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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

THE PEOPLE'S ADVOCATE
Iancu de Hunedoara Blvd., no. 3 – 5
Sector 1
Bucharest
Romania

2. Contact person for this application:

- (a) Name

Lupitu Laura Anca

- (b) Email address

lupitu@advocata.ro

- (c) Direct telephone number

+40 21 509 5000

- (d) Fax contact

+40 21 509 5000

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)

THE PEOPLE'S ADVOCATE (THE OMBUDSMAN)

5. Is the Authority a public body? YES

6. Geographical jurisdiction

The geographical jurisdiction of the People's Advocate is general, extended over the entire territory of Romania, as regards the monitoring and controlling of the processing of personal data, performed in the frame of activities done by controllers established in Romania, processing of personal data, performed in the frame of activities done by diplomatic missions or consular offices of Romania. The activity of the supervisory authority regards also the processing of personal data performed by controllers that are not established in Romania, by using means of any nature, situated on the territory of Romania, except for the case in which these means are not being used but for the purpose of transit through Romanian territory of the personal data, which are subject to the respective processing.

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 People's Advocate as the supervisory authority consists of the monitoring and controlling, in legal aspect, the processing of personal data performed by Romanian or foreigner natural or legal persons, of public and private law, regardless of the fact that they take place in the public or the private sector.

The processing of personal data performed by natural persons exclusively for their own interests, if the data in case are not destined to be disclosed do not fall within the scope of the law.

The processing and transfer of personal data, carried out in the frame of national defence and security, within the limits and restrictions stated by the law, do not fall within the scope of the law, either.

8. Is the role of the Authority mainly concerned with data protection and privacy? NO

Legal basis

9. Title of law under which the Authority is constituted

"Law no. 677/2001 on the Protection of Individuals concerning the Processing of Personal Data and Free Movement of These Data" published in the Official Monitor of Romania, Part I, no 790 of December 12th, 2001, day in which the law has come into force.

10. Is this principally a data protection law? YES

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

Ordinary law

12. Which body made the law?

The Parliament passed the Law no 677/2001.

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

According to the constitutional and legal provisions, the ordinary laws can be amended or repealed by laws passed by the Parliament, by Government ordinances, adopted on the basis of a special enabling law, ordinances that should be submitted to Parliament approval, at request as well as by emergency ordinances issued by the Government in exceptional cases, emergency ordinances that must be submitted to Parliament approval.

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 People's Advocate is appointed by the Senate (one of the chambers of the Romanian Parliament).

The People's Advocate is assisted by two deputies. They are appointed by the People's Advocate and bear the endorsement of the Judicial Commission for Appointments, Discipline, Immunity and Validations of the Senate.

The staff of the People's Advocate institution, which carries out the activity in the Group on the protection of individuals concerning the processing of data with personal character and free circulation of these data, is composed by public officers (investigators/experts).

15. What process is followed?

The People's Advocate is appointed by the Senate. The Standing Bureau of the Senate makes candidate proposals, on the basis of the recommendations of the parliamentary groups of the two Chambers of Parliament.

The candidates for the People's Advocate office have to fulfil the same appointment criteria stipulated by the Constitution for public dignities and for the judges of the Constitutional Court. These criteria are: Romanian citizenship, resident in Romania, graduated in law, high professional competence, and at least 18 years in juridical or academic activities in law. The candidates are being heard before the Judicial Commission for Appointments, Discipline, Immunity and Validations of the Senate. The Senate decides on this hearing in a plenary session and the candidates attend the debates. The People's Advocate is appointed by the majority vote of the senators. Whether candidates fail to get this majority on the first ballot, new round will be organised, in which only the candidates placed on the first and the second position in the previous ballot will run. Before the beginning of the term, the People's Advocate takes an oath before the presidents of the two Chambers of the Parliament.

The deputies of the People's Advocate are appointed by the People's Advocate and bear the endorsement of the Judicial Commission for Appointments, Discipline, Immunity and Validations of the Senate. Similarly, the term of the deputies begins on the appointment's date and lasts until the investiture of the new People's Advocate. Before the beginning of the term, the deputies take an oath before one vice-president of the Chamber of Deputies and one vice-president of the Senate.

The appointment acts of the People's Advocate and of his/hers deputies are published in the Official Monitor of Romania.

The public officers are appointed by People's Advocate's order, on the basis of a contest.

16. For what term are appointments made?

The term of the office of the People's Advocate and of his/hers deputies is four (4) years and can be renewed only once. The term of the office begins on date of the appointment by the Senate and lasts until the investiture of the new People's Advocate.

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? YES

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

The Senate removes the People's Advocate with the majority vote of the senators, at the proposal of the Standing Bureau of the Senate, based on the report of the Judicial Commission for Appointments, Discipline, Immunity and Validations of the Senate.

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

The grounds for removal are limited and specified in art. 9 par. (2) and (3) of the Law no 35/1997 on the Organisation and the Functioning of the People's Advocate Institution, published in the Official Monitor of Romania Part I, no 48 on March 20th, 1997, amended and completed by Law no 181/2002, published in the Official Monitor of Romania Part I, no 268 of April 22nd, 2002.

21. What are the grounds for removal?

The removal from office of the People's Advocate takes place as a result of infringements upon the Constitution and upon laws. The hold of the office may cease before the expiry of the term by resignation, incompatibility with other public or private offices, disability to discharge powers for more than 90 days, which is certified by a specialized medical examination or death.

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. 21 par (3) letter g) in Law no 677/2001 states: "The supervisory authority realises ex-officio investigations or at requests or notices".

Art. 27 in Law no 677/2001: "The exercise of the investigative powers"- In the exercise of its investigative powers the supervisory authority may demand from the operator any information linked to the processing of data and may verify any

or recording regarding the processing of data with personal character.

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

details:

According to art. 57 of the 1991 Constitution of Romania and to art. 5 of the Law no 35/1997, amended and completed, the People's Advocate reports before the two Chambers of Parliament, annually or at their request. The reports may consist of information on the activity of the People's Advocate and may contain recommendations regarding amendments to the legislative framework or measures of other nature for the protection of citizens' rights and freedoms, including the right to intimate, family and private life (privacy). In keeping with art. 25 of Law no 35/1997, amended and completed, the People's Advocate may present special reports to the presidents of the two Chambers of the Parliament or, as the case may be, to the prime-minister, if he/she finds shortcomings in the legislation, serious cases of corruption or violations of the laws.

- (g) make public statements YES

details:

According to art. 25 of the Law no 35/1997, amended and completed, the People's Advocate may publish through the media the results of the applications (petitions) lodged by the concerned persons, with the consent of these, observing the obligations regarding the legal status of classified information and documents. The annual report on the activity is published, in respect of art. 5 of the Law no 35/1997, amended and completed.

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

According to art. 27 in the Law no 35/1997, amended and completed, the People's Advocate and his deputies are not legally answerable for any opinions or acts during the discharge of the powers, if they are done with the observance of the law.

Nevertheless, in the respect of art. 26 in Law no 677/2001, against any decision emitted by the supervisory authority based on the provisions of this law, the controller or the data subject may appeal within 15 days since the communication of the decision, at the competent administrative court of law.

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).

While exercising the office, the People's Advocate and his/her deputies must not be members of a political party and they must not hold any other public or private position.

These incompatibilities apply also to specialist desk officers, except for the academic posts in higher education institutes (art. 29 of Law no 35/1997, amended and completed).

According to the amendments to the Law no 35/1997, by the Law no 181/2002, the People's Advocate institution has its own budget, which is part and parcel of the state budget. The draft budget is approved by the People's Advocate, with the advisory opinion of the Ministry of the Public Finances and is submitted to the Government in order to be distinctively included in the draft state budget that is going to be passed by the Parliament. The Peoples' Advocate's objections regarding the Government's draft state budget are submitted to be solved by the Parliament. (art. 33)

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 |
| | (ii) Council of Europe Additional Protocol (8 November 2001) | NO |
| (c) | UN Guidelines (1990) | NO |
| (d) | 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)

Although Romania is not a State Member of the European Union, the provisions of the EU Directive 95/46/EC were taken into account while adopting the Law no 677/2001. The principles of the Directive 95/46/EC inspired the provisions of the Romanian law. The Peoples' Advocate is invited to attend, as observer, the meetings of the Working Party on the Protection of Individuals with regard to the Processing of Personal Data, established in art. 29 of the Directive 95/46/EC.

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.)

There are no significant questions regarding the compliance of the law with the international instruments.

The Peoples' Advocate participates at the procedures for the negotiations and admission of Romania in the European Union, in the framework of Chapter 24 "Justice and Home Affairs". With this respect, various documents were drawn, illustrating the measures taken on by the Peoples' Advocate implementing Law 677/2001, as well as the EU acquis for Romania, which includes Directive 95/46/EC.

In the same time, art. 20 par. (2) of the Constitution of Romania states the prevalence of the international regulations, if there are any inconsistencies between the pacts and treaties regarding the fundamental human rights Romania is a part to and the domestic laws.

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:

- powers of investigation ex-officio or at the request of the individuals which allege themselves prejudiced by the processing of the personal data concerning him/her – art. 21 par. (3) lit. g), art. 27 Law no 677/2001, mentioned at the point 22 (a) in the present application form;
- powers of investigation (hearings, expertise), for solving the petitions submitted by individuals which claim themselves prejudiced by the processing of the personal data concerning him/her - art. 25 par. (4) Law no 677/2001.

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

details:

- the prior notification of the personal data processing to the supervisory authority – art. 22 Law no 677/2001;
- the preliminary control performed by the supervisory authority whereas it notices that the notified processing involves special risks for the rights and freedoms of the individuals, in 30 days since the date of the notification, with a prior notice to the controller, in 5 days since the date of the notification – art. 23 Law no 677/2001;
- the prior authorisation from the supervisory authority for the processing of personal data regarding the health whereas the protection of other individuals' vital interests that the data subject is required - art. 9 par 3 Law no 677/2001;
- the prior authorisation from the supervisory authority for the personal data transfer abroad – art. 29 Law 677/2001.

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

details:

The supervisory authority receives and solves petitions, notices or requests coming from the individuals and announce the given solution, or, the efforts taken – art 21 par (3)lit f) and art. 25 Law no 677/2001.

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

details: The supervisory authority may

- notify the bodies with competencies in criminal prosecution and file complains to the court of law – art. 21 par. (3) letter d) and art 25 Law no 677/2001;
- notice the contravention and apply sanctions (fines) established in art. 31-35 of the Law no 677/2001, unless the infringements are criminal offences.

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

details:

- deliver recommendations and assents on any issue concerning the protection of fundamental rights and freedoms regarding the processing of personal data, at the request of any individual, including the public authorities and bodies of the public administration art. 21 par (3) letter j) Law no 677/2001;
- approve the codes of conduct elaborated by the trade associations – art. 28 Law no 677/2001.

(f) public education YES

details: The supervisory authority

- makes available for the public of the register of the processing of personal data – art 21 par. (3) letter e) Law no 677/2001;
- may publish the law and other information on the activity of the Peoples' Advocate on the Internet web-site;
- may publish and distribute booklets on the activity of the Peoples' Advocate.

(g) policy advice for government YES

details:

- The Peoples' Advocate is consulted when legislative drafts are being elaborated, drafts regarding individuals' rights and freedoms, including drafts concerning the processing of data with personal character – art. 25¹ in Law no 35/1997, amended and completed, and art. 21 par. (3) letter h) Law no 677/2001;
- If the Constitutional Court is addressed with an exception of unconstitutionality of laws or ordinances regarding the rights and freedoms of the citizens, the Court will solicit the opinion of the Peoples' Advocate - art. 18¹ Law no 35/1997, amended and completed;
- The Peoples' Advocate collaborates with the public authorities and bodies of the public administration, centralises and analyses the annual activity reports regarding the protection of persons concerning processing of personal data – art. 21 par. (3) letter j) Law no 677/2001.

- (h) studies or research (e.g. into developing technologies, privacy issues)
YES/NO

details: The supervisory authority elaborates the minimum-security requirements and actualise periodically these requirements, according to the technique progress and experience assimilated, in order to ensure an adequate level of security regarding the risks the processing involves and regarding the nature of the data that must be protected.

Additional comments

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

The Peoples' Advocate is established by the provisions of the 1991 Constitution of Romania (art. 55-57). The Peoples' Advocate is organised and functions, as a public authority according to the Law no 35/1997, amended and completed by the Law no 181/2002. It was designated as the supervisory authority by the Law no 677/2001 on the Protection of Individuals concerning the Processing of Personal Data and Free Movement of These Data, Law no 676/2001 on the Processing of Personal Data and the Protection of Privacy in the Telecommunications Sector and by Law no 682/2001, concerning the Ratification of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, adopted at Strasbourg, on January 28th, 1981.

Other materials

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

Because the English version of the web-site of the Peoples' Advocate is under construction, the following legal provisions (translated into English) will accompany the application, in electronic form, legal provisions which rule the supervisory authority's activity:

- art. 55-57 of the 1991 Romanian Constitution, Title II " The Human Rights and Freedoms and the Fundamental Duties", Chapter IV "The Peoples' Advocate":
- Law no 35/1997 on the Organisation and Functioning of the People's Advocate Institution, published in the Official Monitor of Romania, Part I, no 48 of March 20th, 1997; modified and amended by the Law no 181/2002, published in the Official Monitor of Romania, Part I, no 168 of April 22nd, 2002.
- Law no 677/2001 on the Protection of Individuals concerning the Processing of Personal Data and Free Movement of These Data, published in the Official Monitor of Romania, Part I, no 790 of December 12th, 2001;
- Law no 676/2001 on the Processing of Personal Data and the Protection of Privacy in the Telecommunications Sector, published in the Official Monitor of Romania, number of 800 dated December 14th, 2001;

- Law no 682/2001, concerning the Ratification of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, adopted at Strasbourg, on January 28th, 1981, published in the Official Monitor of Romania, Part I, no 830 of December 21st, 2001.

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

URL: <http://www.avp.ro> – the English version of the web-site is under construction

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.

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

**National Supervisory Authority for Personal Data Processing ,
Romania**

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

**The authority's jurisdiction covers the entire public
and private sectors.**

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

Laws no. 677/2001 and 102/2005

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

No

Don't know

Notes

All the expected protections for independence and autonomy.

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

All the international instruments are claimed but I expect that the law *principally* seeks to implement CoE No 108. Romania is a party to Convention No 108 and additional protocol ETS No 181. See

http://www.coe.int/t/e/legal_affairs/legal_co-operation/data_protection/Background/4Signatures%20and%20ratification.asp#TopOfPage

Ratification of ETS 181 is a strong indicator to all the accreditation principles tests.

As a candidate country of the EU, Romania is also implementing Directive 95/46/EC as part of the *acquis communautaire*.

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

Everything we would normally look for seems to be here.

7 Does the Sub-group recommend accreditation?

Yes

No

Notes

8 If accreditation is recommended what is the accreditation as?

National authority

Notes

(within the UN criteria)

Authority within a limited sub-national territory

Authority within an international or supranational body

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

Voting Rights

No Voting Rights

Notes

Not applicable

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- 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

Not applicable

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- 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

Not applicable

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If more information is required what is this:

Not applicable

Signed on behalf of the Sub-
group:

Blair Stewart

Date: 19 July 2006

Date:

Date:

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