

APPLICATION FORM FOR ACCREDITATION AS A DATA PROTECTION AUTHORITY

Application to the Credentials Committee for accreditation as a data protection authority pursuant to the Regulations 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 State Data Protection Inspectorate Gedimino Av. 27/2, LT-2600 Vilnius Lithuania

2. Contact person for this application:

(a) Name

Ona Jakštaitė

(b) Email address

jas@stateprotection.lt

(c) Direct telephone number

+370 21 27542

(d) Fax contact

+370 21 27542

Type of application

3. The application is for accreditation as:

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

Description of applicant

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

Inspectorate

5. Is the Authority a public body? YES/NO

6. Geographical jurisdiction

The Republic of Lithuania

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 Inspectorate's jurisdiction covers the entire public and private sectors, except the processing of personal data carried out solely for journalistic purposes and the purposes of artistic or literary expression as well as other purposes of providing information to the public.

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

Legal basis

9. Title of law under which the Authority is constituted

The Law on Legal Protection of Personal Data

10. Is this principally a data protection law? YES/NO

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

law of compulsory character

12. Which body made the law?

Seimas (Parliament) of the Republic of Lithuania

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

Seimas (Parliament) of the Republic of Lithuania

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 Director of the Inspectorate is appointed by the Prime Minister, other civil servants of the Inspectorate are appointed by the Director.

15. What process is followed?

The Director and other civil servants of Inspectorate are being appointed by the procedures set in the Law on Public Service, after winning public competition.

16. For what term are appointments made?

The term of the office of the Director is 5 years. The appointments of other civil servants of the Inspectorate are termless.

17. Does the law under which the Authority operates explicitly state that it acts independently? YES/NO

18. May the member(s) be removed before expiry of their term? YES/NO

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

The Prime Minister may remove the Director of Inspectorate only on the grounds set in the Law on Public Service, members of Inspectorate may be removed by the Director on the same grounds.

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

Yes

21. What are the grounds for removal?

Grounds for removal are set in the Law on Public Service. Civil servants shall be removed from office in the following cases:

- 1) voluntary resignes;
- 2) loses the citizenship of the Republic of Lithuania;
- 3) does not achieve the degree necessary for the performance of duties in the term of 5-7,5 years;
- 4) the term of office manager, who was inducted in office before the Law of Public service took effect, expires;
- 5) the civil servant reaches the age of the 62 years and 6 months or extension of the term of office granted in accordance with the law expires;
- 6) it comes to light that during the recruitment to the Civil Service he presented forged documents or concealed or presented false facts, which would have made the person not eligible for the Civil Service;
- 7) the office of the civil servant is liquidated;

- 8) if a civil servant was evaluated unsatisfactory by his direct manager, and the ranking commission, which is composed following the provisions of the law, evaluates him unsatisfactorily two years consecutively and proposes to dismiss him;
- 9) a civil servant dismissed from the compulsory primary military service or the alternative national defence service for the longer than 2 months did not returns to the office served;
- 10) by the judgement of the court to that office reinstatement the civil servant earlier performing that office or emerges that when taking civil servant into office were violated requirements of this Law and this violations can not be removed;
- 11) is absent from work owing to a temporary incapacity for a period longer than 120 calendar days in succession or longer than 140 days during the last 12 months, provided laws do not lay down that during certain illnesses the position shall be retained for a longer period or when civil servant by the conclusion of the medical or disablement diagnosing commission can not perform his office;
- 12) special rights related with the performance of his direct duties were deprived from the civil servant by the order set in the laws;
- 13) is penalized by a disciplinary sanction - dismissal from the Civil Service- in the following cases:
- participation in activities incompatible with Civil Service,
 - violation of requirements of Law on Public an Private Interests Consistence in Civil Service aiming for illegal income or privileges for self and others,
 - absence in service (work) one or more working days without justifying reason,
 - presence in service (work) in non-sober condition or intoxicated with drugs or toxic materials, if performance of civil servant insult personal dignity and discredits authority of state and local government institution.
- 14) the penalty imposed by a court judgement for a serious crime or an offence against the Civil Service or the penalty, barring him from discharging his duties becomes effective.

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

(e) to initiate an investigation with seeking provision YES/NO

By the subparagraphs 1, 2 and 3 of paragraph 1 of Article 27 of the Law on Personal Data Protection the State Data Protection Inspectorate (the Inspectorate) are entitled to obtain free of charge all necessary information on the processing of personal data from data controllers, to access personal data that are being processed, and carry out inspections in places of processing of personal data in the cases provided by this Law, to instruct data controllers on personal data processing and protection and to draw up protocols about administrative offences in accordance with the procedure set forth in the Code of Administrative Offences.

(f) to report to the head of State, head of Government or legislature YES/NO

By the Paragraph 11 of the Regulations of the State Data Protection Inspectorate (the Regulations) the Inspectorate shall every year till 1 February submit to the Government of the Republic of Lithuania its annual report.

(g) make public statements YES/NO

By the subparagraph 5 of Article 26 of the Law on Personal Data Protection the Inspectorate shall draw up and announce annual reports on its activities. By the subparagraph 8.5 of the Regulations the Inspectorate shall draw up and make public annual reports on its activities.

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

Partly. By the paragraph 2 of the Article 25 of the Law on Personal Data Protection the Inspectorate shall be guided by the Constitution of the Republic of Lithuania, laws, international agreements of the Republic of Lithuania, and, in discharging the functions established in this Law and taking decisions relating to the performance of the functions laid down in this Law, shall be independent: its rights may be restricted only by the law. The actions of the employees of the Inspectorate relating to the performance of the functions laid down in this Law shall be appealed against only in the manner established by 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).

The 1 paragraph of Article 25 of the Law on Legal Protection of Personal Data establishes that Inspectorate is financed from the State budget.
In the paragraph 1 of Article 4 of the Law on Budget Structure provides that State budget appropriation managers shall be heads of the state institutions and agencies specified in the State budget approved by the Seimas or institutions appropriations for which have been authorised by the Government or any other state institution empowered by the Seimas for the purpose, within the limits of total appropriations authorised by the Seimas.

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/NO

If "yes", which of the following does it principally implement?

- (a) OECD Guidelines (1980) YES/NO
(b) (i) Council of Europe Convention No 108 (1981) YES/NO
(ii) Council of Europe Additional Protocol (8 November 2001) YES/NO
(c) UN Guidelines (1990) YES/NO
(d) EU Directive (1995) YES/NO

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/NO

By the subparagraph 3 of Article 26 of the Law on Personal Data Protection the Inspectorate shall check the lawfulness of personal data processing and make decisions with regard to the violations of personal data processing and by the subparagraph 2 of paragraph 1 of Article 27 to instruct data controllers on personal data processing and protection.

By the paragraph 8.2 of the Regulations the Inspectorate shall check the legality of personal data processing and make decisions with regard to the violations of personal data processing; by the paragraph 9.1 to obtain free of charge all necessary information on the processing of personal data from data controllers, to access personal data that are being processed, and carry out inspections in places of processing of personal data in the cases provided by the Law on Legal Protection of Personal Data of the Republic of Lithuania and by the paragraph 9.2 are entitled to instruct data controllers on personal data processing and protection.

The inspections on the legality of data processing are carried out by inspectors, which shall be guided by the Regulations on inspections of the legal data processing and methodology on the carrying out inspections approved by the Director of the Inspectorate. Decisions on the submission of protocol on the violation of the administrative code to the court and instructions or recommendations to the data controllers are made by the Director of the Inspectorate or the Deputy Director empowered by the Director.

(b) approvals (e.g. prior-checking, notification) YES/NO

By the paragraph 6 of Article 27 of the Law on Personal Data Protection the Inspectorate in the cases specified in paragraph 5 of Article 27, shall carry out a prior check and give an opinion about the intended processing of personal data.

By the Article 22 of the Law on Personal Data Protection the data controller may carry out automated processing of personal data only upon notifying the institution authorised by the Government in accordance with the procedure established by the Government, except: when personal data are processed for the purposes of internal administration; when processing is carried out in the course of its activities by a foundation, association, trade union, political party or any other non-profit-seeking body on condition that the processing relates solely to the members of the body or to persons who take part in its activities in some other way and that data can not be disclosed to a third party without the consent of the data subjects; when the processing of personal data carried out solely for journalistic purposes or the purposes of artistic or literary expression as well as other purposes of providing information to the public; when processing of personal data are carried for health care purposes; and when personal data are processed by the order set in the Law on State Secrets and Official Secrets.

- (c) redress for individuals (e.g. complaints, conciliation enforcement) YES/NO

By the paragraph 3 of Article 15 of the Law on Personal Data Protection the data controller must give a reasoned refusal to grant the request submitted to him in writing by the data subject and must send an appropriate written notice to him. The data subject may appeal the refusal of the data controller within 30 calendar days after its receipt to the Inspectorate, and the refusal of the Inspectorate may be appealed against in the court in the manner set out by law.

In the Article 28 are set what liability provided in the laws of the Republic of Lithuania shall apply to the data controllers, data processors and other persons who have violated this Law.

In the Article 29 are set what any person who has sustained damage as a result of unlawful processing of personal data or other acts or omissions by the data controller or data processor shall be entitled to claim compensation for material and non-material damage caused to him. The court shall determine the extent of material and non-material damage. The data controller, data processor or other person, after compensation for damage caused to the person, shall make a claim, in the manner established by law, for recovery of the loss sustained from the employee processing the data due to whose fault the loss occurred.

By the paragraph 8.1 of the Regulations it shall examine the applications and complaints of individuals in cases provided by the Law on Legal Protection of Personal Data of the Republic of Lithuania and in accordance with the procedure set forth in the Law of Public Administration of the Republic of Lithuania.

- (d) sanctions available to Authority (for example, prosecution and enforcement) YES/NO

By the subparagraph 3 of paragraph 1 of Article 27 of the Law on Legal Protection of Personal Data the Inspectorate shall be entitled to draw up protocols about administrative offences in accordance with the procedure set forth in the Code of Administrative Offences and submit them to the Court.

By the subparagraph 2 of paragraph 1 of Article 27 Law on Legal Protection of Personal Data the Inspectorate shall be entitled to instruct data controllers on personal data processing and protection.

- (e) guidance (e.g. compliance advice) YES/NO

By the subparagraph 6 of the Article 26 of the Law on Personal Data Protection the Inspectorate shall draw up methodological recommendations on the protection of personal data and submit them to data controllers.

By the paragraph 4 of the Article 27 when drawing up rules (codes of conduct) related to the processing of personal data, the data controllers and other persons must submit them to the opinion of the Inspectorate.

- (f) public education YES/NO

By the subparagraph 5 of the Article 26 of the Law on Personal Data Protection the Inspectorate shall draw up and announce annual reports on its activities.

Article 4 of the Law on the Provision of Information to the Public obliges:

1. Every institution to inform public about its activity;
2. Institution to prepare and issue edition, or in any other way to make information about its functions, structure and the questions it deals with public. Institution must have an index of the documents it disposes. Information indicated in this part should be accessible to anyone and free of charge.
3. Informational edition or public information transferred in other way to include information about representative for public relations of an institution, exact address of his office, fax and telephone numbers, working and visiting hours.

- (g) policy advice for government YES/NO

The Inspectorate can prepare the drafts of the legal acts and present them to the Government. The Inspectorate approximates drafts of the legal acts of other institutions.
By the paragraph 14.3 of the Regulations of the Inspectorate the Director of the Inspectorate shall issue orders and regulations approved by orders and supervise their enforcement.

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

details:

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:<http://www.ada.lt/en/legal.html>

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:<http://www.ada.lt/en/activity.html>

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/NO

ACCREDITATION OF DATA PROTECTION AUTHORITY
CHECKLIST FOR THE CREDENTIALS SUB-GROUP

1 Name of Authority

LITHUANIA The State Data Protection
Inspectorate

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

- All public and private sectors except journalistic purposes (strict meaning)

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 authority is designated by the Prime minister, the law provide for important powers, its operating independently and its freedom of speech. For those reasons I think the criteria is fullfield.

(For accession to EU reasons, the government is already drafting a new law (not yet at the Parliament) which will provide complete autonomy)

No – The degree of protection from removal from office of the Director of the Inspectorate is less than ideal. Essentially, the Director may be removed for all the same reasons, minor and major, that any civil servant can be dismissed. It is the Prime Minister who does the removal although the application does not make it clear whether it must be by the Prime Minister personally or whether that function may be delegated. If delegated,

Notes

- the director is designated for 5 years by the Prime Minister, the other civil servant by the Director
- the law provides explicitly for the authority to operate independently
- public annual report

The Inspectorate has legally guaranteed independence

the Director may in essence be answerable to a minor official in the Prime Minister's department. The Law on Public Service apparently allows removal from office if, for example, the Director presents for work in non-sober condition or intoxicated, or if his performance insults personal dignity or discredits the authority of the State.

YES, The necessary independence is vested in the Inspectorate as a corporate body, not the Director alone. It is possible that there may be grounds for dismissing staff individually but this is less likely to have the significant impact as the dismissal power is vested with the Director

- 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
Yes
ratification COE convention in 2001 and law adopted in 2001
CoE additional protocol signed on 8 November 2001 (not yet ratified – CoE website 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
- all listed powers

- 7 Does the Sub-group recommend accreditation?
Yes , see question 5 + this authority attended already the conference

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

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

If more information is required what is this:

The applicant's case is sound in all respects except for the issue of a guarantee of independence. The director of the inspectorate can be removed just like any civil servant. It might be that the institutional arrangements are much more like a government department than a truly independent data protection commission or commission. A new law is being drafted to provide complete autonomy. This presumably will also enable the CoE protocol to be ratified. Perhaps it would be appropriate to recognise this authority as an observer pending enactment of that law?

The issue of guaranteed independence is a potential concern but as the law guarantees the Inspectorates independence, this is sufficient to permit accreditation as a national authority.

Signed on behalf of the Sub-group:

Marie Georges

Date: July 3, 2001

Blair Stewart

Date: *8 July 2002*

Jonathan Bamford

Date: 17/07/02

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