

### 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 23<sup>rd</sup> International Conference of Data Protection and Privacy Commissioners at Paris on 25<sup>th</sup> 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](mailto:credentials@privacy.org.nz).

**Details of applicant**

1. Name and postal address of authority

Data State Inspection Kr. Barona street 5 – 4. Riga. LV-1050. Latvia
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2. Contact person for this application:

(a) Name

Signe Plumina
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(b) Email address

signe@data.gov.lv
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(c) Direct telephone number

371722151
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(d) Fax contact

371722155
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**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)

INSPECTION

5. Is the Authority a public body? YES

6. Geographical jurisdiction

REPUBLIC OF LATVIA

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)

BOTH

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

PERSONAL DATA PROTECTION LAW

10. Is this principally a data protection law? YES

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

LAW

12. Which body made the law?

WORKING GROUP UNDER MINISTRY OF TRANSPORT AND COMMUNICATIONS

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

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.)
15. What process is followed?

Procedure for the appointment of the Director of DSI set out both in the Personal Data Protection Law and the State Civil Service Law. The Section 29 (1) of the Personal Data Protection Law simply states that:

*(1) The protection of personal data shall be carried out by the Data State Inspection, which shall be subject to the supervision of the Ministry of Justice. The State Data Inspection shall be managed by a director who shall be appointed and released from his or her position by the Cabinet of Ministers pursuant to the recommendation of the Minister of Justice.*

More detailed provisions are provided in the State Civil Service Law stipulating that the position of a director is a subject to the open competition (Section 8). The Law contains also relevant rules for evaluation of the applicants (Section 9). In the case of appointing the Director of Data State Inspection this procedure is as follows:

1. The open competition is announced in the official newspaper "Latvijas Vēstnesis" by the State Civil Service Administration. The deadline for submission of applications is between 20 and 30 days from the date of publication.
2. The compliance of the applicants with the requirements of the position shall be evaluated by the Evaluation Commission that is established by the Head of the State Civil Service Administration. The list of persons who may become the members of the Evaluation Commission is approved by the Cabinet of Ministers.
3. The Evaluation Commission selects one or several applicants who meet in the best way the requirements set in the job description of the position and recommends these applicants to the Minister of Justice.
4. The Minister of Justice considers the recommendation of the Evaluation Commission and submits them for the final approval by the Cabinet of Ministers.

To ensure greater transparency of the process and better balance of interests thus enhancing the independence of the Data State Inspection, further amendments to

16. For what term are appointments made?

Terms in office for the Director of Data State Inspection are clearly spelt out in the Article 11 of the State Civil Service Law:

*(2) The applicant to the position of the Head of the institution shall be appointed by the Minister for the period of five years. The Director of State Chancellery shall be appointed by the Prime Minister for period of five years. Six months prior to the end of the period the Minister or the Prime Minister respectively shall take the decision to extend the period for another five years or to terminate the appointment of the person, and shall notify the Administration and the respective person about the decision.*

17. Does the law under which the Authority operates explicitly state that it acts independently?

Parliament approved amendments in Personal Data Protection Law in 2<sup>nd</sup> Reading. That states:  
Article 29 (1) The protection of personal data shall be carried out by the Data State Inspection which shall act independently and discretionary, fulfilling functions stated in legal acts, to take decisions and issue administrative acts, fairly, transparently, neutrality, equality and proportionality.

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?

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?

*Possibilities to remove the Director of DSI from the office are provided in the Article 39 and Article 41 of the State Civil Service Law (full text provided in annex).*

*Article 39. Suspension from office*

- (1) *If the civil servant has been placed in custody or has been regarded as a convict, the Head of the institution may suspend the civil servant from the discharge of the official duties by suspending the payment of the salary for the period following the day of suspension.*
- (2) *If the Court pleads the suspended civil servant guilty of committing a criminal offence, the suspended salary shall not be paid and the civil servant shall be regarded as being dismissed as of the day of suspension. In case of acquittal the suspended civil servant shall be paid the suspended salary and shall be restored to the position unless there are other grounds for his/her dismissal under this Law.*
- (3) *The Head of the institution shall suspend the civil servant from the discharge of the official duties if that is required by a respectively authorised public institution in cases stipulated by law.*
- (4) *The Head of the institution may suspend the civil servant from the discharge of the official duties during the investigation of a disciplinary.*
- (5) *The Head of the institution may be suspended by the Minister, but the Director of the Chancellery – by the Prime Minister.*

*Article 41. Termination of the state civil service relationship*

*The state civil service relationship shall be regarded as terminated in the following cases:*

*1) if the civil servant is dismissed from the civil service position by the decision of the Head of the institution, or – in case of a Head of institution – by the decision of the responsible Minister, or in case of the Director of the State Chancellery – by the decision of the Prime Minister:*

- a) *according to his/her own free will;*
- b) *due to expiration of the term of office;*
- c) *due to failure to pass the probation;*
- d) *due to failure to meet the requirements for the occupied position (for the Head of institution as set out in the Article 14 part 3);*

- e) *due to failure to comply with the mandatory requirements for civil servants;*
- f) *upon reaching the retirement age established by the state, except in cases when the Head of the institution has issued a substantiated order on continuation of the employment of the civil servant or the Minister has issued a substantiated order on continuation of the employment of the Head of the institution;*
- g) *due to liquidation of the institution or the respective civil service position, or the downsizing of staff;*
- h) *due to inability of the civil servant to discharge the official duties for a period exceeding four subsequent months due to temporary work incapacity;*
- i) *when the dismissal is enforced as a disciplinary punishment by retaining the right to apply to another civil service position;*
- j) *in case of being elected to a position in a state or local government institution;*
- k) *due to recruitment to the compulsory military service;*
- l) *due to the Court ruling in a criminal case;*

2) in the event of the death of the civil servant.

*While examining these provisions, it becomes apparent that provisions of the Article 41(1)(d) need further specification and clarification as regards the criteria for evaluation of the official's performance. Although the current legislation provides for the appeal by the removed official first to the State Civil Service Administration and subsequently to the Court, an additional evaluation procedure can be envisaged in future.*

*The only possibility to appeal the decisions of DSI is provided in the Article 31 of the Personal Data Protection Law that states:*

Decisions by the State Data Inspectorate may be appealed to a court.

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

(e) to initiate an investigation with seeking provision YES

### **Personal Data Protection Law**

#### **Article 29**

(4) In the field of personal data protection, the rights of the Data State Inspection are as follows:

- 1) in accordance with the procedures prescribed by regulatory enactments, to receive, free of charge, information from natural persons and legal persons as is necessary for the performance of functions pertaining to inspection;
- 2) to perform inspection of a personal data processing system prior to its registration;
- 3) to require that data be blocked, that incorrect or unlawfully obtained data be erased or destroyed, or to order a permanent or temporary prohibition of data processing; and
- 4) to bring an action in court for violations of this Law.

#### **Article 30.**

(1) In order to perform the duties mentioned in Article 29, Paragraph three of this Law, the director of the Data State Inspection and the inspectors authorised by the director, upon presenting their official identification cards, have the right:

- 1) to freely enter any non-residential premises where personal data processing systems are located, and in the presence of a representative of the system controller carry out necessary inspections or other measures in order

to determine the compliance of the personal data processing procedure with law;

2) to require written or verbal explanations from any natural or legal person involved in personal data processing;

3) to require that documents are produced and other information is provided which relate to the personal data processing system being inspected;

4) to require inspection of a personal data processing system, or of any facility or information carrier of such, and to determine that an expert examination be conducted regarding questions subject to investigation;

5) to request assistance of officials of law enforcement institutions, if required, in order to ensure performance of its duties;

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

**Personal Data Protection Law**

**Article 29 (2)** Every year the Data State Inspection shall submit a report on its activities to the Cabinet of Ministers and shall publish it in the newspaper "Latvijas Vestnesis".

(g) make public statements YES

**Personal Data Protection Law**

**Article 29 (2)** Every year the Data State Inspection shall submit a report on its activities to the Cabinet of Ministers and shall publish it in the newspaper "Latvijas Vestnesis".

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

**Personal Data Protection Law**

**Article 31.** Decisions by the Data State Inspection may be appealed to a court.

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 Law guarantees full functional independence of the Data State Inspection (DSI). Although DSI is institutionally linked to the Ministry of Justice (differing solution for the DSI is not feasible within Latvian Constitutional law system), no influence on the decisions of the DSI can be exercised.

### 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) YES
- (b) (i) Council of Europe Convention No 108 (1981) YES  
(ii) Council of Europe Additional Protocol (8 November 2001) YES (draft law)
- (c) UN Guidelines (1990) YES
- (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

#### Personal Data Protection Law

**Article 30 (1)** The director of the Data State Inspection and the inspectors authorised by the director, upon presenting their official identification cards, have the right:

- 1) to freely enter any non-residential premises where personal data processing systems are located, and in the presence of a representative of the system controller carry out necessary inspections or other measures in order to determine the compliance of the personal data processing procedure with law;
- 4) to require inspection of a personal data processing system, or of any facility or information carrier of such, and to determine that an expert examination be conducted regarding questions subject to investigation.

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

**Personal Data Protection Law**

**Article 29 (4)** In the field of personal data protection, the rights of the Data State Inspection are as follows:

- 2) to perform inspection of a personal data processing system prior to its registration.

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

**Personal Data Protection Law**

**Article 29 (3)** The duties of the Data State Inspection in the field of personal data protection are as follows:

- 2) to take decisions and review complaints regarding the protection of personal data;  
4) to propose and carry out activities aimed at raising the effectiveness of personal data protection.

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

**Personal Data Protection Law**

**Article 29 (4)** In the field of personal data protection, the rights of the Data State Inspection are as follows:

- 3) to require that data be blocked, that incorrect or unlawfully obtained data be erased or destroyed, or to order a permanent or temporary prohibition of data processing; and  
4) to bring an action in court for violations of this Law.

The draft legislative amendments for Administrative Penal Code developed taking into account the penalties for offenses of personal data protection provisions stated in the Article 23 and Article 24 of Directive 95/46/ECC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. In the draft amendments responsibility is stipulated for following offences:

- Unpermmited processing of personal data,
- Withhold of information to personal data subject,
- Processing of personal data without registration in Data State Inspection,
- Ignorance of general technical and organizational requirements for protection of personal data processing systems (ae, offense of Article 25 and 269 of Personal Data Protection Law, as well as Regulations of Cabinet of Ministers No 106 (March 21, 2000) "Regulations on information system safety" and Regulations of Cabinet of Ministers No 40 (January 31, 2001) "Obligatory technical and organizational requirements for protection of personal data processing systems").



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

**Personal Data Protection Law**

**Article 29 (3)** The duties of the Data State Inspection in the field of personal data protection are as follows:

4) to propose and carry out activities aimed at raising the effectiveness of personal data protection.

- (f) public education YES

**Personal Data Protection Law**

**Article 29 (3)** The duties of the Data State Inspection in the field of personal data protection are as follows:

1) to ensure compliance of personal data processing in the State with the requirements of this Law.

- (g) policy advice for government YES

details: **Personal Data Protection Law**

**Article 29 (3)** The duties of the Data State Inspection in the field of personal data protection are as follows:

4) to propose and carry out activities aimed at raising the effectiveness of personal data protection.

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

details: **Personal Data Protection Law**

**Article 29 (3)** The duties of the Data State Inspection in the field of personal data protection are as follows:

4) to propose and carry out activities aimed at raising the effectiveness of personal data protection.

**Additional comments**

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

**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.dvi.gov.lv](http://www.dvi.gov.lv) (from June 1, 2002)

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.dvi.gov.lv](http://www.dvi.gov.lv) (from June 1, 2002)

### 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](mailto: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. *(The material will be sent by e-mail – Regulations 40 and 106.)* 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.

1 Name of Authority

LATVIA- Data State Inspection

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

-Competent for public and private sectors on all the territory  
- Power of inspection

3 Legal Basis.  
Is the authority a public body established on an appropriate legal basis (eg by statute or regulation)?

Yes

Notes

- public body established by statute

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- Although the independence is not fully established, the act provides for it to act independently and it does issue a public report- the government is currently preparing a law to provide the organisational independence in the course of the process of accessing to EU**

*No. The law is fine in relation to appointment of the Director of DSI, and grants appropriate functions and a mandate to act independently. However, removal from office is the same as for any civil servant and this would seem to call into question whether there is a guarantee of independence. A law in preparation to provide independence has not yet been enacted.*

Notes

- Designated for 5 years by the Cabinet of Ministers on recommendation of the Minister of Justice, after evaluation by the Evaluation Commission,  
- He is under the supervision of the Justice  
- The Act provides explicitly for the authority to act independently  
- annual report to the government published in the official journal  
- public statement

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

- all listed although Latvia is not yet in line with the European directive but ratified COE convention in 2001 and has a PD Act since 01 07 01

*The CoE additional protocol is claimed ("draft law") but the CoE website suggests Latvia has not signed the protocol as at 17 June 2002.*

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

- inspection power, blocking power, report case to justice, annual report

7 Does the Sub-group recommend accreditation?  
**Yes, although under the control of Ministry of justice for constitutional reasons, according to the applicant, but acting independently and clarification needed in the future law on removal grounds already on the way (designation by Parliament)**

*No, the guarantee of independence is essential to the role of a DP authority and the accreditation principles. The law and other arrangements sound fine otherwise. Suggest observer status for Cardiff with accreditation reconsidered when new law enacted.*

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?

Refusal

More Information

Notes

*I think there is sufficient information to refuse accreditation. If the subgroup, or the Committee, were minded to grant accreditation it is the law, practice and procedure in relation to removals of the director on which more information might be sought.*

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:

Marie Georges

Date: July 5, 2002

*Blair Stewart*

Date: *8 July 2002*

Date:

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