



Final

## 15<sup>th</sup> Plenary meeting

12-13 November, Brussels

### 1. Adoption of the minutes and of the agenda, Information given by the Chair<sup>1</sup>

#### 1.1 Minutes of the 14th Plenary meeting – adoption

The minutes were adopted unanimously with a modification on agenda item 1.5 and 3.3.3.

The EDPB members decided to give a mandate to the [REDACTED] to reflect on practicalities regarding publication of EDPB plenary meeting minutes. [REDACTED] confirmed their willingness to act as lead rapporteur on this issue. The aim is to resolve the matter in time for publication of the minutes of the 2020 EDPB Plenary meetings.

#### 1.2 Draft agenda of the 15th EDPB meeting – adoption

The draft agenda was adopted without modification.

The discussions relating to points 2.1, 2.2, 2.3, 2.4, 3.1, 3.2, 3.3, 4.1, 4.5 were declared confidential according to Art. 33 EDPB RoP. Observers were present during the plenary meeting except for points 2.1, 2.2, 2.3, 3.1, 3.2, 3.3, 4.5 of the agenda.

#### 1.3 ICDPPC conference - information by the Deputy-Chair

The EDPB Secretariat informed the EDPB members about the ICDPPC conference (20 - 25 October 2019) - very well organised by the Albanian Information and Data Protection Commissioner.

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<sup>1</sup> In the absence of the Chair, the Deputy Chair Aleid Wolfsen chaired the meeting.

The ICDPPC had decided to change its name to Global Privacy Assembly. A new website and logo will be launched on 15 November 2019.

The ICDPPC adopted the following resolutions:

- ) Resolution on the Conference's strategic direction (2019-21);
- ) Resolution on the promotion of new and long-term practical instruments and continued legal efforts for effective cooperation in cross-border enforcement;
- ) Resolution on privacy as a fundamental human right and precondition for exercising other fundamental rights;
- ) Resolution to support and facilitate regulatory co-operation between data protection authorities and consumer protection and competition authorities to achieve clear and consistently high standards of data protection in the digital economy;
- ) Resolution to address the role of human error in personal data breaches;
- ) Resolution on social media and violent extremist content online.

The EDPB members offered congratulations to the EDPS for receiving the Innovation Award for its Website Evidence Collector Tool (a tool for remote investigations on websites) and to the ES SA for receiving the Accountability Award and People's Choice Award for its FACILITA\_RGPD Tool (a tool to give guidance to SMEs who carry out low risk processing of personal data).

Albanian Information and Data Protection Commissioner's Award - Awarded.

The EDPB members expressed their appreciation to the Albanian Information and Data Protection Commissioner for their award dedicated to Giovanni Buttarelli to recognise his outstanding contribution to the protection of personal data and privacy, and expressed appreciation also for organising the ICDPPC conference.

## 2. Consistency mechanism, Guidelines and EDPB RoP

### 2.1 Privacy Shield: Report on the 3rd Annual Review – discussion and adoption

One of the rapporteurs presented the draft report and explained that both participants of the [REDACTED] and [REDACTED] ESGs had the opportunity to provide comments. These comments were discussed at ESG level and carefully considered by the drafters of the report.

An EDPB member made a number of suggestions of editorial nature, including some revisions aimed to correct certain imprecisions in references. An EDPB member requested a revision to one paragraph to ensure there is no misunderstanding as to where the emphasis lies.

The EU COM noted that there is to a large degree alignment between their conclusions and those expressed in the EDPB report, including in terms of further improvements that would be needed. The EU COM recalled some of the concerns which it had consistently raised at ESG level, but which have not been reflected in the draft for adoption.

Some modifications were made to the draft report in light of the suggestions and requests made.

The EDPB members adopted the report - including the revisions proposed by the rapporteurs on the 3<sup>rd</sup> annual review of the Privacy Shield. 25 votes were cast in favour, joined by 3 EEA EFTA SAs taking

position in favour, 2 EDPB members were against and none abstained. The EDPB members entrusted the rapporteurs to incorporate the revisions of an editorial nature proposed by an EDPB member.

## 2.2 Art. 64 GDPR Opinion on Exxon Mobil BCRs – discussion and adoption

The EDPB Secretariat presented the draft opinion. This is the second BCR opinion and procedurally followed the same preparatory steps as the preceding BCR opinion.

An EDPB member raises an evolution in their position with regards to the duty to cooperate with SAs and the way this is formulated in draft BCRs. From the discussion, it emerges that the point raised is relevant for the draft BCRs of ExxonMobil, however it emerges also that - as national law prevails over the BCRs where it is stricter - there is no need for a modification of the draft BCRs of ExxonMobil to reach the outcome envisaged by the SA.

The EDPB members adopted the opinion and adopted the update of the mandate unanimously.

## 2.3 Working Document on Art. 64.3 GDPR – discussion and adoption

One of the rapporteurs presented the work done by the ESG on the practical application of article 64(3) GDPR, last sentence, including possible implications for the EDPB RoP.

The EDPB members agreed to give a mandate to the RoP drafting team to incorporate the input provided by the ESG with concrete proposals into the rules of procedure.

## 2.4 EDPB RoP

### 2.4.1 Future of Supervision: Establishing the Coordinated Supervision Committee – discussion and adoption

One of the rapporteurs presented the context and the contents of the proposed modification to the EDPB rules of procedure.

The EDPB members agreed to insert the proposed article as article 37 in a new title “VII Coordinated Supervision Committee” in the rules of procedure. The existing title on final provisions as a consequence becomes “VIII Final Provisions” and the following articles are renumbered to articles 38 - 41 RoP.

28 votes were cast in favour, joined by 3 EEA EFTA SAs taking position in favour, no EDPB members were against and none abstained - thus attaining the two-thirds majority required.

For information, the rapporteur presented some elements of the draft rules of procedure of the Coordinated Supervision Committee (draft CSC RoP), which the Committee is expected to discuss and adopt at its first meeting.

One observer noted the inclusion of article 2(3) draft CSC RoP regarding joint representatives where multiple supervisory authorities are responsible in a country was of importance to countries like theirs where multiple authorities are responsible. One EDPB member raised an issue with the wording of this article and in particular the bracketed reference to “in accordance with national procedure”, in particular for countries where there are no explicit procedures laid down in the national legislation. The rapporteurs were tasked with further reflecting on the matter.

The [REDACTED] SA explained the necessity for particular wording in the draft CSC RoP to reflect the specific situation of Denmark with regards to EU competences Justice and Home Affairs.

#### 2.4.2 Rules of voting (Art. 22) – discussion and adoption [REDACTED]

The EDPB Secretariat presented the work done by the RoP drafting team on a proposed modification to the EDPB rules of procedure on the rules of voting.

The RoP drafting team considered that, according to the GDPR, all votes relating to the final adoption of documents should be counted on the total number of EDPB members entitled to vote regardless of whether or not they are present. The majority required by the GDPR for the adoption of a document is either a simple majority (15 members) or a two-thirds majority (20 members), depending on the type of document.

Besides formal votes, the RoP drafting team discussed orientation votes and votes on parts of documents which are not formal votes under the GDPR but generally serve to guide the ESG in their work. The RoP drafting team considered there was no need to lay out formal rules for orientation votes but to leave all options open for the Chair of the meeting to decide how to proceed when an orientation is wanted.

27 votes were cast in favour, joined by 3 EEA EFTA SAs taking position in favour, no EDPB members were against and none abstained - thus attaining the two-thirds majority required.

#### 2.5 Guidelines: Data protection by design & by default – discussion and adoption

The lead rapporteur presented the draft guidelines and expressed their appreciation for the work done by the rapporteurs, the ESG and the EDPB Secretariat.

Some amendments were made during the meetings by the members. The EDPB Secretariat also suggested a few revisions already agreed by some of the rapporteurs. The EDPB members agreed to entrust the rapporteurs with implementing the revisions suggested, insofar as all rapporteurs agree. The EDPB members agree to entrust the EDPB Secretariat with expanding any references to documents of the Article 29 Working Party to ensure clarity about their authorship, inclusion of the full title and a mention when the document was endorsed.

The guidelines were adopted unanimously, including the revisions pending as indicated above. The EDPB members agree to submit the guidelines to public consultation for a period of 8 weeks.

[REDACTED]

## 2.6 Guidelines 3/2018 on the territorial scope of the GDPR (after public consultation) – discussion and adoption

One of the rapporteurs presented the draft revisions to the guidelines, which were prepared by the ESG after discussing the feedback received in the public consultation. Several members express their appreciation for the work done by the rapporteurs and the ESG.

In the public consultation, several respondents asked for guidance on how article 3(2) GDPR should be interpreted with regard to the activities of processors. The draft revisions include a new section on this matter, which was carefully deliberated in the ESG. The EU COM recalls some of the concerns which it has raised at ESG level, but which have not been reflected in the draft presented for adoption.

[REDACTED]

[REDACTED]

The EDPB members adopted the revised guidelines, including the section on targeting by processors and the revised wording on liability of the representative, as indicated above. 24 votes were cast in favour, joined by 3 EEA EFTA SAs taking position in favour, 2 were cast against and 1 EDPB members entitled to vote abstained.

The EDPB members agree to entrust the EDPB Secretariat with expanding any references to documents of the Article 29 Working Party to ensure clarity about their authorship, inclusion of the full title and a mention of whether the document was endorsed by the EDPB. Also, the words ‘under revision’ will be added to the reference to the Article 29 Working Party document on the concept of Controller and Processor.

## 3. Current Focus of the EDPB Members

### 3.1 Report on national investigations and proceedings against Facebook Inc. and Facebook Germany GmbH regarding the so called “be on lookout” (BOLO) list – discussion [REDACTED]

The DE (Hamburg) SA informed the EDPB members regarding ongoing investigations. EDPB members took note of the information given.

The DE (Hamburg SA) and other EDPB members that have experience with similar cases were invited to share more information via the [REDACTED] ESG. The [REDACTED] SA will share information it published in a case with some similarities.

### 3.2 [redacted] pdate [redacted]

The [redacted] SA followed up on the presentations given during previous EDPB Plenary meetings and updated the information given to EDPB members regarding ongoing investigations. EDPB members took note of the information given.

The IE SA invited other SAs to engage in joint operations with them.

### 3.3 [redacted] Update [redacted]

The [redacted] SA informed the EDPB members regarding some aspects of their procedural law as well as regarding ongoing investigations. EDPB members took note of the information given.

## 4. Expert Subgroups and Secretariat

### 4.1 Fining Task Force: [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

### 4.2 Key Provisions ESG: [redacted]

[redacted]

[redacted]

[Redacted]

[Redacted]

4.3 Financial Matters ESG: Guidelines on the interplay of the Second Payment Service Directive (PSD2) and the GDPR – discussion and request for mandate

One of the rapporteurs presents the topic and in particular the topics on which orientation from the Plenary is requested.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

## 4.4 BTLE ESG

### *4.4.1 Response letter: LIBE request for EDPB contribution on Regulation establishing the conditions for accessing the EU information systems– discussion and adoption*

One of the rapporteurs presented the draft letter.

The EDPB members adopted the draft letter unanimously.

### *4.4.2 Additional Protocol to the Budapest Convention on Cybercrime – discussion and adoption*

One of the rapporteurs presents the draft contribution prepared for the upcoming Octopus conference where a draft for an additional protocol to the Budapest Convention on Cybercrime will be discussed.

A common contribution has been prepared by rapporteurs of the BTLE ESG, aimed to allow the EDPB members participating in the Octopus conference to convey a common message.

An EDPB member informed the Plenary of the fact that they've sent some editorial corrections to the document as well as a reference to a recent opinion of the EDPS on the EU eEvidence legislative proposal. The EDPB members entrusted the rapporteurs and the EDPB Secretariat to integrate the editorial corrections.

The EDPB members adopted the draft contribution unanimously. The EDPB members decide that the contribution paper will be published on the EDPB website in the section 'other documents', prior to the Octopus conference.

## 4.5 Compliance, eGovernment and Health ESG

### *al procedure for the European Data Protection Seal – discussion and adoption*

One of the rapporteurs presented the topic and the options considered by the CEH ESG, including some editorial comments suggested by the EDPB Secretariat and agreed by the rapporteurs.

## 4.6 Secretariat

### *Communications: Wikipedia page – decision*

For the EDPB, a page already exists in Dutch, French, German, Italian and Polish. The EDPB Secretariat would welcome a page accessible in all EU official languages, as this would make information regarding



the EDPB accessible to a large group of people and help raise awareness about the EDPB, as well as its members.

The EDPB members were in favour of having a Wikipedia page about the EDPB in all EU official languages and tasked the EDPB Secretariat with taking the necessary steps.

## 5. Miscellaneous

### *GDPR Review*

The EU COM recalls article 97 GDPR, which requires a first review of the GDPR to be carried out by May 2020, with particular attention to Chapters V and VII.

The EU COM has sent a list of questions to the EDPB Secretariat for circulation among the EDPB members.

The EDPB members agreed to entrust the [REDACTED] with the follow-up of the questionnaire, with a meeting envisaged in January to reflect on the responses provided by the EDPB Members.

### *EU COM grants*

The EU COM informed the EDPB members that a new round of grants will be made available to SAs for awareness raising projects.

The expected timeline is publication of the call on 16 December 2019, application period from 15 January 2020 to 2 April 2020.

### *UK SA report on facial recognition and law enforcement*

The UK SA has issued an investigation report into how the police use facial recognition technology in public places and an opinion setting out advice and recommendations on this matter.

### *ECJ referral for a preliminary ruling*

A Belgian court has referred a case to the ECJ for a preliminary ruling on the interpretation of articles 55 GDPR and following, and in particular the power of a SA to initiate or maintain court proceedings started prior to GDPR if it is not the “lead supervisory authority” for the processing at issue.

### *EDPS: document on joint controllers*

The EDPS has issued Guidelines on the concepts of controller, processor and joint controllership under Regulation (EU) 2018/1725 on 7 November 2019.

The provisions of Regulation (EU) 2018/1725 contain some specificities with regards to these concepts, thus the adoption of these guidelines does not pre-empt the ongoing discussion within the EDPB on these concepts.

### *SEC : informal cooperation*

[REDACTED]

[REDACTED]



## 6. FOR INFORMATION – Expert Subgroups

### 6.1 Compliance, eGovernment and Health ESG

*Election of the representative and alternate to the Stakeholders Cybersecurity Certification Group – written state of play (Rapporteurs: ES SA and SEC)*

#### Annex: Attendance list

AT SA, BE SA, CY 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, UK SA

European Commission

EDPB Secretariat

**Observers:**

AL, MD, RS

**Further participants:**

CH was invited for and attended agenda items 2.4 SA, 4.4.1 SA, 4.4.2.

**Delegations:**

PT was not present on 13 November 2019 but delegated its voting rights to ES.