of national SAs. The network of SPE contacts has already been established and its first meeting will take place in early 2022. The reporting will be done to the SAESG.

During the discussion, the EDPB members agreed to further clarify certain points. It was agreed that the priorities for 2023 will be discussed in the EDPB plenary in the second half of 2022.

During the discussion one EDPB member considered that there is a need for a more general discussion on the functioning of the one-stop-shop mechanism at the EDPB plenary level.

The EDPB members adopted the project plan as modified during the meeting unanimously.

The chair of the EDPB agreed to include a discussion on the one-stop-shop mechanism in the agenda of the next EDPB plenary meeting in January 2022.

3.6.2 Right to be heard and access to the file concerning cooperation procedures - request for mandate

The EDPB Secretariat presented the request for mandate which is based on the outcome of the EDPB plenary of 18 November 2021. The purpose of this mandate is to identify best practices relating to the exercise of the right to be heard and the accompanying right of access to the file relating to documents and communications exchanged between SAs during cooperation procedures managed through the IMI system according to Article 60 GDPR. The Enforcement ESG should be the most appropriate forum to conduct this work. One SA volunteered to act as lead rapporteur.

The EDPB members adopted the mandate unanimously.

It was agreed that the rapporteurs for this mandate and the lead rapporteur for the mandate on the handling of access requests concerning cooperation procedures will liaise with each other to ensure the coordination of the work on the two items.

3.6.3 Access to documents requests concerning legal studies - discussion and adoption

The vice chair of the EDPB explained that the EDPB has received an access to documents request which includes in its scope the recently finalised Legal Study on Government Access concerning several third countries. In this context, the EDPB members were also invited to address the question raised by the EDPB Secretariat on the publication of all legal studies initiated with approval by the EDPB members.

After discussing this matter, the EDPB members were of the opinion that the specific legal study should be disclosed in relation to the particular AtD request. The EDPB members further agreed that existing and future legal studies, which were initiated with approval by the EDPB members, should be proactively published by the EDPB.

4 AOB

4.1 Spring Conference 2022

HR SA informed the EDPB members about their plans regarding the Spring Conference of the European data protection authorities in May 2022. HR SA recalled that the relevant information was circulated via email, including the link for registration. The EDPB members were invited to register for the conference as soon as possible, as well as to propose topics for the agenda. HR SA also informed the EDPB members about its plans to host a BCR workshop side by side with the Spring Conference.

4.2 February 2022 Plenary meeting date

The EDPB members agreed that the plenary meeting will take place on 22 February 2022 in a remote format.

4.3 SA update on

SA recalled the on-going Article 60 cooperation procedure regarding the and reiterated on the importance of the good cooperation. All SAs willing to discuss the case were invited to contact the SA.

4.4 Follow-up on Schrems II case

4.5 Possible statement on cooperation between the EDPB members

One EDPB member proposed to issue an EDPB statement explaining the cooperation between the SAs and the decision making process within the EDPB in order to react to recent allegations against one EDPB member in the media.

After an exchange of views, the EDPB members agreed that the EDPB should issue such a statement.

The EDPB members discussed the text of the statement on the basis of the proposal by one EDPB member.

The EDPB members adopted the statement as agreed during the meeting. 1 EU member of the EDPB abstained.

5 For information - Expert subgroups and Secretariat

5.1 Exchange of views on potential additional competences for data protection supervisory authorities in light of legislative proposals at EU level - **written state of play**

The EDPB members took note of the written state of play.

Annex: Attendance List

SA: 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, CH SA. In line with Art. 8 of the EDPB RoP, CH SA was present for the point 3.1.1 and the other observers were present during the plenary meeting except for points 1.3, 2.1, 3.1.2, 4.3, 4.4 and 4.5 of the agenda.

- EDPB Secretariat