

Joint Supervisory Body of Europol

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

Joint Supervisory Body of Europol
 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 Body 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

Europol as an European Body

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: European police cooperation within Europol and between Europol and Third States and third bodies

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

Convention based on Article K3 of the Treaty of the European Union, on the establishment of a European Police Office (Europol Convention)

10. Is this principally a data protection law? YES

Apart from the provision that establishes Europol as an organisation, the Convention contains specific provisions on information processing and data protection

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.

15. What process is followed?

It is an appointment done by a national Data Protection Authority of each EU Member State

16. For what term are appointments made?

Five 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? YES

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

In case of breach of confidentiality the JSB 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?

yes, only according to the rules of procedure, see answer nr. 19

21. What are the grounds for removal?

see 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. 24
Europol Convention, Art. 2 and 7 Rules of Procedure)

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

details: to the European Council and Member States (Art. 24(6)
Europol Convention)

make public statements YES

details: it may do what it deems necessary (Art. 24(6) Europol
Convention)

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 JSB has its own budget that is part of the Europol budget and approved by the EU Council. The independence of the staff is further established in an EU Council Decision 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 Art. 24 of the Europol Convention and Art. 2 and 7 Rules of Procedure

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

details: prior role in the establishment of a specific category of files, (Art. 12(1) of the Europol Convention)

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

YES

details: the JSB has an Appeals Committee where individuals may lodge an appeal against a decision of Europol in cases as request for access, checking data (Art. 19(7) of the Europol Convention). Any person invoking his right to correct or delete data may refer this matter to the JSB if not satisfied with Europol's answer (Art. 20(4) Europol Convention) Furthermore has each individual the right to request the JSB to ensure that the manner in which his personal data have been collected, processed and utilized by Europol is lawful and accurate (Art. 24(4) of the Europol Convention).

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

YES/NO

the decisions of the Appeals Committee may overrule the positions taken by Europol and the Member States concerned. (Art. 19(7) and 24 (7)of the Europol Convention)

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

details: it has a specific advisory role if it concerns the negotiations with third States. It further gives opinions on amendments of the Convention its implementation and its interpretation. General task see Art. 24 Europol Convention. Specific role according to Art.3 of the Council Act of 12 March 1999 (OJ C 88 30.03.1999 pag 1)

(f) public education YES/

details: not yet implemented but it is part of the policy

g) policy advice for government

YES

details: see nr. e

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

details: it has started two studies to the implementation of data protection laws in the police sector. It is participating in a technical group developing audit instruments

Additional comments

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

Europol Convention published in the Official Journal of the European Union OJ C 316 27.11.1995 p.2
Rules of Procedure published OJ C 149 28.5.1999 0.1

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: website still under construction

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.

b) 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

Joint Supervisory Body of Europol, 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 governing the European Police Office which naturally has a narrower competence than a typical national DPA. Each EU member state appoints 2 representatives of the national DPA.

The JSB has a narrow focus on a particular organisation, the system of DP also involves national DPAs who supervise member state participation in Europol

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 article 24 of the Europol Convention (1995) and article K3 of the Treaty of the European Union. Additional legal basis found in the Rules of Procedure (1999) and the Council decision established a secretariat (2000).

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 Rules of Procedure allow members to be suspended for breaches of confidentiality but otherwise membership is determined by national DPAs. The Council decision establishing the Secretariat also guarantees independence of the staff from governmental or other interference. The Europol Convention makes it clear that it is the JSB's decision whether or not to publish its

activity reports and how that should be done. There is a duty on Europol itself to assist the JSB in the performance of its tasks including to supply any information requested, to allow it free access at any time to all its premises, and to carry out the JSB's decisions.

- 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
Article 14 of the Europol Convention makes explicit reference to the CoE Convention (1981) and CoE recommendation R(87)15 concerning the use of personal data in the police sector. The application claims it also implements CoE additional protocol 181 but the current on-line list does not record any relevant signature or ratification.

- 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?

Authority within an international or supranational body

Notes

- 9 If accreditation is as an authority within an

Notes

international/supranational body does the recommendation include voting rights?

No Voting Rights

It would appear inappropriate to give such a narrowly focused body general voting rights.

- 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: **20 May 2003**

Marie Georges

Date: **28 mai 2003**

Jonathan Bamford

Date: **24th June 2003**

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