

Hamburg: Data Protection Commissioner (Hamburgischer Datenschutzbeauftragter)

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

Hamburgischer Datenschutzbeauftragter Baumwall 7, D 20459 Hamburg, Germany

2. Contact person for this application:

(a) Name

Dr. Hans-Hermann Schrader

(b) Email address

hdsb@datenschutz-hamburg.de

(c) Direct telephone number

030 4123-2100

(d) Fax contact

030 4123-2100

Type of application

3. The application is for accreditation as:

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

Description of applicant

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

Commissioner

5. Is the Authority a public body? YES

6. Geographical jurisdiction

Hamburg

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 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

Hamburgisches Datenschutzgesetz

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?

Parliament of Hamburg (as a city-state)

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

Parliament of Hamburg

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.)

Parliament of Hamburg

15. What process is followed?

election

16. For what term are appointments made?

6 years (and only once more 6 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?

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

21. What are the grounds for removal?

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

(e) to initiate an investigation with seeking provision YES

details: several times every year

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

details: report to the Senate and Parliament

(g) make public statements YES

details: media. brochures. internet

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

Yes, only the commissioner is responsible for the staff

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).

Finances are protected by the law

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 : inspection

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

details: prior-checking

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

details: complaints

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

details: prosecution and enforcement (only private sector)

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

details: compliance advice

(f) public education YES

details: public conferences

(g) policy advice for government YES

details: policy advice

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

details: several scientific brochures

Additional comments

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

cooperations with the other sub-national, national and international Authorities

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.hamburg.datenschutz.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.hamburg.datenschutz.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

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 Hamburgischer Datenschutzbeauftragter, *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

The Authority covers the City/State of Hamburg, including both public and private sectors.

It is a German Land in its own right. To draw a distinction between this and the others on the grounds of limited geographic scope would be difficult

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

Land 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

Although Statutory references not provided it is assumed that these are embodied in 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

Notes

EU Directive

Don't know

- 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 range of powers

- 7 Does the Sub-group recommend accreditation?

Yes

No

Notes

Although Hamburg is a 'City/State' It is one of 3 such Lander within the German system. It is therefore on a par with other lands. It would be hard to discriminate between these on the grounds of size

- 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

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

Voting Rights

No Voting Rights

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

Notes

conference host, observer status is granted?

Not Applicable

Yes

Not

If more information is required what is this:

Signed on behalf of the Sub-group:

Jonathan Bamford

Date: 26/06/02

Blair Stewart

Date: *9 July 2002*

Date:

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