

Catalonia: Catalan Data Protection Agency (Agència Catalana de Protecció de Dades)

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

Agència Catalana de Protecció de Dades
C/ Llacuna núm. 166, 7^a planta
BARCELONA
SPAIN

2. Contact person for this application:

- (a) Name

Mr. Joan Codina

- (b) Email address

~~joan.codina@agenciacatalana.de~~

- (c) Direct telephone number

+34 93 5 52 78 46

- (d) Fax contact

+34 93 5 52 78 40

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)

Data Protection Commissioner

5. Is the Authority a public body? YES

6. Geographical jurisdiction

The jurisdiction of the Agència Catalana de Protecció de Dades (Catalan Data Protection Agency) covers all the Region of Catalonia.

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).

It covers the entire public sector from the Region of Catalonia, including Autonomous Community Administration, Local Administration, Universities, Consortia and also private companies when they are mainly financed by public funds and when they operate as public services.

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

Llei 5/2002, de 19 d'abril, de l'Agència Catalana de Protecció de Dades (Act 5/2002, of 19th April, on the Catalan Data Protection Agency).

10. Is this principally a data protection law? YES

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

The Act 5/2002, of 19th April, on the Catalan Data Protection Agency is a statute of the Parliament of Catalonia. The mentioned Act concerns:

- The creation of the Agència and the definition of its organisation: the Director (Data Protection Commissioner) and the Consell Assessor sobre Protecció de Dades de Catalunya (Data Protection Advisory Council of Catalonia);

- The definition of its functions;
 - The establishment of the economic, legal and personnel regime;
 - The definition of the breaches and sanctions in Catalonia in the data protection field.
- This Act extends the article 41 of the Organic Act¹ on the Protection of Personal Data 15/1999, of 13 December. This article establishes the creation of authorities in the autonomous communities in Spain to exercise the functions of the Spanish Data Protection Agency related to the public sector of his own territory (Catalonia).

Furthermore, the regulation of the data protection in Catalonia came from the Spanish Constitution and from the mentioned Organic Act. The Organic Act 15/1999 is the transposition of the Directive 95/46/CE of the European Parliament and of the Council, on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

12. Which body made the law?

The Act 5/2002, of 19th April, on Catalan Data Protection Agency was drafted by the Catalan Government and passed by the Parliament of Catalonia.

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

The Catalan Government can present a bill to the Parliament of Catalonia for amending the Act and the Act has to be passed by the Parliament of Catalonia. It is also possible for the Parliament to take the initiative and to introduce the legislative initiative to amend the Act.

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 Act 5/2002 establishes the Director of the Agència and the Consell Assessor sobre Protecció de Dades de Catalunya (Consultative Body) as the governing bodies of the Agència Catalana de Protecció de Dades.

The Director of the Agència Catalana de Protecció de Dades is appointed by the Catalan Government, at the proposal of the Consell Assessor.

The members of the Consell Assessor sobre Protecció de Dades de Catalunya are:

- Three members appointed by the Parliament of Catalonia, by a two-thirds majority at the beginning of each legislative period.
- Three representatives of the Catalan Autonomous Community Administration, appointed by the Catalan Government.

¹ The organic acts are the basic statutes affecting fundamental rights and public freedoms, as well as, basic institutions of the Spanish legal system and must be passed by absolute majority in the Parliament.

- Two representatives of the Local Administration, proposed by the associations of local entities.
- One expert in the field of the Fundamental Rights, proposed by the Consell Interuniversitari de Catalunya (Interuniversity Council of Catalonia).
- One expert in Information Technology, proposed by the Consell Interuniversitari de Catalunya.
- One member representing the Institute of Catalan Studies.
- A member representing the consumers and users proposed by the most representative consumers' organisations.
- The Director of the Institute of Statistics of Catalonia.

The other Authority members are officials of the public administration or staff recruited on a base of a labour contract by a public call according to the equality principles, merit and competence.

15. What process is followed?

As it has been explained, after the Consell Assessor sobre Protecció de Dades de Catalunya has been set up and all the relevant institutions and organisations have appointed their representatives in the Council, they propose the Director who is appointed by the Catalan Government. The appointment of the Director of the Agència Catalana de Protecció de Dades is published in the Official Gazette of the Generalitat of Catalonia.

16. For what term are appointments made?

The appointment of the Director of the Agència Catalana de Protecció de Dades is made for four years.

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

YES, the second article of the Act on the Catalan Data Protection Agency establishes that the Agència is a public institution with its own legal personality and with full legal capacity that operates objectively and with complete independence from the public administrations in exercising its functions. Furthermore, according to article 13 of the Act 5/2002 the Director of the Agency performs his functions with full independence and may not be subject to any mandatory instructions whatsoever.

18. May the member(s) be removed before expiry of their term?

The Director of the Agency may not be removed from his duties before the expiry of the term but there are four specific cases stated in the Act on the Catalan Data Protection Agency that implies the Director's cease of his position: failure to comply with the obligations of the post; incapacity to carry out the functions of the post; incompatibility or conviction for wilful criminal act.

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

The Director may be removed only by the Catalan Government, once the corresponding proceeding have been instituted at the proposal of three quarters of the members of the

Consell Assessor de Protecció de Dades de Catalunya, and only in the case of one or more of the above-mentioned cases.

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

As has been explained in question number 18, there are only four reasons for removing the Director of the Agència Catalana de Protecció de Dades specified in the article 13 of the Act 5/2002.

21. What are the grounds for removal?

It has been explained in answer to question 18 to 20.

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

(e) to initiate an investigation with seeking provision YES

The Agència Catalana de Protecció de Dades may initiate an investigation of its own accord or after receiving a complaint from individuals. According to the article 5.1.h) and 8 of the Act 5/2002 the Director has broad inspection, supervisory and sanctioning powers. Consequently the Director may seek any documentation or evidence it deems necessary for the investigation. He may also inspect both hardware and software equipment and gain access to the premises or facilities where this equipment is located if necessary.

Failing to comply with this request is considered a serious breach according the article 16 of the Act 5/2002 and the article 44 of the Organic Act 15/1999.

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

The Director of the Agència Catalana de Protecció de Dades shall present the annual report of the Agència to the Parliament of Catalonia. This annual report shall be given to the Catalan Government, to the Síndic de Greuges (Catalan Ombudsman) and to the Director of the Spanish Data Protection Agency.

(g) make public statements YES

The Agència, exercising its information and diffusion functions in the field of data protection, may make public statements to mass media. In addition, all the hearings in the Parliament of Catalonia are published in the Parliament of Catalonia Official Journal. The Authority, exercising its power to give general recommendations, may also make public statements to the public sector or to individuals in order to promote the data protection culture.

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

No, according to the legal provisions, complaints about members of the Agència Catalana de Protecció de Dades (as well as any other member of a public institution in Catalonia) failing on performing their duties can be raised through the established administrative procedures. If applicable, members can be suit by Court. In this case, members of the Authority have the right to be represented in Court by an Attorney of the Generalitat de Catalunya at no cost.

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 Agència Catalana de Protecció de Dades is a public institution, with its own legal personality and full legal capacity to act for fulfilling its duties. It acts in full independence of the public administrations during the exercise of its functions and with total objectivity.

The posts in the bodies and services belonging to the Agència Catalana de Protecció de Dades are filled by officials of the public administrations or by staff recruited on a base of a labour contract by a public call according to the equality principles, merit and capacity. The staff is obliged to keep secret any personal data of which they acquire knowledge in the performance of their tasks.

The Contract Act of Public Administrations governs its acquisitions of assets and its contracts. For the performance of its tasks, the Agència Catalana de Protecció de Dades has the following assets and economic resources:

- The annual assignments established in the budgets of the Generalitat.
- The subventions and contributions that are granted to the Agència.
- The assets and rights that make up its property and the product and return thereon.
- The ordinary and extraordinary incomes that derive from the exercise of its activities.
- Any other attributed to it.

The financial controlling of the Agència will be carried out by the Intervenció General de la Generalitat de Catalunya (Financial Controlling Body or the Catalan Government).

Each year the Agència Catalana de Protecció de Dades elaborates and approves the preliminary draft budget and send it to the Catalan Government for its incorporation in a specific section to the General Catalan Government Budget that shall be passed by the Parliament of Catalonia. The legal references that determine the human resources, the economic and the asset regime of the Agència are settled in Chapter III of the Act 5/2002 and in Chapter IV of the Decree 48/2003.

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
(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 implemented 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

The Agència Catalana de Protecció de Dades has full power of audit and inspection for the public sector, which include Autonomous Community Administration, Local Administration, Universities, Consortia and also private companies when they are mainly financed by public funds and when they provide public services. These functions can be found in articles 3, 5.1.h) and 8 of the Act 5/2002 and in the article 20 of the Decree 48/2003.

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

In Catalonia, every single personal data processing or filing system shall be declared by a general regulation and registered in the Registre de Protecció de Dades de Catalunya (Data Protection Register of Catalonia; article 15.2 Act 5/2002). The Agència previously checks the compliance with the ruling legislation of the regulation (article 5.1.j) Act 5/2002). Before registering the notification, the Agència Catalana de Protecció de Dades may ask for all the information it deems necessary to verify the lawfulness of the processing and may carry out an inspection to check compliance.

There is also a procedure for the approval of Codes of Conduct of the public sector that may be submitted to the Agència Catalana de Protecció de Dades. The Agència will check the conditions of the organisation, the operating rules, the applicable procedures, the security standards for data, programs and equipment, the obligations of those involved in the processing and use of personal information, as well as the procedures for exercising the rights of individuals. The

Agència Catalana de Protecció de Dades may refuse approval if the Codes do not fulfil the legal requirements on data protection. Provisions on Codes of Conduct and the powers of the Agència regarding them can be found in article 15.2 of the At 5/2002.

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

According to the article 5.1.e) of the Act 5/2002 the Agència shall provide information to individuals on their rights in the data protection field. The article 5.1.k) establishes that the Agència shall deal with all the enquiries and claims submitted by the Autonomous Community Administration, Local Administration and Universities related to the data protection rights, rules and regulations.

Furthermore, any individual to whom the rights of access, rectification, cancellation or objection have been denied for the public sector can submit its request or claim to the Agència Catalana de Protecció de Dades according to article 5.1.f) Act 5/2002. The Agència will deal with the complaint and decide whether the refusal to satisfy the request is lawful or not. Its decision will be notified to the data controller who have to grant the request made by the individual in case the Agència Catalana de Protecció de Dades has decided the individual was right. The decision of the Agència can only be challenged in Court.

The Agència Catalana de Protecció de Dades has also, as we have mentioned before, investigating powers to deal with any complaint formulated by individuals or organisations or even got to know by the Agència (article 8 Act 5/2002). After an investigation has been carried out, the Director of the Agència may decide to open a sanctioning procedure if there is an evidence of a possible breach of the data protection legislation (articles 16 and 17 Act 5/2002). After the instruction of the case, the Director may decide to declare that a breach has been committed and sanction the offender. The decision can only be challenged in the Courts.

In addition, if the possibility of a very serious breach, which could affect fundamental rights of individuals is detected, the Director of the Agència Catalana de Protecció de Dades may decide temporarily to block the involved personal data processing until the end of the sanctioning procedure. This decision can be challenged in Court. The blocking may be confirmed as permanent at the end of the procedure when the final decision is issued or, if no infraction is declared, the blocking is lifted (article 18 Act 5/2002).

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

YES, the Agència Catalana de Protecció de Dades has inspection and sanctioning powers as it has been explained before. When the Agència, then, has taken the decision that a data controller has processed personal data in breach of the data protection legislation, the Director of the Agència Catalana de Protecció de Dades may:

- To adopt corrective measures (art. 16.2 Act 5/2002).
- To propose to commence disciplinary actions (art. 16.2 Act 5/2002).
- To decide the cease of the unlawful use or communication (art. 18 Act 5/2002).

- To decide to block the personal data filing system or processing (art. 18 Act 5/2002).

If the offender is a public administration, the Director of the Agència Catalana de Protecció de Dades may decide to set out measures to be adopted to terminate or correct the effects of the infringement. This decision will be notified to the data controller, the body to which it is responsible, to the data subjects affected and to the Síndic de Greuges (Catalan Ombudsman; article 16.4 Act 5/2002). The Director of the Agència may also propose that disciplinary actions shall be taken against the civil servant(s) responsible of the breach. The Public Administration involved shall notify to the Agència Catalana de Protecció de Dades the measures and proceedings taken to comply with its decision.

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

According to the article 5.1 b) and c) of the Act 5/2002 the Agència may adopt general instructions to individuals or instructions in the Statistics field. The Agència Catalana de Protecció de Dades shall also deal with any request of information submitted by individuals. These requests of information may be made personally, by writing, by phone or through the Internet.

There is also the possibility to organise conferences and seminars to raise awareness and to promote a better knowledge of both general and specific data protection issues.

Furthermore, the Agència Catalana de Protecció de Dades can address to data controllers any instructions it deems adequate to promote compliance with the data protection legislation and request them to adopt, after hearing them, the necessary measures to comply with their legal obligations. In addition, the Agència may give advice to data controllers when they require its opinion regarding specific situations and when they intend to put in place new personal data processing.

- (f) public education YES

As we have mentioned before, a function of the Agència is to provide information to individuals on their rights as regards the processing of personal data. The Agència Catalana de Protecció de Dades is also planning to organise conferences and seminars and members of the Agència are continuously participating in specialised courses and seminars in the data protection field.

In addition, it is also mandatory to make publicly available the information contained in the Registre de Protecció de Dades de Catalunya regarding the notified personal data processing, according the article 15 of the Act 5/2002. .

- (g) policy advice for government YES

According to the article 5.1.j) of the Act 5/2002 and 8 of the Decree 48/2003, the Agència Catalana de Protecció de Dades participates in the procedure of making laws and other regulations in the field of the data protection. That means, that the Agència issue a previous mandatory report on any new draft of legislation in the data protection field or other regulation that can affect directly or indirectly

the fundamental right to the personal data protection. Additionally, as it has been mentioned before, the Agència may issue general instructions and recommendations to facilitate that all the personal data processing give compliance to the existing data protection legislation.

The Agència also, may advise the Catalan Government with the discussion of relevant issues through informal meetings in which the Agència will expose the responds that have been given to queries or petitions submitted by the public sector.

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

The Catalan Data Protection Agency is planning the development of researching the data protection field and to prepare relevant studies in this subject but at the moment the creation of the Authority is too recent to be able to do research.

Additional comments

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

The legal creation of the Catalan Data Protection Agency is from April 2002 but the effective establishment of the Catalan Data Protection Agency is only from last October. As a result of this, the disposal of the materials, results, studies or annual reports is currently unavailable. We will have them available in the next months as well as complementary information to this application.

Other materials

29. List any attachments which will accompany the application as an electronic attachment or to follow by post.

Act 5/2002, of 19th April, on the Catalan Data Protection Agency (in English).

31. If law under which the Authority operates is accessible on the Internet, please give the reference

URL: www.apdcat.net

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

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.

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

1 Name of Authority

Agència Catalana de Protecció de Dades

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

It covers all the public sector in the region of Catalonia including publicly funded private companies.

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

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

No

Don't know

Notes

The statute guarantees independence

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 and CoE Convention 108

Don't know	
<p>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)?</p> <p>Yes</p> <p>No</p> <p>Don't know</p>	<p>Notes</p> <p>It has an appropriate range of functions</p>
<p>7 Does the Sub-group recommend accreditation?</p> <p>Yes</p> <p>No</p>	<p>Notes</p>
<p>8 If accreditation is recommended what is the accreditation as?</p> <p>National authority (within the UN criteria)</p> <p>Authority within a limited sub-national territory</p> <p>Authority within an international or supranational body</p>	<p>Notes</p> <p>It clearly performs the role of a sub national authority within the Kingdom of Spain</p>
<p>9 If accreditation is as an authority within an international/supranational body does the recommendation include voting rights?</p> <p>Voting Rights</p> <p>No Voting Rights</p>	<p>Notes</p> <p>N/A</p>
<p>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?</p> <p>Refusal</p> <p>More Information</p>	<p>Notes</p> <p>N/A</p>
<p>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?</p> <p><i>Not Applicable</i></p>	<p>Notes</p>

Yes

Not

If more information is required what is this:

Signed on behalf of the Sub-group:

Jonathan Bamford

Date: 12/01/04

Blair Stewart

Date: *30 May 2004*

Date:

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