

Hesse: Data Protection Commissioner (Hessische Datenschutzbeauftragte)

## 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

Der Hessische Datenschutzbeauftragte, Uhlandstr. 4, D-65189 Wiesbaden

2. Contact person for this application:

- (a) Name

Wilhelm Rydzy

- (b) Email address

w.rydzy@datenschutz.hessen.niederrhein.de

- (c) Direct telephone number

049 41 14 03 24

- (d) Fax contact

049 41 14 03 24

### 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)

commissioner

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

6. Geographical jurisdiction

State of Hesse (Germany), nationwide if data are processed for state authorities

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)

Entire public 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

Hessisches Datenschutzgesetz

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?

State legislature

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

State legislature

## 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.)

Commissioner elected by State Parliament on proposal of the State Governor, staff members appointed by President of the State Parliament

15. What process is followed?

Commissioner elected, staff members appointed by President of the State Parliament on proposal of the commissioner

16. For what term are appointments made?

Commissioner elected to office for the duration of the electoral period of the State Parliament

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?

State Legislature

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

Yes, Art. 21 sec. 4 Hessian Data Protection Act

21. What are the grounds for removal?

If facts have emerged which, in the case of a civil servant, would constitute grounds for 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/~~NO~~

details: Art.24 sec.1 . Art.29 sec.1 Hessian Data Protection Act

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

details: Art.24 sec.1. Art.30 Hessian Data Protection Act

(g) make public statements YES/~~NO~~

details:

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).

Art. 31 HDP: The President of the State Parliament shall make available to the Commissioner the necessary staff and equipment for the accomplishment of his tasks

#### 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?

- (e) OECD Guidelines (1980) ~~YES~~/NO
- (f) (i) Council of Europe Convention No 108 (1981) YES/~~NO~~  
(ii) Council of Europe Additional Protocol (8 November 2001) YES/~~NO~~
- (g) UN Guidelines (1990) ~~YES~~/NO
- (h) 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 implemented 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):

(d) compliance (e.g. audit, inspection) YES/~~NO~~

details: Art.24 Hessian Data Protection Act

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

details: Art.4 sec.3, Art.7 sec.4, Art. 17 sec. 2, Art. 33 sec.4, Art. 34

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

details:

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

details:

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

details:

(i) public education YES/~~NO~~

details:

(g) policy advice for government YES/~~NO~~

details:

(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.

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

URL: [www.datenschutz.hessen.de](http://www.datenschutz.hessen.de)

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.hessen.de](http://www.datenschutz.hessen.de)

### 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

Der Hessische Datenschutzbeauftragte, *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  
Public Sector covered

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  
Hessisches DP law

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  
Provided for in Hessisches DP law

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

Don't know

Notes  
Conv. 108 and EU Directive

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 prosecution/enforcement and redress for individuals

The lack of individual redress is a real concern...however it is difficult, within the context of the other Lander, to decide that it does not possess an appropriate range of functions.

*I have been unable to study the law under which the authority operates as the website is in German and no English translation was separately provided. However, the application indicates that the authority has functions in relation to neither redress for individuals (e.g. complaints, conciliation, enforcement) or sanctions (e.g. prosecution and enforcement). I question whether accreditation should be granted in such a case.*

7 Does the Sub-group recommend accreditation?

Yes

No

Notes

Although no redress for individuals other range of functions sufficient

*A role in relation to complaints or redress is fundamental. While I think it satisfactory to approve an authority with limited complaints/redress function, e.g. limited by institution or range of enforceable remedies, I question the position of an authority that has absolutely no functions in relation to*

***complaints/redress at all.***

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

Applied for both National and Sub-national status. Does not meet UN criteria for national status

***Clearly the applicant is not a national authority. The correct category is sub-national.***

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:

*Enquiries could be made in relation to complaints/redress functions or activities (unless the correct position is already known to the sub-group or committee). If the applicant has absolutely no role in relation to redress for individuals, and there are no sanctions for breach, then I would not recommend accreditation. If the authority has some limited role then the balance of the applicant's function would probably allow for accreditation.*

Signed on behalf of the Sub-group:

Jonathan Bamford

Date: 5/6/02

*Blair Stewart*

Date: 9 July 2002

Date:

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