



# **DPC ADDITIONAL ACCREDITATION REQUIREMENTS FOR CERTIFICATION BODIES**

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**An Coimisiún um  
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## Appendix III

Appendix III provides the DPC's additional accreditation requirements with respect to ISO/IEC 17065/2012 (hereinafter ISO 17065) and in accordance with Articles 43(1)(b) and 43(3) GDPR. The points below (aside from section 9) refer to ISO 17065 section headings and set out the additional requirements for the relevant ISO 17065 section numbers.

### 0 PREFIX

The Terms of cooperation between the Data Protection Commission (DPC) and Irish National Accreditation Board are set out in an agreement (not yet available). The agreement sets out roles and responsibilities and operational procedures in relation to accreditation for GDPR certification schemes.

### 1 SCOPE

This document contains additional requirements to ISO 17065 for assessing the competence, consistent operation and impartiality of GDPR certification bodies.

The scope of ISO 17065 shall be applied in accordance with the GDPR<sup>1</sup>. Pursuant to Article 42(1), GDPR certification is only applicable to the processing operations of controllers and processors.

The scope of a certification mechanism (for example, certification of cloud service processing operations) should be taken into account in the assessment by the National Accreditation Body and the DPC during the accreditation process, particularly with respect to criteria, expertise and evaluation methodology.

The broad scope of ISO 17065 covering products, processes and services should not lower or override the requirements of the GDPR, e.g. a governance mechanism cannot be the only element of a certification mechanism, as the certification must include processing of personal data, i.e. the processing operations.

### 2 NORMATIVE REFERENCE

The GDPR has precedence over ISO 17065. If in the additional requirements or by certification mechanism, reference is made to other ISO standards, they shall be interpreted in line with the requirements set out in the GDPR.

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<sup>1</sup> The guidelines on [accreditation](#) and [certification](#) provide further information.

### 3 TERMS AND DEFINITIONS

The terms and definitions of the guidelines on accreditation (EDPB 4/2018) and certification (EDPB 1/2018) shall apply and have precedence over ISO definitions. For ease of reference the main definitions used in this document are listed below.

**2018 Act:** Irish Data Protection Act 2018

**ISO 17065:** ISO/IEC 17065/2012

**Applicant:** the organisation that has applied to have their processing operations certified.

**Certification:** the assessment and impartial, third-party attestation that the fulfilment of certification criteria has been demonstrated in respect of a controller or processor's processing operations.

**Accreditation:** third-party attestation related to the activities of a certification body. This is the result of the assessment process for successful certification body (as part of the accreditation process).

**Accreditation body:** body that performs accreditation. In this document this term is taken to mean Irish National Accreditation Board.

**Certification body:** third party conformity assessment body operating certification schemes.

**Certification criteria:** the criteria against which an organisation's processing operations are measured for a given certification scheme.

**Certification scheme:** a certification system related to specified products, processes and services to which the same specified requirements, specific rules and procedures apply. It includes the certification criteria and assessment methodology.

**Certification mechanism:** an approved certification scheme which is available to the applicant. It is a service provided by an accredited certification body based on approved criteria and assessment methodology. It is the system by which a controller or processor becomes certified.

**Client<sup>2</sup>:** the organisation that has been certified (previously the applicant).

**DPC:** Data Protection Commission

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<sup>2</sup> Whenever the term "client" is used in this International Standard (ISO/IEC 17065/2012), it applies to both the "applicant" and the "client", unless otherwise specified.

**General Data Protection Regulation (GDPR):** Regulation 2016/679/EC

**National accreditation body:** the sole body in a Member State named in accordance with Regulation (EC) No 765/2008 of the European Parliament and the Council that performs accreditation with authority derived from the State. In Ireland the National Accreditation Body is the Irish National Accreditation Board.

**Target of evaluation:** In the case of GDPR certification this will be the relevant processing operations that the controller or processor is applying to have evaluated and certified.

## **4 GENERAL REQUIREMENTS FOR ACCREDITATION**

### **4.1 Legal and contractual matters**

#### **4.1.1 Legal responsibility**

A certification body shall be able to demonstrate (at all times) to the National accreditation body that they have up to date procedures that demonstrate compliance with the legal responsibilities set out in the terms of accreditation, including the additional requirements in respect of the application of the GDPR.

The certification body shall be able to demonstrate that its procedures and measures specifically for controlling and handling of client organisation's personal data as part of the certification process are compliant with the GDPR and the Irish Data Protection Act 2018.

The certification body shall provide evidence of compliance as required during the accreditation process.

This shall include the certification body confirming to the accreditation body that they are not the subject of any DPC investigation or regulatory action in relation to the subject matter of the target of evaluation which may mean they do not meet this requirement and therefore might prevent their accreditation.

The certification body shall inform the accreditation body immediately of relevant infringements of GDPR or the 2018 Act that may affect its accreditation.

Prior to issuing or renewing a certification, the certification body shall be required to inform the DPC pursuant to Article 43(1).

#### **4.1.2 Certification agreement ("CA")**

The certification body shall demonstrate in addition to the requirements of ISO 17065 that its certification agreements:

1. require the client to always comply with both the general certification requirements within the meaning of 4.1.2.2 (a) ISO 17065 and the criteria approved by the DPC as per Article 43(2)(b) or the EDPB in accordance with Article 42(5);
2. require the client to allow full transparency to the DPC with respect to the certification procedure including contractually confidential materials whether contractual or otherwise, related to data protection compliance pursuant to Articles 42(7) and 58(1)(c);
3. do not reduce the responsibility of the client to comply, as applicable, with the GDPR and is without prejudice to the tasks and powers of the DPC in line with Article 42(5);
4. require the client to provide the certification body with all information and access to its processing activities which are necessary to conduct the certification procedure pursuant to Article 42(6);
5. require the client to comply with applicable deadlines and procedures. The certification agreement must stipulate that deadlines and procedures resulting, for example, from the certification programme or other regulations must be observed and adhered to;
6. with respect to ISO 17065/212 section 4.1.2.2 (c)(1) set out the rules of validity, renewal, and withdrawal pursuant to Articles 42(7) and 43(4) including rules setting appropriate intervals for re-evaluation or review (regularity) in line with Article 42(7) and section 7.9 of these additional requirements.
7. require the client to allow the certification body to disclose to the DPC all information necessary for granting certification pursuant to Articles 42(8) and 43(5);
8. include rules on the necessary precautions for the investigation of complaints within the meaning of 4.1.2.2 (c)(2), additionally, lit. j, shall also contain explicit statements on the structure and the procedure for complaint management in accordance with Article 43(2)(d).
9. require in addition to the minimum requirements referred to in 4.1.2.2 ISO 17065, if the consequences of withdrawal or suspension of accreditation for the certification body impact on the client, that the consequences for the customer are addressed.
10. require the client to inform the certification body in the event of relevant infringements of GDPR or the 2018 Act that may affect its certification, as soon as they become aware of such an infringement.

11. includes binding evaluation methods with respect to the ( target of evaluation).

#### 4.1.3 Use of data protection seals and marks

Certificates, seals and marks shall only be used in compliance with Article 42 and 43 and the guidelines on accreditation and certification.

#### 4.2 Management of impartiality

The accreditation body shall ensure that in addition to the requirements set out in ISO 17065, in particular 3.13 and 4.2, and the requirements of 765/2008/EC, that the certification body:

1. complies with the additional requirements of the DPC (pursuant to Article 43(1)(b)) as set out in this document.
2. in line with Article 43(2)(a) provide separate evidence of its independence. This applies in particular to evidence concerning the financing of the certification body in so far as it concerns the assurance of impartiality;
3. has demonstrated its tasks and obligations do not lead to a conflict of interest pursuant to Article 43(2)(e);
4. has no relevant connection with the customer it assesses.

#### 4.3 Liability and financing

In addition to the requirement ISO 17065 the accreditation body shall ensure that the certification body has appropriate measures (e.g. insurance or reserves) to cover its liabilities in the geographical regions in which it operates.

#### 4.4 Non-discriminatory conditions

Requirements of ISO 17065 shall apply.

#### 4.5 Confidentiality

Requirements of ISO 17065 shall apply.

#### 4.6 Publicly available information

In addition to the requirements of ISO 17065, the accreditation body shall, at a minimum, require from the certification body that:

1. all versions (current and previous) of the approved criteria used within the meaning of Article 42(5) are published and easily publicly available as well as all certification procedures, generally stating the respective period of validity; including where applicable the criteria has been approved by the EDPB
2. information about complaints handling procedures and appeals are made public pursuant to Article 43(2)(d).

## **5 STRUCTURAL REQUIREMENTS, ARTICLE 43(4) [“PROPER” ASSESSMENT]**

### **5.1 Organisational structure and top management**

In addition to the requirements in 5.1.3 of ISO 17065, the accreditation body shall require the certification body to appoint a person with overall authority and responsibility for overseeing data protection certification evaluation, decisions and supervision.

### **5.2 Mechanisms for safeguarding impartiality**

Requirements of ISO 17065 shall apply.

## **6 RESOURCE REQUIREMENTS**

### **6.1 Certification body personnel**

It is anticipated that because of the GDPR articles specifying the elements of data protection certification that both legal and technical personnel will be required to be involved in assessment or evaluation and decision making undertaken by certification bodies, in line with the certification scheme and depending on the target of evaluation or processing operation that is to be certified.

The accreditation body shall, in addition to the requirement in section 6 of ISO/IEC 17065/2012, ensure for each certification body that its personnel:

1. has demonstrated appropriate and ongoing expertise (knowledge and experience) with regard to data protection pursuant to Article 43(1) and related to the subject matter of the certification;
2. has independence and ongoing expertise with regard to the subject matter of the certification pursuant to Article 43(2)(a) and does not have a conflict of interest pursuant to Article 43(2)(e);
3. undertakes to respect the criteria referred to in Article 42(5) pursuant to Article 43(2)(b);
4. has demonstrable, relevant and appropriate knowledge about and experience in applying data protection legislation in the context of the subject matter of the certification;
5. has demonstrable, relevant and appropriate knowledge about and experience in technical and organisational data protection measures as relevant in relation to the subject matter of the certification.
6. is able to demonstrate experience in the fields mentioned in these additional requirements, specifically:

For personnel with technical expertise:

- Have obtained a qualification in a relevant area of technical expertise to at least EQF3 level 6 or a recognised protected title in the relevant regulated profession.
- Personnel responsible for certification decisions are required to have at least two years professional and comprehensive experience and expertise in data protection measures related to certification.
- Personnel responsible for evaluations are required to have at least two years professional experience in technical data protection and knowledge, specialist expertise and professional experience in technical procedures (e.g. audits and certifications).
- Personnel shall demonstrate they maintain domain specific knowledge in technical and audit skills through continuous professional development.

For personnel with legal expertise:

- Legal studies at an EU or state-recognised university for at least eight semesters including the academic degree Master (LL.M.) or equivalent.
- Personnel responsible for certification decisions are required to have at least two years professional and comprehensive experience and expertise in certification measures related to data protection law.
- Personnel responsible for evaluations are required to have at least two years of professional experience in data protection law and knowledge, specialist expertise and professional experience in technical procedures (e.g. audits and certifications)
- Personnel shall demonstrate they maintain domain specific knowledge in technical and audit skills through continuous professional development.

If evaluation activities are outsourced to external bodies, those bodies shall be subject to the same conditions as the certification body. In particular, these data protection-specific requirements have to be observed by the subcontracted body.

## 6.2 Resources for evaluation

Requirements of ISO 17065 shall apply.

# 7 PROCESS REQUIREMENTS

## 7.1 General

The accreditation body shall in addition to the requirement in section 7.1 ISO17065 be required to ensure the following:

1. certification bodies comply with the additional requirements of the DPC (pursuant to Article 43(1)(b)) when submitting the application in order that

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<sup>3</sup> See qualification framework comparison tool at <https://ec.europa.eu/ploteus/en/compare?>

- tasks and obligations do not lead to a conflict of interests pursuant to Article 43(2)(e);
2. the DPC is notified pursuant to Article 43(1), before a certification body starts operating an approved European Data Protection Seal in a new Member State from a satellite office.
  3. certification bodies have procedures in place to notify the DPC immediately prior to issuing/renewing/withdrawing certifications and provide the reasons for taking such actions. This includes providing the DPC with a copy of the executive summary of the evaluation report referenced in section 7.8 of this document.
  4. the certification body is required to carry out an investigation where the client or the DPC notifies them of any significant and relevant investigation or regulatory action by the DPC in relation to the scope and subject matter of the client's certification and target of evaluation that brings into question the client's data protection compliance. The certification body will undertake the appropriate investigation and provide the DPC with a report, advising of the outcome and whether the client still conforms to the certification criteria

## 7.2 Application

In addition to item 7.2 of ISO 17065 the accreditation body shall ensure that the certification body shall require that:

1. the target of evaluation must be described in detail in the application. This also includes interfaces and transfers to other systems and organisations, protocols and other assurances;
2. the application shall specify whether processors are used, and, when a processor is the applicant, that their responsibilities and tasks shall be described, and the application shall contain the relevant controller/processor and/or joint controller contract(s).
3. discloses any current or recent DPC investigation or regulatory action to which the applicant is subject.

The certification body shall be required to inform the DPC about all applications received at the application stage.

## 7.3 Application Review

In addition to the requirements of ISO 17065, the accreditation body shall require that the competence and capability referred to in 7.3.1 (e) of ISO 17065 takes account, as per section 6 above, of both technical and legal expertise in data protection to an appropriate extent.

The application review shall take into account the data protection compliance checks referred to in 7.2(3) of this document. The certification body will be

required to satisfy themselves that the applicant is a fit candidate for data protection certification.

#### 7.4 Evaluation

In addition to the requirements of ISO 17065 the certification mechanisms shall describe sufficient evaluation methods for assessing the compliance of the processing operation(s) with the certification criteria, including for example where applicable:

1. a method for assessing the necessity and proportionality of processing operations in relation to their purpose and the data subjects concerned;
2. a method for evaluating the coverage, composition and assessment of all risks considered by controller and processor with regard to the legal consequences pursuant to Articles 30, 32 and 35 and 36 GDPR, and with regard to the definition of technical and organisational measures pursuant to Articles 24, 25 and 32 GDPR, insofar as the aforementioned Articles apply to the target of evaluation, and
3. a method for assessing the remedies, including guarantees, safeguards and procedures to ensure the protection of personal data in the context of the processing to be attributed to the target of evaluation and to demonstrate that the legal requirements as set out in the criteria are met; and
4. documentation of methods and findings.

The certification body shall be required to ensure that these evaluation methods are standardised and applied consistently. This means that comparable evaluation methods are used for comparable target of evaluations. Any deviation from this procedure shall need to be justified by the certification body.

In addition to item 7.4.2 of ISO 17065, the evaluation may be carried out by sub-contractors who have been recognised by the certification body, using the same personnel requirements in section 6.

In addition to item 7.4.5 of ISO17065, it shall be provided that existing certification, which relates to the same target of evaluation, may be taken into account as part of a new evaluation. However, the certificate itself will not be sufficient evidence and the certification body shall be obliged to check the compliance with the criteria in respect of the target of evaluation. The complete evaluation report or information enabling an evaluation of the previous certification scheme and its results shall be considered. In cases where existing certification is taken into account as part of a new evaluation, the scope of said certification should also be assessed in detail in respect of its compliance with the relevant certification criteria.

The certification body shall be able to access all necessary information/documentation in order to be able to take an informed decision.

In addition to item 7.4.6 of ISO 17065, it shall be required that the certification body shall set out in detail in the certification scheme how the information required in item 7.4.6 informs the applicant about non conformities from a certification mechanism. This will include at a minimum the nature and timing of such information. This is applicable to all certification bodies.

In addition to item 7.4.9 of ISO 17065, it shall be required that the evaluation documentation be made fully accessible to the DPC upon request.

#### 7.5 Review

In addition to item 7.5 of ISO17065 procedures for the granting, regular review and revocation of the respective certifications pursuant to Article 43(2) and 43(3) are required.

#### 7.6 Certification decision

In addition to point 7.6.1 of ISO 17065, the certification body shall be required to set out in detail in its procedures how its independence and responsibilities with regard to individual certification decisions are ensured.

In addition to the requirements of ISO 17065, immediately prior to issuing or renewing certification, the certification body shall be required to submit the draft approval, including the executive summary of the evaluation report to the DPC. The executive summary will clearly describe how the criteria are met thus providing the reasons for granting or maintaining the certification.

In addition to the check carried out at the application stage, prior to issuing certification, the certification body shall be required to confirm with the applicant that they are not the subject of any DPC investigation or regulatory action in relation to the target of evaluation, which might prevent certification being issued.

The DPC will confirm where appropriate that this is the case prior to the certification body issuing or renewing certification. If it is discovered that the applicant has not disclosed such action to the certification body, this may result in the certification not being issued.

#### 7.7 Certification documentation

In addition to item 7.7.1(e) of ISO 17065 and in accordance with Article 42(7) GDPR, it shall be required that the period of validity of certifications shall not exceed three years.

In addition to item 7.7.1(e) of ISO 17065, it shall be required that the period of the intended monitoring within the meaning of section 7.9 will also be documented.

In addition to item 7.7.1(f) of ISO 17065, the certification body shall be required to name the target of evaluation in the certification documentation (stating the version status or similar characteristics, if applicable).

On issuing the certificate, the certification body shall be required to provide the DPC with a copy of the certification documentation referred to in 7.7.1 of ISO 17065.

#### 7.8 Directory of certified products

In addition to requirements of 7.8 of ISO 17065, the certification body shall make publicly accessible a record of the certifications issued and on which basis, including information about the certification mechanism and how long the certifications are valid for.

The certification body will provide to the public an executive summary of the evaluation report. The aim of this executive summary is to help with transparency around what has been certified and how it was assessed. It will explain such things as:

- (a) the scope of the certification and a meaningful description of the target of evaluation,
- (b) the respective certification criteria (including version or functional status),
- (c) the evaluation methods and tests conducted and
- (d) the result(s).

#### 7.9 Surveillance

In addition to points 7.9.1, 7.9.2 and 7.9.3 of ISO 17065, and according to Article 43(2)(c) GDPR, it shall be required that regular monitoring measures are obligatory to maintain certification during the monitoring period. Such measures should be risk based and proportionate and the maximum period between surveillance activities should not exceed 12 months.

#### 7.10 Changes affecting certification

In addition to points 7.10.1 and 7.10.2 of ISO 17065, changes affecting certification to be considered by the certification body shall include:

- any personal data breach of GDPR or the 2018 Act reported by the client or the DPC in relation to the subject matter of certification;
- any infringement of GDPR or the 2018 Act reported by the client or the DPC in relation to the subject matter of certification;
- developments in the state of the art of technology employed in the subject matter of certification;
- amendments to data protection legislation;
- the adoption of delegated acts of the European Commission in accordance with Articles 43(8) and 43(9);

- relevant publications adopted by the European Data Protection Board pursuant to Article 39 of the Rules and Procedure of the Board, including decisions, guidance and opinions;
- and court decisions related to data protection.

The change procedures to be agreed here could include such things as: transition periods, approvals process with the DPC, reassessment of the relevant target of evaluation and appropriate measures to revoke the certification if the certified processing operation is no longer in compliance with the updated criteria.

#### 7.11 Termination, reduction, suspension or withdrawal of certification

In addition to point 7.11.1 of ISO 17065 and 7.1(3) of this document, the certification body shall be required to inform the DPC immediately in writing about measures taken and about continuation, restrictions, suspension and withdrawal of certification.

According to Article 58(2)(h), the certification body shall be required to accept decisions and orders from the DPC to withdraw or not to issue certification to a customer (applicant) if the requirement for certification are not or no longer met.

#### 7.12 Records

In addition to point 7.12 of ISO 17065 the certification body is required to keep all documentation complete, comprehensible, up- to-date and fit to audit.

#### 7.13 Complaints and appeals, Article 43(2)(d)

In addition to item 7.13.1 of ISO 17065, the certification body shall define,

- who can file complaints or objections,
- who processes them on the part of the certification body,
- which verifications take place in this context; and
- the possibilities for consultation of interested parties.

In addition to item 7.13.2 of ISO17065, the certification body shall define,

- how and to whom such confirmation must be given,
- the time limits for this; and
- which processes are to be initiated afterwards.

Certification bodies shall be required to make their complaints handling procedures publicly available and easily accessible to data subjects.

The certification body shall be required to inform complainants of the progress and the outcome of the complaint within a reasonable period.

In addition to item 7.13.1 of ISO 17065, the certification body must define how separation between certification activities and the handling of appeals and complaints is ensured.

## **8 MANAGEMENT SYSTEM REQUIREMENTS**

In addition to the requirements of ISO 170656, management principles and their documented implementation must be transparent and be disclosed by the accredited certification body pursuant in the accreditation procedure pursuant to Article 58 and thereafter at the request of the DPC at any time during an investigation in the form of data protection reviews pursuant to Art. 58(1)(b) or a review of the certifications issued in accordance with Article 42(7) pursuant to Article 58(1)(c).

The procedures in the event of suspension or withdrawal of the accreditation shall be integrated into the management system of the certification body, including notification to their clients and applicants.

A complaints handling process with the necessary levels of independence shall be established by the certification body as an integral part of the management system, which shall in particular implement the requirements of points 4.1.2.2(c), 4.1.2.2(j), 4.6(d) and 7.13 of ISO 17065.

### **8.1 General management system requirements**

Requirements of ISO 17065 shall apply

### **8.2 Management system documentation**

Requirements of ISO 17065 shall apply

### **8.3 Control of documents**

Requirements of ISO 17065 shall apply

### **8.4 Control of records**

Requirements of ISO 17065 shall apply

### **8.5 Management Review**

Requirements of ISO 17065 shall apply

### **8.6 Internal audits**

Requirements of ISO 17065 shall apply

### **8.7 Corrective actions**

Requirements of ISO 17065 shall apply

### **8.8 Preventive actions**

Requirements of ISO 17065 shall apply

## 9 FURTHER ADDITIONAL REQUIREMENTS

### 9.1 Updating of evaluation methods

The certification body shall establish procedures to guide the updating of evaluation methods for application in the context of the evaluation under point 7.4. of this document. The update must take place in the course of changes in the legal framework, the relevant risk(s), the state of the art and the implementation costs of technical and organisational measures.

### 9.2 Maintaining expertise

Certification bodies shall establish procedures to ensure the training of their employees with a view to updating their skills, taking into account the developments listed in point 9.1. of this document.

### 9.3 Responsibilities and competencies

#### 9.3.1 Communication between Certification Body and its customers

Procedures shall be in place for implementing appropriate procedures and communication structures between the certification body and its customer. This shall include:

1. Maintaining documentation of tasks and responsibilities by the accredited certification body, for the purpose of
  - a. responding to information requests; or
  - b. to enable contact in the event of a complaint about a certification.
  
2. Maintaining an application process for the purpose of
  - a. Information on the status of an application;
  - b. Evaluations by the DPC with respect to
    - i. Feedback;
    - ii. Decisions by the DPC.

#### 9.3.2 Documentation of evaluation activities

Systems shall be in place for implementing appropriate procedures and communication structures between the certification body and the DPC. This shall include a reporting framework to inform the DPC:

- of details of applicant on receipt of application to enable the DPC to check its records for the applicant's compliance history as per section 7.6 of this document;
- of the reasons for granting/withdrawing certification pursuant to Article 43.5, immediately prior to issuing, renewing, suspending or withdrawing certifications as per section 7.1(3) of this document