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
   The Federal Data Protection Commissioner
   Friedrich-Ebert-Str. 1, D-53173 Bonn

2. Contact person for this application:
   (a) Name
       Dr. Joachim Jacob
   (b) Email address
   (c) Direct telephone number
   (d) Fax contact

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)

Commissioner

5. Is the Authority a public body? YES

6. Geographical jurisdiction

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 sector of Federation plus postal and telecommunications services

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

Federal Data Protection Act

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?

Federal Parliament

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

Federal Parliament
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 Federal Commissioner is elected by the Federal Parliament

15. What process is followed?

The Federal Commissioner is appointed by the Federal President

16. For what term are appointments made?

5 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?

Federal Parliament (sect. 23 para. 1 Fed.DPAct)

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

Yes, (sect. 23 para. 1 Fed.DPAct)

21. What are the grounds for removal?

1) Upon the Commissioner’s request; 2) on a proposal by the Fed. Gov. when there are grounds which in the case of an established judge would justify dismissal from service.

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

(e) to initiate an investigation with seeking provision YES details: Sect. 24 and 25 Fed.DPAct

(f) to report to the head of State, head of Government or legislature YES details: Sect. 26 para. 1 to 3 Fed.DPAct

(g) make public statements YES details: Sect. 26 para 1 Fed.DPAct
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).

Right to refuse to give evidence in court

**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) NO

(b) (i) Council of Europe Convention No 108 (1981) YES

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

(c) UN Guidelines (1990) NO

(d) EU Directive (1995) YES

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

Int. Treaties which are implemented into nat. law and executed as such (e.g. Europol, Schengen)

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
### 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: Sect. 24 and 25 Fed.DPAct

- (b) **approvals** (e.g. prior-checking, notification)  
  YES  
  details: Sect. 4d para. 4 Fed.DPAct

- (c) **redress for individuals** (e.g. complaints, conciliation enforcement)  
  YES  
  details: Sect. 21 Fed.DPAct

- (d) **sanctions available to Authority** (for example, prosecution and enforcement)  
  NO  
  details: No sanctioning power; Commissioner may initiate a criminal complaint (sect. 44 para. 2)

- (e) **guidance** (e.g. compliance advice)  
  YES  
  details: Brochures, hints via homepage, activity report

- (f) **public education**  
  YES  
  details: see above

- (g) **policy advice for government**  
  YES  
  details: Sect. 26 paras. 2 and 3 Fed.DPAct; regular participation in sessions of parliamentary committees

- (h) **studies or research** (e.g. into developing technologies, privacy issues)  
  YES  
  details: Elaborations and in-depth studies on specific problems in the activity report

### Additional comments

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

For further details see [www.bfd.bund.de](http://www.bfd.bund.de)  LINK English Corner LINK The Fed.DPCommissioner – A description of his functions and his legal position.
Other materials
30. List any attachments which will accompany the application as an electronic attachment or
to follow by post.

No attachments. See 29. and 31.

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

URL:www.bfd.bund.de

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:See 31.

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.
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

The Federal Data Protection Commissioner
Friedrich-Ebert-Str. 1, D-53173 Bonn

2. Contact person for this application:
   (a) Name
   Dr. Joachim Jacob
   (b) Email address
   (c) Direct telephone number
   (d) Fax contact

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)
   Commissioner

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

6. Geographical jurisdiction
   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 sector of Federation plus postal and telecommunications services

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
   Federal Data Protection Act

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?
    Federal Parliament

13. What body has the power to amend or revoke the law?
    Federal Parliament
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 Federal Commissioner is elected by the Federal Parliament

15. What process is followed?

The Federal Commissioner is appointed by the Federal President

16. For what term are appointments made?

5 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?

Federal Parliament (sect. 23 para. 1 Fed.DPAct)

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

Yes, (sect. 23 para. 1 Fed.DPAct)

21. What are the grounds for removal?

1) Upon the Commissioner's request; 2) on a proposal by the Fed. Gov. when there are grounds which in the case of an established judge would justify dismissal from service

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

(e) to initiate an investigation with seeking provision YES
details: Sect. 24 and 25 Fed.DPAct

(f) to report to the head of State, head of Government or legislature YES
details: Sect. 26 para. 1 to 3 Fed.DPAct

(g) make public statements YES
details: Sect. 26 para 1 Fed.DPAct

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

Right to refuse to give evidence in court

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

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

Int. Treaties which are implemented into nat. law and executed as such (e.g. Europol, Schengen)

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
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: Sect. 24 and 25 Fed.DPAct
   (b) approvals (e.g. prior-checking, notification) YES
       details: Sect. 4d para. 4 Fed.DPAct
   (c) redress for individuals (e.g. complaints, conciliation enforcement) YES
       details: Sect. 21 Fed.DPAct
   (d) sanctions available to Authority (for example, prosecution and enforcement)
       NO
       details: No sanctioning power; Commissioner may initiate a criminal
   (e) guidance (e.g. compliance advice) YES
       details: Brochures, hints via homepage, activity report
   (f) public education YES
       details: see above
   (g) policy advice for government YES
       details: Sect. 26 paras. 2 and 3 Fed.DPAct; regular participation in
   (h) studies or research (e.g. into developing technologies, privacy issues) YES
       details: Elaborations and in-depth studies on specific problems in

Additional comments

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

For further details see www.bfd.bund.de LINK English Corner LINK The
Fed DPCommissioner: A description of his functions and his legal position

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

No attachments. See 29. and 31.

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

URL: www.bfd.bund.de

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: See 31.

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**

<table>
<thead>
<tr>
<th></th>
<th>Name of Authority</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>GERMANY - The Federal Data Protection Commissioner</strong></td>
<td></td>
</tr>
</tbody>
</table>

#### 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**
- All public sector under federal competence + postal and telecommunication services
- Wide range of powers

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

**Yes**

**Notes**
- Public body established by statute

#### 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**

**Notes**
- Designated by parliament 5 years- limited reasons for removal by Parliament(power of investigation, report to Parliament, public statement

#### 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**
- In particular COE, EC directive
  *Confirmed that Germany has signed CoE additional protocol.*
6 Appropriate Functions. Does the authority have an appropriate range of functions with the legal powers necessary to perform those functions (e.g., the power to receive and investigate complaints from individuals without seeking permission)?

Yes

7 Does the Sub-group recommend accreditation?
Yes

8 If accreditation is recommended what is the accreditation as?
National authority (within the UN criteria)

9 If accreditation is as an authority within an international/supranational body does the recommendation include voting rights?
Not Applicable

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

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
If more information is required what is this:

Signed on behalf of the Subgroup:

Marie Georges
Date: June 12, 2002

BLAIR STEWART
Date: 27 June 2002

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