

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
Armenian Personal Data Protection Agency

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 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 February, 2016 the Accreditation Committee received request for accreditation to be a member of the Conference of European Data Protection Authorities from the Armenian Personal Data Protection Agency (hereafter the ‘DPA’). In addition, the DPA also promptly provided further information in response to the request by the Accreditation Committee.

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;

Armenia

The Law on Protection of Personal Data of the Republic of Armenia (hereafter referred to as RA) was adopted by the National Assembly of Armenia on May 15th, 2015 and came into force on July 1, 2015. A non-official English version of the Law can be found at:

http://www.foi.am/u_files/file/Personaldataprotectionlaw_ENG.pdf

The DPA is a public body, established in October 2015 within the structure of the RA Ministry of Justice. It was successfully accredited by the Central and Eastern Europe Data Protection Authorities (CEEDPA) at its 18th Meeting on 12 May 2016.

The DPA's jurisdiction covers both private and the entire public sector but there are many exceptions provided in the Law: *„Characteristics pertaining to personal data constituting state and official, banking, notarial, insurance secrecy, legal professional privilege, those used in the course of operations concerning national security or defence, as well as those used in the fight against money laundering and terrorism, operational intelligence activity and proceedings shall be regulated by other laws. The restrictions of processing of personal data prescribed by this Law shall not cover the personal data being processed exclusively for journalism, literary and artistic purposes.“*

Armenia has ratified the Council of Europe Convention 108 (1981) and its Additional Protocol (2001).

The Head of the DPA is recruited through the following procedure: the RA Ministry of Justice announces a competition for the post of the Head of the DPA for any candidate from the Armenian civil society and the candidate should be nominated by a consortium of at least 5 NGOs. Out of the candidates the Prime Minister of the RA appoints the Head of the DPA based on the recommendations of the RA Minister of Justice for a 5 year term. The same person may not be appointed to the position of the head of the DPA for more than two terms of mandate.

The Head of the DPA recruits staff members according to job descriptions and open announcements. Staff members should pass State obligatory exams to be able to work in the DPA. The Prime Minister may remove the Head of the DPA and the RA Minister of Justice may remove other staff members. The grounds for removal are strictly and narrowly prescribed by the Law on Protection of Personal Data.

Seven employees, including the Head of the DPA, are responsible for all the work of the DPA. The number of staff is defined by the decision of the Government. If there is such a need, the Government's decision is amended accordingly.

The DPA has the power to initiate investigations based on applications or on its own initiative. The DPA applies administrative sanctions prescribed by law in the case of violation of the requirements of the Law on Protection of Personal Data. The decisions of the DPA are binding.

The DPA submits, once a year, a public report on the current situation in the field of personal data protection and on the activities of the previous year.

The DPA is funded by the State and its budget is presented on a separate line.

The DPA acts upon an application or ex officio.

The DPA can, upon application, prior-check electronic systems for processing of personal data of legal persons to determine if they offer an adequate level of protection.

The DPA has the power to control any devices and documents, including the existing data and computer software used for processing data.

As part of the FOI reforms that have been initiated by the RA Ministry of Justice, it is envisaged that the supervision of access to information requests might be included in the overall competence of the DPA.

The main data protection principles enshrined in the Council of Europe Convention 108 can be found in the Act as follows:

- The Articles 4 to 8 of the Law on Protection of Personal Data of the Republic of Armenia set the basic data protection principles such as principles of lawfulness, of proportionality, of reliability, of minimum engagement of subjects and of lawfulness of personal data processing.
- Articles 9 and 10 as well as Chapters 4 and 5 guarantee the rights of the data subjects and describes the obligations of the data controllers.
- Articles 11 to 13 regulate the processing of publicly available, special and biometric data. These categories of data are defined in Article 3 (13-15).
- Article 24 creates an “authorised body for the protection of personal data”, which “shall operate independently based on Laws and other legal acts”.
- Article 24 (3) lists the numerous powers and competencies of the DPA. The conditions for dismissal of the head of the DPA are described in detail in Article 25.
- Chapter 7 provides rules for the transfer of personal data.

Beyond the above, the Committee, informed of and supporting the current work of cooperation between the DPA and the Council of Europe regarding the legal data protection framework in Armenia, has the following recommendations regarding the Act:

- We would advise the DPA to consider redrafting the provisions which in the Law on Protection of Personal Data set out the structure of the DPA to guarantee that it operates fully independently from the Ministry of Justice and,
- we would also advise the DPA to consider clarifying the provisions of the Law which guarantee its financial stability and budgetary independence.

Upon the assessment of the application and in light of the above recommendations regarding the Act, the Accreditation Committee therefore recommends:

- **to adopt the Resolution to accredit the Armenian Personal Data Protection Agency as member of the Conference of European Data Protection Authorities with the status of European national Data Protection Authority.**

27 May 2016