Mecklenburg-West Pomerania: Data Protection Commissioner (Landesbeauftragte für den Datenschutz Mecklenburg-Vorpommern)

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

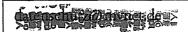
1. Name and postal address of authority

Der Landesbeauftragte für den Datenschutz Mecklenburg-Vorpommern Schloss Schwerin 19053 Schwerin

- 2. Contact person for this application:
 - (a) Name

Dr. Werner Kessel

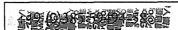
(b) Email address



(c) Direct telephone number



(d) Fax contact



Type of application

- 3. The application is for accreditation as:
 - (a) national Authority

YES

	(c) Authority within an international, if yes which one NO					
Descri	ption of applicant					
4.	Description of Authority (e.g. commissioner, commission, board etc)					
	commissioner					
5.	Is the Authority a public body? YES					
6.	Geographical jurisdiction					
	Mecklenburg-West Pomerania					
7.	Sectoral coverage (i.e. does the applicant's jurisdiction cover the entire public and priva sectors? If only part of a sector or if there are significant activities not covered, pleaspecify)					
	public sector					
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					
	art. 37 constitution of Mecklenburg-West Pomerania /					
	§ 29 data protection law of Mecklenburg-West Pomerania					
	(Landesdatenschutzgesetz – DSG M-V)					
10.	Is this principally a data protection law? YES (DSG M-V)					
11.	Status of the law (e.g. statute, regulation, executive order)					
	statute					
12.	Which body made the law?					
	federal state parliament					
13.	What body has the power to amend or revoke the law?					
	federal state parliament					

YES

(b) sub-national Authority

Autonomy and independence

										cess applies
to the	presiding	member	from o	ther 1	Authority	members	in this	question	and in	subsequent
questic	ns.)									

the president of parliament appoints the commissioner after election (the members of staff are appointed on the recommendation of commissioner)

15. What process is followed?

commissioner takes up the office

16. For what term are appointments made?

6 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?

the parliament (the votes of 2/3 of the members of parliament are necessary)

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

no

21. What are the grounds for removal?

several grounds

- 22. Does the Authority possess the following powers (briefly describe and give statutory references)
 - (e) to initiate an investigation with seeking provision YES

details:- to inspect obeying of the data protection law (§§ 30, 31 DSG M-V) - to institute criminal proceedings in case of criminal acts according to § 42 DSG M-V (§ 42 (4) DSG M-V)

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

details: about the results of the checks (§§ 32, 33 (1) DSG M-V)

	(g)						
		details: about data protection topics (§ 33 (4) DS	SG M-V)				
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).						
!	I	ty's finances are entered within a special chapter o ent (§ 29 (6[3]) DSG M-V)	f the budget of				
Consi	stency wit	th 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						
	instrume	nt)? YES					
	If "yes",	If "yes", which of the following does it principally implement?					
	(a) C	DECD Guidelines (1980)	NO				
	(b) (i)Council of Europe Convention No 108 (1981)	NO				
	(ii)	Council of Europe Additional Protocol (8 Novement	mber 2001)				
			NO				
	(c) U	JN Guidelines (1990)	NO				
	(d) E	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)						
		no					
27.	27. Have significant questions been raised about the extent to which the law is with the international instruments which are claimed to be implement in questions 25 and 26? (Applicants should supply further information to Committee including a description of any measures under way to add inconsistencies.)						
		no					

Appropriate functions

(a)	compliance (e.g. audit, inspection)	YES
	details: inspection because of and without a spec M-V)	cial reason (§ 30 DS
(b)	approvals (e.g. prior-checking, notification)	YES
	details: in special cases of data transmission to comember states of the EU (§ 16 (3 No. 5) DSG N	
(c)	redress for individuals (e.g. complaints, conciliation	on enforcement) YES
	details: every individual has the right to complain of his/here personal data by an Authority to the DSG M-V)	
(d)	sanctions available to Authority (for example, pro	
	NO	
	details: -	MP-0
(e)		YES
(e)	details: -	
(e) (f)	details: - guidance (e.g. compliance advice)	
	details: - guidance (e.g. compliance advice) details: compliance advice (§ 33 [2] DSG M-V)	YES YES
	details: - guidance (e.g. compliance advice) details: compliance advice (§ 33 [2] DSG M-V) public education details: information to the public about data pr	YES YES
(f)	details: - guidance (e.g. compliance advice) details: compliance advice (§ 33 [2] DSG M-V) public education details: information to the public about data pre (4) DSG M-V)	YES YES cotection (§ 33
(f)	details: - guidance (e.g. compliance advice) details: compliance advice (§ 33 [2] DSG M-V) public education details: information to the public about data pr (4) DSG M-V) policy advice for government	YES YES Totection (§ 33) YES

Additional comments

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

and

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.datenschutz.mvnet.de/ges ver/guv/guv c 20.html

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.datenschutz.mvnet.de/taetberi/tb5/tb5.html

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	Landesbeauftrager fur den Datenschutz Mecklenburg- Vorpommern (Germany)		
2	Does the authority have clear a protection functions covering a activity (eg not just an advising ba narrow field such as medical pri	Notes Public sector		
	<u>Yes</u>			
	No ·			
	Don't know			
3	Legal Basis. Is the authority a public body eappropriate legal basis (eg by se	Notes DP Law of Mecklenburg- West Pomerania and constitutional guarantees		
	Yes	constitutional guarantees		
	No			
	Don't know			
4	Autonomy and Independence? Is the authority guaranteed on autonomy and independence to the power to make public statemer removal from office)?	appropriate degree of perform its functions (eg	Notes Provided for in DP law	
	<u>Yes</u> .			
	No			
	Don't know			
5	Consistency with International Is the law under which the aut compatible with at least one or instruments dealing with data EU Directive, OECD Guidelines Convention)?	hority operates f the international protection and privacy (eg	Notes EU Directive	
	<u>Yes</u>			

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 Full range of functions provided for in DP law but stated not able to prosecutethis contradicts an earlier answer stating that it can institute criminal proceedings so may be a translation error
~	Dearth Cult annual management against that and	Ni-to-
7	Does the Sub-group recommend accreditation?	Notes
	<u>Yes</u>	
	No	
8	If accreditation is recommended what is the accreditation as?	Notes
	National authority (within the UN criteria)	Application as both national and sub–national made, however a German Land
	Authority within a limited sub-national territory	does not meet UN criteria
	Authority within an international or supranational body	The application as a national authority appears to be an error since this is clearly a sub-national authority.
9	If accreditation is as an authority within an international/supranational body does the recommendation include voting rights?	Notes
	Voting Rights	
	No Voting Rights	
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?	Notes
	Refusal	
	More Information	
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

Not Applicable			
Yes			
Not			
If more information is requi	red what is this:		
		7	
Signed on behalf of the Subgroup:	Jonathan Bamford	Date:	5/6/02
		7	
	Blair Stewart	Date:	9 July 2002
		Date:	

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