Requirements for Data Protection Certification Schemes

Data protection examination criteria, systems and methods for the adaptation and application of technical standard DIN EN ISO/IEC 17067 (scheme type 6)

Version 2.0 (21 June 2022)

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1 Objective and integration into regulatory framework

1.1 Objective

In order to prepare for accreditation, the certification body or scheme owner must create a certification scheme and ask the German Accreditation Body (DAkkS[1]) to check its suitability in accordance with DIN EN ISO/IEC 17011 (cf. DAkkS Rule 71 SD 0016). The certification scheme will essentially revolve around certification criteria for the implementation of data protection requirements. The relevant criteria will either be approved by the competent data protection supervisory authority in accordance with point (n) of Art. 57 (1) of the General Data Protection Regulation (GDPR) in conjunction with Art. 42 (5) GDPR[2], or they will be sent to the European Data Protection Board (EDPB) for approval (usually by the competent supervisory authority) in accordance with Art. 63 and point (c) of Art. 64 (1).

This document describes the minimum requirements for the certification criteria which, in addition to the specifications of DIN EN ISO/IEC 17067, must be met by all certification schemes. There may also be additional requirements due to the specific nature of a certain certification scheme.

In summary, each certification scheme must satisfy the following mandatory requirements:

(1) the specifications of DIN EN ISO/IEC 17067 (scheme type 6);

(2) the minimum requirements for all certification schemes, as described in this document; and

(3) if necessary, specific requirements, which may, for example, arise from a certification scheme being tailored to a specific field or addressing a specific form of personal data processing, or because potential subjects of certification fall within the scope of specific legal regulations.

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1 Deutsche Akkreditierungsstelle GmbH (DAkkS) has its legal basis in the German Accreditation Body Act (AkkStelleG) in accordance with Regulation (EC) No. 765/2008.

2 When articles of the GDPR are referenced in the rest of this document, "GDPR" will be omitted from the citation.

Additional requirements may be stipulated by accreditation bodies, specifically taking into account the guidelines of the EDPB[3], the decisions adopted by the Independent Data Protection Supervisory Authorities of the Federation and the Länder (DSK), case law or accreditation practice.

For the reasons mentioned above, this document does not claim to be complete. The aim is to provide both a uniform basis for the German supervisory authorities to evaluate certification schemes and a guide for scheme owners and certification bodies to create their documents.

1.2 Integration into regulatory framework

When it comes to designing certification schemes, the starting point is DIN EN ISO/IEC 17067[4].

As DIN EN ISO/IEC 17067 is generic in nature, the independent supervisory authorities will make adjustments and additions to the standard to establish requirements specifically related to data protection criteria in accordance with Art. 42 (5).

DIN EN ISO/IEC 17067 contains a definition of different scheme types. Certification schemes for data protection seals have to be aligned with scheme type 6 in accordance with Art. 42 because of the professional practice of the competent supervisory authorities and the service nature of the subjects of certification.

1.3 Examination process

Each certification scheme must include an examination process that allows for a practical verification, a technical evaluation and a legal assessment to determine whether

3 Cf. "Guidelines 1/2018 on certification and identifying certification criteria in accordance with Articles 42 and 43 of the Regulation" https://edpb.europa.eu/our-work-tools/our-documents/leitlinien/guidelines-12018-certification-and-identifying-certification_de.

4 In the application of the technical standards, DIN EN ISO/IEC 17067 is the follow-up standard to DIN EN ISO/IEC 17065, which is stipulated for use in point (b) of Art. 43 (1).

the applicant is meeting the relevant requirements on an ongoing basis. If a verification, evaluation or assessment reveals a need for change, appropriate measures must be taken as required. The examination process must be in place at the time of certification; it must be maintained and guaranteed for as long as the certification remains valid.

Each certification scheme must present the certification requirements, as listed in Section 1.1, and the methods used by the accredited certification body to examine the subject of certification.

The data protection examination method must be suitable for determining and documenting whether the applicant is properly satisfying the relevant data protection requirements and whether the applicant has implemented effective technical and organisational measures for the subject of certification in relation to the established and approved criteria pursuant to Art. 42 (5). The applicant will be deemed GDPR-compliant if such evidence is presented for the subject of certification.

All certification schemes must aim to ensure that certifications that have been issued properly are not subsequently challenged by an independent supervisory authority following a data protection audit. With this in mind, a certification scheme must be suitable for fully checking and documenting whether the subject of certification complies with the GDPR. The supervisory authority may exercise its supervisory powers at any time, and its audits may reveal that a certain form of data processing is actually unlawful.

1.4 Underlying documents

This document, which can be used to define criteria pursuant to Art. 42 (5) alongside the associated examination system and examination methods in conjunction with DIN EN ISO/IEC 17067 (scheme type 6), is based on

- the specifications of Art. 43;
- the EDPB guidelines mentioned above and other more specific EDPB guidelines;

- the ISO/IEC 17065 and ISO/IEC 17067 standards; and
- the DSK supplementary paper[5] pursuant to Art. 43 (3) in conjunction with DIN EN ISO/IEC 17065 for certification bodies that are to be audited as part of the DAkkS accreditation process in agreement with the competent and independent supervisory authorities.

5 "Accreditation requirements pursuant to Art. 43 in conjunction with DIN EN ISO/IEC 17065", available (in German) here: https://www.datenschutzkonferenz-online.de/media/ah/20201008_din17065_Ergaenzungen_deutsch_nach_opinion.pdf.

2 Certification criteria and requirements

2.1 General requirements

2.1.1 Description of the subject of certification

Each certification scheme must specify the processing activities for which it is to be used (i.e. the scope of the certification scheme). The scope of each certification scheme should be limited to processing that falls within the material and geographical scope of the GDPR.[6]

The minimum requirements for certification schemes, as set out in Section 2.1.3 and 2.2 ff. below, must be taken into account. The requirements must be checked by the accredited certification body and the competent data protection supervisory authority. If it is a generic certification scheme, the requirements specifically related to data protection must be detailed prior to certification, and the certification body must make sure that the relevant requirements are complete. Every certification scheme must state that the certification of a controller's processing activities will extend to any such processing performed by the controller itself – or by joint controllers – and by any processors that may be involved, including any sub-processors.

2.1.2 Information to be provided by the applicant regarding the subject of certification

Each certification scheme should contain specifications as to which information the applicant has to provide about the processing that is to be certified (i.e. the subject of certification) before the examination process can begin. The following information – if applicable to the processing in question – are required as a bare minimum:

6 Please note: The controller / processor does not have to fall within the geographical scope of the GDPR, as stipulated in Art. 42 (2). The scope of 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 ("JHA Directive") is not taken into account here, for example, as conformity with the JHA Directive cannot be the subject of certification under Art. 42.

1. the processing operations covered by the subject of certification;
2. the purpose of the processing operations and why the processing operations are necessary to achieve the purpose;
3. the recipients or categories of recipients;
4. the data processed in connection with the subject of certification; and
    a. which of that data can be defined as "special categories of personal data" pursuant to Art. 9;
    b. which of that data relates to criminal convictions and offences pursuant to Art. 10;
    c. which of that data relates to children in the sense of the GDPR;
5. whether someone is acting as a "processor", as defined in Art. 8 No. 4, and, if so, for which processing operations covered by the subject of certification;
6. whether there are any "joint controllers" for certain processing operations covered by the subject of certification pursuant to Art. 26;
7. a stage-by-stage presentation of the entire processing chain, including the relevant controllers, and the respective actor and role model (actors, roles, relationships) for each stage of processing[7];
8. whether the processing operations involve the transfer of personal data
    a. outside the European Union or European Economic Area; or
    b. to international organisations.

7 This can either be done graphically, e.g. using standardised formats such as Business Process Modelling (BPM) or Unified Modelling Language (UML), or in text form.

Any such data transfers may also be carried out for the purposes of administration, maintenance, care or support to ensure that the subject of certification remains fully functional during the certification validity period. Any further transfers by processors must also be examined.

9. What are the main components and sub-components and how are they broken down (see processing operations using systems and services), e.g. by the following points:

   a. list of all participants or groups of participants (e.g. customers, users, administrators[8]);

   b. presentation of how data flows between components and participants are recorded, specifying the categories of data concerned;

   c. consideration and, if necessary, explanation of legal grounds for the processing of personal data in (sub-)components and for transfers in the case of data flows and types of data.

The connection between the relevant legal basis, the technical standards and the subject of certification depending on the specific scope of application must be clearly presented in each certification scheme.

It is also a good idea to list the points in the certification scheme where the relevant requirements of DIN ISO 17065, 17067 and the DSK supplementary papers are met (this can be done in the form of a matrix, for example).

2.1.3 Compliance with the relevant data protection requirements

In accordance with Art. 42 (1), certification procedures should serve as evidence that controllers and processors are complying with the GDPR in their processing operations. In order to achieve this goal, the certification criteria must guarantee compliance with all relevant requirements of the GDPR.

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8 - footnote intentionally left blank -

The EDPB Guidelines 1/2018 on certification and identifying certification criteria[9] serve as a guide in this context, specifying aspects to be taken into account in each certification scheme. As this paper is under constant development, the articles of the GDPR listed in the following sections will be examined with varying degrees of detail. This does not reflect the importance of each article; it is for illustrative purposes only.

The information presented in tables in the following sections is not exhaustive, as further assessment techniques may be employed in addition to the examination methods listed there. The examination methods should be based on those defined in the standards, e.g. audits (ISO 17021), testing (ISO 17025) or inspections (ISO/IEC 17020).

This version of the document only presents the rights of data subjects (Art. 12 to 23) in generic terms (Section 2.12) without formulating the specific minimum requirements. The authors of this document may choose to add the specific minimum requirements to a subsequent version.

9 https://edpb.europa.eu/our-work-tools/our-documents/leitlinien/guidelines-12018-certification-and-identifying-certification_de

2.2 Art. 5: principles related to the processing of personal data

Legal criteria	*Aspects to be covered by the certification criteria and implementation by the customers[10] of the certification body[11]*	*How will the certification body verify implementation?*
Point (a) of Art. 5 (1) Lawfulness, fairness and transparency	Lawfulness, cf. Chapter 2.3 (Art. 6) Fairness Transparency of processing for data subjects: Art. 12 *et seq.* - there must be criteria for assessing whether personal data is processed in a transparent manner in relation to data subjects; and - in particular, information must be provided about risks, rules, safeguards and rights, and how these	Cf. Section 2.3 (Art. 6) Cf. Section 2.3 (Art. 6) The certification body will examine documented data flows, records of processing activities, information provided under Art. 13 and 14, and the documentation of the process to ensure and maintain transparency in relation to data subjects. The certification body will inspect all relevant business processes and systems; it will also conduct plausibility

10 This not only means the actual customers of the certification body, but also any contractual partners of the customers (e.g. processors).
11 This column essentially contains two pieces of information: a list of aspects to be covered by the certification criteria to verify compliance with the most important legal requirements, as well as measures to be taken by customers to implement those legal requirements.

	rights can be exercised (Recital 39). The processes used to select and implement technical and organisational measures must be documented in a way that ensures the transparency of processing (key objective: transparency).	analysis for all data flows. The certification scheme must at least require the certification body to check the technical and organisational measures to ensure that the requirements for ensuring transparency are met. (Document check, methodological analysis).
Point (b) of Art. 5 (1) Purpose limitation	Purpose limitation, cf. Chapter 2.3 (Art. 6) The process used to select and implement technical and organisational measures must be documented in a way that ensures that processing is limited to a specific purpose (key objective: no interlinking).	Cf. Section 2.3 (Art. 6) The certification scheme must at least require the certification body to check the technical and organisational measures to ensure that the requirements for ensuring purpose limitation are met. (Document check, methodological analysis).
Point (c) of Art. 5 (1) Data minimisation	As part of the certification criteria, the controller must provide evidence to prove that processing activities are being carried out in keeping with the principle of data minimisation.	The certification scheme must stipulate at least the following:

	The criteria must provide for the evaluation of this evidence to check whether the following legal requirements are met: Compliance with point (c) of Art. 5 (1): a) there must be criteria for assessing whether the processing of personal data is adequate, relevant and limited to what is necessary; and b) the processes used to ensure that personal data is always processed in a manner that is adequate and relevant to the purpose and limited to what is necessary must be documented (key objective: data minimisation).	The certification body will examine documents and conduct legal analysis for the documentation described in column 2. The certification scheme must at least require the certification body to conduct on-site inspections to check the following aspects of processing activities: specific databases and comparison with the criteria specified in column 2 a); this may be limited to a random sample. The certification scheme must require the certification body to check the technical and organisational measures to ensure that the requirements for ensuring data minimisation are met. (Document check, methodological analysis for column 2 b).
Point (d) of Art. 5 (1) Accuracy	As part of the certification criteria, the controller must provide evidence to prove that processing activities are	

	being carried out in keeping with the principle of accuracy. The criteria must provide for the evaluation of this evidence to check whether the following legal requirements are met: Compliance with point (d) of Art. 5 (1): a) there must be criteria for determining the factual accuracy of personal data; b) the processes used to determine the factual accuracy of personal data must be documented; and c) the processes used to select and implement suitable technical and organisational measures to ensure that any inaccurate data is immediately deleted or rectified must be documented (key objective: integrity in conjunction with Art. 16).	The certification scheme must stipulate at least the following: The certification body will examine documents and conduct legal analysis for the documentation described in column 2. The certification scheme must at least require the certification body to check the technical and organisational measures to ensure that the requirements for ensuring integrity are met. (Document check, methodological analysis).
Point (e) of Art. 5 (1)	As part of the certification criteria, the controller must	

Storage limitation	provide evidence to prove that processing activities are being carried out in keeping with the principle of storage limitation. The criteria must provide for the evaluation of this evidence to check whether the requirements of point (e) of Art. 5 (1) are met: a) there must be criteria for determining whether a data subject can be identified; b) there must be criteria for determining how long a data subject has to remain identifiable for the purposes of processing; c) there must be criteria for determining a suitable form in which personal data can be kept to ensure that a data subject can only be identified for as long as necessary for the purposes for which their personal data is processed; and d) there must be documentation of the process used to	The certification scheme must stipulate at least the following: The certification body will examine documents and conduct legal analysis for the documentation described in column 2. d) The certification scheme must at least require the

	select and implement suitable technical and organisational measures to ensure that personal data is kept in a form that allows data subjects to be identified for no longer than necessary for the purposes for which their personal data is processed (key objective: data minimisation).	certification body to check the technical and organisational measures to ensure that the requirements for ensuring data minimisation are met (document check, methodological analysis).
Point (f) of Art. 5 (1) Integrity and confidentiality	Data processing based on the principle of integrity. Data processing based on the principle of confidentiality. In particular, the requirements specified in Art. 24, 25 (cf. Section 2.4) and 32 (cf. Section 2.7).	In particular, the requirements specified in Art. 24, 25 (cf. Section 2.4) and 32 (cf. Section 2.7).
	The processes used to select and implement technical and organisational measures in a way that ensures the integrity and confidentiality of processing must be documented (key objective: integrity and confidentiality).	The certification scheme must at least require the certification body to check the technical and organisational measures to ensure that the requirements for ensuring integrity and confidentiality are met. (Document check, methodological analysis).

Art. 5 (2) Accountability	Evidence of compliance with Art. 5 (1) (see above).	

2.3 Art. 6: lawfulness of processing

The processing of personal data is only permissible if there is a specific legal basis. Art. 6 contains the most important provisions of the GDPR in terms of the lawfulness of processing.

Legal criteria	*Aspects to be covered by the certification criteria and implementation by the customers of the certification body*	*How will the certification body verify implementation?*
Art. 6 (1) (in principle) Processing is only lawful under the conditions set out in Art. 6 (1).	a) Customers must present, examine and document a legal basis for the processing of personal data involved in each separate processing operation; processing operations with the same legal basis can be presented, examined and documented together.	The certification body will examine documents and conduct legal analysis to determine whether there actually is a legal basis; this examination and analysis will be based in particular on the following documents: privacy policy, information to be provided under Art. 13 and 14, records of processing activities pursuant to Art. 30, internal notes documenting the examination and the verification of a legal basis.
	b) If customers are "controllers", as defined in Art. 4 No. 7:	The certification body will examine documents and conduct legal analysis for the documentation described in

	- customers must document their instructions issued to employees for checking whether there is a legal basis before carrying out the processing subject to certification or before changing / extending it; the instructions should specify how the check is to be done (e.g. in the form of guidelines), as well as information on the checking processes used by the controller; and - customers must document structures and responsibilities for checking whether there is an adequate legal basis (e.g. with involvement of the legal or data protection department or other responsible bodies if necessary).	column 2 (e.g. based on internal guidelines, work instructions or works agreements in place at the controller's company).
	c) Customers must implement and document processes and measures that lead to data being deleted once processing is no longer lawful. In particular, the requirements specified in point (e) of Art. 5 (1) must also be observed.	The certification body will examine the relevant documents and conduct at least a random inspection of the processes and measures described in column 2. It will also examine the requirements specified in point (e) of Art. 5 (1).

Point (a) of Art. 6 (1) Data subjects have given their consent for their personal data to be processed for one or more specific purposes.	a) Customers must check and document whether consent has effectively been given for - each processing operation; - each set of personal data; and - one or more specified purposes.	The certification body will examine the relevant documents and conduct legal analysis for the documentation (described in column 2 a) to examine consent (particularly whether it is complete, given voluntarily, up-to-date, consistent with the relevant purpose and comprehensible).
	b) The examination must focus on whether all the relevant requirements for consent have been met, particularly those specified in Art. 7 and 8, including: - Have arrangements been made to ensure that comprehensive and sufficiently clear declarations are obtained from data subjects (and/or their representatives) for all processing operations and purposes before the processing begins?	The certification body will inspect the processes and measures used to obtain consent. If any processing operations are already taking place, the certification body will examine random samples of the consent that has been given.
	- Is each data subject capable of giving consent and has the consent of their authorised representatives been obtained where necessary?	The certification body will examine the relevant documents, conduct legal analysis and inspect (1) the processes used to determine whether a data subject is capable of giving consent, in particular age verification, and (2) the steps taken if a data subject is deemed incapable of giving consent.

	- Has consent been given voluntarily (in particular taking into account superior / subordinate relationships and the ban on interlinking processing)? - Are data subjects able to withdraw their consent at any time and does this lead to the termination of processing (or can processing be continued on another legal basis)? - Are data subjects and, if applicable, their authorised representatives, sufficiently informed before giving their consent in keeping with the principle of transparency?	The certification body will examine the relevant documents, conduct legal analysis to examine the process by which data subjects can withdraw their consent, and conduct an inspection. This also includes examining and inspecting the processes that lead to data being deleted after data subjects have withdrawn their consent.
Point (b) of Art. 6 (1) Processing is necessary for the performance of a contract to which a data subject is party or	Customers must check and document whether the following requirements are met: a) A contract has been concluded with a data subject or	The certification body will check the relevant documents

in order to take steps at the request of the data subject prior to entering into a contract.		steps have been taken at the request of a data subject prior to entering into a contract. In particular, any such (contractual) relationships must be distinguished from cases in which data subjects acknowledge offers in a non-binding manner (e.g. by visiting a website); they should also be distinguished from post-contractual relationships and clearly ineffective contracts.	and conduct legal analysis to determine whether a contract has been concluded with a data subject or whether steps have been taken prior to entering into a contract (in particular based on contract templates, descriptions or notes on pre-contractual relationships).
	b)	All processed data is required to perform a contract or to take steps prior to entering into a contract.	The certification body will conduct legal and technical analysis to determine whether the data processing is actually necessary, as described in column 2 b) and c). It will also examine the requirements specified in point (c) of Art. 5 (1).
	c)	All processing operations are required to perform a contract or to take steps prior to entering into a contract.	See b).
	d)	Customers must document their structures and processes that lead to a contractual or pre-contractual relationship.	The certification body will examine the relevant documents for the structures and processes described in col-

		umn 2 d) and inspect the processes leading to a contractual or pre-contractual relationship. If any processing operations are already taking place, the certification body will conduct at least a random inspection of contracts or steps taken prior to entering into the contracts.
	For b) to d), it is particularly important that the requirements specified in point (c) of Art. 5 (1) are also observed.	
Point (c) of Art. 6 (1) Processing is necessary for compliance with a legal obligation to which the controller is subject.	Customers must check and document whether the following requirements are met: a) The controller is subject to a legal obligation; if so, the controller must describe the conditions under which the obligation arises, the scope of the obligation and the circumstances that may cause the obligation to expire. If the wording is not clear, it may be useful to provide documents to aid interpretation (e.g. commentaries, legal opinions, case law). b) All processed data is required to comply with the legal obligation in question.	The certification body will analyse the documentation described in column 2 a) to determine whether the controller is actually subject to a legal obligation. The certification body will conduct legal and technical

		analysis to determine whether the data processing is actually necessary for the controller to comply with a legal obligation, as described in column 2 b) and c).
	c) All processing operations are required to comply with the legal obligation in question. For b) to c), it is particularly important that the requirements specified in point (c) of Art. 5 (1) are also observed.	See b). It will also examine the requirements specified in point (c) of Art. 5 (1).
	d) The provisions referred to in Art. 6 (2) and (3) and any other special provisions must be observed.	The certification body will examine the relevant documents and conduct legal analysis to verify compliance with the regulations described in column 2 d).
Point (d) of Art. 6 (1) Processing is necessary to protect the vital interests of a data subject or another natural person.	Customers must check and document whether the following requirements are met: a) The vital interests of a data subject or another natural person are at stake. In particular, the controller is expected to detail whose and which vital interests are concerned.	The certification body will conduct legal analysis for the documentation described in column 2 to determine whether the vital interests of a natural person are at stake.

	b) All processed data is required to protect vital interests. c) All processing operations are required to protect vital interests. For b) to c), it is particularly important that the requirements specified in point (c) of Art. 5 (1) are also observed.	The certification body will conduct legal and technical analysis to determine whether the data processing is actually necessary to protect vital interests, as described in column 2 b) and c). It will also examine the requirements specified in point (c) of Art. 5 (1). See b).
Point (e) of Art. 6 (1) Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.	Customers must check and document whether the following requirements are met: a) The controller has been instructed to perform a task in the public interest or in the exercise of official authority. The controller is expected to describe the conditions under which the task is to be performed,	The certification body will conduct legal analysis for the documentation described in column 2 to determine whether the controller has been assigned a task pursuant to point (e) of Art. 6 (1).

	the scope of the task, and the circumstances that may cause these requirements to expire.	
	b) All processed data is required to perform the task in question.	The certification body will conduct legal and technical analysis to determine whether the data processing is actually necessary for the performance of the task in question, as described in column 2 b) and c). It will also examine the requirements specified in point (c) of Art. 5 (1).
	c) All processing operations are required to perform the task in question. For b) to c), it is particularly important that the requirements specified in point (c) of Art. 5 (1) are also observed.	See b).
	d) In particular, the provisions referred to in Art. 6 (2) and (3) and any other special provisions (e.g. depending on the scope of application) must be observed.	The certification body will examine the relevant documents and conduct legal analysis to verify compliance with the regulations described in column 2 d).

Point (f) of Art. 6 (1) Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.	a) Customers must present, examine and document the extent to which - processing is necessary for the purposes of the legitimate interests pursued by the controller or a third party; - the processing is not carried out by public authorities in the performance of their duties; and - the controller's legitimate interests are not overridden by the interests or fundamental rights and freedoms of a data subject, in particular where the data subject is a child.	The certification body will examine the relevant documents and conduct legal analysis for the documentation described in column 2 to determine whether the requirements specified in point (f) of Art. 6 (1) have actually been met. In particular, the certification body must check whether overriding interests have been identified and taken into account correctly in each case. Random data sets should also be examined to see whether children are or could be affected and whether this has been taken into account accordingly when identifying overriding interests.
	b) Customers must document the process used to identify overriding interests, including specific criteria and corresponding results. In particular, the process must include a presentation of which and whose specific interests are compared and contrasted, as well as the personal data and processing operations concerned in each case.	The certification body will examine and inspect the process used to identify overriding interests.

		The certification body will conduct at least a random validation of data flows between systems and services (to provide a (specified) service).
Art. 6 (4) If the purpose of processing subsequently changes and there is no legal basis for the new purpose or data subjects have not given their (effective) consent to the new purpose, special requirements apply pursuant to Art. 6 (4).	a) Customers must document the change of purpose (from which purpose to which). b) Customers must document their justification of the change of purpose and their legal examination as to whether the change of purpose is permissible. c) Customers must have documented measures in place to allow imminent changes of purpose to be identified and changed purposes to be checked in good time, so that further precautions can be taken where necessary (e.g. requesting further consent from data subjects).	The certification body will examine the documentation described in column 2 to check whether the purpose of processing has actually changed; The certification body will examine the relevant documents and conduct legal analysis for the documentation described in column 2 to check whether the change of purpose is actually permissible; The certification body will check documents and examine the documentation described in column 2 to verify whether measures are taken to identify changes of purpose and whether the necessary precautions are subsequently taken; it will also conduct at least a random inspection of those measures and precautions.

2.4 Art. 25: data protection by design and by default

Legal criteria	*Aspects to be covered by the certification criteria and implementation by the customers of the certification body*	*How will the certification body verify implementation?*
Art. 25 (1) Data protection by design	A data protection risk assessment (see "data protection risk assessment") must be conducted and documented for processing operations.	The certification body will examine the relevant risk assessment documents.
	The state of the art must be monitored and taken into account when establishing the means of processing. The means of processing must be continuously adapted in line with the state of the art. (Other considerations include implementation costs and the nature, scope, context and purposes of processing, the severity of the risks to the rights and freedoms of data subjects and how likely these risks could manifest).	The certification body will question employees to find out which measures are taken to monitor the state of the art and whether suggestions for updating the means of processing are appropriately taken into account (see additional specifications on the "time of processing"). The certification body will examine job descriptions and work instructions.
	There must be a description of all technical and organisational measures implemented to ensure compliance	The certification body will examine the relevant documents summarising the measures taken; it will

	with the data protection principles and to integrate the necessary safeguards - to meet the requirements of the GDPR; and - to protect the rights of data subjects.	validate the effectiveness of the technical and organisational measures intended to reduce the data protection risk.
Art. 25 (1) When determining of means for processing, the controller takes appropriate technical and organisational measures that are designed to implement data protection principles in an effective manner and to integrate the necessary safeguards into the processing to meet the requirements of the GDPR and to protect the rights of data subjects.	There must be processes in place to ensure compliance with data protection principles at the time the means of processing are determined.	The certification body will examine the relevant process documentation. The certification body will examine the relevant documents for example tenders and acceptance criteria for means of processing. The certification body will question employees to find out about decision-making processes in the system design phase.
	The determination of appropriate technical and/or organisational measures – and the associated decisions – must be documented and justified, cf. point (f) of Art. 5 (1) in conjunction with Art. 5 (2).	The certification body will examine the relevant documents to examine whether the factors described in Art. 25 (1) are appropriately taken into account in decision-making processes.

Art. 25 (1) At the time of processing, the controller implements appropriate technical and organisational measures that are designed to implement data protection principles in an effective manner and to integrate the necessary safeguards into the processing to meet the requirements of the GDPR and to protect the rights of data subjects.	All processing activities must be recorded; appropriate technical and organisational measures must be implemented based on the risks identified in the risk assessment, cf. Art. 32 (1). The determination of appropriate technical and/or organisational measures – and the associated decisions – must be documented and justified, cf. point (f) of Art. 5 (1) in conjunction with Art. 5 (2).	The certification body will check whether all processing activities are fully mapped out by records of processing activities (Art. 30), data flow diagrams, system overviews, process descriptions and the like. The certification body will validate the effectiveness of the technical and organisational measures implemented to reduce the data protection risk. The certification body will examine the relevant documents to examine whether the factors described in Art. 25 (1) are appropriately taken into account in decision-making processes.
Art. 25 (2) Data protection by default	All settings of the means of processing must be checked to ensure that they limit processing to what is necessary and are set to this limited setting by default.	The certification body will check the default settings of the means of processing; all unnecessary processing operations must be disabled. The certification body will check whether the non-restrictive default settings are necessary based on the purposes of processing.

	The necessary volume of data collected, the scope of processing, the amount of time for which data is stored and its accessibility must be documented and justified, cf. point (c) and (e) of Art. 5 (1) in conjunction with Art. 5 (2).	The certification body will examine the documented restrictions to determine whether the reasons listed stand in the way of further data minimisation.
	Customers must ensure that personal data is not made accessible to an indefinite number of natural persons by default.	The certification body will establish any processing operations that make personal data accessible to an indefinite number of natural persons and will then examine the relevant documents for the specified default settings.

2.5 Art. 26:

2.5.1 Introductory remarks

The starting point for determining whether there are joint controllers is the subject of certification described in Section 2.1.1 above. If the processing activities described there are likely to have joint controllers based on the criteria below, the application for certification (ISO 17065, 7.2) must be filed by all joint controllers. All joint controllers must have a legally enforceable agreement with the conformity assessment body.

2.5.2 Tabular overview: requirements, forms of implementation and examination methods

Legal criteria	*Aspects to be covered by the certification criteria and implementation by the customers of the certification body*	*How will the certification body verify implementation?*
First sentence of Art. 26 (1) Joint determination of the purposes and means of processing	With regard to controllership, see requirement in point 6 of Section 2.1.2 above. Here are the criteria for a two-step check based on the EDPB Guidelines 07/2020[12]:	The certification body will conduct legal analysis to check whether any legal regulations apply to the tasks performed by each controller.
	Step 1: Those concerned have verified their status as "controllers", as defined in Art. 4 No. 7, in relation to all or individual processing steps. The following criteria must be examined in relation to the specific subject of certification:	The certification body will examine the documentation of decision-making processes regarding the purposes and (essential) means of processing.
	a) legal[13] or actual (co-)determination of purposes (why	The certification body will check the relevant contract

12 Guidelines 07/2020 on the concepts of controller and processor in the GDPR, Version 2.0.

13 If a (joint) controller is nominated by law, this may either result from the provisions of Art. 4 No. 7 or implicitly from the legal assignment of a task to a controller in accordance

	data is processed)[14]; and	and other documents from those involved (e.g. privacy policy), as well as the records of processing operations.
	b) legal or actual (co-)determination of the means of processing (how data is processed), distinction between essential and non-essential means (cf. EDPB Guidelines 07/2020, para. 39 f.) for the subject of certification, in particular the power to decide "which data" and "how long".	The certification body will conduct an audit, including random technical checks to determine the extent to which the main findings of the document check correspond to the actual processing.
	Step 2: The means and purposes of processing are jointly determined in relation to all or individual processing steps. (Distinction from cases in which there are two or more independent controllers). Joint participation can also take the form of "converging	

with the EDPB Guidelines 07/2020, para. 24.

14 Usage data / metadata must also be taken into account.

	decisions" (cf. EDPB Guidelines 07/2020, para. 54 f.). Joint participation refers to a controller's authority to determine a) the purposes; and b) the (essential) means of processing[15].	
Second and third sentence of Art. 26 (1) ; first and second sentence of Art. 26 (2)	Customers must examine and document the extent to which the tasks to be performed by each controller are governed by law. If the tasks to be performed by each controller are not governed by law, they must establish a transparent contractual arrangement according to the second sentence of Art. 26 (1). The following points are particularly important: - full coverage of obligations under the second sentence of Art. 26 (1); - measures to comply with data protection principles	The certification body will examine the documentation based on the relevant legal situation and practice. The certification body will examine the arrangement to be made between the joint controllers. It will also examine records of their processing activities. Furthermore, the certification body will examine process descriptions, verify the implementation and effectiveness of those processes (particularly for the exercise of data subjects' rights) and audit the processes (e.g. by

15 For more information, please refer to the EDPB Guidelines 07/2020, para. 53.

	and honour the rights of data subjects, and a definition of each party's obligations; and - clarity, comprehensibility and transparency of the agreement (in particular with regard to the delimitation of roles and responsibilities). - If the joint controllers make use of the option of designating a point of contact for data subjects in accordance with the third sentence of Art. 26 (1), there must be a specific process description for the functions to be assumed by the point of contact, and the contractual arrangements must duly reflect the respective roles and relationships of the joint controllers vis-à-vis data subjects, cf. first sentence of Art. 26 (2).	simulating input from data subjects). The certification body will examine process descriptions relating to the second sentence of Art. 26 (1) and, if applicable, the third sentence of Art. 26 (1) (point of contact). It will also verify the implementation and effectiveness of those processes (e.g. by simulating internal and external incidents). The certification body will conduct an audit to examine the arrangements for the implementation of technical and organisational measures with regard to the dependencies, overlaps and roles of the joint controllers, including their obligations to provide (mutual) support. The certification body will examine the arrangements for cross-departmental risk analysis[16], threshold value

16 Technical and organisational measures always imply a risk analysis (Art. 24: "severity of risks"). In the case of Art. 26, risk analysis should be carried out jointly by the controllers; if the risk analysis is carried out separately, certain risks might not be identified by any of the joint controllers or each controller might think that the other parties are responsible for risks in that particular area.

		checks pursuant to Art. 35 (1) and, if relevant, the fulfilment of obligations under Art. 35 and 36. The certification body will examine the arrangements for the inclusion of additional contractual partners and the use of processors, where applicable.
	The joint controllers must make[17] the essence of their contractual arrangement[18] available to data subjects in accordance with the second sentence of Art. 26 (2).	The certification body will examine the information provided to data subjects (in particular with regard to its clarity, comprehensibility, accessibility and the transparency of role definitions).
Art. 26 (3)	The following examination criteria must be met: - each controller must have roles and processes in place to enable data subjects to exercise their rights; - there must be arrangements and processes in place to prepare for the eventuality that a certain controller is unable to honour the rights of a data subject	The certification body will examine the relevant contractual arrangements. The certification body will examine the relevant process descriptions and conduct an audit for those processes (e.g. by simulating input from data subjects).

17 Cf. EDPB Guidelines 07/2020, para. 181.

18 Cf. EDPB Guidelines 07/2020, para. 180.

	alone; - there must be processes in place to prepare for the eventuality that the other controller fails to honour the data subject's right despite being able to; and	
	- there must be processes in place to prepare for the eventuality that data subjects exercise their rights against more than one controller, as specified in Art. 26 (3), and data subjects must be made aware of this option.	The certification body will examine the information provided to data subjects.

2.6 Art. 28: processor

2.6.1 Introductory remarks

There are two different perspectives for the examination criteria devised for this point:

1. A processor's services are to be certified.
2. The controller's use of a processor is to be included in the certification.

Art. 28 contains the most important provisions of the GDPR in relation to processors. In accordance with Art. 28 (1), controllers may only use processors who can provide sufficient guarantees to implement appropriate technical and organisational measures in a manner that ensures an adequate level of data protection. Evidence of such guarantees can also be provided in the form of an approved code of conduct for the processor pursuant to Art. 40 or certifications pursuant to Art. 42.

2.6.2 Tabular overview: requirements, forms of implementation and examination methods

Legal criteria	*Aspects to be covered by the certification criteria and implementation by the customers of the certification body*	*How will the certification body verify implementation?*
The processor must be used in a specific and legally permissible manner.	Alternative 1 (certification of a processor):	See examination methods for the first sentence of Art. 26 (1).

	Customers must check and document whether a processor is involved or whether there are joint controllers pursuant to Art. 26. Please refer to the criteria set out for the first sentence of Art. 26 (1) [step 1].	
	Alternative 2 (use of a processor by a controller to be certified): The controller must have all the relevant information from the processor about the services they provide, in order to assess whether the processing is permissible. Customers must check and document whether a processor is involved or whether there are joint controllers pursuant to Art. 26. Please refer to the criteria set out for the first sentence of Art. 26 (1) [step 1]. Depending on the field in which the processor operates, special provisions on permissibility and certain re-	See examination methods for the first sentence of Art. 26 (1). In addition, the certification body will examine the quote provided by the processor for the relevant services or a description of the services and other documents.

	strictions must be observed (e.g. with regard to the processing of personnel files or data related to health).	
Art. 28 (1) Sufficient guarantees to implement appropriate technical and organisational measures.	The processor must have approved codes of conduct (Art. 40); or certification (Art. 42); or other guarantees (e.g. audits, documentation, monitoring options for controllers).	The certification body will usually apply all of the following examination methods: - examination of permits / certifications; - on-site inspection of technical and organisational measures; and - document check.
Art. 28 (3) A data processing agreement has been drawn up (in writing / electronic format).	The data processing agreement must contain sufficient provisions on the following minimum content specified in Art. 28 (3): - the subject matter and duration of processing pursuant to the first sentence of Art. 28 (3); - the nature and purpose of processing pursuant to the first sentence of Art. 28 (3); - the type of personal data involved pursuant to the first sentence of Art. 28 (3);	- The certification body will conduct legal analysis to verify whether the data processing agreement is complete and legally permissible. - It will also conduct a detailed legal examination to establish how the agreement is specifically implemented and whether there are sufficient technical and organisational measures in place (see comments on Art. 32).

	- the categories of data subjects involved pursuant to the first sentence of Art. 28 (3); - documented instructions for the processor pursuant to point (a) of Art. 28 (3); - commitment to confidentiality or secrecy pursuant to point (b) of Art. 28 (3); - implementation of adequate technical and organisational measures by the processor pursuant to point (c) of Art. 28 (3); - provision on the involvement of subcontractors pursuant to point (d) of Art. 28 (3); - assistance to be provided by the processor to help the controller fulfil their obligation to respond to requests from data subjects wishing to exercise their rights – does the processor ensure the appropriate technical and organisational measures for this purpose pursuant to point (e) of Art. 28 (3)? - provisions on the assistance owed to the controller to ensure compliance with the obligations specified in Art. 32 to 36 pursuant to point (f) of Art. 28 (3); - provisions on the deletion / return of data once the	

	agreed services have been provided pursuant to point (g) of Art. 28 (3); - provision of all information necessary to demonstrate compliance with the relevant obligations pursuant to point (h) of Art. 28 (3) and Art. 5 (2); - contribution to audits (including inspections) pursuant to point (h) of Art. 28 (3) or the use of a process that allows the controller to monitor the processor's compliance with the specifications on an ongoing basis; and - agreement on the processor's obligation to provide information if they believe that an instruction is unlawful pursuant to point (h) of Art. 28 (3).	
Art. 28 (4) Contract with additional processor / subcontractor (in writing / electronic format).	A contract must be drafted in accordance with Art. 28 (4) in conjunction with Art. 28 (3). There must be sufficient guarantees to implement appropriate technical and organisational measures.	- The certification body will conduct legal analysis to verify whether the data processing agreement is complete and permissible. - It will also examine the relevant documentation for the technical / organisational measures. - Furthermore, it will conduct an on-site inspection of the technical / organisational measures.

Art. 28 (2) Subprocessors are only engaged with the controller's written authorisation.	There must be a process in place to ensure that the processor informs the controller and obtains the controller's authorisation before engaging another processor. Any such authorisations must be documented.	- If any sub processors have already been engaged, the certification body will check whether the relevant information / authorisations were given at the time. - The certification body will also examine the relevant documents. - In addition, it will audit the relevant processes.
Art. 44 There are appropriate safeguards for data transfers to a third country.	The relevant safeguards must be documented. (cf. Art. 5).	- The certification body will examine the relevant documentation (cf. Art. 5).
Art. 33 (2) Data breaches are reported as soon as they become known to the processor.	The relevant processes must be established. The processes must be documented.	- The certification body will audit the processes. - It will also look through the relevant documentation.

Art. 32 (4) and Art. 29 The controller and processor ensure that data is only processed according to their instructions.	The relevant processes must be established, and instructions must be documented.	- The certification body will examine the relevant documentation. - It will also describe the processes.

2.7 Art. 30: records of processing activities

2.7.1 Introductory remarks

The criteria specified in Art. 30 are mainly examined based on whether the records of processing activities are complete. The records also contain a number of (partial) results from other processes that have to be considered under separate examination criteria. For example, the purposes of processing [point (b) of Art. 30 (1)] or technical and organisational measures [point (g) of Art. 30 (1)] cannot only be determined when maintaining this record; this must have been done beforehand.

When examining the records, special attention is paid to the processes within the controller's organisation that help to maintain the records as a "living" document, constantly and truthfully reflecting the current status of processing activities.

The special circumstances surrounding small businesses and micro-enterprises are also taken into account, as the requirement to keep records of processing activities may not apply and is therefore checked in advance (cf. Recital 13).

2.7.2 Tabular overview: requirements, forms of implementation and examination methods

Legal criteria	*Aspects to be covered by the certification criteria and implementation by the customers of the certification body*	*How will the certification body verify implementation?*
Art. 30 (5) Records of processing activities	The following requirements must be checked:	The certification body will determine the number of employees by conducting a survey or checking the

are necessary.	- number of employees and, if applicable, either - a risk to the freedoms and rights of natural persons; - not just occasional processing; or - processing of special categories of data pursuant to Art. 9 (1) or Art. 10.	relevant documents. The certification body will examine the legal, technical and organisational aspects of an assessment of processing activities to be carried out by the controller with regard to - the risk of processing; - the frequency of processing; and - the categories of personal data involved.
Art. 30 (1) Records are complete.	The records of processing activities must contain all the information specified in points (a) to (g) of Art. 30 (1). There must be processes in place for updating the records in the following cases: - if new processing activities are introduced; - if certain processing activities are no longer carried out; or - if any of the information to be provided under points	The certification body will examine the documents related to the records of processing activities. The certification body will examine written process descriptions and audit the relevant processes.

	(a) to (g) of Art. 30 (1) changes for processing activities that are already listed in the records. There must be processes in place to facilitate cooperation in this area between - the departments involved in the processing activities; - the controller's representative; and - the data protection officer, if applicable. The relevant responsibilities must have been clarified within the organisation.	The certification body will examine the following documents: - written process descriptions; - organisation charts; - business / task allocation plan; and - if necessary, questions posed to the controller.
Art. 30 (2) Records contain information for processors.	The records of processing activities must contain all the information specified in points (a) to (d) of Art. 30 (2). There must be processes in place for updating the records in the following cases:	The certification body will examine the documents related to the records of processing activities. The certification body will examine written process descriptions and audit the relevant processes.

	- if new categories of processing activities are introduced for processors; - if categories of processing activities assigned to processors are no longer carried out; - if any of the information to be provided under points (a) to (d) of Art. 30 (2) changes for categories of processing activities that are already listed in the records; - if processors start working for additional controllers; - if processors stop working for certain controllers; or - if any of the information specified in points (a) to (d) of Art. 30 (2) changes for existing controllers.	
	There must be processes in place to facilitate cooperation in this area between - the departments involved in the processing activities; - the representative of the controller acting as a processor;	The certification body will examine the following documents: - written process descriptions; - organisation charts; - business / task allocation plan; and - if necessary, questions posed to the controller.

	- if applicable,data protection officer of the controller acting as a processor; and - the controllers for whom processing is carried out. The relevant responsibilities must have been clarified within the organisation.	
Art. 30 (3) The records are kept in writing.	The records must be kept in writing. The storage locations must be known to the persons involved.	The certification body will examine the relevant documents.
Art. 30 (4) The records are made available to the supervisory authority upon request.	There must be processes in place to ensure that the following is done in a timely manner when a corresponding request is made by a supervisory authority: - the request is received; - the request is processed; and - a response is returned (providing the records of processing activities).	The certification body will examine the following documents: - written process descriptions; process audits; - organisation charts; - business / task allocation plan; and - if necessary, questions posed to the controller.

	The relevant responsibilities must have been clarified within the organisation.	

2.8 Art. 32: security of processing

2.8.1 Introductory remarks

Art. 32 stipulates that appropriate technical and organisational measures have to be implemented to protect personal data. In order to check whether this requirement has been met, the relevant measures and processes must be documented and the documentation must be available for review. The measures and processes must also be technically or physically accessible so that appropriate examinations can be performed to evaluate their functionality. When defining the technical and organisational measures, the level of security to be ensured is the central criterion for determining their appropriateness. The level of security must also be documented and continuously reviewed.

Certain requirements resulting from Art. 32 may be fully or partially met by suitable (IT security) certifications (e.g. ISMS according to ISO 27001, BSI Basic Protection) that also cover data protection aspects, cf. DSK supplementary paper.[19] If the relevant data protection requirements are met by one or more (IT security) certification(s), the extent to which the requirements have been completely and correctly satisfied must be checked and documented. A data protection requirement will be deemed to have been completely and correctly satisfied if it can be clearly matched to one or more requirements of an (IT security) certification and if the examination methods required for the (IT security) certification also correspond to the relevant data protection examination methods.

2.8.2 Tabular overview: requirements, forms of implementation and examination methods

Legal criteria	*Aspects to be covered by the certification criteria and implementation by the customers of the certification body*	*How will the certification body verify implementation?*
Art. 32 (1) and (2) The level of security is deter-	a) There must be a complete and detailed description of all processed data or categories of data.	The certification body will examine the relevant documents and question the controllers.

19 However, such certifications will only be recognised if they are issued by accredited certification bodies under the conditions listed in Section 7.4 of the DSK supplementary paper ("Accreditation requirements pursuant to Art. 43 in conjunction with DIN EN ISO/IEC 17065", available (in German) here: https://www.datenschutzkonferenz-online.de/media/ah/20201008_din17065_Ergaenzungen_deutsch_nach_opinion.pdf).

mined for all necessary processing activities.	b) A level of security must be established that is appropriate to the risk involved in processing (particularly taking into account Recitals 38 and 75).	The certification body will check whether the risk assessment method is GDPR-compliant. The certification body will examine the following document(s): risk assessment check (e.g. according to SDM D3). The certification body will examine the relevant documents and conduct legal analysis to check whether the resulting level of security satisfies the security requirements of the categories of data to be processed.
	c) Account must be taken of the risks presented by processing, in particular from the destruction, loss, alteration or disclosure of personal data or unauthorised access to personal data pursuant to Art. 32	The certification body will take the same approach as for b) but with a focus on the destruction, loss, alteration or disclosure of data or unauthorised access to data.

	(2).	
Point (a) and (b) of Art. 32 (1) Measures to protect personal data.	a) Measures must be taken to ensure the confidentiality of personal data (in particular pseudonymisation and encryption).	The certification body will examine the following document(s): specifications and security concepts, in particular with regard to the state of the art and the consistency of each measure. The certification body will examine the following document(s): comparison of the level of security ensured by the measures with the security requirements specified in Art. 32. The certification body will conduct on-site inspections, validation audits and interviews to appropriately verify whether the measures are being implemented. (The verification process will be deemed appropriate if one can assume that all measures are being implemented according to the concept / specifications. This

		may include audits of technology and processes, e.g. penetration / stress tests, and audits according to common technical standards, e.g. BSI Basic Protection or ISO 27001).
	b) Measures must be taken to ensure the achievement of other objectives under the GDPR and/or SDM C1 for personal data (depending on the level of security needed to mitigate the risk).	See a).
	c) Customers must document their processes used to select and implement suitable technical and organisational measures in a way that ensures the confidentiality, integrity and availability of processing (key objective: availability, integrity and confidentiality, cf. Art. 5).	Document check, methodological analysis: The certification scheme must at least require the certification body to check the technical and organisational measures to ensure that the requirements for ensuring availability, integrity and confidentiality are met.
Point (b) of Art. 32 (1) Measures to protect systems and services on an ongoing basis.	a) Measures must be taken to ensure the achievement of other objectives under the GDPR and/or SDM C1 to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services.	The certification body will examine the following document(s): specifications and security concepts, in particular with regard to the state of the art and the consistency of each measure (authorisation concept, identity management,

		authentication, authorisation, auditing and logging concept). The level of security ensured by the measures must correspond to the security requirements for the overall system (e.g. according to IT security concept). The certification body will verify this by comparing the two factors. The certification body will conduct on-site inspections, validation audits and interviews to appropriately verify whether the measures are being implemented (see above).
	b) The measures specified in a) must be ensured on an ongoing basis.	The certification body will examine the relevant documents and conduct interviews to check the business continuity concept, e.g. according to BSI 200-4 or ITIL (in particular checking whether the relevant systems are fully covered and verifying compliance with the PDCA principle / Deming circle). The certification body will conduct on-site inspections,

		validation audits, unannounced visits and interviews to verify whether the relevant management processes have been implemented (e.g. by simulating internal and external incidents such as intentional attacks and unintentional events and/or by carrying out load tests).
Point (c) of Art. 32 (1) Measures to ensure the availability of personal data in regular operations and in the event of incidents.	a) Measures must be taken to ensure the availability of personal data in regular operations.	The certification body will examine the following document(s): specifications and the relevant concepts (e.g. review of availability levels, service level agreements), in particular with regard to the state of the art. The level of availability ensured by the measures must correspond to the availability requirements for the processed personal data; this must be appropriate to the risk involved, as determined in accordance with Art. 32 (1). The certification body will verify this by comparing the two factors.

	b) Availability must be ensured in the event of physical or technical incidents.	The certification body will conduct on-site inspections, validation audits and interviews to appropriately verify whether the measures are being implemented (e.g. according to ITIL Availability Management, KRITIS). The certification body will examine the following document(s): availability and disaster recovery concepts (e.g. according to ISO 2700x). The certification body will conduct on-site inspections, validation audits, unannounced visits and interviews to verify the measures and processes contained in the concepts mentioned above (e.g. by simulating internal and external incidents such as intentional attacks and unintentional events and/or by carrying out load tests) in relation to personal data.
Point (d) of Art. 32 (1)	a) A process must be in place to ensure that all relevant	The certification body will conduct validation audits for

A process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures.	systems and processes are regularly tested, assessed and evaluated to verify the effectiveness of technical and organisational measures. b) The measures established in a) must be correctly (effectively) implemented for all systems and processes.	each management system (e.g. ISMS, ITIL Service Continuity Management) and each monitoring system and process (e.g. Incident response, CERT, IDS/IPS). See a).
Art. 32 (4) Measures to ensure that any natural persons acting under the authority of controller(s) or processor(s) only process personal data when instructed to do so.	There must be arrangements in place for the processing of personal data, and these must be correct.	The certification body will examine documents and conduct legal analysis to determine whether the relevant company policies and arrangements are lawful and correct. The certification body will examine the relevant documents and conduct interviews to check whether the company policies and arrangements are consistent with each controller's organisational structure.

2.9 Art. 33 and 34: notification of a personal data breach to the supervisory authority and communication of a personal data breach to the data subject

2.9.1 Introductory remarks

Art. 33 and Art. 34 contain provisions regarding the notification of the supervisory authority and data subjects in the event of a personal data breach.

Specifically, those articles detail the necessary content and deadline of such notifications, the relevant documentation obligations and duties, as well as possible exceptions to the notification requirement.

2.9.2 Tabular overview: requirements, forms of implementation and examination methods

Legal criteria	*Aspects to be covered by the certification criteria and implementation by the customers of the certification body*	*How will the certification body verify implementation?*
Art. 33 Obligation to report personal data breaches to the supervisory authority.	There must be a process in place to regulate how personal data breaches are to be handled from an operational perspective to meet the reporting requirements. As part of this process, specific	The certification body will check whether and to what extent procedures / processes have been established to deal with data protection incidents and make everyone

	procedures and responsibilities must be defined and all those involved must be made aware of general principles related to the detection of data breaches.	involved aware of general principles related to the detection of data breaches. These checks may come in the following forms: - document check; - on-site inspection; and/or - interviews with employees.
First sentence of Art. 33 (1) Personal data breach.	Any "personal data breaches", as defined in Art. 4 No. 12, must be identified, analysed and evaluated.	See above.
First sentence of Art. 33 (1) Exemption from reporting if a personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons.	The risk must be identified, analysed and evaluated (see "data protection risk assessment").	See above.
First sentence of Art. 33 (1) Deadline ("without undue delay	Measures must be taken to meet deadlines, to identify any delays, if necessary, to justify them.	See above.

and, where feasible, no later than 72 hours"). Second sentence of Art. 33 (1) Obligation to state reasons for any delays.		
Art. 33 (2) Processor's obligation to notify the controller.	Measures must be taken to ensure that the processor notifies the controller of any personal data breaches (e.g. provision in data processing agreement).	See above (particularly including an examination of the data processing agreement).
Art. 33 (3) Content of notification.	There must be measures in place to ensure that all the relevant details of a personal data breach are reported, using notification forms provided by the supervisory authority if necessary.	See above.
Point (d) of Art. 33 (3) Measures to address the breach including, if appropriate, measures to mitigate its potentially adverse effects.	The relevant technical and organisational measures must be adopted and implemented. The focus of such measures should be on identifying, analysing and evaluating the personal data breach and the risk (see above).	See above.
Exception with regard to the	Any information that cannot be provided at the same	See above.

content of notifications: Art. 33 (4) Provision of information in phases.	time must be provided in phases pursuant to Art. 33 (4). The deadline pursuant to the first second sentence of Art. 33 (1) must still be observed if the minimum information specified in Art. 33 (3) cannot be provided at the same time within the deadline. In such cases, the necessary content / scope of the notification may be provided in phases, but the information must actually be made available in phases for the deadline to be met (initial and subsequent notifications). Measures must be taken to ensure that the deadline is met and that the necessary information is subsequently provided (in phases).	
First sentence of Art. 33 (5) Documentation requirement.	All personal data breaches must be documented, including the facts relating to the breach, its effects and the remedial action taken. The documentation must enable the supervisory authority to verify compliance with the provisions of Art. 33.	See above.

Art. 34 Obligation to communicate personal data breaches to data subjects.	There must be a procedure in place to regulate how personal data breaches are to be communicated to data subjects in such a way that the requirements are met. As part of this process, specific procedures and responsibilities must be defined.	The certification body must be able to check the procedures / processes (cf. Art. 33).
Art. 34 (1) Personal data breach likely to result in a high risk.	See above for Art. 33	
Art. 34 (1) Deadline.	See above for Art. 33	
Art. 34 (2) Content of notification.	See above for Art. 33	
Art. 34 (3) Exemption from notification requirement.	An examination must be conducted to check for any exemptions.	
Art. 34 Documentation of compliance	The documentation must enable the supervisory authority to verify compliance with the provisions of Art.	

with requirements.	34.	

2.10 Art. 35: data protection impact assessment

Legal criteria	*Aspects to be covered by the certification criteria and implementation by the customers of the certification body*	*How will the certification body verify implementation?*
Art. 35 Assessment of necessity	The controller must conduct a data protection impact assessment (DPIA) if there is likely to be a high risk when the subject of certification is used within its scope of application (the controller will usually decide whether a DPIA is necessary based on the **description of the planned processing operations** and the respective purposes of processing; it is therefore crucial that the controller creates records of processing activities in accordance with Art. 30). For this purpose, the controller must check whether at least one processing operation covered by the subject of	The certification body will examine the relevant documents and may also conduct interviews. The controller and processor must document and explain the examination results specifically related to the DPIA for the use of the subject of certification within its scope of application. Optional: A sample DPIA may be examined for the use of the subject of certification in one or more context; this will be specified by the controller or processor according to their own use of the subject of certification.

	certification is included in one of the following lists: - the special requirements listed in Art. 35 (3); - the list described in Art. 35 (4) (whitelist); or - the list described in Art. 35 (5) (blacklist). The controller must also check whether a DPIA has to be carried out for the subject of certification for any other reasons, e.g. because - the processing of personal data meets the EDPB's current criteria (e.g. WP 248); or - a DPIA is required by federal, state or special legislation.	
Art. 35 Minimum requirements	The formal requirements for conducting a DPIA are specified in the GDPR, specifically in Art. 35 and Recitals 84, 90, 91, 92 and 93. The controller will generally be free to choose an appropriate method.	The certification body will examine the relevant documents and may also conduct interviews. The controller and processor must document and explain the outlined requirements for the use of the subject of certification within its scope of application.

	The GDPR does not contain any explicit formal requirements for conducting a DPIA. However, a list of minimum contents can be found in Art. 35 (7): - a systematic description of the envisaged processing operations and the purposes of the processing, including, where applicable, the legitimate interest pursued by the controller; - an assessment of the necessity and proportionality of the processing operations in relation to the purposes; - an assessment of the risks to the rights and freedoms of data subjects referred to in Art. 35 (1); and the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to	Optional: A sample DPIA may be examined for the use of the subject of certification in one or more contexts; this will be specified by the controller or processor according to their own use of the subject of certification. Note on high residual risks: If a DPIA indicates a high risk to the rights and freedoms of natural persons despite technical and organisational measures being taken to mitigate the risk (i.e. a residual risk), the controller must consult the competent supervisory authority in accordance with Art. 36.

	demonstrate compliance with the GDPR [on an ongoing basis[20]], taking into account the rights and legitimate interests of data subjects and other persons concerned.	

2.11 Art. 44 *et seq.*: transfer of personal data to third countries

2.11.1 Introductory remarks

If the subject of certification involves the transfer of personal data to third countries or international organisations (hereinafter referred to collectively as "data transfers to third countries"), the legal requirements specified in Art. 44 to 49 must be observed to make sure that such data transfers to third countries are lawful. A certification scheme must therefore examine whether the subject of certification includes data transfers to third countries and whether such data transfers are legally permissible.[21]

This results in the following mandatory content (i.e. certification criteria) for certification schemes:

1. Are data transfers to third countries ruled out?

20 A DPIA is not a one-time process; it must be carried out again if there are changes in risk or significant changes in the process. In this respect, an iterative process of reviews and adjustments is recommended.

21 For certification as tools for transfers pursuant to point (f) of Art. 46 (2), see "Guideline on certification as tools for transfers" (add no. after EDPB plenary session).

The certification body must first examine whether data transfers to third countries can be ruled out within the scope of the subject of certification. In doing so, the certification body should bear in mind that data is often transferred to third countries for maintenance, care and support purposes. The relevance of such transfers is often overlooked, especially when the subject of certification does not revolve around maintenance, care and support services or the transfers are not usually planned but necessary in exceptional cases. For this reason, certification bodies and scheme owners must also take into account such services and the activities of any sub-processors when examining the extent to which data transfers to third countries can be ruled out; this must be specifically included in the scope of their certification scheme.

2. Two-stage check

If data transfers to third countries cannot be ruled out for the subject of certification, the certification body's customers must check and document the legal basis on which personal data is transferred to third countries (and the certification body must then examine the documentation provided). A two-stage check must then be conducted to determine and document (1) whether, notwithstanding the specific requirements for data transfers to third countries pursuant to Chapter 5 GDPR, the other provisions of the GDPR are observed with regard to the processing in question; and (2) the extent to which the specific requirements of Art. 44 to 49 are observed.

In the second stage, customers are especially expected to present, examine and document the basis on which personal data is transferred to third countries. Furthermore, specific scenarios[22] must be created for additional guidance. The scenarios should be integrated into a methodology that allows the subject of certification to be evaluated in a comprehensible, reliable and reproducible manner.

The following should be considered as a possible legal basis for data transfers to third countries:

1. an adequacy decision of the Commission pursuant to Art. 45 (1) and (3); or
2. appropriate safeguards pursuant to Art. 46 (1), if applicable in conjunction with Art. 47[23].

The publications of the data protection supervisory authorities at national and European level should be taken into account in each case, as well as developments in relation to the determination of the adequate level of security and case law (e.g. the "Schrems II" judgement of the CJEU).[24]). As a general rule, Art. 49 cannot be considered as the legal basis for recurring data transfers to a third country.[25]

22 For this purpose, the EDPB Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data should be consulted and the cases described in that document should be specified in greater detail where necessary.

23 This also includes binding corporate rules pursuant to Art. 47, standard contractual clauses adopted by the Commission, standard data protection clauses adopted by a supervisory authority, and approved codes of conduct pursuant to Art. 40.

24 Judgement of the European Court of Justice of 16 July 2020 (Case C-311/18).

25 Guidelines 2/2018 on derogations of Art. 49 under Regulation 2016/679, adopted on 25 May 2018, p. 4.

2.11.2 Examination steps

There are two possible scenarios:

1. The data is exported by the controller: The controller must comply with the requirements specified in Chapter 5 of the GDPR.
2. The data is exported by the processor: The processor must comply with the requirements specified in Chapter 5 of the GDPR. However, the controller must at least incidentally check the requirements specified in Chapter 5 of the GDPR pursuant to Art. 28 (1) and point (a) of Art. 28 (3).

Examination criteria	*Aspects to be covered by the certification criteria and implementation by the customers of the certification body*	*How will the certification body verify implementation?*
Awareness of planned data transfers	All processing activities involving the transfer of personal data to a third country must be presented and documented. The presentation must show which types of data are affected, which third countries are involved (also in transit) and which technologies are used.	The certification body will examine the relevant charts and documents, in particular those related to the controller's obligation to provide information under Art. 13 and 14. It will also examine records of processing activities pursuant to Art. 30. Furthermore, the certification body will examine the

		planned and used services and their actual data flows[26].
Examination of an appropriate transfer tool (pursuant to Art. 44)	The transfer tools selected from Art. 45 and 46 must be presented in addition to the examination that led to that selection. a) Adequacy decision issued by the European Commission for the target country If an adequacy decision has been issued, it must be regularly reviewed to ensure that it is still in place and an emergency plan must be drawn up if it is ever revoked. If there is no adequacy decision, point b) and the other points in the table must be examined. b) Transfers based on a transfer tool pursuant to points (a) to (f) of Art. 46 (2) or point (a) or (b) of Art. 46 (3),	The certification body will examine the relevant documents (incl. process descriptions).

26 E.g. third-party providers on websites, hosting providers, content delivery networks, Internet security services, geo-location services, customer relations management systems.

	each in conjunction with Art. 46 (1) (enforceable rights and effective remedies).	
Further examination in the absence of an adequacy decision Assessment of legal situation and practice in the target country.	The level of protection for personal data in the third country[27] must be compared with the level of protection within the geographical scope of the GDPR. Any facts that might cause the level of protection in the target country to be deemed lower than in the EU or the EEA, meaning that transfers are only permitted with supplementary measures, must be identified. Evidence must be provided to prove that an adequate level of protection is ensured when using the selected transfer tool for the specific subject of certification[28]. The analysis of the legal situation and practice in the target country must meet the criteria laid down in Recommendations 01/2020, and the level of protection must meet the requirements of Recommendations	The certification body will examine the relevant process descriptions and conduct a legal review of the documentation and the legal situation and practice in the third country based on the (not exhaustively listed) sources of information pursuant to Annex 3 of Recommendations 01/2020.

27 In practice, it is worth limiting the subject of certification to specific third countries, whose legal situation has to be assessed and monitored in each case.

28 Judgement of the European Court of Justice of 16 July 2020 (Case C-311/18).

	02/2020 on the European Essential Guarantees for surveillance measures.	
Selection and application of supplementary measures.	There must be processes in place to select suitable supplementary measures within the scope of the scenarios presented by the EDPB[29] based on the gaps identified with regard to the protection of personal data in the target country (incl. any transit countries and stops along the way). If supplementary measures are possible, they must be implemented in the form of the measures presented in EDPB's scenarios[30].	The certification body will examine the relevant documents and the technical and organisational measures (pseudonymisation, encryption).
Complementary measures taken by the data importer	There is a basic assumption that any supplementary measures taken by the data exporter must be appropriate (and effective) in the importer's specific circumstances. In particular, an examination must be carried out to check whether any supplementary	The certification body will examine the relevant process descriptions and documents. The data processing agreement or written instructions will be presented to the certification body.

29 Cf. Annex 2 of Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data.

30 Cf. Annex 2 of Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data.

	measures are required from the importer and whether corresponding instructions have been issued regarding additional measures to be taken by the importer. If certification pursuant to point (f) of 46 (3) is chosen as the transfer tool, the requirements for the effectiveness of the supplementary measures pursuant to "GL Certification as tools for transfer"[31] must also be met. This means that an examination must be carried out to check whether the importer's certificate matches the exporter's data and scenarios.	The certification body will check whether the instructions are implemented by the importer. The importer's certificate will be submitted to the certification body.
If applicable, formal procedures	In the cases described in Art. 46 (3), the competent supervisory authority must be involved for authorisation purposes.	The certification body will examine the relevant process descriptions and documents.
Regular monitoring and re-	There must be processes in place to ensure that the	The certification body will examine the relevant process

31 Cf. point 3.2.7 of GL: Additional safeguards concerning the exporter and Annex I to the Guidelines on certification as tools for transfers (draft as of May 2022).

evaluation	development of the legal situation and practice in the third country can be regularly evaluated in conjunction with the relevant effects on the level of protection for personal data; there must be an emergency plan in case the level of protection falls.	descriptions and documents. The certification body will inspect and verify implementation as described in the previous steps.

2.12 Rights of data subjects

The following rights of data subjects must be seen as mandatory certification criteria to be included in a certification scheme:

1. transparency and means of exercising the rights of data subjects pursuant to Art. 12;
2. obligation to provide information when collecting personal data pursuant to Art. 13 and 14;
3. right of access pursuant to Art. 15;
4. right to rectification pursuant to Art. 16;
5. right to erasure ("right to be forgotten") pursuant to Art. 17;
6. right to the restriction of processing pursuant to Art. 18;
7. obligation to notify data subjects in relation to the rectification or erasure of personal data or the restriction of processing pursuant to Art. 19;
8. right to data portability pursuant to Art. 20;
9. right to object pursuant to Art. 21; and
10. automated individual decision-making, including profiling, pursuant to Art. 22.

If any of the points listed above are not relevant for the subject of certification under consideration, reasons must be given as to why it is not necessary for the specific subject of certification.

3 Processes during the certification validity period

In order for a certification scheme to be used, the relevant criteria must first be approved by the competent independent supervisory authority. For this purpose, processes surrounding the subject of certification must be defined and implemented, and organisational measures must be taken. These processes must be embedded within data protection management to ensure that the GDPR conformity of the subject of certification is maintained for as long as the data protection certification remains valid. In other words, these processes perform a sort of dual function when it comes to data protection certification: On the one hand, they form part of the organisation's data protection management; on the other hand, from a certification perspective, they form an integral part of the subject of certification. As such, they are the subject of the data protection examination and assessment to be conducted by the certification body during the certification process and are therefore included in the certification granted, but only to the extent that they relate to the subject of certification. The organisation's entire data protection management is not certified here.

In order to ensure an adequate examination and the long-term functionality of these processes, and thus also a valid and verifiable seal statement that lasts throughout the certification validity period, clearly separate competencies and responsibilities must be defined and guaranteed in this context. For this purpose, the tasks of the certification body and the holder of a data protection seal or quality mark must be clearly distinguished from one other. They must be presented in such a way that both the competencies and responsibilities of the respective certification body and the holder of a data protection seal or quality mark are clearly evident.

The data protection processes to be certified include at least the following processes:

- administrative processes specifically related to data protection that describe the relationship between the certification body and the holder of a data protection seal or quality mark (e.g. ensuring that contact details are provided for specific points of contact on both sides, including their authorisations);

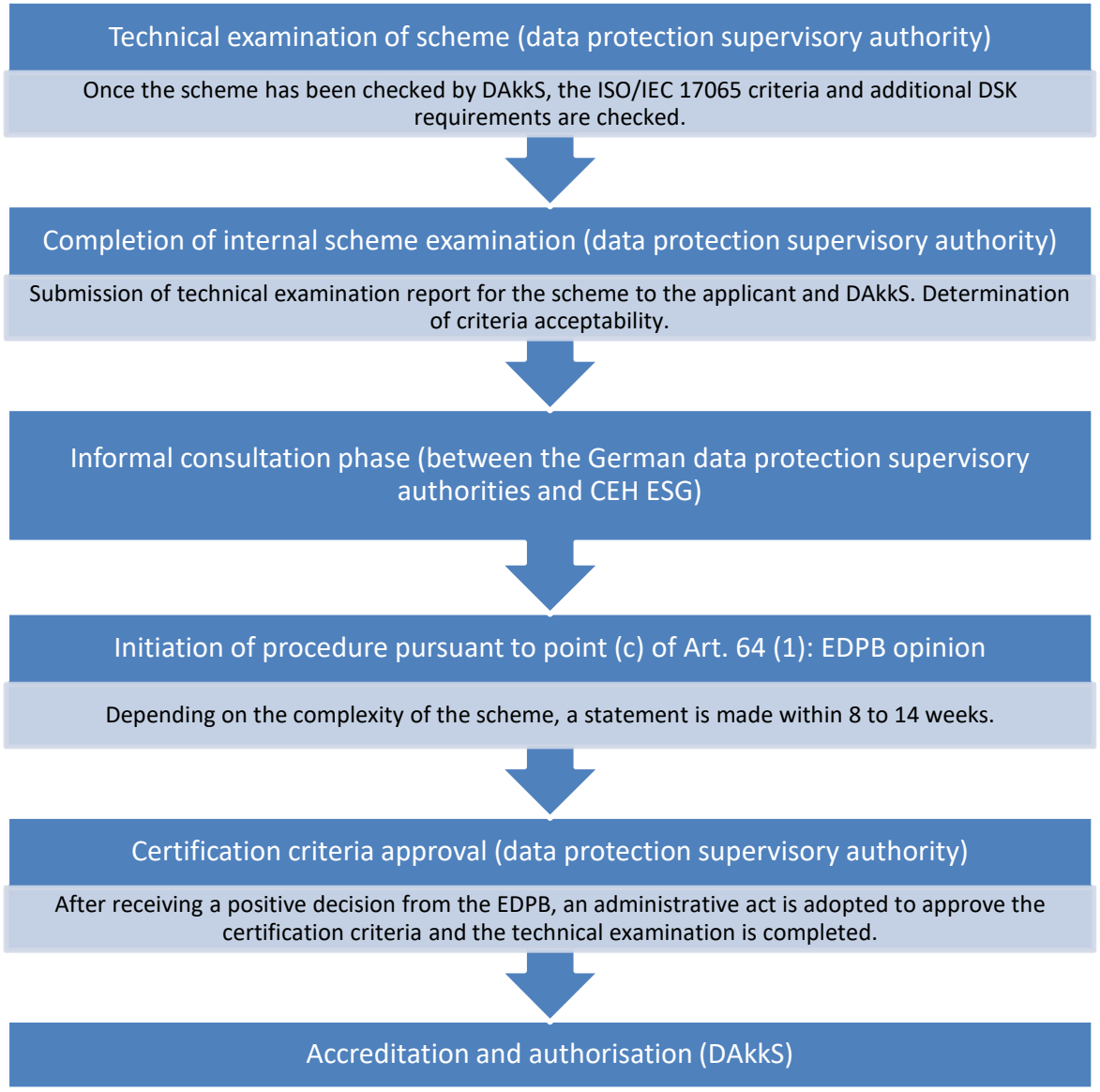
- processes for ongoing compliance with data protection principles pursuant to Art. 5;
- processes specifically related to data protection to protect the rights of data subjects pursuant to Art. 12 to Art. 22;
- processes for data protection risk assessments pursuant to Art. 30 in conjunction with Art. 35 and 36;
- processes for dealing with personal data breaches pursuant to Art. 33 and 34
  - with identification, analysis, technical evaluation and legal review of the associated risks of personal data breaches affecting the owner of a data protection seal or quality mark; and
  - with the subsequent selection and implementation of technical and organisational measures pursuant to point (d) of Art. 33 (3);
- implementation of technical and organisational measures from a process perspective, which can be controlled and monitored using IT-based processes if necessary and are to be implemented taking into account and applying Art. 25 and 32; and
- presentation of the valid, process-based transformation of data protection requirements into systems and services for which a suitable and appropriate form of technical assessment must be ensured and a (recurring) legal assessment must be guaranteed.[32]

32 Such an assessment of the processes derived from the transformation of the data protection requirements must also be presented in the certification scheme. The SDM may serve as a starting point for understanding such transformations (cf. https://www.datenschutz-mv.de/datenschutz/datenschutzmodell/).

4 Workflows for German and European data protection seals

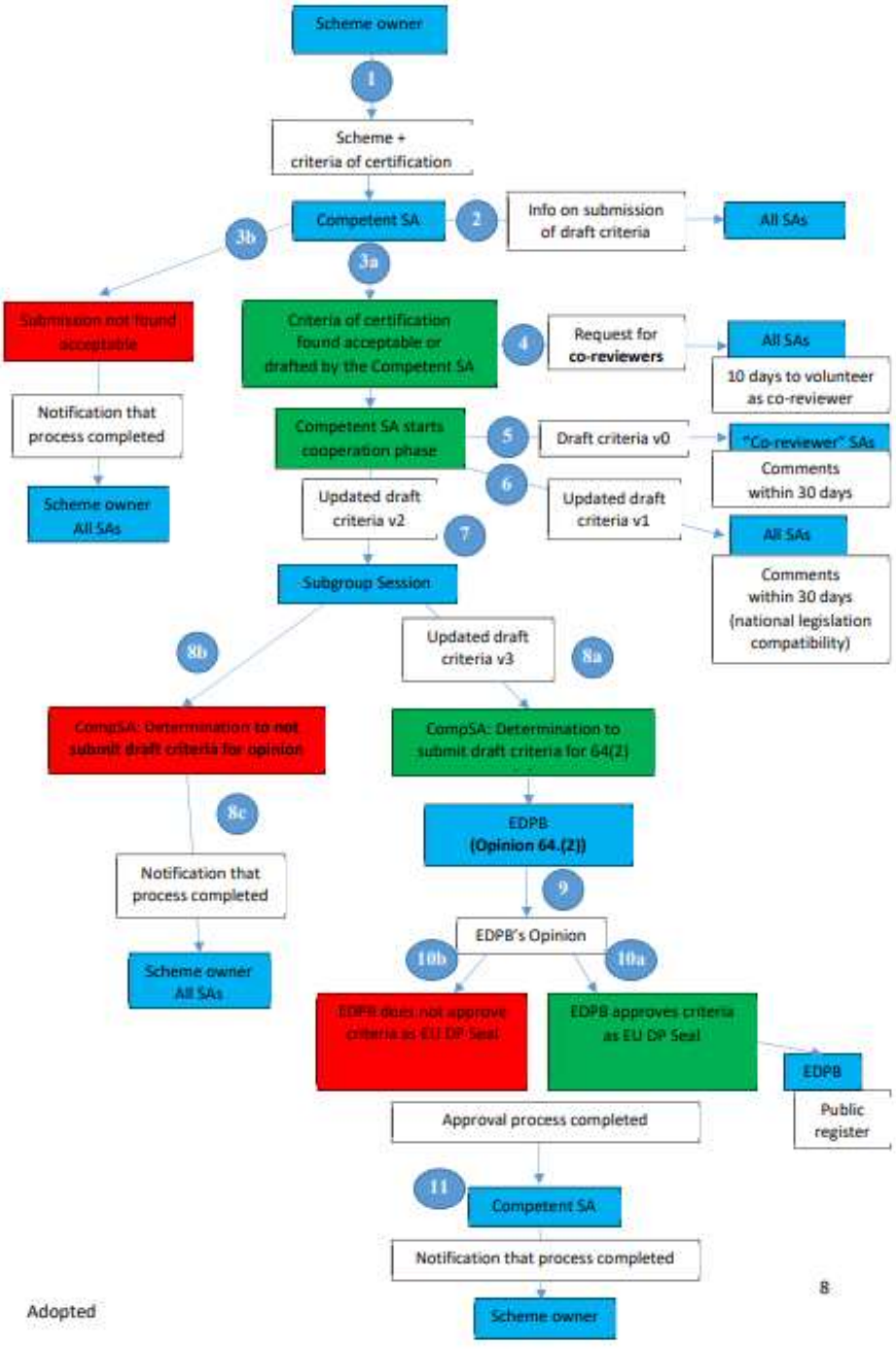
4.1 Workflow: approval of German data protection seal

The following chart presents the further procedure for awarding seals in Germany:



4.2 Workflow: approval of EU data protection seal

Here is an illustration of the further procedure observed by the EDPB when it comes to approving certification criteria leading to a European data protection seal (new version of the illustration expected for beginning 2023).



Source: https://edpb.europa.eu/our-work-tools/our-documents/procedure/edpb-document-procedure-approval-certification-criteria-edpb_de

5 List of abbreviations / glossary

AkkStelleG	German Accreditation Body Act
Art.	Article
BDSG	German Federal Data Protection Act
BSI	Federal Office for Information Security
CERT	Computer Emergency Response Team
DAkkS	Deutsche Akkreditierungsstelle GmbH
DPIA	Data protection impact assessment (Art. 35 GDPR)
DSK	Datenschutzkonferenz
EDPB	European Data Protection Board
GDPR	General Data Protection Regulation
IDS	Intrusion Detection System
IPS	Intrusion Prevention System
ISMS	Information Security Management System
ITIL	Information Technology Infrastructure Library
KRITIS	Critical infrastructure
PDCA principle	Plan-Do-Check-Act, Deming circle
SDM	Standard Data Protection Model
TFEU	Treaty on the Functioning of the European Union

A glossary can be found (in German) in Annex 1 to the DSK supplementary paper on "Accreditation requirements pursuant to Art. 43 (3) GDPR in conjunction with DIN EN ISO/IEC 17065".