

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 **Hiba! A könyvjelző nem létezik.**

Details of applicant

1. Name and postal address of authority

Office of the Parliamentary Commissioner for Data Protection and Freedom of Information
H-1051 Budapest, Nador u. 22., HUNGARY

2. Contact person for this application:

(a) Name
Gabor Freidler

(b) Email address

adtvred@obh.hu

(c) Direct telephone number

+36 1 475 7180 (Secretariat)

(d) Fax contact

+36 1 475 7180

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.)
Parliamentary Commissioner; elected by the Parliament;

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

6. Geographical jurisdiction

Republic of Hungary

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)

The jurisdiction of the Commissioner covers every data controller/processor in the state and the private sector

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

Act XX of 1949 The Constitution of the Republic of Hungary
Act No LXIII of 1992 on Protection of Personal Data and Disclosure of Data of Public Interest

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

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

Act

12. Which body made the law?

The Hungarian Parliament (According to the Constitution a majority of two-thirds of the votes of the Members of Parliament is required to pass or amend this Act)

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

The Parliament only

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 Commissioner is elected by the Parliament

15. What process is followed?

The President of The Republic nominates the person for this position. After the candidate have hearings at the competent committees of the Parliament. Finally the Parliament elects the commissioner (two-thirds of the votes of the Members of Parliament is required)

16. For what term are appointments made?
Six years; the Commissioner can be re-elected

The members of the Commissioner's staff are public servants; the employer is the Commissioner.

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?

The Parliament only

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?

According to the Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights (this Act is authoritative for the DP&FOI Commissioner concerning his election and mandate): the mandate of the Commissioner shall terminate by a) the expiry of the term of the mandate, b) death, c) resignation, d) the declaration of conflict of interest, e) discharge, f) removal from office. The reasons and procedure for d)-f) are detailed in the Act.

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

(e) to initiate an investigation with seeking provision YES/NO
The Data Protection Ombudsman shall observe the implementation of the DP&FOI Act and other laws on data processing and examine complaints lodged with him. Anyone may apply to the Data Protection Ombudsman in case of violation of his or her rights; the commissioner also has the right to initiate investigations ex officio.

(f) to report to the head of State, head of Government or legislature YES/NO
The Commissioner is obliged to make an annual report to the Parliament on the experience of his activities. It is also possible to make „individual” reports if needed.

(g) make public statements YES/NO
As the Parliamentary Commissioner (ombudsman) is not an authority, his main „weapon” is to turn to the public; make recommendations or announcements.

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

The Commissioner (and ex-Commissioner) has immunity, and only the Parliament can suspend it.

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 budget of the Office of the Parliamentary Commissioners is an independent chapter in the State Budget. In the course of his proceedings, the ombudsman shall be independent, he shall take his measures exclusively on the basis of the Constitution and the law; he must not be instructed.

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

Remark: In the Hungarian legal system only proclaimed Acts and other rules (e.g.: government decrees) may dispose over rights and obligations - International agreements, treaties, or pacts must be proclaimed by an Act or other rule. The DP&FOI Act is compatible with the EU Directive and during his work, the Commissioner used to take it into consideration while interpreting the national rules.

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) | <u>YES/NO</u> |
|---|---------------|

details:

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

details:

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

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

details:

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

The commissioner can inform the complainants of the way they can enforce their rights. The Commissioner also used to consult data controllers on special questions of data handling/processing.

(f) public education YES/NO

details:

(g) policy advice for government YES/NO

The Commissioner shall present proposal for adoption or modification of legislation concerning data processing and disclosure of data of public interest, and give opinion on such draft legislation.

(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.

The DP&FOI Act

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

URL: www.obh.hu

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.obh.hu

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

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

Data Protection Ombudsman, Hungary
Also appears to be known as "Parliamentary Commissioner for Data Protection and Freedom of Information"

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

Entire State and private sectors covered.

3 Legal Basis.

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

Yes

Notes

4 Autonomy and Independence?

Is the authority guaranteed an 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

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

The law does not implement an international instrument but the application notes that the law is compatible with the EU Directive. From my observations over the last several years, the Hungarian Commissioner has taken an active part in international DP discourse and the Hungarian

approach seems perfectly compatible with approaches taken internationally. A quick study of the English translation of the Hungarian law does support the view that the law is compatible with international instruments. Since Hungary is a candidate for membership of the EU, I understand that the law has been written in anticipation of it being found to be compatible (or largely compatible) with the EU approach, and therefore also compatible with the international approach generally.
The compatibility has the meaning of "adequacy" as it stands.

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

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?

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:

Signed on behalf of the Sub-group:

Blair Stewart

Date: **18 July 2002**

Marie Georges

Date: 18 juillet 2002

Date:

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