

## Report by Secretariat on Observer Applications (received too late to be considered at July meeting)

The Secretariat proposes that the following three entities and organisations be recommended for observer status:

1. United States Department of Justice.
2. International Organization for Migration.
3. Agency for Personal Data Protection and Free Access to Information, Montenegro.

### The rules

Rule 5.3 sets out the criteria for observer status. Rule 5.4 sets out the application process.

#### 5.3 Observer status

The following entities and organisations can take part in the Conference, with an Observer status:

- a. Public entities that do not meet [the criteria provided for in article 5.1], but are involved in dealing with the protection of personal data and/or privacy.
- b. International organisations whose activity is related to the protection of personal data or privacy.
- c. Any other organisation that has granted Observer status to the Conference, under the principle of reciprocity.

Observer status may be granted for a particular annual meeting or for a period of time covering more than one annual meeting.

#### 5.4 Submission of applications for accreditation as Observer

- a. Entities or organisations that meet any of the conditions provided for in article 5.3 may apply to the Executive Committee on the form provided by the Secretariat to be an Observer.
- b. Applications must be received by the Secretariat at least three months before the next Closed Session to be properly considered.

### The three applications

The **US Department of Justice** through its Office of Privacy and Civil Liberties has applied under 5.3a as a public entity that is not eligible for membership but which is involved in dealing with the protection of personal data and/or privacy. The application and supporting letter indicate that privacy and data protection is a principal function. The mission statement of the OPCL as set out on its website:

“The Office of Privacy and Civil Liberties (OPCL) supports the duties and responsibilities of the Department’s Chief Privacy and Civil Liberties Officer (CPCLO). The principal mission of OPCL is to protect the privacy and civil liberties of the American people through review, oversight, and coordination of the Department’s privacy operations. OPCL provides legal advice and guidance to Departmental components; ensures the Department’s privacy compliance, including compliance with the Privacy Act of 1974, the privacy provisions of both the E-Government Act of 2002 and the Federal Information Security Modernization Act of 2014, as well as administration policy directives issued in furtherance of those Acts; develops and provides Departmental privacy training; assists the CPCLO in developing Departmental privacy policy; prepares privacy-related reporting to the President and Congress; and reviews the information handling practices of the Department to ensure that such practices are consistent with the protection of privacy and civil liberties.”

The Secretariat notes that the US Privacy Act 1974 is the principal federal public sector privacy law in a major global economy. It is one of the world's oldest privacy laws and has been influential model for many laws that have followed. As the law is enforced through civil litigation there is there is no authority associated with that law eligible to become a Conference member. However, the Department of Justice administers the law and might be considered 'the next best thing'. The Secretariat is of the view that the Conference will be strengthened through the participation as observer of relevant US Justice Department officials.

***The Secretariat is of the view that the OPCL meets the observer criteria and would appropriately be granted observer status for a 3 year period.***

The **International Organization for Migration** has applied under rule 5.3b as an international organisation whose activity is related to the protection of personal data or privacy. The application focuses on the work and activities of IOM. Observer status is sought only for the 38<sup>th</sup> Conference.

Established in 1951, IOM describes itself as "the leading inter-governmental organization in the field of migration and works closely with governmental, intergovernmental and non-governmental partners."

***The Secretariat is of the view that the IOM meets the observer criteria and would appropriately be granted observer status for the forthcoming Conference.***

The **Agency for Personal Data Protection and Free Access to Information, Montenegro** has applied to become a member.

The application for membership was submitted on 5 August 2016 after the 3 month deadline. The applicant is willing to have its application considered for next year's Conference and this would ease the pressure on CA which has 4 other timely applications to assess. As has become customary in such circumstances, the Secretariat and CA propose that the application instead be treated as an observer application for this year's conference.

***The Secretariat is of the view that the AZLP would appropriately be granted observer status for the forthcoming Conference.***

## **Recommendation**

The Secretariat recommends that the Executive Committee consider these 3 applications immediately and communicate their views by email to the Secretariat. If, in each case, Committee members agree that observer status should be recommended that will be taken as the Committee's decision and communicated to each applicant. If any Committee member objects to any application, it will instead be held over for discussion at the September meeting.

In particular, it is proposed that the Committee agree to:

- **Recommend** observer status for the US Department of Justice for a 3 year period.
- **Recommend** observer status for the IOM for the forthcoming annual meeting.
- **Recommend observer status for** AZLP for the forthcoming annual meeting.

**Executive Committee Secretariat**

11 August 2016

## New Application to be accredited as an observer of the Conference (Public Entity)

<b>Details of applicant</b>
<b>Name of entity</b>
Chief Privacy and Civil Liberties Officer, U.S. Department of Justice
<b>Postal Address</b>
950 Pennsylvania Avenue, NW
<b>City</b>
Washington, D.C.
<b>Postal Code</b>
20053
<b>Country</b>
United States of America
<b>Website</b>
<a href="https://www.justice.gov/opcl">https://www.justice.gov/opcl</a>
<b>Details of contact person for this application:</b>
<b>Name</b>
Erika Brown Lee
<b>Email</b>
<a href="mailto:erika.brown.lee@usdoj.gov">erika.brown.lee@usdoj.gov</a>
<b>Description of applicant</b>
<b>Confirm</b>
<ul style="list-style-type: none"><li>• The applicant is a public entity</li><li>• The applicant does not meet the criteria to become a Conference member</li><li>• The entity is involved in dealing with the protection of personal data and/or privacy</li></ul>
<b>Briefly describe the entity's involvement in dealing with the protection of personal data and/or privacy</b>
<p>The applicant is the Chief Privacy and Civil Liberties Officer of the United State's Department of Justice (the "DOJ CPCLC"), where she is the senior official for Privacy and Civil Liberties. The Department of Justice is a federal executive department of the U.S. government, responsible for the enforcement of the law and administration of justice in the United States, equivalent to the justice or interior ministries of other countries. The Department of Justice is headed by the United States Attorney General, who is nominated by the President and confirmed by the Senate and is a member of the Cabinet. The components of the Department include the Federal Bureau of Investigation, the Bureau of Prisons, and several other domestic law enforcement organisations. The Attorney General is also responsible to provide authoritative and binding legal advice to the heads of all federal agencies, including the heads of the U.S. Intelligence Agencies. The DOJ CPCLC is appointed by the Attorney General and reports to and advises the Attorney General on all actions taken by the Department that may affect privacy and civil liberties, as well as all legal and significant policy issues pertaining to privacy and civil liberties. The DOJ CPCLC is thus responsible for providing advice on law and policy on issues pertaining to the protection of personal data, as well as any actions taken by law enforcement and national security agencies that affect personal privacy and civil liberties. Thus, because of her role as advisor to the Attorney General, the DOJ CPCLC is the most important United States Official for privacy, and plays an important role overseeing and coordinating all the United States' government's actions that affect privacy and civil liberties.</p>
<b>Duration of requested observer status</b>
<b>Duration:</b>
for a period of time covering more than one annual conference
<b>Additional comments</b>
<b>Further brief comments to explain or support the application may be added here:</b>
Please see separate cover letter.



U.S. Department of Justice

Office of Privacy and Civil Liberties

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Telephone: (202) 514-0208

Washington, D.C. 20530

July 15, 2016

Executive Committee  
International Conference of Data Protection and Privacy Commissioners  
Federal Trade Commission  
Room H-494  
600 Pennsylvania Avenue NW  
Washington, DC 20580

Dear Members of the Committee:

I am writing with additional information in support of the web-site submitted application by the United States Department of Justice (the "Department"), Office of Privacy and Civil Liberties ("OPCL"), Chief Privacy and Civil Liberties Officer, to be accredited for Observer Status to the International Conference of Data Protection and Privacy Commissioners. I am Chief Privacy and Civil Liberties Officer of the Department.

In Section 1062 of the Intelligence Reform and Terrorism Prevention Act of 2004, the United States Congress directed each executive department or agency with law enforcement or antiterrorism functions to designate a privacy and civil liberties officer. Further legislation in 2005 required the Attorney General to designate a senior official to assume primary responsibility within the Department for privacy policy and the position of Chief Privacy and Civil Liberties Officer was established in 2006.

The Department's Chief Privacy and Civil Liberties Officer serves as its principal advisor on privacy policy with respect to the Department's collection, use, maintenance, and disclosure of personal information, and is involved when the Department proposes, develops, and implements laws, regulations, policies, procedures, and guidelines related to privacy and civil liberties. The Chief Privacy and Civil Liberties Officer also heads OPCL as a separate office within the Department, where the Department's privacy compliance and legal work is consolidated, and where its staff ensures consistency and leadership to all Department components on information privacy issues.

The following responsibilities highlight a few of the legal responsibilities of the Chief Privacy and Civil Liberties Officer and OPCL:

- Represent the Department with respect to international privacy policy, including multilateral negotiations with foreign governments;

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- Develop departmental privacy policy for use by the components, including policy for compliance with the requirements of the Privacy Act and E-Government Act;
- Review and assume responsibility for the approval of all Department Privacy Impact Assessments (PIAs) under the E-Government Act;
- Provide training on the Privacy Act, the E-Government Act, the privacy provisions of the Federal Information Security Modernization Act ("FISMA"), and departmental privacy policy;

- Adjudicate all Privacy Act amendment appeals on behalf of the Department;
- Engage with the Privacy and Civil Liberties Oversight Board on a variety of issues, including review of government surveillance, collection techniques, and government reporting; and
- Review and comment on legislative initiatives, testimony, and reports concerning privacy and civil liberties issues.

In addition to their numerous other privacy related responsibilities, the Chief Privacy and Civil Liberties Officer and OPCL participate in privacy activities across the federal government, including, serving in an executive capacity on the Federal Privacy Council. This Council established via Executive Order, where the President affirmed that “[p]rivacy has been at the heart of our democracy from its inception, and we need it now more than ever.” To this end, the Chief Privacy and Civil Liberties Officer and OPCL have played a central role in the Data Privacy and Protection Agreement (“DPPA”), the Judicial Redress Act, the White House’s Big Data Report, and other significant international efforts.

The privacy mission of the Department of Justice aligns with the goals of the International Conference of Data Protection and Privacy Commissioners. By granting the Observer Status request, conference participants will benefit from the expertise and unique positioning of the Department’s role in the law enforcement community and the Intelligence Community. In forging this important relationship, the Department can contribute to your organization’s leadership at the international level in data protection and privacy. In sum, I respectfully request that you approve the application of the Department’s Chief Privacy and Civil Liberties Officer to be an Observer to articulate the Department’s specific interests before your organization.

I appreciate your consideration to these application materials. Should you have any questions or need additional information, please let me know.

Respectfully,

*s/Erika Brown Lee*  
Erika Brown Lee  
Chief Privacy and Civil Liberties Officer  
U.S. Department of Justice

## New Application to be accredited as an observer of the Conference (International Organisation)

Details of the Authority	
<b>Name of International Organisation</b>	International Organization for Migration (IOM)
<b>Postal Address</b>	Route des Morillons 17
<b>City</b>	Geneva
<b>Postal Code</b>	1211
<b>Country</b>	Switzerland
<b>Website</b>	<a href="http://www.iom.int">www.iom.int</a>
Details of contact person for this application:	
<b>Name</b>	Christina Vasala Kokkinaki
<b>Email</b>	<a href="mailto:cvasala@iom.int">cvasala@iom.int</a>
Description of Applicant	
<b>Confirm</b>	<ul style="list-style-type: none"><li>• The applicant is an international organisation</li><li>• The activity of the international organisation is related to the protection of personal data or privacy</li></ul>

**Briefly explain the ways in which the activity of the international organisation is related to the protection of personal data or privacy**

The collection and processing of personal data is a necessary component of IOM's commitment to facilitate migration movements, understand migration challenges, and respect the human dignity and well-being of migrants. IOM's data protection guidance seeks to protect the interests of IOM beneficiaries, as well as the Organization itself.

IOM was one of the first international organizations to develop its own Data Protection Principles in 2009 together with an extensive Manual providing practical guidance for protecting personal data in the context of migration. The IOM Data Protection Manual was developed to provide a standardized approach to protecting the personal data of IOM beneficiaries. It was the first publication of its kind to provide such guidance in the context of migration. It outlines how IOM should handle personal data of IOM beneficiaries with a view to protect their privacy. As stated in the foreword of the Manual, IOM hoped that the content of the Manual was going to add to the discussions of stakeholders, both nationally and internationally, given the lack of a binding international instrument of data protection and especially following the resolution adopted at the 31st ICDPPC calling for a universal convention and recognizing that data protection and privacy are fundamental rights attributed to all individuals, irrespective of nationality or residence.

Data protection is paramount for the safe exchange, secure storage and confidential treatment of personal data. To enhance IOM operations and systems, data protection is applied systematically throughout the Organization. IOM had 2,760 active projects worldwide in 2015 and personal data processing is included in many of them in order to provide assistance and migration services to beneficiaries, such as resettlement, assisted voluntary return and reintegration and cash assistance. Due to the multifaceted nature of IOM activities, data protection issues are considered at all stages, from project development and implementation to evaluation and reporting.

The key objectives of IOM on data protection are:

- To respect privacy and meet the expectations of the data subjects.
- To protect the integrity and confidentiality of personal data.
- To prevent unnecessary and inappropriate disclosure of personal data.
- To provide comprehensive institutional safeguards for the handling of personal data.
- To enhance the understanding of core concepts and international data protection standards.
- To give operational guidance for the implementation of the IOM data protection principles.

IOM understands that data protection is a constantly evolving area of law mainly due to the rapid growth of information technology and the fact that data are digitally transferable and easily accessed. Being a humanitarian organization with over 400 offices in more than a hundred countries, IOM noted the Resolution on Privacy and International Humanitarian Action of the 37th ICDPPC in Amsterdam, which highlighted especially the endeavour to meet the demand for cooperation in the development of guidance expressed by international humanitarian actors, and it wishes to participate in such discussions.

IOM has already participated actively in initiatives of international organizations concerning issues of data protection, such as the 2016 International Workshop on Data protection within international organizations co-organized by the ICRC and the European Data Protection Supervisor as well as data protection workshops co-organized by the ICRC and the Brussels Privacy Hub. IOM aims to increase its participation in further initiatives of the international legal community and also to organize in spring 2017 the next International Workshop on data protection within international organizations. Being an observer in the 38th ICDPPC will allow IOM to fulfil these aims and to observe and contribute to the discussions of the data protection community present in this important annual gathering.

**Duration of requested observer status**

**Duration:**

only for the forthcoming conference

**Additional comments**

**Further brief comments to explain or support the application may be added here:**

Established in 1951, the International Organization for Migration is the leading intergovernmental organization in the field of migration and is committed to the principle that humane and orderly migration benefits migrants and society. IOM works with its partners in the international community to assist in meeting the growing operational challenges of migration, advance understanding of migration issues, encourage social and economic development through migration and uphold the well-being and human rights of migrants.

IOM is governed by its 165 Member States in accordance with its Constitution, which is an international treaty. IOM has its Headquarters in Geneva and over 400 offices in more than a hundred countries. It follows the United Nations common system in its financial and administrative management and it enjoys privileges and immunities normally accorded to international organizations and their staff under international law.

Following the approval of an IOM-UN cooperation agreement by the IOM Council and the UN General Assembly, IOM will become a related organization to the UN after the signature of the Agreement which will take place on 19 September 2016 during the United Nations Summit on Refugees and Migrants.

It is also important to note that in 2015, in order to respond to growing calls for comprehensive data on global migration trends, IOM created its Global Migration Data Analysis Centre (GMDAC) based in Berlin, Germany. GMDAC aims to provide authoritative analysis of data on global migration issues, while advocating for the better collection and use of migration data. It also aims to explore innovative areas of work in this field, such as understanding how new technologies and "big data" can be used to analyse migration trends and patterns.

## New Application to be accredited as a member authority from ICDPPC website

<b>Details of the Authority</b>
<b>Name</b>
Agency for Personal Data Protection and Free Access to Information
<b>Country or Economy</b>
Montenegro
<b>Postal Address</b>
Kralja Nikole 2
<b>City</b>
Podgorica
<b>Postal Code</b>
81000
<b>Website</b>
<a href="http://www.azlp.me/index.php/me/">http://www.azlp.me/index.php/me/</a>
<b>Details of contact person for this application:</b>
<b>Name</b>
Muhamed Gjokaj
<b>Email</b>
<a href="mailto:muhamed.gjokaj@azlp.me">muhamed.gjokaj@azlp.me</a>
<b>Description of Authority</b>
<b>Type of Authority</b>
Other

<b>Briefly describe type of authority</b>
Agency
<b>Confirm that:</b>
<ul style="list-style-type: none"> <li>• The authority is a public body</li> <li>• The authority has the supervision of implementation of data protection or privacy legislation</li> </ul>
<b>Jurisdiction:</b>
Montenegro
<b>Indicate the authority's sectoral or other jurisdiction</b>
Entire public and private sectors
<b>Legal Basis</b>
<b>Name of data protection or privacy law:</b>
Personal Data Protection Law
<b>Link to data protection or privacy law:</b>
<a href="http://azlp.me/images/stories/Zakon/zakon%20o%20zastiti%20podataka%20licnosti.pdf">http://azlp.me/images/stories/Zakon/zakon%20o%20zastiti%20podataka%20licnosti.pdf</a>
<b>Compatibility with International Instruments</b>
<b>Does the territory's data protection or privacy law implement any international instrument dealing with data protection or privacy?</b>
Yes
<b>Indicate the international instrument or instruments principally implemented by the Authority's data protection or privacy law</b>
<ul style="list-style-type: none"> <li>• Council of Europe Convention No 108 (1985)</li> <li>• Council of Europe Additional Protocol No 181 (2001)</li> <li>• EU Directive (1995)</li> <li>• ICDPPC International Standards on Data Protection and Privacy (2009)</li> </ul>

**Does the law instead, or additionally, implement any general or specific international instrument?**

Yes

**Specify the international body and the international instrument**

Directives, Working Group Article 29

**Appropriate functions and powers**

**Does the Authority possess functions in any of the following areas?**

- Compliance (e.g. audit, inspection)
- Approvals (e.g. prior-checking, notification)
- Public education
- Policy advice for government
- Rule-making (e.g. issuing codes of practice, approving standards)

**Compliance**

According to Article 47 of Personal Data Protection Law, <http://azlp.me/images/stories/Zakon/zakon%20o%20zastiti%20podataka%20licnosti.pdf>

**Approvals**

Regarding giving consent for video surveillance, Articles 35-40 of Personal Data Protection Law, <http://azlp.me/images/stories/Zakon/zakon%20o%20zastiti%20podataka%20licnosti.pdf>

**Public education**

Independent of Provisions

**Policy advice for government**

Giving opinion upon proposal of the laws, or other regulation which are related to the field of personal data protection, <http://azlp.me/images/stories/Zakon/zakon%20o%20zastiti%20podataka%20licnosti.pdf>

**Rule-making**

According to Article 47 of Personal Data Protection Law, <http://azlp.me/images/stories/Zakon/zakon%20o%20zastiti%20podataka%20licnosti.pdf>

## Autonomy and Independence

### Indicate who appoints the head of the Authority:

Other

### Other - please specify

Parliament of Montenegro

### Briefly explain the process of appointment of the head of the Authority and, if applicable, authority members.

Members of the Council are appointed by the Parliament of Montenegro

### Can the head of the authority or members of the authority be removed before the expiry of their term?

No

### Please indicate if any of the following typical protections of an authority's independence and autonomy are included in the territory's data protection or privacy law or other relevant law.

- An explicit statement in law that the Authority is to act independently
- Suitable guarantees for the funding of the authority
- Appointment of the head of the authority on a permanent basis or fixed term
- Removal of the head of the authority permitted only for limited reasons and by a process provided for in law

### An explicit statement in law that the Authority is to act independently

Upon Article 49 of Personal Data Protection Law, <http://azlp.me/images/stories/Zakon/zakon%20o%20zastiti%20podataka%20licnosti.pdf>

### Suitable guarantees for the funding of the authority

Upon Article 63 of Personal Data Protection Law, <http://azlp.me/images/stories/Zakon/zakon%20o%20zastiti%20podataka%20licnosti.pdf>

### Appointment of the head of the authority on a permanent basis or fixed term

Upon Article 52 of Personal Data Protection Law, <http://azlp.me/images/stories/Zakon/zakon%20o%20zastiti%20podataka%20licnosti.pdf>

### Removal of the head of the authority permitted only for limited reasons and by a process provided for in law

Upon Article 55 of Personal Data Protection law, <http://azlp.me/images/stories/Zakon/zakon%20o%20zastiti%20podataka%20licnosti.pdf>