

Accreditation assessment checklist: Members

To be completed by secretariat	
Applicant contact	Koen Gorissen [REDACTED]
Name of Authority and country/economy	Supervisory Body For Police Information Management - Belgium
Description of Authority	Inspectorate

To be completed by principal assessor (Morocco)	
Recommendation (select appropriate recommendation): Applicant does meet criteria	
<p>1. Is the applicant a public entity created by an appropriate legal instrument?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	<p>Brief comments</p> <p>The Supervisory body is created by Art. 36 ter of the Belgian Privacy Act : “A <i>supervisory body for police information management, in charge of supervising the processing of the information and data referred to in article 44/1 of the Belgian Act on the office of police, including the information and data in the databases referred to in article 44/2, shall be established at the Commission for the Protection of Privacy.</i>”</p>
<p>2. Does the applicant have the supervision of the implementation of the legislation on the protection of personal data or privacy as one of its principal regulatory mandates?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	<p>Brief comments</p> <p>Art 36. ter : “A <i>supervisory body for police information management, in charge of supervising the processing of the information and data referred to in article 44/1 of the Belgian Act on the office of police, including the information and data in the databases referred to in article 44/2, shall be established at the Commission for the Protection of Privacy.</i>”</p> <p>The articles 44/1 & 44/2 mentioned above relate to the collection, processing and transmission of personal information regarding police duties.</p>
<p>3. Is the legislation under which the applicant operates compatible with the principal international instruments dealing with data protection or privacy?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	<p>Brief comments</p> <ul style="list-style-type: none"> • According to the applicant, the Privacy Act is compatible with the EU Directive (1995); • The Body supervises the processeing of personal data under the Belgian Act on the office of police. This act has established a number of rules to ensure personal data protection by police services. <p>The main data protection principles adopted by the said act are :</p>

	<ul style="list-style-type: none"> - Personal data must be processed lawfully (Art. 44/1); - Purpose specification and limitation (Art. 44/1 & 44/3 & 44/7); - Data retention no longer that is necessary for the purposes of its processing (Art. 44/11/3bis §7); - Data accuracy (Art. 44/1); - Data security and confidentiality (Art. 44/4). <ul style="list-style-type: none"> • The Belgian Privacy Act clarifies also that the following articles does not apply to any data processing by police services and public authorities : Article 2 §5 : “ Articles 9, 10§ 1 and 12 do not apply to : 1. The processing of personal data managed by public authorities with a view to the fulfilment of their judicial police duties ; 2. To the processing of personal data managed by the police services referred to in article 3 of ... with a view to the fulfilment of their administrative police duties..” <p>Article 9 : Right to be informed Article 10§ 1 : Right to access Article 12 : Right to rectification and objection</p> <p>Besides these articles, the Article 5 indicates that personal data can be processed without prior consent if “e) the processing is necessary for the performance of a task carried out in the public interest or in the exercise of the official authority vested in the controller or in a third party to whom the data is disclosed;”</p>
<p>4. Does the applicant have an appropriate range of legal powers to perform its functions?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	<p>Brief comments</p> <p>The Privacy act gives the Supervisory Body the following powers :</p> <ul style="list-style-type: none"> - Supervision over the protection of personal data and compliance enforcement regarding the access and the use of the General National Database - GND (Art 36ter/8 & /9); - Investigations on the GND, its contents and how personal data is processed on it (Art. 36ter/10 & /11); - Advice for Government on designation, promotion, appointment or transfer of the members of staff of the polices services managing the GND. The SBPIM issues also an elaborate opinion on the advisability of a disciplinary procedure (Art. 36ter/12); - Reporting to the House of Representatives (Art. 36ter/13); - Processing complaints following a request from the Privacy Commission (Art 36ter §4). <p>However, the SBPIM does not have the ability to initiate sanctions.</p>

<p>Does the applicant have appropriate autonomy and independence?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	<p>Brief comments</p> <p>Autonomy and independency of the Supervisory Body are granted by law as below :</p> <ul style="list-style-type: none"> - The SPBIM is independent from the Privacy Commission of Belgium, having its own rules and procedures as approved by the Parliament (Art. 36ter §2 & §3); - The supervisory body Chairman and members are appointed by the Parliament of Belgium (Art. 36ter/1); - Conditions of dismissing The Chairman and members before the expiry of their terms are listed on the Art. 36ter /1 §7; <p>There is no indications on the Belgian Privacy Act that clarifies :</p> <ul style="list-style-type: none"> - The source of the Supervisory Body’s budget; - The legal protection of the personnel against civil suits for actions performed in good faith of their duties
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To be completed by ExCo member other than principal assessor (HK)	
I agree with the principal assessor’s evaluation that the applicant (tick the statements that apply)	
1. is a public entity created by an appropriate legal instrument	√
2. has the supervision of the implementation of the legislation on the protection of personal data or privacy as one of its principal regulatory mandates	√ (subject to comment below)
3. has a legislation under which it operates is compatible with the principal international instruments dealing with data protection or privacy	√ (subject to comment below)
4. has an appropriate range of legal powers to perform its functions	√ (subject to comment below)
5. has appropriate autonomy and independence	√
Brief comments	<p><u>Comment for item 2:</u></p> <p>Morocco stated in its assessment that “<i>articles 44/1 & 44/2</i>” of “<i>the Belgian Act on the office of police</i>” “<i>relate to the collection, processing and transmission of personal information regarding police duties</i>”. The Act appears to be 5 AOUT 1992. - Loi sur la fonction de police (online version: http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=fr&la=F&table_name=loi&cn=1992080552&&caller=list&F&fromtab=loi&tri=dd+AS+RANK&rech=1&numero=1&sql=%28text+contains+%28%27%27%29%29#LNK0016) PCPD notices that the Act only has French and Dutch versions. In supporting Morocco’s assessment for item 2, PCPD relies on Morocco’s interpretation of articles 44/1 & 44/2 of the Act.</p> <p><u>Comment for item 3:</u></p>

	<p>- In 2nd bullet pt. of Morocco's assessment, Morocco referred to the "main data protection principles" in the "Belgian Act on the office of police". As noted in Comment for item 2 above, the Act appears to be 5 AOUT 1992. - Loi sur la fonction de police, which only has French and Dutch versions. In supporting Morocco's assessment, PCPD relies on Morocco's interpretation of the main data protection principles of the Act.</p> <p>- In 3rd bullet pt. of Morocco's assessment, Morocco commented that "The Belgian Privacy Act clarifies also that the following articles does not apply to any data processing by police services and public authorities : Article 2 §5". PCPD considers <u>Article 3 §5</u> appears to be the correct provision.</p> <p><u>Comment for item 4:</u></p> <p>For Morocco's assessment that "The Privacy Act gives the Supervisory Body the following powers:</p> <p>...</p> <p>-Processing complaints following a request from the Privacy Commission (Art36 ter§4)", PCPD considers <u>Art 36 ter§8</u> appears to be the correct provision.</p>
Name of ExCo member	Privacy Commissioner for Personal Data, Hong Kong

To be completed by ExCo member other than principal assessor (NZ)	
I agree with the principal assessor's evaluation that the applicant (tick the statements that apply)	
1. is a public entity created by an appropriate legal instrument	✓
2. has the supervision of the implementation of the legislation on the protection of personal data or privacy as one of its principal regulatory mandates	✓
3. has a legislation under which it operates is compatible with the principal international instruments dealing with data protection or privacy	✓
4. has an appropriate range of legal powers to perform its functions	✓
5. has appropriate autonomy and independence	✓
Brief comments	----
Name of ExCo member	NZ

To be completed by ExCo member other than principal assessor (CA)	
I agree with the principal assessor's evaluation that the applicant (tick the statements that apply)	
1. is a public entity created by an appropriate legal instrument	✓
2. has the supervision of the implementation of the legislation on the protection of personal data or privacy as one of its principal regulatory mandates	✓
3. has a legislation under which it operates is compatible with the principal international instruments dealing with data protection or privacy	✓
4. has an appropriate range of legal powers to perform its functions	✓

5. has appropriate autonomy and independence		✓
Brief comments	[REDACTED]	
Name of ExCo member	CA	

To be completed by ExCo member other than principal assessor (FR)		
I agree with the principal assessor's evaluation that the applicant (tick the statements that apply)		
1. is a public entity created by an appropriate legal instrument		✓
2. has the supervision of the implementation of the legislation on the protection of personal data or privacy as one of its principal regulatory mandates		✓
3. has a legislation under which it operates is compatible with the principal international instruments dealing with data protection or privacy		✓
4. has an appropriate range of legal powers to perform its functions		✓
5. has appropriate autonomy and independence		✓
Brief comments		
Name of ExCo member	CNIL, France	

Notes:

1. Where more information is required from the applicant the principal assessor should get the relevant information from the applicant.
2. Principal assessor's recommendation will be circulated via email to ExCo members. Where the ExCo agrees with the principal assessor's recommendation the secretariat will notify the applicant of the ExCo's decision.
3. If any member of the ExCo disagrees with the principal assessor's recommendation the relevant application/s will be discussed at the following ExCo meeting.