



10th Plenary meeting 14-15 May 2019, Brussels

1 Adoption of the minutes, the agenda and information given by the Chair

1.1 Adoption of the Minutes of the 9th Plenary meeting (test of the electronic voting system)

The minutes were adopted with a small modification on point 2.3.

27 SAs and 2 EEA EFTA SAs voted in favour and 1 SA abstained.

1.2 Draft agenda of the 10th EDPB meeting – adoption

The draft agenda was adopted with additional items: information on the Spring Conference, a Code of practice for age appropriate design, a Technology related study, the Investigation on the use of Microsoft products and services by EU Institutions, the EP Elections, the monitoring of new technologies and pending case laws.

The discussions relating to points 1.5, 2 and 4.1 were declared confidential according to Art. 33 EDPB RoP.

Observers were present during the plenary meeting except for points 2 and 4.1.1 of the agenda.

1.3 Preparation of the election of a new deputy Chair - information by the Chair

Two candidates (Commissioners from BE SA and NL SA) have submitted their applications for the deputy Chair position prior to the plenary meeting. The candidates introduced themselves and briefly explained their motivation to the EDPB members.

1.4 IAPP Conference Washington May 2019 and the Spring Conference– information by the Chair

The Finnish SA represented the EDPB at the Spring conference. The Commissioner of the Finnish SA shared his experience with the EDPB members. The next conference will be organised in Croatia.

The Chair represented the EDPB at the IAPP conference in Washington. The EU Data Protection Supervisor received the IAPP organization's 2019 Privacy Leadership Award and the IE Commissioner received an award from Future of Privacy Forum for her activity in the public service.

1.5 Outcome of the meeting on 17 April 2019 – information by the Chair

The Chair gave an overview about the Enforcement and Social Media ESG joint meeting held on 17 April. [REDACTED]

[REDACTED] The members of the expert subgroups also discussed the possibility to develop some guidance for the exchange of information between the lead supervisory authorities and the supervisory authorities concerned in the context of the Cooperation ESG.

In addition, it was stressed that the current mandate of the ENF ESG (approved by the Plenary meeting of January 2019) includes the exchange of information in ongoing cases and related to enforcement activities. The coordinators of the ENF ESG will facilitate this within the upcoming meetings, [REDACTED]

[NEW] Monitoring new technologies

On the margin of point 1.5. EDPS informed the EDPB members about its initiative "TechDispatch" to report via a newsletter on a regular basis on its website about new technologies which may raise any data protection related issues.

[NEW] EP elections

On the initiative of EDPS the EDPB members discussed the EP election and many SAs shared their experiences at national level. The EDPS reminded the members about the existence of the amended regulation 1141/2014 on the statute and funding of European political parties and European political foundations from 22 October 2014. The COM underlined the fact that questionnaires relating to the involvement of SAs relating to that topic have been sent to the national point of contact identified in the electoral package.

2 Update [REDACTED] CONFIDENTIAL

[REDACTED] followed up on the presentations given during the last EDPB Plenary meeting. [REDACTED]

[REDACTED] EDPB Members took note of the information given and offered support (such as joint investigations) which was welcomed by the [REDACTED]. The EDPB members proposed that the Cooperation ESG should get a mandate to work on the practical implementation of amical settlements.

3 Third Annual Review of the Privacy Shield – call for designation of EDPB representatives

The COM informed the EDPB members that they plan to hold the third annual review in early September. To start the preparation, the COM invited the members to designate their representatives. [REDACTED] volunteered to participate. Three SAs were invited to announce the names of their representative to the EDPB Secretariat.

Similarly, the Coordinator of the BTLE ESG reminded the members that they need to designate their experts for the review of the Passenger Names Records law in Australia and USA.

[NEW] Investigation on the use of Microsoft products and services by EU institutions- Information from EDPS **CONFIDENTIAL**

As the EDPS is undertaking an investigation into the compliance of contractual arrangements concluded between the EU institutions and Microsoft, it has informed the EDPB members about its preliminary findings. The EDPS invited the members to bilaterally contact them for possible cooperation. The EDPS also asked the Chair to have a point on the agenda of the June plenary meeting on this topic.

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

4.1 Cooperation ESG **CONFIDENTIAL**

4.1.1 Internal Guidance on handling cases with only local impacts under Article 56.2 GDPR and related issues

The Coordinator of the Cooperation ESG and the Rapporteurs presented the document. Members expressed concerns regarding the drafting of example 17. In addition, editorial remarks were presented in order to enhance the drafting. Other comments were also discussed.

The revised version of the internal guidelines was adopted with 26 SAs and 2 EEA EFTA SAs in favour and 1 SA abstaining.

The internal guidelines will be reviewed by the Cooperation ESG after 6 months of use (the Cooperation ESG will investigate further on the example relating to the right to be forgotten). The members further agreed that the document will not be published nor translated.

4.1.2 Translations during the OSS procedure

The Coordinator of the Cooperation ESG presented the request for mandate. Several related issues were discussed and it was concluded that an additional request for mandate for the Cooperation ESG is to be prepared covering:

[REDACTED]

— the practical implementation of the amicable settlement,

[REDACTED]

The work on the first topic is closely intertwined with the original requested mandate [REDACTED]

The original request for mandate was adopted by 28 SAs and 2 EEA EFTA SAs.

The additional request for mandate was adopted by 25 SAs and 2 EEA EFTA SAs. 1 SAs voted against.

4.2 Technology ESG

4.2.1 Response to MEP Sophie in't Veld regarding connected vehicles

The coordinator of the Technology ESG presented the letter. Members suggested some changes to include the resolution of the International Conference on connected vehicles and the current work of the EDPB on this topic.

A revised version of the letter was submitted to the members and this version was adopted by consensus.

4.2.2 Blockchain

The Coordinator presented the request for mandate drafted by the Technology ESG in cooperation with the FM ESG. The draft proposes that the principal work will be done by TECH ESG and that the FM ESG will supplement the document on issues related to cryptocurrencies.

The mandate was adopted with a minor modification by 27 SAs and 2 EEA EFTA SAs.

4.3 BTLE ESG

4.3.1 Reply to LIBE request in the implications of the CLOUD Act

The EDPB and the EDPS have received two substantially identical letters from the LIBE Committee requesting guidance on the US Cloud Act. A joint response was prepared by the BTLE ESG, after having been shared with the International Transfers ESG.

The response letter was discussed and members requested some changes. As there were several modifications to make in the draft letter, members decided to set a period for written comments until Friday 16 May 2019. A conference call will be organised the week after the plenary meeting to have a discussion on the provided comments. This item will be the first substantive point of the June plenary meeting.

4.4 Compliance, eGovernment and Health ESG

4.4.1 Internal guidance on working procedures for opinions under national certification schemes and approval of criteria leading to the European Data Protection Seal

The Coordinator of the Compliance, eGovernment and Health ESG informed the EDPB of the need to deal with the practical aspects of the procedure regarding opinions on national certification schemes and approval of criteria leading to the European data protection seal.

The mandate was adopted by 26 SAs and 2 EEA EFTA SAs.

Election of the new Deputy Chair

The EDPB members elected M. A. Wolfsen from the NL SA as new Deputy Chair of the EDPB.

4.5 Financial Matters ESG

4.5.1 Retention of credit cards data in distant payments – request for mandate

The rapporteur informed the EDPB members about the content of the requested mandate to work on recommendations under Article 70.1.e) of GDPR focusing on the legal basis of the retention of credit card data used online, after a single purchase of a customer, in order to facilitate further purchases.

The mandate was adopted by 26 SAs and 2 EEA EFTA SAs.

4.6 Secretariat

4.6.1 Possible topics for future events of the EDPB - discussion

The Secretariat explained that invitations to EDPB events need to be sent well in advance in order to ensure a broad presence of stakeholder. It is therefore time to think about the possible topics for the two next events.

Based on the 2019-2020 work program, the Secretariat has identified 4 possible topics: Rights of the data subjects; Privacy by design and by default; Children's personal data and the notion of legitimate interest. 1 SA also shared in writing some suggestions, such as relating to the definition of the concept of large scale. Some members proposed additional topics (artificial intelligence and the concept of accountability).

EDPB members agreed to select the topics on the basis of the work program and to make a decision based on the time frame of the adoption of guidelines. The Members decided to check first the status of the work on the notion of Privacy by design and by default within the Technology ESG to assess if an event on this topic in autumn will still be useful. Depending of the answer from the Technology ESG, the members agreed on the following order of priority: (Privacy by design and by default), Rights of the data subjects, Children's personal and the notion of legitimate interest.

5 Miscellaneous

5.1 Access by specific supervisory authorities according to Article 85 and 91 GDPR to Documents of the European Data Protection Board - discussion - [REDACTED]

[REDACTED]

Members were of the opinion that only authorities that fulfil the conditions of the GDPR to be defined as a supervisory authorities shall receive the information. There is an obligation under Art. 51.4 GDPR to notify to the COM the provision of the national law regarding chapter VI GDPR on independent supervisory authorities. [REDACTED]

The EDPB members agreed that only the authorities mentioned on the website of the COM can receive documents from the plenaries and that is up to the COM to assess whether the authorities notified by the Member States fulfil the conditions of the GDPR to be defined as a supervisory authority.

Other Miscellaneous items

- ES SA: Spanish studies on Android: The ES SA informed the members about 3 studies - one from the Madrid University and 2 from the ES SA - on this specific topic. They will provide the members with the links via the EDPB Secretariat.
- UK SA: Code of practice for age appropriate design: The UK SA informed the members about its recently published code of practice. The code is currently submitted for public consultation. The ICO will soon provide the members with more information via the EDPB Secretariat.
- UK SA: Tax authorities - enforcement notice: The UK SA informed the members that they have issued an enforcement notice regarding the use of biometric data by Tax authorities.
- SEC: request from DG SANTE: The EDPB Secretariat explained to the members that the EDPB and the EDPS have just received a request of opinion based on Art. 42 of Regulation 2018/1725 from DG SANTE on the H-DSI system. The opinion of the EDPB should be issued within 8 weeks. The EDPS has already been informally consulted in an earlier stage of the procedure and sent comments on 12 December 2018.
The EDPS volunteered to be co-rapporteur on this question. The EDPB Secretariat will circulate the E-mail received by the DG SANTE and will also send a call for additional rapporteurs within the Compliance ESG.
- BE SA: meeting with the EU Authority for European Political Parties and European Political Foundations: The BE SA informed the members that they met representatives of the APPF. The APPF will present its competences and work to the members of the Social Media ESG at a following meeting.
- BE SA: Current Case law: The BE SA informed the members that on 8 May 2019, the Court of Appeal of Brussels handed down a judgment in the context of our ongoing legal proceedings against Facebook, which concerns the tracking of internet users (both users and non-users of Facebook) through social plug-ins, cookies and pixels.
During the pleadings of 27 and 28 March 2019, the BE SA argued that the Belgian courts have jurisdiction over these legal proceedings (which were initiated prior to the GDPR) and demanded that Facebook comply with Belgian and European privacy rules. Before ruling on the merits, the Court of Appeal decided to refer certain questions to the Court of Justice of the European Union for a preliminary ruling.
- The EDPB Chair informed the members on the fact that next Plenary meeting will be a one day meeting and will be chaired by the new Deputy Chair, M. A. Wolfsen.
- The EDPB Chair informed the members about the meeting of the communication officers' network in Vienna on 17 May 2019.

Annex: Attendance list

AT SA, BE SA, BG SA, DE SA, DK SA, EDPS, EE SA, EL SA, ES SA, FI SA, FR SA, HR SA, HU SA, IE SA, IT SA, IS SA, LI SA, LT SA, LU SA, LV SA, MT SA, NL SA, PL SA, PT SA, RO SA, SE SA, SI SA, SK SA, UK SA

European Commission

EDPB Secretariat

Observers:

AL, ME