

Application Form For Accreditation As A Data Protection Authority

Application to the Credentials Committee for accreditation as a data protection authority pursuant to the resolutions adopted at the 23rd International Conference of Data Protection and Privacy Commissioners at Paris on 25th September 2001.

Notes:

- (a) Please complete application in French or English.
- (b) Please keep answers brief and to the point.
- (c) Please ensure that all 33 questions are answered
- (d) If you retype the form, please include the numbered questions with your answers. It is possible to avoid such retyping by getting the electronic application form in French or in English upon request by e mail at credentials@privacy.org.nz.

Details of applicant

1. Name and postal address of authority

National Direction for Personal Data Protection
Sarmiento 329 5 floor
C1014AAG Buenos Aires
ARGENTINA

2. Contact person for this application:

- (a) Name

Prof. Dr. Juan Antonio TRAVIESO

- (b) Email address

jtravieso@inc.gov.ar

- (c) Direct telephone number

54 11 4382 2070

- (d) Fax contact

54 11 4382 2070

Type of application

3. The application is for accreditation as:

- (a) national Authority YES
- (b) sub-national Authority NO
- (c) Authority within an international, if yes which one NO

Description of applicant

4. Description of Authority (e.g. commissioner, commission, board etc)

The National Direction for Personal Data Protection is an independent unit, created under the jurisdiction of the Ministry of Justice and Human Rights of the Argentine Republic

5. Is the Authority a public body? YES

6. Geographical jurisdiction

The Direction has jurisdiction (in federal matters) under the whole Argentinian territory.

7. Sectoral coverage (i.e. does the applicant's jurisdiction cover the entire public and private sectors? If only part of a sector or if there are significant activities not covered, please specify)

The Direction covers all the sectors of activity.

8. Is the role of the Authority mainly concerned with data protection and privacy?
YES

Legal basis

9. Title of law under which the Authority is constituted

Data Protection Law N° 25.326, Enacted on the 4th, 2000 and Decree N^a1558/2001

10. Is this principally a data protection law? YES

11. Status of the law (e.g. statute, regulation, executive order)

The Law regulates all the data protection major issues, and has been completed by complimentary regulations of the National Executive Branch (Decree N°1558/2001)

12. Which body made the law?

The Argentinian Parliament (The Senate and the House of Representatives)

13. What body has the power to amend or revoke the law?

The same Parliament that enacted and enforced the law, only by means of another law.

Autonomy and independence

14. Who appoints member(s) of the Authority? (Please explain if a different process applies to the presiding member from other Authority members in this question and in subsequent questions.)

The Authority is to be presided by a Director (General Manager), appointed by the Executive Branch.

15. What process is followed?

The candidate is to be selected from all the people with experience on the field. This whole procedure was followed in 2002, ending with the Decree N° 1898/2002, which appointed Prof. Dr. Juan Antonio Travieso as the National Director for Personal Data Protection.

16. For what term are appointments made?

The Director will cease in this function after 4 years.

17. Does the law under which the Authority operates explicitly state that it acts independently? YES

18. May the member(s) be removed before expiry of their term? YES

19. If yes, who may remove members of the Authority before expiry of their term?

Only the Executive Branch (in this case the President of the Argentinian Republic)

20. Are there limited reasons specified in the statute, or in another law, providing the permitted grounds for removal?

Given that the National Director for the Protection of Personal Data is a public functionaire, the general provisions for public servants ruled in the Law N°25.188 and complementary provisions.

21. What are the grounds for removal?

Mostly those related to the inadequate performance of duties, based on the National Public Ethic Law (N°25.188 and its complimentary provisions)

22. Does the Authority possess the following powers (briefly describe and give statutory references)

- (e) to initiate an investigation with seeking provision YES

details: The article 29 establishes that the Authority will control the observance of the norms governing data protection, and therefore it can promote investigations, request information and impose administrative sanctions.

- (f) to report to the head of State, head of Government or legislature YES

Details: The agency is independent, with functional autonomy, created within the scope of the National Ministry of Justice, Security and Human Rights, to which reports only for administrative aspects.

- (g) make public statements YES

details: This power is not mentioned specifically in the law, so it can be included in the actions necessary to comply the dispositions of the law.

23. Does the Authority (and its staff) have immunity from legal suit for actions performed in the course of their duties?

NO

24. Applicants may list any other measures set out in the statute or in other laws which guarantee the Authority's independence (for example if the law provides specifically that the Authority's finances are protected).

In particular, the Decree N°1558/2001 establishes that the National Direction for Personal Data Protection will receive and manage –apart form the National budget dispositions for each year – the financial resources result of the fines due to penalties for infringement, as well as the notification fees in case of the registration procedures.

Consistency with international instruments

25. Does the Authority explicitly implement any international instrument (for example if the law under which the Authority operates specifies that it implements such international instrument)?
- NO

If "yes", which of the following does it principally implement?

- (a) OECD Guidelines (1980) YES/NO
- (b) (i) Council of Europe Convention No 108 (1981) YES/NO

(ii) Council of Europe Additional Protocol (8 November 2001)

YES/NO

(c) UN Guidelines (1990)

YES/NO

(d) EU Directive (1995)

YES/NO

26. Does the law instead, or additionally, implement any general or specific international instrument? (If so, list the international body and the instrument)

27. Have significant questions been raised about the extent to which the law is consistent with the international instruments which are claimed to be implement in answer to questions 25 and 26? (Applicants should supply further information to assist the Committee including a description of any measures under way to address these inconsistencies.)

- Since the Council and the European Parliament have given the Commission the power to determine, on the basis of Article 25.6 of directive 95/46/EC whether a third country ensures an adequate level of protection by reason of its domestic law or of the international commitments it has entered into, Argentina's Data Protection Authority, the National Direction for Personal Data Protection, has recently introduced the proposal to the Commission

The Opinion 4/2002 of the group of the national data protection commissioners, the Article 29 working party, has determined the adequate level of protection of personal data in Argentina.

(http://europa.eu.int/comm/internal_market/en/dataprot/wpdocs/wpdocs-2002.htm)

Actually an opinion of the Article 31 Management committee delivered by a qualified majority of Member States is to be sent to the European Parliament.

- Finally, the National Direction for Data Protection is waiting for the adoption of the decision by the College of Commissioners.

Appropriate functions

28. Does the Authority possess functions in any of the following areas (briefly describe and give statutory references):

- (a) compliance (e.g. audit, inspection) YES

details: article 30 of the Data Protection Law, establishes that the authority possesses control compliance with the norms on data integrity and security by data files, registers or banks. To such purpose it shall be entitled to request the corresponding judicial authorization to access data treatment premises, equipment or software in order to verify violations of the law

- (b) approvals (e.g. prior-checking, notification) YES

details: the National Data Protection Direction will do a census of data files, registers or banks covered by the Act and keep a permanent record thereof. The Direction is actually working and cooperating with international data commissioners in order to develop fast and secure registration and notifications procedures.

- (c) redress for individuals (e.g. complaints, conciliation enforcement)

As far as complaints are concerned, it is clear that the law always provides that all the citizens may introduce a legal complaint called Habeas Data Action in the respective courts.

The National Direction for Data Protection may receive the complaints of the citizens but will only act as far as the data controller is concerned, but the action will always be taken to the courts. (art. 33 – 40 Law 25.326)

- (d) sanctions available to Authority (for example, prosecution and enforcement) YES

The Data Protection Law gives the Direction the powers to Enforce the administrative sanctions that may apply for the violation of the norms set forth in this Act and the regulations passed as a consequence thereof; and to Assume the role of accuser in criminal actions brought for violations of this Act.

- (e) guidance (e.g. compliance advice) YES

details: The article 29 of the Law, establishes the control compliance with the norms on data integrity or security, by data files, registers or banks.

- (f) public education NO

details: Even if the law doesn't express this function, it is one of the Direction goals. Actually, the Direction is designing handbooks on data protection, in order to launch a public education campaign.

- (g) policy advice for government NO

details:

- (h) studies or research (e.g. into developing technologies, privacy issues)

NO

details:

Additional comments

29. Applicants are invited to offer any further comments that they wish.

Other materials

30. List any attachments which will accompany the application as an electronic attachment or to follow by post.

A PowerPoint version of the National Direction for Personal Data Protection. Institutional Plan

Brief resume of Prof. Dr. Juan Antonio Travieso, Argentina's Data Protection Commissioner

A paper presented by Prof. Dr. Juan Antonio Travieso in the Data Protection meeting in Brussels in 2002.

31. If law under which the Authority operates is accessible on the Internet, please give the reference

URL: www.jus.gov.ar/minjus/DPDP (texts available in Spanish)

URL: <http://www.privacyinternational.org/countries/argentina/argentine-dpa.html> (Text available in english)

32. If a recent annual report of the Authority (or a similar recent publication outlining typical activities) is available on the Internet, please give the reference

URL: <http://www.privacyinternational.org/countries/argentina/eu-a29-opinion-10-02.pdf>

Research use

33. With the consent of applicants, the Committee proposes to make copies of the applications available to appropriate researchers approved by the Committee to facilitate a study on data protection. Please indicate whether you agree to this use:

- I agree to this application being released to a researcher YES

Making the application

The application should be emailed to the credentials committee at credentials@privacy.org.nz

If sent as an email attachment it should be in M/S Word.
If unable to email the application, it should be posted to:

Credentials Committee
C/- Privacy Commissioner
P O Box 466
Auckland
New Zealand

The Committee needs access to a copy of the law under which the Authority is constituted. This need not be supplied in hard copy if it is available on the Internet and listed at question 31. If the law itself is not in English or French, it will be useful to supply an English or French summary or translation if one exists.

Use of information

The information in this form will be used for processing the application and will be disclosed to members of the committee and their staff (being the commissioners from New Zealand, France and the United Kingdom) and future committees. It may be also disclosed also to the Data Protection Authorities which participate to the international conference and approved researchers. Any personal data contained in the form is available for access and correction in accordance with the applicable data protection laws of current and future committees. In the first instance it is subject to the New Zealand Privacy Act 1993.

ACCREDITATION OF DATA PROTECTION AUTHORITY
CHECKLIST FOR THE CREDENTIALS SUB-GROUP

1 Name of Authority National Direction for Personal Data Protection,
Argentina

2 Does the authority have clear and wide ranging data protection functions covering a broad area of economic activity (eg not just an advising body or a body operating in a narrow field such as medical privacy)?

Yes

No

Don't know

Notes

Covers all sectors (though Argentina has a federal system)

3 Legal Basis.
Is the authority a public body established on an appropriate legal basis (eg by statute or regulation)?

Yes

No

Don't know

Notes

4 Autonomy and Independence?
Is the authority guaranteed on appropriate degree of autonomy and independence to perform its functions (eg the power to make public statements and protection from removal from office)?

Yes

No

Don't know

Notes

5 Consistency with International Instruments.
Is the law under which the authority operates compatible with at least one of the international instruments dealing with data protection and privacy (eg EU Directive, OECD Guidelines, Council of Europe Convention)?

Yes

No

Don't know

Notes

Although no international instruments are relied upon in the application, the law has been assessed as providing adequate protection in the context of the EU Directive by the Article 29 working group. In a general sense it can be judged to be 'compatible'

with the EU Directive

6 Appropriate Functions.
Does the authority have an appropriate range of functions with the legal powers necessary to perform those functions (eg the power to receive and investigate complaints from individuals without seeking permission)?

Yes

No

Don't know

Notes
Although there is no specific public education/policy advice/research role, the range of functions are sufficient

7 Does the Sub-group recommend accreditation?

Yes

No

Notes
The deficiencies in terms of international instruments and functions are not so limiting as to prejudice the application

8 If accreditation is recommended what is the accreditation as?

National authority (within the UN criteria)

Authority within a limited sub-national territory

Authority within an international or supranational body

Notes

9 If accreditation is as an authority within an international/supranational body does the recommendation include voting rights?

Voting Rights

No Voting Rights

Notes N/A

10 If accreditation is not recommended does the Sub Group recommend that accreditation is refused or is more information needed before a decision can be made?

Refusal

More Information

Notes
N/A

11 If accreditation is not recommended and the application is from an authority with narrow functions does the Sub Group recommend that, at the discretion of the conference host, observer status is granted?

Notes
N/A

Not Applicable

Yes

Not

If more information is required what is this:

Signed on behalf of the Sub-group:

Jonathan Bamford

Date: **13/04/03**

Blair Stewart

Date: *15/4/03*

Date:

Note: 2 signatures required for recommendations for accreditation.
3 signatures required for recommendations for refusal