PERSONAL DATA PROTECTION

PRIVACY

INFORMATION FOR THE CITIZENS ON THE RIGHT TO PERSONAL DATA PROTECTION

Personal data represent rights and freedoms, which are directly linked to a person as an individual.*

The right to personal data protection is citizen’s right to a protection of his legitimate interests, which understands prevention of any personal data misuse and imposing sanctions. This right is guaranteed by national and international legal acts.

Individual (data subject) is a physical person, whose identity can be determined directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.

*In this brochure for the same physical person we use the notion citizen, individual or data subject (as a notion in terms of the Act on personal data protection).

Identity of an individual differs from other citizens in specific characteristics (age, gender, race).

Personal data is any information relating to an identified natural person or an identifiable natural person.

PERSONAL DATA

- health data
- personal identification number
- data on earnings
- grades and behaviour at school
• bank accounts
• tax refund notification
• biometrical data (e.g. fingerprint)
• passport or identity card number etc.

Personal data are not:
Company registration number of a legal person, name and postal address of a
gle person, its e-mail address and financial data, information on deceased
persons etc.

CITIZENS AND PERSONAL DATA PROTECTION

The right to personal data protection is one of the fundamental rights of every
human being. The purpose of personal data protection lies in protection of a
private life and other human rights and fundamental freedoms in collecting,
processing and use of personal data.

In the Universal Declaration of Human Rights of the United Nations (10.
December 1948) it is said: "No one shall be subjected to arbitrary interference
with his privacy, family, home or correspondence, nor to attacks upon his honour
and reputation".

Article 8 of the European Convention for the Protection of Human Rights
and Fundamental Freedoms (4. November 1950) says that everyone has the
right to respect for his private and family life, his home and his correspondence.
There shall be no interference by a public authority with the exercise of this right
except such as is in accordance with the law and is necessary in a democratic
society in the interests of national security, public safety or the economic well-
being of the country, for the prevention of disorder or crime, for the protection of
health or morals, or for the protection of the rights and freedoms of others.

In order to raise citizens' awareness on the right to personal data protection the
Council of Europe, supported by the European Commission, has proclaimed
January 28th the "EUROPEAN DATA PROTECTION DAY".

Personal data protection in the Republic of Croatia is a constitutional category.
The protection of human rights and fundamental freedoms is guaranteed to every
citizen disregarding the race, skin colour, gender, language, religion, political or
other opinion, national or social origin, birth, education, social position or other
characteristics.
LEGAL FRAMEWORK ON PERSONAL DATA PROTECTION IN THE REPUBLIC OF CROATIA

Article 37 of the Constitution of the Republic of Croatia says:

"Everyone shall be guaranteed the safety and secrecy of personal data. Without consent from the person concerned, personal data may be collected, processed and used only under conditions specified by law.

Protection of data and supervision of the work of information systems in the State shall be regulated by law.

The use of personal data contrary to the purpose of their collection shall be prohibited."

The Act on personal data protection has been passed on the basis of the constitutional provision on the right to personal data protection (Official Gazette N° 103/03, 118/06, 41/08).

The Law regulates personal data protection of natural persons and supervision over collecting, processing and use of personal data in the Republic of Croatia.

Next to the Act on personal data protection in the Republic of Croatia there are other legal acts regulating the personal data protection domain:

- Regulation on the manner of keeping the records of personal data filing systems and the pertinent records form (Official Gazette N° 105/04) and
- Regulation on the procedure for storage and special measures relating to the technical protection of special categories of personal data (Official Gazette N° 139/04).

The Republic of Croatia as Council of Europe's member is a signatory state of the Convention for the protection of individuals with regard to automatic processing of personal data (Convention 108) and of the Additional protocol to the Convention 108 regarding supervisory authorities and transborder data flows.

The implementation of the above-mentioned legal acts of the Council of Europe has been possible after the promulgation of the Act on confirmation of the Convention for the protection of individuals with regard to automatic processing of personal data (Convention 108) and of the Additional
protocol to the Convention 108 regarding supervisory authorities and transborder data flows (Official Gazette N° 04/05, International agreements).

The Act on personal data protection as a basic law in the field of personal data protection in the Republic of Croatia has also been harmonised in all relevant provisions with the Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

PERSONAL DATA PROTECTION PRINCIPLES

General principles on the personal data protection in accordance with the Convention 108 are:

- **legitimacy**
  - personal data must be collected and processed in a legitimate way

- **purpose**
  - personal data must have a defined purpose

- **volume**
  - personal data must be proportioned with regard to the purpose for which they have been collected

- **accuracy**
  - personal data must be accurate

- **permanency**
  - personal data must be stored in a form, which enables identification of a person only in the time period necessary to satisfy the purpose of collection

COLLECTING AND PROCESSING OF PERSONAL DATA IN THE REPUBLIC OF CROATIA

Personal data can be collected and processed:

- with data subject's consent only for a purpose, for which a data subject has given his/her consent, or

- in the cases determined by the law, or

- to comply with legal obligations of a data controller, or
• for the purposes of signing and fulfilling of contract clauses, in which a data subject is a party, or

• to protect life or physical integrity of a data subject or another person when a data subject is not in a position to give his/her consent physically nor legally, or

• if personal data processing is necessary for a data controller to carry out tasks of public interest, or

• if a data subject has personally disclosed his/her data.

**Where are data subject's data held?**

Personal data are stored in personal data filing systems called data basis (e.g. records on employees, members of an association etc.)

**Who is collecting and processing personal data and taking care of the legitimacy of personal data processing?**

**Data controller** means a natural or legal person, state or other body, representation offices or subsidiary of foreign legal entities and representatives of foreign legal and natural persons.

**Data officer** is a person appointed by a data controller, who is supervising the legitimacy of the personal data processing and execution of the right to personal data protection, who is also cooperating with the Personal data protection agency in the matters of supervision over the personal data processing.

**Processing official** is a natural or legal person, who has been entrusted with personal data processing activities via a contract.

**User of personal data** means a natural or legal person, state or other body whom personal data may be disclosed to for the purposes of conducting regular activities within the scope of competences defined by the law.

**DATA CONTROLLER'S OBLIGATIONS TOWARDS DATA SUBJECT**

The personal data filing system controller shall, at the latest within 30 days from receiving a request about it, provide the following to every data subject or his/her legal representative or plenipotentiary:
1. deliver a confirmation as to whether or not data relating to data subject are being processed,
2. communicate to data subject in an intelligible form of the data undergoing processing and of any available information as to their source,
3. allow access to the personal data filing system records and to the personal data in the personal data filing system relating to the data subject, and allow the copying of such files,
4. deliver excerpts, certificates or printouts of the personal data held in the personal data filing system relating to the data subject, which must contain an indication of the purpose and legal basis for their collecting, processing and use,
5. deliver a printed copy containing the information on who obtained access to the data, for what purpose and on what legal basis regarding the personal data of the data subject,
6. provide information about the logic involved in any automatic processing of data concerning him/her.

BASIC RIGHTS OF DATA SUBJECTS

Every citizen (data subject) must be cautious and aware of his/her rights while giving his/her personal data to a data controller. He/she must know for which purposes data have been given and whether they are going to be used for something else. An institution collecting personal data must not use them for other purposes than for those for which they have been collected.

RIGHT TO WITHDRAW A GIVEN CONSENT
When personal data are being collected and processed on the basis of a consent, a citizen has the right to withdraw that consent.

RIGHT TO ACCESS INFORMATION ON PERSONAL DATA
A data subject has the right to know who is dealing with his/her personal data, to send a request to any organisation, legal or natural person disposing of his/her data (e.g. bank, police, employer, doctor) to get an access to his data, to get an insight into concrete data held in some personal data filing system.

RIGHT TO CORRECT INACCURATE OR INCOMPLETE DATA, TO PREVENT A DISCLOSURE OF SUCH DATA OR TO ERASE DATA
This right includes the request for erasure of personal data from a specific record (if the record is not maintained according to specific rules).

RIGHT TO BE REMOVED FROM THE MARKETING LIST
A data subject has the right to oppose the processing of his/her personal data for the purposes of marketing. It means that those personal data are not to be processed any more for such purposes. If an organisation or a company has personal data for the purposes of the direct marketing (e.g. e-mail or marketing via telephone), a data subject has the right to request an erasure of those data
from a personal data filing system. This right is especially useful in cases of receiving the so-called "junk mails" or disturbing telephone calls by a service provider.

RIGHT TO COMPLAIN
Every data subject can file a complaint before the Personal data protection agency if he/she considers that his/her rights have been violated and if his/her personal data have been misused. The Agency can at request of a data subject temporarily prohibit personal data processing until the finalisation of the process.

RIGHT TO THE COMPENSATION FOR DAMAGES
Everybody has the right to request a compensation for damages from a data controller in case his/her rights have been violated. In case of violation of citizen's rights a data controller can be held responsible for a misdemeanor or a crime before a competent body (a court). The Agency may propose to initiate criminal or misdemeanor proceedings before a competent authority.

SYSTEM OF PROTECTION OF DATA SUBJECT'S RIGHTS
If a citizen believes that his/her rights guaranteed by the Act on personal data protection have been violated, he/she can send a request for establishment of the violation of rights to the Agency.

The Agency is obliged to study all citizens' requests and to inform them about the measures taken.

If during the supervision the Agency determines that legal provisions establishing personal data processing have been violated, it shall be entitled to warn or notify the personal data filing system controller about the irregularities in the personal data processing and issue a decision:

- ordering that irregularities be eliminated within a certain time period,
- temporarily prohibiting the collecting, processing and use of personal data being collected, processed or used contradictory to the relevant legal provisions,
- ordering erasure of personal data collected without a legal basis,
- prohibiting the transfer of personal data across the Croatian border or allowing a disclosure of personal data to other users if such data are transferred abroad from the Republic of Croatia or provided to other users contradictory to provisions stipulated in this Act,
prohibiting the assignment to collect and process personal data to processing officials if a processing official does not fulfil the requirements prescribed for personal data protection, or where the assigning of these tasks has been conducted contradictory to provisions stipulated in this Act.

CROATIAN PERSONAL DATA PROTECTION AGENCY - CPDPA

Croatian personal data protection agency is a legal person which is carrying out public tasks independently in the framework of the competences defined by the Act on personal data protection ("Official Gazette N° 103/03). The seat of the Agency is in Zagreb.

The scope of the Agency is defined in articles 32 and 33 of the Act encompassing both administrative and specialized tasks related to personal data protection.

In the framework of its public tasks the Agency

- supervises the implementation of personal data protection;
- indicates the violations noted during personal data collecting;
- compiles a list of national and international organisations which have adequately regulated personal data protection;
- resolves requests to determine possible violations of rights guaranteed by this Act;
- maintains the Central Register.

On the basis of supervisory activities upon personal data collecting and processing the Agency issues decisions and acts ex-officio, but also upon requests referring to establishment of violation of rights in personal data processing.

Agency's management

Director: Franjo Lacko, LL.B.
Deputy director: Vilena Gašparović, LL.B.

Decision on appointment of the director and the deputy director of the CPDPA (Official Gazette N° 60/2008)

THE CENTRAL REGISTER
The Agency maintains the Central Register in which records on personal data filing systems are compiled according to the Act on personal data protection (Official Gazette N° 103/03) and to the Regulation on the manner of keeping the records of personal data filing systems and the pertinent records form (Official Gazette N° 105/04).

The Central Register represents a computer data basis, which is publicly accessible on the Internet pages of the Agency (http://registrar.azop.hr).

Article 2.4 of the Act defines a Personal data filing system controller (a data controller) as a natural or legal person, state or other body that determines the purposes and means of the processing of personal data. All state authorities, local and regional self-government bodies, as well as legal and natural persons collecting and processing personal data must maintain records on personal data filing systems according to the previously mentioned Regulation. The personal data filing system controller shall inform the Agency of any amendments, alterations or deletions of such personal data.

Data controller have a direct access to the Central Register in order to deliver notifications on the records on personal data filing systems with a prior registration on Agency's Internet site.

In order to be registered a data controller must fulfil all requested data and make two printouts. One printout is to be stamped and signed by a responsible person and delivered to the Agency. Right after having received the printout the Agency enables to data controllers the input of information about records maintained by them.

The Agency also supervises the delivery of notifications to the Central Register as well as the information security and technical measures undertaken to protect personal data. Authorized employees of the Agency issue decisions to data controllers to deliver notifications and correct and harmonize forms serving for collecting of personal data. The Agency issues requests to institute proceedings before the competent court and acts ex-officio and upon citizens' requests for the protection of their rights.

AGENCY IN INTERNATIONAL BODIES

One of many tasks and obligations of the Agency refers to participation in international conferences and working parties as an active member or an observer. Through a regular and active participation on the international scene the Agency contributes to a continuous development of work, it searches for better solutions and works on harmonisation of the croatian legislation in the field
of personal data protection with the highest european and global norms. It is ensuring a fulfillment of obligations stemming from various conventions signed and ratified by the Republic of Croatia.

**Council of Europe - Convention 108 (Convention for the protection of individuals with regard to automatic processing of personal data)**

Convention 108 is the first binding international instrument protecting an individual from a misuse in personal data collecting and processing, regulating simultaneously a cross-border data transfer.

Convention 108 has been signed by the Council of Europe in Strasbourg on 28. January 1981. The Council of Europe has established the Consultative Committee of the Convention for the Protection of Individuals with regard to automatic processing of personal data (T-PD). The Republic of Croatia is one of 40 member states of the Council of Europe having signed and ratified the Convention 108 and participating with a voting right in the work of the T-PD.

**Working party on Police and Justice**

Having acquired a status of a full member of the Spring conference of the Commissioners for personal data and privacy protection the Agency has become a full member in the Working group on Police and Justice. In its work the WP faces ever bigger challenges to personal data protection linked to police and law enforcement.

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**Article 29 Working Party**

The Article 29 Working Party represents an independent advisory body of the European Union in the field of the personal data and privacy protection. Its tasks are defined in Article 30 of the Directive 95/46/EC and Article 14 of the Directive 97/66/EC. They include professional opinion making, advising and recommending to the European Commission in the matters of personal data and privacy protection. Its meetings are held in Brussels.

**Interpol**

Agency's expert in electronic data processing has been appointed as member of the Commission for the control of Interpol files, which is held for one of the biggest international organisations of the criminal police. This has confirmed the readiness and the ability of the croatian staff to excersise and complete complexe tasks in international bodies.

**Eurojust**

Eurojust is European Union's institution, established in 2002 and seated in the Hague. Its main objective is to raise the efficiency of cooperation and
coordination between competent bodies of the EU Member states in investigation procedures and prosecution of organized crime as well as to give a more complex international legal aid in criminal matters in order to accelerate the extradition procedures.

The Republic of Croatia has signed an agreement with Eurojust on November 9th, 2007 in Brussels. Due to an exchange of information between the Republic of Croatia and Eurojust, and especially of personal data, regular exchange of opinions is taking place as well as inspection over the fulfillment of Agency's obligations from the Agreement.

**International Conference of Data Protection and Privacy Commissioners**  
This international conference is celebrating 30 years. It is gathering cca. 78 personal data and privacy protection commissioners from all over the world.

The open part of the conference is accessible also to representatives of the economic and public sector and of the NGOs. In the closed sessions the commissioners discuss key questions on personal data and privacy protection and make decisions in the circle of accredited personal data protection authorities.

The Republic of Croatia represented by the Agency has become a full member of the Conference held in October 2008 in Strasbourg.

**Meeting of the Central and Eastern European Data Protection Authorities (CEEDPA)**  
Member states of the EU and candidate countries from the Central and Eastern Europe (Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Macedonia, Poland, Roumania, Slovakia and Croatia) sharing the same history continue their cooperation in the field of personal data protection.

In the last 10 years these authorities held a yearly Meeting of the Central and Eastern European Data Protection Authorities, organized by one of the full members. In June 2007 the organiser was the Republic of Croatia (the Agency) and the meeting was held in Zadar.

**Spring Conference**  
The Spring Conference is a permanent and the biggest conference of the European data protection and privacy commissioners, held at least once a year. It is a plenum for discussion on personal data protection issues, where conclusions and recommendations for various bodies of the EU, the Council of Europe and others are made. At the conference in Rome in 2008 a resolution has been adopted proclaiming the Agency Conference's full member.

**Francophone Association (L'Association francophone des autorités de protection des données personnelles)**
The objective of this association is to exchange the practice and to develop the right to personal data and privacy protection in all francophone countries. The right to participate in the conference have also countries, which have not yet established an independent personal data protection authority and whose legislation does not yet provide for provisions on data protection.

In the framework of the first Fracophone conference held in September 2007 in Montréal the Francophone Association (L'Association francophone des autorités de protection des données personnelles) has been established, the full member of which is also the Agency.

LIST OF STATES AND INTERNATIONAL ORGANISATIONS WITH ADEQUATELY REGULATED PERSONAL DATA PROTECTION

According to Article 13, paragraphe 1 of the Act on personal data protection the records on personal data filing systems thus personal data contained in those records can be transferred accros the croatian border for further processing only if a state or an international organisation, to which data are being transferred, has an adequate level of personal data protection.

According to Article 32, paragraphe 1, subparagraphe 3 of the Act the Agency is obliged to compile a list of states and international organisations having an adequate level of personal data protection.

A data controller can prior a data transfer check in the list if a certain state or an international organisation, to which data are supposed to be trasnferred, have an adequate level of personal data protection.

Member States of the European Union

Austria
Belgium
Bulgaria
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Poland
Portugal
Roumania
Slovakia
Slovenia
Spain
Sweden
United Kingdom

States of the EFTA
Iceland
Liechtenstein
Norway

Other states
Albania
Argentina
Bosna-Herzegovina
Canada
Former Yugoslav Republic of Macedonia
Guernsey
Isle of Man
Jersey
Switzerland