

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

COMISSÃO NACIONAL DE PROTECÇÃO DE DADOS (Data Protection National Commission – Portuguese DPA). Rua de S. Bento, 148, 3º, 1200-821 Lisboa, PORTUGAL Tel: + 351 21 392 84 00 Fax: + 351 21 392 68 32 E-mail: comissao@cnpd.pt

2. Contact person for this application:

- (a) Name

Clara Guerra

- (b) Email address

clara@cnpd.pt
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- (c) Direct telephone number

+351 21 392 84 00

- (d) Fax contact

+351 21 392 68 32

Type of application

3. The application is for accreditation as:

- (a) national Authority

YES

- (b) sub-national Authority NO
- (c) Authority within an international, if yes which one..... NO

Description of applicant

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

Commission

5. Is the Authority a public body? YES

6. Geographical jurisdiction

All the territory of Portugal (national)

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)

It covers public and private sectors

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

Law 67/98 of 26 October

10. Is this principally a data protection law? YES

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

Statute

12. Which body made the law?

The Parliament

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

The Parliament

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.)

Several bodies (Article 25 of Law 67/98, 26/10)

15. What process is followed?

Chairman and two other members being elected by the Parliament by means of the Hondt highest average rule;
two magistrates with over 10 years' experience, one being a legal magistrate appointed by the Magistrates Superior Council and the other a Public Prosecution Service magistrate appointed by the Prosecution Service Superior Council;
and two other members appointed by the Government.

16. For what term are appointments made?

5 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? NO

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

No applicable

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

No applicable

21. What are the grounds for removal?

No applicable

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

(e) to initiate an investigation with seeking provision YES

details: Art.22. 3 - The DPA is endowed with investigative powers

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

details: Art.22.4 and Art. 23.4 – The DPA may, in case of non-compliance with legal provisions, raise the matter with the Parliament, the Government or other bodies or authorities, and it may, as well, suggest to the Parliament the measures deemed useful for pursuing its duties and exercising its responsibilities.

(g) make public statements YES

details: Art.22.4 - The DPA may warn or publicly censure the processor in case of non –compliance;

Art. 23.1 p) – The DPA shall promote the disclosure and clarification of rights and periodically publicise its activity

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).

Constitutional consecration in Article 35.2 “The law shall determine what is personal data (...) and shall guarantee its protection by means of an independent administrative body”

Article 21.1 of Law 67/98 – “The CNPD is an independent body with powers of authority (...)”.

Article 26.2 of Law 67/98 – “The status of the members of the CNPD guarantees their independence in exercising their functions”.

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) | NO |
| | (ii) Council of Europe Additional Protocol (8 November 2001) | NO |
| (c) | UN Guidelines (1990) | NO |
| (d) | 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. 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: Art.22.3.a) – the DPA has investigative powers, has full access to controllers premises and information systems and has powers to collect all the information it deems necessary.

(b) approvals (e.g. prior-checking, notification) **YES**

details: Art.23.1 a) and b) and Art. 27.1 – the DPA has the responsibility of issuing opinions on draft legal provisions and on legal instruments in preparation in Community or international institutions, and of authorising or recording the processing of personal data, after being obligatory notified by the controller or his representative.

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

details: Art.23.1 k) – The DPA is responsible for assessing the claims, complaints or applications of private individuals

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

details: Articles 22.3 b) and 22.4– The DPA may order the blocking, erasure or destruction of data, or imposing a temporary or permanent ban on the processing of personal data; the DPA may warn or publicly censure the processor.
Article 22.5 – The DPA may engage in legal proceedings and must report the Public Prosecution Service any criminal offences it becomes aware of in exercising its functions;
Article 23.1.n) – The DPA deliberates on the application of fines;
Article 23.3 – The DPA lays down obligatory decisions.

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

details: Article 22.3 c) – The DPA has the power to deliver opinions before processing is carried out and to ensure their publication.

Articles 23.1 o) and 23.2 – The DPA shall promote and assess the drawing up of codes of conduct. To issue directives or assess codes of conduct, it must promote consideration of the views of the associations defending the interests concerned.

- (f) public education **YES**

details: Articles 23.1 p) and 31.5 – The DPA shall promote the disclosure and clarification of rights regarding the protection of personal data, and shall publicise periodically its activity. All opinions or authorisations drawn up or granted must be published by the DPA in its annual report.

- (g) policy advice for government **YES**

details: Articles 22.2 , 22.4 and 23.4

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

details: The DPA may develop any studies or researches it considers useful or necessary for the accomplishment of its duties and responsibilities.

Additional comments

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

The legislative references made above – unless mentioned otherwise - concern the Portuguese Data Protection Act – Law 67/98 of 26 October.

Other materials

30. List any attachments which will accompany the application as an electronic attachment or to follow by post.

Portuguese Data Protection Act (Law 67/98 of 26 October), transposing Directive 95/46/EC

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

URL: <http://www.cnpd.pt> (English and French versions)

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.cnpd.pt/relat/relatorio.htm>

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

COMISSÃO NACIONAL DE PROTECÇÃO DE DADOS -
(Data Protection National Commission), Portugal

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

Notes

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
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

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?

Not applicable

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

Notes

If more information is required what is this:

Signed on behalf of the Sub-group:

Blair Stewart

Date: **17 June 2002**

Jonathan Bamford

Date: 12/07/02

Date:

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