

**Minutes of the 7th meeting of the Multistakeholder expert group
to support the application of Regulation (EU) 2016/679
29 October 2021**

1) Administration of the group

The Commission presented the draft internal Rules of Procedure, which had been circulated to the Members prior to the meeting and which are based on the standard Rules of Procedure for all Commission expert groups. The Rules of Procedure were adopted by the Group.

2) Update on latest developments

The Commission presented the latest developments on GDPR implementation, including its international dimension.

The Commission referred to the three on-going infringement procedures launched against Belgium, Poland and Hungary regarding violations of the GDPR. The Commission informed the Members about its work to ensure that GDPR rules are mainstreamed into EU legislative initiatives that foster exchange of data such as: the Data Governance Act (DGA) and common European data spaces; the Digital Services Act (DSA); the Digital Markets Act (DMA); the Artificial Intelligence (AI) Act; the EU Digital COVID Certificate and the Passenger Locator Form. The Commission stressed that, in line with the Communication on GDPR issued in 2020, the GDPR is a stepping-stone for all those initiatives involving the processing of personal data.

The Commission reported that it continues to actively contribute to the work of the European Data Protection Board (EDPB), in particular on the preparation of guidelines. The Commission pointed out that some Data Protection Authorities (DPAs) had recently imposed considerable fines addressed to multinationals, and that more enforcement actions are expected in the near future. The Commission recalled that the GDPR had not harmonised national procedural rules that DPAs have to follow. It pointed to the EU financial support to DPAs through grants to promote outreach to individuals and SMEs.

The Commission informed that the report on the application of the Law Enforcement Directive¹ and the report on the application of the Regulation on the protection of personal data by the EU institutions, bodies, offices and agencies² are foreseen for 2022.

¹ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89–131.

² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39–98.

As regards the international dimension, the Commission provided updates on the adoption of two adequacy decisions for the United Kingdom, the launch of the adoption process for an adequacy decision for South Korea, the on-going negotiations with the US on a possible successor arrangement to the Privacy Shield and the first joint review of the EU-Japan adequacy decision (for which the review meeting took place in October 2021). The Commission also referred to work carried out at multilateral level (OECD and Global Privacy Assembly) on developing principles for government access to data held by the private sectors.

The Members made the following points on the updates presented by the Commission:

One Member requested further information on the stage of the on-going infringement procedure against Belgium concerning the independence of the Belgian DPA. The Commission outlined the progress of the infringement procedure and stressed the importance of DPAs' independence.

Several Members expressed concerns as regards the applicability of the GDPR to particular European Data Spaces and other upcoming EU legislations, which require sharing of personal data. The Commission reassured the Members that those initiatives would comply with data protection rules, while striking the right balance between the different interests at stake.

One Member asked about the timeline for the preparation of the second report on the evaluation of the GDPR that will take place in 2024. The Commission replied that it was too early to start the preparation of that report and told Members that they would be involved in the evaluation exercise, as they had been for the first report issued in 2020.

Some Members asked about the progress of the EDPB guidelines on the concept of legitimate interest. The Commission replied that the work on those guidelines was still ongoing within the EDPB and that the timeline for their adoption depended on the EDPB. Another Member questioned whether there were any developments following the publication of the EDPB guidelines on restrictions of data subject rights under Article 23 GDPR. The Commission replied that the enforcement of the guidelines was the responsibility of the DPAs. The Commission also indicated that it would address the matter of the restriction of data subject rights through a horizontal approach across Member States.

Several Members pointed to the divergences observed between DPAs in the enforcement of the GDPR. The Commission reacted that in case of any disagreement on enforcement, the role of the EDPB is to ensure a harmonised approach. The Commission stressed that cooperation mechanism is used routinely by DPAs. It added that for the time being there were no plans for an overhaul of the system and that it was instead pushing for an even stronger and more efficient cooperation between DPAs. The Commission also referred to the EDPB guidelines on the application of Article 65(1)(a) GDPR, while new guidelines are under preparation for the application of Article 60 GDPR.

One Member expressed concerns about the discrepancies between fines imposed by DPAs. The Commission said that while this might be due to several reasons, including national priorities and resources, it was crucial to maintain the deterrent effect of the GDPR rules on sanctions.

One Member expressed concerns about the efforts required for adopting Codes of Conduct (CoC) because of the requirements for the monitoring bodies and the long adoption process by DPAs/the EDPB. The Commission reiterated its position of principle supporting CoCs as a very useful tool to demonstrate compliance with the GDPR.

Furthermore, Members asked about the progress in the talks with the US and the timeline for a new arrangement. The Commission explained that, although progress had been made, there were still outstanding issues, and, as with any international negotiation, it was not possible to commit to a specific timeline. The Commission also underlined that what matters is that a solution can be found that fully complies with the *Schrems II* judgment.

One Member requested an update on the timeline of the review of the adequacy decisions. The Commission replied that it did not publish the review along with the GDPR evaluation report of 24 June 2020 to ensure that the *Schrems II* judgment, which provided important clarifications on the adequacy standard, could be taken into account. The Commission explained that it aims to complete this exercise by the end of 2021 or early 2022.

Another Member asked the Commission's views on the proposed reforms of the UK data protection framework. The Commission replied that it closely follows the developments in the UK and pointed to the possibility provided by the adequacy decisions to react in case of divergences that would negatively affect the Commission's findings.

3) Input from the Members on the preparation of Q&As on the two sets of Commission Standard Contractual Clauses (SCCs): SCCs for controllers and processors³ and SCCs for the transfer of personal data to third countries⁴

The Commission informed about the preparation of a guidance document, in the form of Q&As that will be published online and could be updated if new questions arise in the future. These Q&As will facilitate the use of the two sets of SCCs by providing practical clarifications on questions relating to their implementation.

The Commission invited the Members to share their views on which elements of the SCCs further guidance is needed. Members suggested a number of topics, including:

- Questions and answers that would be addressed to data subjects, for instance explaining how they can invoke their rights as a third-party beneficiary, how they can obtain a copy of the SCCs, etc.;
- Clarifications of key obligations for data exporters under the GDPR, in particular as regards transparency and the information to be provided to data subjects in response to a request to obtain a copy of the SCCs;
- Practical guidance on contractual aspects, such as the interplay of the liability clauses in the SCCs with liability clauses in the main commercial contract, how to add new Parties to the SCCs through the docking clause, etc.;

³ COMMISSION IMPLEMENTING DECISION on standard contractual clauses between controllers and processors under Article 28 (7) of Regulation (EU) 2016/679 and Article 29 (7) of Regulation (EU) 2018/1725: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021D0915&locale=en>

⁴ COMMISSION IMPLEMENTING DECISION on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679: https://eur-lex.europa.eu/eli/dec_impl/2021/914/oj?uri=CELEX%3A32021D0914&locale=en

- The meaning of Recital 7 of the implementing decision on the SCCs for international transfers and how to address scenarios of transfers to entities that are subject to the GDPR pursuant to Article 3(2) GDPR;
- How to comply in practice with the clauses on local laws and government access in the SCCs for international transfers, for instance as regards the obligation for the data importer to notify data subjects of government access requests;
- Providing examples of how and in which situations the onward transfer clauses in the SCCs for international transfers apply, e.g. in the context of regulatory procedures in third countries where personal data is shared on a voluntary basis with a public authority.

The Commission thanked the Members for their valuable input in the preparation of the Q&As.

4) AOB

The Commission informed the Members that it intends to renew their membership for three additional years, in line with the provisions in the call for selection of experts⁵. For that purpose, the Commission would send individual letters to each of the Members.

⁵ The call can be found on the dedicated webpage of the group in the Register of Commission Expert Groups and Other Similar Entities.