

**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 23<sup>rd</sup> International Conference of Data Protection and Privacy Commissioners at Paris on 25<sup>th</sup> 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](mailto:credentials@privacy.org.nz).

**Details of applicant**

1. Name and postal address of authority:

„Datenschutzkommission“ (Austrian Data Protection Commission)

**Ballhausplatz 1  
1014 Wien  
AUSTRIA/EUROPE“**

Telephone: +43 1 531 15 / 2525  
Fax: +43 1 531 15 / 2690  
E-Mail: [v3post@bka.gv.at](mailto:v3post@bka.gv.at)

2. Contact person for this application:

(a) Name

Mag. Georg LECHNER

(b) Email address

~~georg.lechner@bka.gv.at~~

(c) Direct telephone number

~~+43 1 531 15 2525~~

(d) Fax contact

~~+43 1 531 15 2690~~

**Type of application**

3. The application is for accreditation as:

If more information is required what is this:

Signed on behalf of the Sub-  
group:

**Blair Stewart**

Date: **17 June 2002**

Marie Georges

Date: 9 juillet 2002

Date:

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

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

### Description of applicant

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

Commission

5. Is the Authority a public body? YES/NO

6. Geographical jurisdiction

Republic of Austria

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)

Entire public and private sector

8. Is the role of the Authority mainly concerned with data protection and privacy?  
YES/NO

### Legal basis

9. Title of law under which the Authority is constituted

Datenschutzgesetz 2000

10. Is this principally a data protection law? YES/NO

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

Statute, contains constitutional provisions

12. Which body made the law?

Austrian parliament

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

The Austrian parliament.

### Autonomy and independence

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**

Notes

7 Does the Sub-group recommend accreditation?

**Yes**

Notes

8 If accreditation is recommended what is the accreditation as?

**National authority (within the UN criteria)**

Notes

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

**Not applicable**

Notes

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?

**Not applicable**

Notes

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?

**Not applicable**

Notes

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 president of the republic (Sect. 36 DSG 2000).

15. What process is followed?

Lists of candidates are presented by the Supreme Court and other institutions to the federal government. The government makes a proposal to the president (Sect. 36 DSG 2000).

16. For what term are appointments made?

The members are appointed for a term of five years (renewable, see Sect. 36 p. 1 DSG 2000).

17. Does the law under which the Authority operates explicitly state that it acts independently? YES/NO

18. May the member(s) be removed before expiry of their term? YES, but only in very exceptional cases!

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

Only the data protection commission itself.

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

yes

21. What are the grounds for removal?

Sect. 36 p. 6 DSG 2000 : failing to attend without reason, or on serious grounds e.g. criminal delinquency.

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

(e) to initiate an investigation with seeking provision YES/NO

E.g. Sect. 30 Abs. 3 DSG 2000:

(f) to report to the head of State, head of Government or legislature YES/NO

details: See Sect. 30 p. 6 no. 4 DSG 2000

(g) make public statements YES, if it so chooses

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).

Independence is guaranteed by constitutional provision (Sect. 37 DSG 2000).

### 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)?

YES/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~~ (because it has

not been ratified yet, but will be ratified very soon)

(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)

No

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.)

None

### 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/NO

(b) approvals (e.g. prior-checking, notification) YES/NO

details: prior checking (sect. 18 DSG 2000), notification (sects. 16-22 DSG 2000)

(c) redress for individuals (e.g. complaints, conciliation enforcement) YES/NO

details: Sect. 30 and 31 DSG 2000

(d) sanctions available to Authority (for example, prosecution and enforcement) YES/NO

details: Sect. 30 p. 6: Possible sanctions run all the way from checking a faulty registration to a criminal charge pursuant to sects. 51 or 52 DSG 2000. When acting on a complaint according to sect. 31 DSG 2000, the commission can declare a specific practice illegal, order data erased or rectified (public sector only), and order an unwilling controller to grant the right of access (public and private sector). These decisions can be forcibly executed.

(e) guidance (e.g. compliance advice) YES/NO

details: Informal advice of all kind is frequently given to controllers and data subjects

(f) public education YES/NO

details: The commission builds public awareness through its website, frequent advice by telephone, and seminars on data protection issues.

(g) policy advice for government YES/NO

details: The office of the commission frequently advises governmental offices

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

None

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

URL: <http://www.bka.gv.at/datenschutz/legal.htm>

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:

### 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/NO

### Making the application

The application should be emailed to the credentials committee at [credentials@privacy.org.nz](mailto: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

**Datenschutzkommission (Austrian Data Protection Commission), Austria**

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**

Notes

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

**Yes**

Notes

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

**Yes**

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**

Notes  
**Both CoE Convention  
and EU Directive**

If more information is required what is this:

Signed on behalf of the Sub-group:

**Blair Stewart**

Date: **17 June 2002**

**Marie Georges**

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