**Notes / Action items – Small Teams on EDPB Letter (29 Nov 2018)**

**Goals of the Meeting**

* Discuss what the EPDP Team's interaction with the EDPB could be
* If a meeting/communication is appropriate, the small teams can discuss the content of the communication

**Action Items from Meeting**

* Stephanie to send marked up EDPB Letter by COB today, 29 November 2018.
* Kurt to follow up with Diane and Stephanie via email to work on SOW for retention of outside legal counsel/GDPR expert.
* Small group to convene to rewrite and refine questions to counsel for outside legal counsel/GDPR expert.
* Note (from EDPB website): The EDPB does not provide individual consultancy services. Please note that individuals or organisations with questions related to data protection law are advised to consult the website of the Supervisory Authority in the country where they are based. (For EU Member States: https://edpb.europa.eu/about-edpb/board/members\_en.)
* Opinions within the small team:
* We should communicate with the EDPB, but we should not be schedule-driven - in other words, even though the EDPB is meeting next week, we should not rush into having something by next week. We should focus on quality over speed.
* The EDPB is the new incarnation of the Art. 29 Working Party. The only difference is the EDPB has more power. Very few people have appeared before the EDPB to date, due to its newness. The team has not done enough homework, so it is not appropriate to write to the EDPB until the team has concrete proposals. It may be useful to look at the PNR IATA issue for some context.
* The EDPB is meant to give guidance, and this is the correct place to go for answers, but the Team needs to ensure that the process of receiving answers is done correctly and appropriately.
* The draft email is premature. Proper channels are necessary here - the board is getting fatigued by requests that do not go through the appropriate channels. It may burn political capital by sharing disparate arguments and asking the EPDB to function as the arbiter. The Team may want to consider getting legal counsel at this point, so that the Final Report can have conclusions rather than questions. Provide the Report to the EDPB as a courtesy and allow them to respond at their own behest. Also, the Charter says "should send", so it is permissive, it is not mandatory. Sending this letter at this point in time would be a mistake.
* Some of the questions in the draft are not in a state of maturity for the Board to comment. We need a simple message and simple questions to the EDPB. It may be better to go to the EDPB for compliance rather than advice.
* This document is not the document to share. The Team would look immature. Are there ways to deal with differing interpretations of the GDPR within the Team? Can we engage with a GDPR expert?
* Like the idea of having a communication with the EDPB, making them aware of the Initial Report.. Disagree that we cannot ask the EDPB questions - we should not be afraid of asking questions. The questions should be reframed as use cases.
* Redline version of the letter: much shorter version - shows the questions the team is pondering but does not answer the questions. If you are going to cite the letter, ensure you heed its advice.
* First preference: we should not engage at all. For those who would really like engage, we should send a bland letter notifying them of the report, rather than provide any commentary.
* Tweaking may not be enough; the team needs to create a fullsome document for comment - best to wait for public comment to conclude.
* The Team should definitely reach out to EDPB, but there may be some questions an independent lawyer may not be able to answer. We should not stop the process of writing up the questions comprehensively and coherently now.
* When the EDPB is provided with a solution and asked to weigh in on if the solution is GDPR compliant, the EDPB is more likely to respond.
* Delaying the communication is not wise as the response could take up to two months (possibly longer). The questions to the EDPB should be about areas that are unclear.
* Questions posed to EDPB should be neutral.

Is there a tangible benefit of communicating with the EDPB at this point?

* The EPDP Team should take the option of legal counsel seriously, and this is something we should do now before sending a letter to the EDPB.
* Sending the Initial Report to the EDPB is fine; it is sending the letter that is the problem. Bringing an objective legal counsel is critical at this juncture.
* It would be practical and wise to get legal support now that the report is out.
* Would it be possible to use the Brussels office of WSGR as this firm was used by RDS WG?

Given the reticence of the EDPB to answer questions or be put on the spot, is there a way to introduce questions or get guidance from someone?

* A way to proceed is to try to reach out to the EDPB when the Team is ready, and in parallel, reach out to the Belgian DPA for assistance.

Action Items

Stephanie to send marked up EDPB Letter.

Kurt to follow up with Diane and Stephanie via email re: SOW for outside counsel/GDPR expert.

Small group to convene to rewrite and refine questions to counsel.