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(amended)

### 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

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

~~joachim.jacob@bpa.bund.de~~

(c) Direct telephone number

~~0049 228 99 33 33 33~~

(d) Fax contact

~~0049 228 99 33 33 33~~

#### 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.DPA ct

(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

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**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

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

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

1 Name of Authority

**GERMANY - The Federal Data Protection  
Commissioner**

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  
5years- 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 (eg the power to receive and investigate complaints from individuals without seeking permission)?

Yes

Notes

All powers listed except sanctions

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

If more information is required what is this:

Signed on behalf of the Sub-group:

Marie Georges

Date: June 12, 2002

*BLAIR STEWART*

Date: 27 June 2002

Date:

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