

Internal EDPB Documents



Internal EDPB Document 4/2019 on the procedure for the adoption of the EDPB Opinions on the SA's draft accreditation requirements for certification bodies and the SA's draft decisions on criteria for certification

Adopted on 9 October 2019

IMPORTANT NOTE:

This document was originally written for internal use among EDPB members. At its Plenary meeting of 14 June 2022, the EDPB has decided, in the interests of transparency, to make this document available to the public by publishing it on its website. This document is currently being revised and some of the information in this document may no longer be up to date.

This document contains redactions as the publication of this information would undermine the decision-making process of the EDPB, in relation to matters upon which a decision has been taken.

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The European Data Protection Board

Having regard to Article 42(5), Article 43(3) and Article 64(1)(c) of the Regulation 2016/679/EU 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 and on the free movement of such data, and repealing Directive 95/46/EC, (hereinafter “GDPR”),

Having regard to the EEA Agreement and in particular to Annex XI and Protocol 37 thereof, as amended by the Decision of the EEA joint Committee No 154/2018 of 6 July 2018,

Having regard to Article 3 and Article 22 of its Rules of Procedure as last amended on 10 September 2019,

HAS ADOPTED THE FOLLOWING INTERNAL DOCUMENT

1 EDPB OPINIONS ON SA’S DRAFT ACCREDITATION REQUIREMENTS FOR CERTIFICATION BODIES: SUBMISSION, ADMISSIBILITY AND OPINION

1.1 Preparation for submission of draft accreditation requirements to EDPB

1. Supervisory authorities (SAs) have to draft and publish their requirements for accreditation of certification bodies pursuant to article 43.3. When they aim to approve these requirements, SAs have to submit them to the EDPB pursuant to article 64.1(c).
2. As agreed during the plenary meeting of April 2019, to better anticipate the workload of the EDPB, SAs should inform the other members in advance of their intention to submit a draft requirements for a consistency procedure. The Secretariat will share this information with the members of the Compliance, E Government Expert Sub Group (CEH ESG).
3. The formal submission has to be done via IMI platform. More information is available in the IMI user guide¹ and the IMI best practices².
4. It should be noted that, once a formal submission has been made, the decision will be prepared on the basis of the submitted documents, without a possibility for the CSA to update the submitted documents.

■ [REDACTED]
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1.2 Admissibility of draft accreditation requirements

5. The submission shall fulfil the following admissibility criteria for acceptance by EDPB:
 - 1) All documents have to be submitted in English language;
 - 2) The EDPB assessment template is fully completed by the CSA and submitted;
 - 3) Relevant national legislation that has been referenced in the accreditation requirements; and
 - 4) A copy of the requirements for accreditation and any annexes are submitted.
6. The secretariat should check that all the documents are present and complete. The secretariat may request the CSA to provide the secretariat within a specific timeframe with additional information needed for the file to be complete. When necessary, for instance documents not originating or drafted by the supervisory authority, the documents submitted by the CSA will be translated into English by the secretariat without undue delay. When the CSA agrees on the translation, and the Chair and the CSA decide that the file is completed, the secretariat, on behalf of the Chair will circulate the file to the members of the Board.
7. The opinion of the Board shall be adopted within eight weeks after the Chair and the CSA (where relevant) have decided that the file is complete. It may be extended by a further six weeks, taking into account the complexity of the subject matter, upon decision of the Chair, on its own initiative or at the request of at least one third of the members of the Board.
8. Before draft opinions are submitted to the vote of the Board, they shall be prepared and drafted by the secretariat and, upon decision of the Chair, together with a rapporteur and expert subgroups members.
9. Upon decision of the chair, a drafting team can be set up, depending on the timing of submission, via email or at a CEH meeting. The call for the drafting team volunteers will be made by the Secretariat together with CEH experts group co-ordinators. In order to avoid conflicts of interest, the CSA should not be part of the core drafting team. However, any questions can always be addressed by the core drafting team to the CSA.
10. The CSA is called to take into consideration the working schedule of the CEH ESG before making its submission.
11. The Secretariat and the drafting team (where relevant) review the submitted requirements for accreditation and supporting documents (including the assessment template) and draft the opinion. This will always involve consideration of what was stated in previous opinions on the same subject, in order to ensure consistency. The EDPB assessment template submitted by the CSA can be used as an internal working document when preparing the draft opinion. This review must take place within the opinion deadlines.

1.3 Article 64 opinion

12. Under article 64, EDPB shall issue an opinion pertaining to matters outlined in article 43(3) of the GDPR.
13. The rules of article 10 of the EDPB rules of procedure apply for the adoption of an opinion.

1.4 Further steps

14. The following steps have to be fulfilled after the adoption of an opinion:
 - (1) the Secretariat publishes the opinion;
 - (2) Within two weeks of receipt of the Opinion, the SA shall communicate to the Chair its intention to maintain or amend the decision and the amended draft decision, if any. The answer will be analysed by the SEC, the rapporteurs and the ESG members who prepared the opinion, in line with Art. 10.7 of the EDPB's RoP. The SEC will circulate this information to the members of the Board;
 - (3) the CSA adopts its draft decision, making its accreditation requirements public.

2 EDPB OPINIONS ON SA'S DRAFT DECISIONS ON CRITERIA FOR CERTIFICATION (NATIONAL INITIATIVES): (INFORMAL REVIEW), SUBMISSION, ADMISSIBILITY AND OPINION

2.1 Preparation for submission of a draft decision to EDPB

16. Scheme owners (which could be organisations or private companies that are not in charge of issuing certificates) or certification bodies should formally submit their certification criteria to their local SA. Furthermore, SAs can also draft the criteria for certification of a certification mechanism, act as a certification body and perform accreditation itself.³
17. SAs have the power to approve criteria for national certification schemes referred to in article 42(5) and article 58(3)(f). The SA shall carry out a review to ensure that draft certification criteria meet the requirements of a GDPR certification scheme, taking into account the EDPB guidelines on certification. The SA's review will be aided by fully completing the assessment template sections for national criteria. When it aims to approve these criteria, the SA has to submit their draft decision to the EDPB pursuant to article 64.1(c).
18. Where there is consideration of approval of criteria by multiple SAs, depending on the stage of submission and approval, it may be possible to streamline the opinion route⁴. For example:
 - 1) if the CSA considers that draft criteria for certification in its submission have already been subject to an EDPB opinion, it should highlight this with appropriate references;
 - 2) if the CSA considers that draft criteria for certification in its submission are an amended version of criteria that have already been subject to an EDPB opinion (e.g. to take into account national law), the CSA should highlight the amended elements in its submission and provide a reasoning of the potential impacts of the changes overall the set of the certification criteria.
19. The formal submission has to be done via IMI platform. More information is available in the IMI user guide and the IMI best practices (refer to ²).
20. The submission for informal review is done using the EDPB digital shared workspace tool.
21. Before formally submitting its draft decision, the CSA can decide whether the submission would be assisted by an informal review. Pursuant to article 57.1(g), the CSA should *"cooperate with, including sharing information and provide mutual assistance to, other supervisory authorities with a view to ensuring the consistency of application and enforcement of"* the GDPR.

³ A CSA cannot submit certification criteria for an opinion if it has not already submitted the CSA's accreditation requirements for approval.

⁴ As specified in the EDPB guidelines, CSA are called to avoid fragmentation of the data protection certification market

22. This informal phase allows the CSA to get early feedback and seek further information from the scheme owner, before submitting a draft decision for an EDPB opinion⁵. Regardless of the review route chosen by the CSA, it should be noted that, once the formal submission is made, the decision will be prepared on the basis of the submitted documents, without a possibility for the CSA to update the submitted documents. Please see the work flow chart below for more information about the stages in this process.

2.2 Admissibility of a draft decision for criteria for certification

23. The submission (for both formal and informal routes) shall fulfil the following admissibility criteria for acceptance by EDPB:
- All documents have to be submitted in English language; and
 - The EDPB assessment template is fully completed by the CSA and submitted; and
 - A copy of the criteria for certification and any annexes are submitted.
24. The secretariat will check that all the documents are present and complete. The secretariat may request the CSA to provide the secretariat, within a specific timeframe, with additional information needed for the file to be complete. When necessary, for instance documents not originating or drafted by the supervisory authority, the documents submitted by the competent authority will be translated into English by the secretariat without undue delay. When the competent authority agrees on the translation, and the Chair and the CSA decide that the file is completed, the secretariat, on behalf of the Chair, will circulate the file to the members of the Board.
25. The opinion of the Board shall be adopted within eight weeks after the Chair and the CSA (where relevant) have decided that the file is complete. It may be extended by a further six weeks, taking into account the complexity of the subject matter, upon decision of the Chair on its own initiative or at the request of at least one third of the members of the Board.
26. Before draft opinions are submitted to the vote of the Board, they shall be prepared and drafted by the secretariat and, upon decision of the Chair, together with a rapporteur and expert subgroups members. Depending on the scope of the certification mechanism, expertise of other EDPB subgroups may be requested in order to prepare the opinions.
27. Upon decision of the chair, a drafting team can be set up, depending on the timing of submission, via email or at a CEH meeting. The call for the drafting team volunteers will be made by the Secretariat together with CEH experts group co-ordinators. In order to avoid conflicts of interest, the CSA should not be part of the core drafting team. However, any questions can always be addressed by the core drafting team to the CSA.

⁵ The formal review phase without the informal review phase would normally only be possible when the CSA has already held extensive consultations and be able to demonstrate these and satisfactorily explain why the informal review phase is not required.

28. The CSA is called to take into consideration the working schedule of the CEH experts group before making its submission.
29. The secretariat and the drafting team (where relevant) review the submitted criteria for certification and supporting documents (including the assessment template) and draft the opinion. This will always involve consideration of what was stated in previous opinions on the same subject, in order to ensure consistency. The EDPB assessment template submitted by the CSA can be used as an internal working document when preparing the draft opinion. This review must take place within the opinion deadlines.

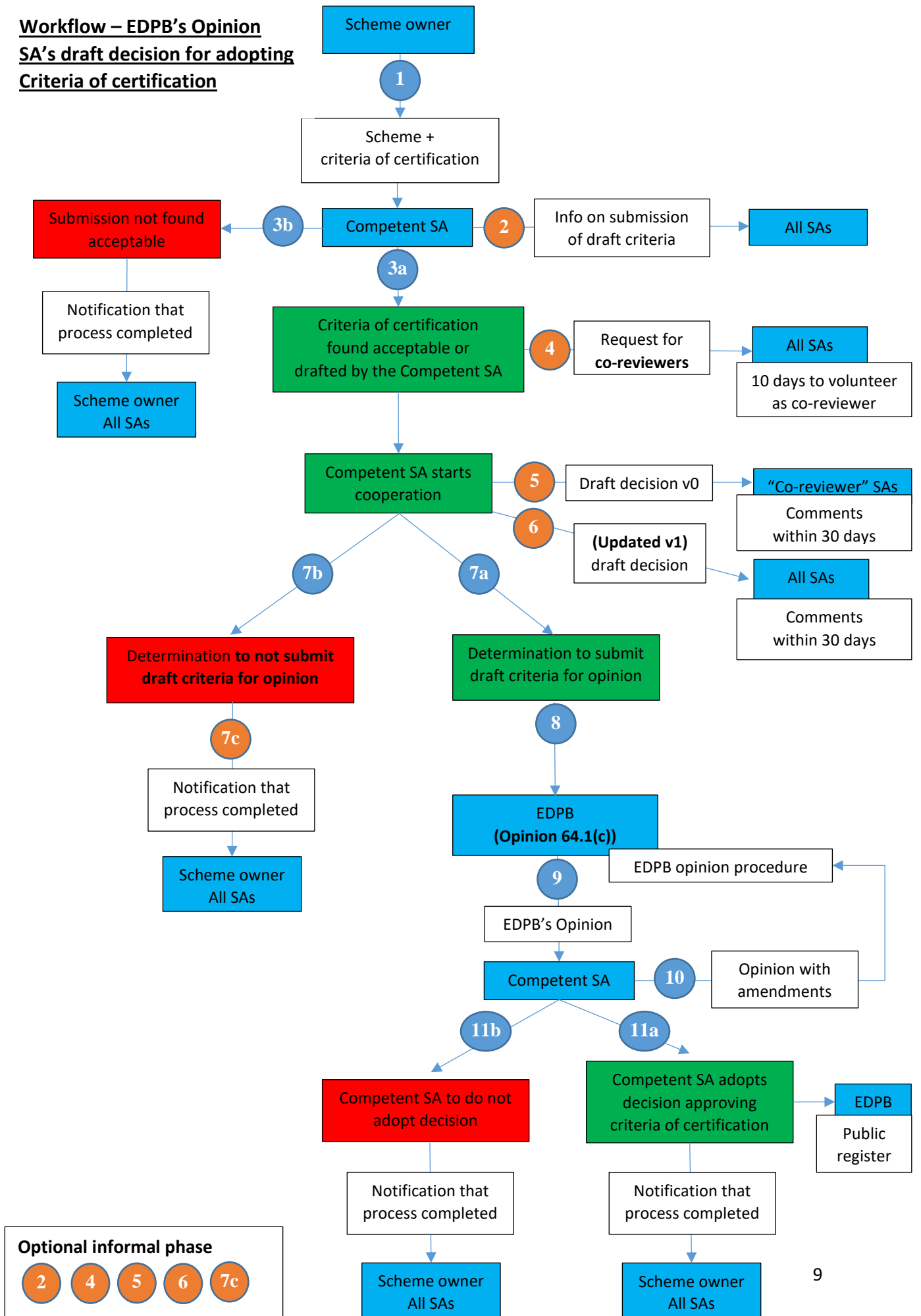
2.3 Article 64 opinion

30. Under article 64, EDPB shall issue an opinion pertaining to matters outlined in Article 42(5) of the GDPR.
31. The rules of article 10 of the EDPB rules of procedure apply for the adoption of an opinion.

2.4 Further steps

32. The following steps have to be fulfilled after the adoption of an opinion:
 - (1) the Secretariat publishes the opinion;
 - (2) Within two weeks of receipt of the Opinion the SA shall communicate to the Chair its intention to maintain or amend the decision and the amended draft decision, if any. The answer will be analysed by the SEC, the rapporteurs and the ESG members who prepared the opinion, in line with Art. 10.7 of the EDPB RoP. The SEC will circulate this information to the members of the Board;
 - (3) the CSA adopts its draft decision, making it public.
 - (4) the CSA should inform the scheme owner about the adoption of the draft decision in relation with the EDPB's opinion;
 - (5) the CSA is responsible for ensuring the transmission to the Secretariat of the required documents for the publication in the EDPB public register.

**Workflow – EDPB’s Opinion
SA’s draft decision for adopting
Criteria of certification**



Optional informal phase
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