

**Conference of European Data Protection Authorities
26-27 May 2016 – Budapest, Hungary**

**Accreditation Procedure for Conference of European Data Protection Authorities
Report of the Accreditation Committee on the application for accreditation by the Data
Protection Commissioner of the Canton Basel-Stadt**

Introduction

According to the Guidelines for Admission to the Conference of European Data Protection Authorities, as adopted on 23 April 2004 during the Rotterdam Spring Conference of European Data Protection Authorities, the Accreditation Committee comprises of the former, current and next organizer of the Spring Conference of European Data Protection Authorities.

The Accreditation Committee now comprises of:

- The United Kingdom Data Protection Authority (ICO)
- The Hungarian Data Protection Authority (NAIH) and
- The Cypriot Data Protection Authority

The work of the Accreditation Committee was performed by an officer of each Authority, as follows:

- The United Kingdom Data Protection Authority: Ms. Hannah McCausland
- The Hungarian Data Protection Authority: Dr. Julia Sziklay
- The Cypriot Data Protection Authority: Mr. Constantinos Georgiades

Request for accreditation as member of the Conference of European Data Protection Authorities

On 6 April, 2016 the Accreditation Committee received the official request for accreditation to be a member of the Conference of European Data Protection Authorities from the Data Protection Commissioner of the Canton Basel-Stadt (Switzerland) (hereafter the ‘DPA’).

The assessment process

The application was examined together by all authorities participating in the work of the Accreditation Committee. According to the Guidelines for Admission to the Conference of European Data Protection Authorities the examination of the application focused on whether:

- the applicant DPA is a public body established on an appropriate legal basis;
- the law under which the applicant operates implements either the Council of Europe Convention 108 or European Union Directive 95/46/EC;
- the DPA has sufficient degree of independence and autonomy;
- the DPA has an appropriate array of functions combined with the power to perform these functions;
- the applicant DPA had filed an application in the correct category of membership;

Canton Basel-Stadt

The English version of the Law on Information and Data Protection of the Canton of Basel-Stadt, (also referred to as the 'Information and Data Protection Act'), adopted on 9 June 2010, was made available to the Accreditation Committee.

The DPA is established by the Cantonal Information and Data Protection Act, (Informations- und Datenschutzgesetz, IDG, SG 153.260) (hereafter the 'Act'). The mandate covers the public sector, and private sector in its interaction with the public sector. The Act does not apply if a public body is taking part in economic competition and is operating under private law; in pending civil and criminal proceedings; and in pending proceedings of constitutional and administrative courts. The Act covers both the regulation for accessing and processing data of public interest and the protection of personal data processed by public bodies.

Although it does not directly implement the Directive 95/46/EC or the Convention 108 and its additional protocol, the Committee found that the main data protection principles enshrined in the said Convention 108 and European Union Directive 95/46/EC are clearly incorporated in the Act namely:

- Fair and lawful processing (Article 9)
- Legitimate purpose principle (Article 12)
- Proportionality principle (Article 9)
- Data quality principle (Article 11)
- Necessity principle (Article 9)
- Grounds for processing of data (Articles 9 and 21)
- Special category of data (Article 3 Point 4)
- Data minimization principle (Article 14)
- Deletion of unnecessary and outdated data (Article 16)
- Right to access public information and personal data (Articles 25 and 26)
- Right of rectification, update, addition, blocking, erasure and destruction of data (Articles 27 and 28)
- Data security (Article 8)
- Transfers of data to another canton and state (Articles 22 and 23)
- Data processing by third parties (Article 7)

The Act contains special provisions on the use of video surveillance in Article 17-18. Moreover, Article 37 of the Cantonal data protection law explicitly states that the DPA shall be independent and shall not be bound by directives. The Commissioner is appointed by the parliament of the Canton for a fixed term of office of six years and recruits his/her own team members.

The Commissioner is given a number of powers including the ability to initiate investigations and inspections on its own initiative or on the basis of a data subject's application (Articles 44 and 45). Moreover the Commissioner is entitled to impose a fine on those who deliberately or negligently use personal data in breach of the Act.

Beyond the above, the Committee has the following recommendations regarding the Act:

- We would advise the authority to consider how to obtain a right for data subjects interacting with the Canton of Basel-Stadt to object to automated decisions made on the basis of their personal data.
- We would advise the authority, in the light of principle of foreseeability, to clarify the exact rate or the discretionary grounds for imposing (administrative) fines on third party data controllers (Article 51).

Upon the assessment of the application, the members of the Accreditation Committee recognize that the Data Protection Commissioner of the Canton Basel-Stadt meets all the necessary requirements.

Recommendation

The Accreditation Committee recommends:

- **To adopt the Resolution to accredit the Data Protection Commissioner of the Canton Basel-Stadt as member of the Conference of European Data Protection Authorities with the status of European sub-national Data Protection Authority.**

27 May 2016