

EUROPEAN UNION:
Customs Information System Joint Supervisory Authority

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.

b) Details of applicant

1. Name and postal address of authority

Customs Joint Supervisory Authority
 Rue de la Loi 175 (3040GM14), B-1048 Brussels

2. Contact person for this application:


(a) Name

Mr. Peter A. Michael, data protection secretary

(b) Email address



(c) Direct telephone number



(d) Fax contact

[REDACTED]

Type of application

3. The application is for accreditation as:

(a) national Authority /NO

(b) sub-national Authority /NO

(c) Authority within an international, if yes which one..... YES/
it is a supra national authority

Description of applicant

4. Description of Authority (e.g. commissioner, commission, board etc)

The Joint Supervisory Authority may be compared with a commission, and consists of representatives from the national supervisors (the national Data Protection Authorities) of the EU Member States.

5. Is the Authority a public body? YES*

* This depends of the defintion used for public body. The JSA is not an artificial person in public law. It is established in an international legal and binding instrument: a convention.

6. Geographical jurisdiction

Since it concerns customs co-operation within the EU using a central data base it concerns indirectly all the EU Member States

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 but only the Customs Information System

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

The Convention of 26 July 1995 on the use of information technology for customs purposes
(Published in the Official Journal. OJ C 316, 27.11.1995, p. 34). ✓

10. Is this principally a data protection law? YES

The Convention deals with the co-operation in general between customs authorities Part of that cooperation is the establishment of an international data base and the necessary data protection regulations including independent supervision.

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

Convention

12. Which body made the law?

Member States of the European Union

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

Member States of the European Union

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.)

Each EU Member State appoints two representatives of the national Data Protection Authority. (Art. 18 Customs Convention) ✓

15. What process is followed?

It is an appointment done by the national Data Protection Authority

16. For what term are appointments made?

No specific term

17. Does the law under which the Authority operates explicitly state that it acts independently? No

18. May the member(s) be removed before expiry of their term? YES/NO

For the answer see answer to question See answer to nr. 19

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

According to the Rules of procedure of the JSA Customs: membership ceases when the person resigns or ceases to serve as a member or representative of the national authority, In case of breach of confidentiality the JSA may suspend a member or his alternate by a majority of two thirds

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

See answer to nr. 19

21. What are the grounds for removal?

See answer to question nr. 19

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

to initiate an investigation with seeking provision YES

details: it may inspect or audit when it deems necessary (art. 18 Customs Convention, Art. 1 and 2 of the Rules of Procedure)

to report to the head of State, head of Government or legislature YES

details: European Council, Member States, National Parliaments and the EU Parliament (art. 18(5) Customs Convention)

make public statements YES

details: it may do what it deems necessary (Art. 18 Customs Convention, art. 1 Rules of Procedure)

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

There are no specific provisions on this subject

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 independence of the staff is further established in an EU Council Decision. Published in the Official Journal, OJ L 24.10.2000, nr. 271/1 ✓

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 |
| (c) | (ii) Council of Europe Additional Protocol (8 November 2001) | YES |
| (d) | UN Guidelines (1990) | NO |
| (e) | EU Directive (1995) | NO |
26. Does the law instead, or additionally, implement any general or specific international instrument? (If so, list the international body and the instrument)

Recommendation No R (87)15 of the Committee of Ministers of the Council of Europe of 17 September 1987

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: inspections/audit according to its task mentioned in Article 18 of the Customs Convention and Art.1 and 2 of its Rules of Procedure

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

details:

(c) redress for individuals (e.g. complaints, conciliation enforcement)

NO

details:

(d) sanctions available to Authority (for example, prosecution and enforcement)

NO

details:

(e) guidance (e.g. compliance advice) YES

details: It gives opinions on amendments of the Convention its implementation and its interpretation (Art. 18 Customs Convention)

(f) public education YES

details: it publishes information material for the public

(g) policy advice for government YES

details: see nr. e

(h) studies or research (e.g. into developing technologies, privacy issues)

YES

details: not yet developed but possible in view of the task of the JSA Customs (art. 18(3) of the Customs Convention)

Additional comments

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

Customs Convention published in the Official Journal of the European Union OJ C 316, 27.11.1995 pag. 34

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.ue.eu.int

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:

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.

c) 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 **Customs Joint Supervisory Authority, European Union**

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)?

No

Notes
This is a specialist supra-national supervisory authority which naturally has narrower competence than a typical national DPA. JSA consists of representatives from the national DPAs of EU states and covers the Customs Information System which is a joint endeavour within the contributing states' public sectors.

The JSA covers a very specific area of activity and some elements of supervision falls to the DPAs of the member states concerned in respect of their national units.

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

Yes

Notes
The principal legal authority is the EU Convention on the Use of Information Technology for Customs Purposes (1995). Legal basis also to be found in an EU Council decision establishing a secretariat (2000) and the rules of procedure (? – not viewed). This appears to be an appropriate legal basis for a supra national institution of this type offering high level authorisation, transparency, certainty of powers and clarity of purpose. The joint will of EU states needed to establish the JSA as a data protection mechanism would also need to be invoked to disestablish it or to markedly alter its functions or operation.

The rules of procedure are consistent with other such rules for similar joint supervisory bodies and reinforce the basis and independent status of the JSA

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

The national DPAs make the appointments to the JSA, those DPAs themselves possessing autonomy and independence. The rules of procedure (not viewed) apparently deal with removal for certain misconduct. The JSA has some functions conducive to effectiveness and independence (initiation of investigations, reporting to democratic institutions, public statements). The EU Council decision establishing a secretariat (2000) also mandates independence of the staff ("in the exercise of their duties the staff ... shall be subject exclusively to the instructions of the data protection secretary and the joint supervisory bodies ... they may neither seek nor accept instructions from any government, authority, organisation or person ...").

The rules of procedure reinforce the JSA's independence

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 Customs convention is a specialised instrument consistent with international data protection norms. Compatibility is emphasised through the membership of national DPAs. The application cites recommendation R(87)15 of the Council of Europe (1987) which concerns regulating

the use of personal data in the police sector.

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

For the limited specialist functions it performs, the JSA would appear to have the necessary associated powers appropriate in the supra-national context.

7 Does the Sub-group recommend accreditation?

Yes

Notes

8 If accreditation is recommended what is the accreditation as?

Authority within an international or supranational body

Notes

9 If accreditation is as an authority within an international/supranational body does the recommendation include voting rights?

No Voting Rights

Notes

It would appear inappropriate to give such a narrowly focused body general voting rights especially given the (perfectly appropriate) establishment of several similar JSAs within EU (e.g. Europol, Schengen).

The JSA only has a limited focus and national DPAs have certain functions of their own to perform in relation to the supervision of their national units. Full voting rights are inappropriate

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

Notes

See below

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

If more information is required what is this:

Although I have not seen the rules of procedure I have seen the rules for similarly constituted EU institutions (e.g. for Europol) and expect that they would be as carefully drawn. My inability to locate the rules of procedure has not led me to seek further information and I think the decision can be taken on the documents seen (application, Customs Convention, Council decision establishing secretariat).

Please note that I obtained most documentation via the Eur-lex website and the URL given in the application is not correct (there is no "www").

I have examined the rules of procedure in detail and they are consistent with other such bodies and serve to reinforce the independence of the JSA and the conduct of its full range of functions. Nothing within them calls into question any of the views expressed in the appraisal of the application

Signed on behalf of the Sub-group:

Blair Stewart

Date: **19 May 2003**

Jonathan Bamford

Date: *23rd June 2003*

Date:

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