



Accreditation assessment checklist: Members

To be completed by secretariat	
Applicant contact	Muhamed Gjokaj [REDACTED]
Name of Authority and country/economy	Agency for Personal Data Protection and Free Access to Information, Montenegro/ EU
Description of Authority	Agency

To be completed by principal assessor (Morocco)	
Recommendation (select appropriate recommendation): <b>Applicant meets criteria</b>	
1. Is the applicant a public entity created by an appropriate legal instrument?  Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<b>Brief comments</b> The Agency is created by Article 49 of the "PERSONAL DATA PROTECTION LAW" of Montenegro (Official Gazette of Montenegro 79/08 and 70/09). The Art 49 states that an Agency for Personal Data Protection is set up to perform the tasks of the supervisory authority .
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?  Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<b>Brief comments</b> The art. 50 enumerates the prerogatives of the Agency. The 1 <sup>st</sup> paragraph of the said article indicates that <b>"The Agency shall: 1) perform supervision over the protection of personal data in accordance with this law;..."</b>
3. Is the legislation under which the applicant operates compatible with the principal international instruments dealing with data protection or privacy?  Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<b>Brief comments</b> 1. The Constitution of Montenegro ensures that : <ul style="list-style-type: none"> <li>• "Everybody shall have the right to respect for his/her private and family life" (Art. 40) and that".</li> <li>• The protection of personal data shall be guaranteed (Art. 43.1).</li> <li>• It is prohibited to use personal data for purposes other than those for which they were collected (Art. 43.2).</li> <li>• Everyone shall have the right to be informed about the personal data collected about him or her and the right to court protection in case of abuse (Art. 43.3).</li> </ul> 2. Art. 1 of the law : <b>"Protection of data relating to individuals shall be provided under the conditions and in the way laid down by this law, in accordance with the principles and standards contained in the ratified</b>

	<p><b><i>international human rights treaties and generally recognised rules of international law.”</i></b></p> <p>According to the applicant, the Data protection Law of Montenegro is compatible with the following instruments:</p> <ul style="list-style-type: none"> <li>• Council of Europe Convention No 108 (1985) and its Additional Protocol (2001);</li> <li>• EU Directive (1995);</li> <li>• ICDPPC International Standards on Data Protection and Privacy (2009).</li> </ul> <p><b>3.</b> The main data protection principles adopted by the Law are:</p> <ul style="list-style-type: none"> <li>- Personal data must be processed lawfully (Art. 2);</li> <li>- Purpose specification and limitation (Art. 2);</li> <li>- Prior consent (Art. 2 &amp; 10);</li> <li>- Right to be informed (Art. 20 &amp; 21);</li> <li>- Right to access (Art. 43) and to rectify (Art. 44);</li> <li>- Right to erase (Art. 11, 22 &amp; 23);</li> <li>- Data retention no longer that is necessary for the purposes of its processing (Art. 18 &amp; 23);</li> <li>- Data accuracy (Art. 3 &amp; 22);</li> <li>- Data security and confidentiality (Art. 24 &amp; 25).</li> </ul>
<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><b>Brief comments</b></p> <p>The Data Protection Law gives the Agency the following powers :</p> <ul style="list-style-type: none"> <li>- Supervision over the protection of personal data and compliance enforcement (Art 50.1);</li> <li>- Prior approvals (Art. 27, 28, 29 &amp; 50.4)</li> <li>- Receiving complaints (Art. 47 &amp; 50.2);</li> <li>- Guidance (Art. 50.3);</li> <li>- Rule-making (Art. 50.7 &amp; 50.8);</li> <li>- Policy advice for Government (Art. 50.10 &amp; 50.11);</li> <li>- Investigations (Art. 65 &amp; 66);</li> </ul> <p><b>PS:</b> An email was sent to the applicant asking for more details about public education and applying sanctions.</p>
<p>Does the applicant have appropriate autonomy and independence?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	<p><b>Brief comments</b></p> <p>Autonomy and independency of the Agency are granted by law as below :</p> <ul style="list-style-type: none"> <li>- The Agency shall be autonomous and independent in the performance of the tasks falling within its competence (Art. 49);</li> <li>- The Agency’s Chairman and Commissioners are appointed by the Parliament of Montenegro (Art. 52);</li> <li>- Conditions of dismissing The Chairman and members before the expiry of their terms are</li> </ul>

	<p>listed on the Art. 55;</p> <ul style="list-style-type: none"> <li>- The work of the Agency shall be financed from the budget of Montenegro and other sources (Art. 63).</li> </ul> <p><b>PS:</b> An email was sent to the applicant regarding the process of nomination of the Commissioners and the other sources of the Agency's budget.</p>
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<b>To be completed by ExCo member other than principal assessor (NZ)</b>	
I agree with the principal assessor's evaluation that the applicant	
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	New Zealand

<b>To be completed by ExCo member other than principal assessor (FR)</b>	
I agree with the principal assessor's evaluation that the applicant ( <b>tick the statements that apply</b> )	
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	France

<b>To be completed by ExCo member other than principal assessor (CA)</b>	
I agree with the principal assessor's evaluation that the applicant ( <b>tick the statements that apply</b> )	
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	✓

Checklist created on 27 March 2017

Brief comments	--
Name of ExCo member	Canada

**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**)

6. is a public entity created by an appropriate legal instrument	✓
7. has the supervision of the implementation of the legislation on the protection of personal data or privacy as one of its principal regulatory mandates	✓
8. has a legislation under which it operates is compatible with the principal international instruments dealing with data protection or privacy	✓
9. has an appropriate range of legal powers to perform its functions	✓
10. has appropriate autonomy and independence	✓
Brief comments	---
Name of ExCo member	Hong Kong

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.