

- Saxony-Anhalt: Data Protection Commissioner (Landesbeauftragter für den Datenschutz Sachsen-Anhalt)

## 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

Landesbeauftragter für den Datenschutz Sachsen-Anhalt  
Postfach 19 47, 39009 Magdeburg, GERMANY

2. Contact person for this application:

- (a) Name

Klaus-Rainer Kalk (DPC)

- (b) Email address

poststelle@fdl-st.de

- (c) Direct telephone number

49 391 818030

- (d) Fax contact

49 391 818030

### Type of application

3. The application is for accreditation as:

(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)

DPC

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

6. Geographical jurisdiction

State of Saxony-Anhalt, 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 except Federal Administration and jurisdiction of courts

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

Art. 63 Constitution of State and Gesetz zum Schutz personenbezogener Daten der Bürger (Statute for the protection of citizen's personal data)

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

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

Statute

12. Which body made the law?

Parliament of the State

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

see No. 12.

## 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.)

President of Parliament

15. What process is followed?

- a) the DPC has to be elected by Parliament with a 2/3 majority before appointment
- b) Staff is nominated by DPC's decision and appointed by the President of Parliament

16. For what term are appointments made?

6 years – 1 reelection allowed

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/NO

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

President of Parliament

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?

Severe disciplinary offences or sentences only

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

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

details: DPC and authorized staff can investigate any public authority, all questions have to be answered, PCs, files, all official premises are to be opened on request  
(Art. 22 par. 1, Art. 23 par. 1 State Statute)

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

details: DPC is free to apply to Parliament in any case  
(Art. 21 par. 2 State Statute)

(g) make public statements YES/NO

details: no restrictions besides the general laws

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).

- 1) Art. 63 par. 3, 1. sentence Constitution of State
- 2) State Statute Art. 21 par. 3 – special budget for DPC's disposal
- 3) DPC and staff are privileged from testifying (Federal Data Protection Statute Art. 12 par. 3 and Art. 23 par. 4)

#### 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

(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.)

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/NO

details: right to control any public authority except jurisdiction (Art. 22 par. 1 and Art. 23 State Statute)

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

details: DPC has to be informed about the planing of automatic IT-systems (Art. 22 par. 4 State Statute) and in case of special police actions (e.g. data acquisition and automatical checktests to find suspects)

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

details: everybody can apply to the DPC, if he has the opinion that there is something wrong with the collecting, processing and use of his personal data by public authoronities

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

details:  
1) formal and informal objection (Art. 23 par. 3, Art. 24 State Statute)  
  
2) right to report to police, public prosecutor or administrative authority for fine (Art. 22 par. 8)

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

details: right to give reference to any public authority (Art. 22 par. 4)

- (f) public education YES/NO

details:  
1) DPC is free for public statements in TV, press, radio or to take part in public events  
  
2) Publishes a two-years-report for Parliament and the public

- (g) policy advice for government YES/NO

details: see Art. 22 par. 4, 1. sentence

- (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

State Constitution Art. 63 / Statute of the State of Saxony-Anhalt – Section Four – for the protection of Citizen’s personal data (translated into English)

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

URL: <http://www.datenschutz.sachsen-anhalt.de/dsg-lsa/dsg-lsa.pdf>  
(only in German): "Gesetz zum Schutz personenbezogener Daten der Bürger"

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: <http://www.datenschutz.sachsen-anhalt.de/taetigkeitsber.htm> (only in German):  
V. Tätigkeitsbericht (1 April 1999 – 31 March 2001)

### 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

Landesbeauftragter für den Datenschutz Sachsen-Anhalt (State of Saxony-Anhalt 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  
Covers Public Sector  
excluding federal/court  
jurisdiction

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  
Article 63 of Statute for the  
Protection of Citizens  
Personal Data

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  
Statute provides for  
independence to perform  
functions and autonomy  
(Articles 20-23)

5 Consistency with International Instruments.

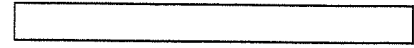
Is the law under which the authority operates compatible with at least one of the international instruments dealing with data protection and privacy (eg EU Directive, OECD Guidelines, Council of Europe Convention)?

Yes

No

Notes  
Conv. 108 and EU Directive

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 functions apart from conducting research

7 Does the Sub-group recommend accreditation?

Yes

No

Notes

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

The application is made for both national and sub national status, but national status is not appropriate does not meet UN criteria

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

Notes

Not

If more information is required what is this:

Signed on behalf of the Sub-  
group:

Jonathan Bamford

Date: 4/6/02

*Blair Stewart*

Date: 9 July 2002

Date:

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