



**Pirc Musar**  
ODVETNIŠKA DRUŽBA · LAW FIRM

Mr. Paul Nemitz  
DG JUSTICE at European Commission

Ljubljana, 20 May, 2015

Dear Mr. Nemitz,

I would like to inform you about a situation in Croatia which could be of your interest. My clients Mr. Anto Rajkovača and Mrs. Dubravka Dolenc (Commissioner and Deputy Commissioner at Croatian Data Protection Authority) has given me a mandate to inform European Commission about the situation which has just recently occurred in Zagreb, Croatia. It would be highly appreciated if you could react at your earliest convenience.

#### **Facts of the situation**

The Conflict of Interest Board in Croatia published on the website the so called property cards of the government officials, some of which on one hand did not contain the relevant data prescribed by the Act on the prevention of the Conflict of Interest, while on the other hand some of them contained the data which are not prescribed by the mentioned Act as data which should be published on-line. The Croatian Data Protection Agency first kindly indicated to the Conflict of Interest Board the said irregularities, but the Board did not respect or take even into consideration any legal argument of the Agency. Therefore the Agency issued the decision and prohibited the on line publication of the data which are not prescribed by the special law – the Act on the prevention of the Conflict of Interest.

Instead of filling a complaint to the Administrative court, the Board has held the press conference and released the news that the Board has no other way but to remove all the property cards of the government officials, because the Board respects the decision of the Agency and because the Board cannot correct the indicated irregularities in 8 days. The Board did not address the Agency first and asked for prolongation of the term (for correction of the said irregularities), which Agency would have certainly approved as in so many cases before.

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As soon as the Board released this news, media lynch against the Agency and its management instantly started. The Decision of the Agency was presented in completely distorted way, in the sense that the Agency conceals the information and is responsible for removing the cards, which is defamation. The media lynch was unbearable, nobody paid attention to the fact that Agency did not order to remove legally publicized data, did not order to remove all the property cards, and what is the most important, nobody wanted to see that Conflict of Interest Board has not published uniform property cards with all the relevant data filed by every government official. Instead, some of the published cards contain all the data (even such not prescribed by the Law) and some of them were half empty (almost all data is missing).

Instead of an epilogue in the court (since it is a legal matter and should be ruled in the court in a country which respect the rule of law), it turned out into a political matter and media mobbing directed to the Agency and its management. The Agency reacted, denied the responsibility for removing the cards (because the Agency has never ordered such incomprehensible move), and so confronted with this reaction and legal arguments of the Agency, the Board put the property cards back on the web. From the removal of the cards and putting them back 4 days have passed.

However, only two days after the removal of the property cards, the Government submitted to the Parliament the proposal for the dismissal of the management of the Agency. This is direct interference into daily work of the Agency is in no doubt a huge invasion into independence of the Agency (Data Protection Authority) by the government of Croatia.

### **Conclusion**

From my point of view this is to be considered as a violation of the Directive 95/46/EC (Recital 62 of the Preamble - »*Whereas the establishment in Member States of supervisory authorities, exercising their functions with complete independence, is an essential component of the protection of individuals with regard to the processing of personal data*«) and also the violation of Article 28, which defines that each Member State shall provide that one or more public authorities are responsible for monitoring the application within its territory of the provisions adopted by the Member States pursuant to this Directive and that these authorities shall act with **complete independence** in exercising the functions entrusted to them.

I would like to remind you that the situation in Croatia is similar to one in Hungary which happened in 2011, when your reaction was highly appreciated and necessary.

In the context of a reorganisation of the data protection authority by the Hungarian government, the six-year term of the Data Protection Commissioner, appointed in 2008, was prematurely brought to an end in 2011 (instead of 2014). The Commission then launched infringement proceedings in January 2012 (IP/12/24) and referred Hungary to the Court in April 2012 (IP/12/395).<sup>1</sup>

Court of Justice uphold independence of data protection authorities in case against Hungary brought by the European Commission. In a case the European Court of Justice has ruled (case C-288/12) that the abrupt termination the Hungarian Data Protection Commissioner's term in office by the government constitutes an infringement of the independence of the Hungarian Data Protection Authority and is hence in breach of EU law.

Vote of dismissal of the management of the Agency is expected to take place in the parliament in the next few days since the Government already sent such proposal. I believe that a swift reaction by the Commission may prevent a situation where the whole independence of the Data Protection Authority would come into question. The independence of data protection supervisors is guaranteed under Article 16 of the Treaty on the Functioning of the EU and Article 8 of the Charter of Fundamental Rights. In addition, EU rules on data protection (Directive 95/46/EC) require Member States to establish a supervisory body to monitor the application of the Directive acting in complete independence. There is no need to elaborate on the implications of such doubt in the future, particularly considering the aspirations of Croatia to join the Schengen Area.

Yours Faithfully,

Nataša Pirc Musar,

Attorney at Law



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<sup>1</sup> [http://europa.eu/rapid/press-release\\_MEMO-14-267\\_sl.htm](http://europa.eu/rapid/press-release_MEMO-14-267_sl.htm)

