

Internal EDPB Document 1/2020 on Art 64.1 GDPR Opinion on matters related to items on which the board has already issued an Opinion

Adopted on 18 February 2020

Important note:

This document was originally written for internal use among EDPB members. At its Plenary meeting of 14 June 2022, the EDPB has decided, in the interests of transparency, to make this document available to the public by publishing it on its website.

The following document outlines the approach of how to deal with a request submitted by an SA or a Member on an item on which previously a consistency Opinion has been issued. For instance, when the Board has issued an Opinion on a draft decision containing various individual items, and later a new request for an Opinion is received because the SA submits a revised draft decision (e.g. deleting or adding individual items to a DPIA list). Consideration was given to the possibility of multiple iterations of these changes.

1 LEGAL BACKGROUND

- 1. This raised the question of if and how the EDPB should issue an Opinion on this new draft decision while following Art 64.3 GDPR (first sentence), which states that "(...) the Board shall issue an Opinion on the matter submitted to it provided that it has not already issued an Opinion on the same matter."
- 2. This provision was further enriched by Art. 10.4 of the EDPB Rules of Procedure, which specifies that "the Board may decide without undue delay and within a deadline set by the Chair, not to give an Opinion under Art. 64 (1) and (2) GDPR, because another Opinion on the same matter may have already been issued". Therefore, this represents a threshold issue to be assessed on a case-by-case

basis. The novelty of the items submitted to the Board for an Opinion must be verified (e.g. additional items only amounting to a rephrasing of previously assessed ones probably cannot be assessed).

2 PROCEDURE

3. When it is appropriate for the Board to adopt an Opinion on the revised draft decision, a completely new Opinion is drafted, and it will be treated in the very same manner as the first Opinion. This Opinion shall in the preamble keep a reference to all previous Opinions dealing with these items to allow the tracing back of information.

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