

Schleswig-Holstein: Privacy Commissioner (Unabhängiges Landeszentrum für
Datenschutz)

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

Unabhängiges Landeszentrum für Datenschutz, Holstenstrasse 98, 24103 Kiel,
Germany

2. Contact person for this application:

- (a) Name

Dr. Susanne Rublack (LD5)

- (b) Email address

unla@unla-landeszentrum.de

- (c) Direct telephone number

0431 9983-2000

- (d) Fax contact

0431 9983-2000

Type of application

3. The application is for accreditation as:

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

Description of applicant

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

Privacy commissioner of the Land Schleswig-Holstein (Germany)

5. Is the Authority a public body? YES

6. Geographical jurisdiction

Land Schleswig-Holstein, Germany

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)

Public authorities of Schleswig-Holstein, private sector located in Schleswig-Holstein

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

Landesdatenschutzgesetz Schleswig-Holstein (see www.datenschutzzentrum.de)

10. Is this principally a data protection law? YES

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

Statute

12. Which body made the law?

Parliament of Schleswig-Holstein

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

Parliament of Schleswig-Holstein

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.)

Parliament elects Head of the Authority (privacy commissioner him-/herself).
Subsequent appointment by Prime Minister. Rest of members appointed by commissioner.

15. What process is followed?

Parties in parliament propose candidate for commissioner. Election by parliament.
Appointment by Prime Minister.

16. For what term are appointments made?

Five years with option of one prolongation for another five 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?

Prime Minister of Schleswig-Holstein

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

No; the law on public servants applies

21. What are the grounds for removal?

Theoretically, all grounds applying to all public servants in general

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

(e) to initiate an investigation with seeking provision YES

details: right to see all data and to interrogate officials

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

details: report to parliament

(g) make public statements YES

details: press statements (in practice, not explicitly empowered in

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

No, only right to refuse to give evidence as a witness in court proceedings

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).

The authority is explicitly an Independent body of public law; financial and personal means are to be guaranteed by the T and

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

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

- | | | |
|-----|--|-----|
| (a) | OECD Guidelines (1980) | YES |
| (b) | (i) Council of Europe Convention No 108 (1981) | YES |
| | (ii) Council of Europe Additional Protocol (8 November 2001) | YES |
| (c) | UN Guidelines (1990) | YES |
| (d) | EU Directive (1995) | |

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

All of the above

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.)

No, it is fully consistent with EU and international instruments

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: inspection, audit, certification

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

details: prior-checking according to EU-Directive, notification

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

details: complaints are addressed, but no real enforcement powers

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

details: only powers to reproach inconsistencies with laws

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

details:

(f) public education YES

(g) details: specific service functions according to law

(g) policy advice for government YES

details:

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

details: yes, especially relating to privacy enhancing technologies

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.

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

URL: www.datenschutzzentrum.de/material/recht/ldsg-neu/ldsg-neu.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: www.datenschutzzentrum.de/material/tb/tb24.htm

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

Privacy Commissioner of the Land Schleswig-Holstein,
Germany

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

Public and Private authorities in S-H covered

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

S-H DP law

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

DP law appears to provide for this. Although specific statutory authority not cited in answers it is reasonable to assume that these exist

The State Prime Minister may remove the Privacy Commissioner. The grounds for removal include all of those applying to public servants in general. I question whether this provides the "guarantee" of independence that would be provided by explicit limits on removal.

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

Notes

All International instruments complied with

EU Directive, OECD Guidelines, Council of Europe Convention)?

Yes

No

Don't know

- 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

All functions except prosecution-power to reproach

NB Specific statutory references not cited-assumed from DP law

In terms of redress for individuals, the application states "complaints are addressed, but no real enforcement powers". It further advises that there are no sanctions available to the authority. While this "Ombudsman" approach is not uncommon in terms of public sector agencies, it is unusual to have a toothless approach also to private sector data controllers.

- 7 Does the Sub-group recommend accreditation?

Yes

No?

Notes

Despite lack of statutory references it is reasonable to assume these exist without further enquiry. The range of functions does not include prosecution but there are sufficient other functions

I hesitate to recommend accreditation on this application without further information. The removal process raises issues in common with Latvia and Lithuania. The lack of redress mechanisms raises issues similar to Hesse (although on the face of it

this authority at least has an Ombudsman complaints jurisdiction whereas that was not claimed for Hesse).

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
Only applied for this status as German Land

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

Voting Rights

No Voting Rights

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?

Refusal

More Information

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

Yes

Not

Notes

If more information is required what is this:

I rely on the application form since I cannot read the German law. While a borderline case, the application raises issues relating to independence (removal from office) and functions (redress/sanctions). Perhaps we could ask for the statutory references in these cases and for an English translation, or summary, of key aspects. We could also seek information about the political/constitutional conventions (e.g. does the Prime Minister personally act in removal cases or is the function delegated to officials?).

As an aside, the application says that the Council of Europe Additional Protocol is implemented. That would require an authority to have "powers of investigation and intervention, as well as the power to engage in legal proceedings or to bring to the attention of the competent authorities violations of provisions of domestic law giving effect to [DP] principles" (Art 1(2)). It would also require the supervisory authorities to exercise their functions in complete independence (Art 1(3)). The German Government has lodged a declaration in relation to that instrument, see: <http://conventions.coe.int/Treaty/EN/cadreprincipal.htm>. This indicates that "the existing practice for supervising data protection in Germany meets the requirements of Article 1, paragraph 3, of the Additional Protocol because the supervisory authorities responsible for data protection – even where they are incorporated in a hierarchical administrative structure – exercise their functions in complete independence".

Signed on behalf of the Sub-group:

Jonathan Bamford

Date: 5/6/02

Blair Stewart

Date: 9 July 2002

Date:

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