

THE CROATIAN PARLIAMENT

2729

Pursuant to Article 88 of the Constitution of the Republic of Croatia, I hereby issue the

DECISION

ON PROMULGATING THE SECURITY VETTING ACT

I hereby promulgate the Security Vetting Act, passed by the Croatian Parliament at its session on 9 July 2008.

Class: 011-01/08-01/90
Reg. No.: 71-05-03/1-08-2
Zagreb, 15 July 2007

The President of the Republic of Croatia
Stjepan Mesić, m.p.

SECURITY VETTING ACT

I BASIC PROVISIONS

Article 1

This Act establishes the notion, the types and degrees of security vetting, security impediments and the procedures for performing security vetting.

Article 2

Security vetting, in the sense of this Act, is the procedure whereby the competent authorities ascertain the existence of security impediments for natural and legal persons in cases referred to in Article 3 of this Act.

Article 3

(1) Security impediments in performing security vetting for access to Classified Information are defined by the Data Secrecy Act.

(2) Security impediments, in basic security vetting procedure, are the facts which point out towards misuse or risk from misuse of official position or duty, which is rights and authorities at the expense of national security or interests of the Republic of Croatia.

(3) Security impediments, in security vetting procedure for the protection of protected persons and facilities, are the facts which point out towards the risk for security of protected persons and their families and property or the security of protected facilities.

Article 4

(1) The decision on the existence of security impediments shall be made by the competent authority, which asked for the security vetting to be performed, based on the report of the results of security vetting submitted by the competent security and intelligence agency.

(2) In case the decision on the existence of security impediments depends solely on the health status of the vetted person, the authority submitting request for vetting may ask for expert opinion of the competent health institution.

Article 5

(1) Security vetting shall be performed on the basis of the questionnaire for security vetting, whose constituent part is the consent for security vetting performance.

(2) The questionnaire for security vetting shall be completed personally, and the consent shall be willingly signed by the person for whom security vetting is performed.

(3) The competent security and intelligence agency shall not start performing the security vetting unless, in accordance with the provisions of this Act, the consent for the performance of security vetting is not signed.

(4) The consent for security vetting performance is related to checking and processing information related to the questions from the security questionnaire and to the procedures stipulated for the performance of security vetting by this Act.

Article 6

Security vetting shall be performed by the competent security and intelligence agency.

II TYPES OF SECURITY VETTING

Article 7

Types of security vetting are as follows:

- Security vetting for access to Classified Information
- Basic security vetting
- Security vetting for the protection of protected persons and facilities.

II.1. Security vetting for access to Classified Information

Article 8

Security vetting for access to Classified Information is performed for:

- natural persons who, within their scope of work or authorities, need access to information classified as TOP SECRET, SECRET and CONFIDENTIAL;

- legal entities which conclude contracts classified as TOP SECRET, SECRET and CONFIDENTIAL with state authorities, local and regional self government bodies and legal entities with public authority.

Article 9

(1) The request for security vetting for natural and legal persons for access to Classified Information shall be submitted to the competent security and intelligence agency by the Office of the National Security Council.

(2) The request referred to in paragraph 1 of this Article shall include as follows:

- name and surname of the person for whom the request is submitted;
- duties or jobs in the scope of which the said person has access to Classified Information;
- degree of security vetting;
- completed Questionnaire with the written consent of the person for whom security vetting is performed.

(3) The request for legal persons referred to in paragraph 1 of this Article shall include as follows:

- name, address and registry number of the legal person;
- completed questionnaire for legal person;
- completed questionnaires for employees and persons in accordance with the provisions of paragraph 2 of this Article.

Security Vetting for Natural Persons

Article 10

Security vetting for natural persons shall be performed within the scope of duties and jobs:

- in state authorities;
- legal and natural persons who perform jobs for state authorities;
- on the basis of international agreements and arrangements that the Republic of Croatia has signed with other countries and international organizations.

Article 11

Security vetting for access to information classified as TOP SECRET, SECRET and CONFIDENTIAL shall encompass the period of life between 18 years of age and the day when security vetting procedure is initiated.

Security Vetting for Legal Persons

Article 12

Security vetting for legal persons shall include:

- checking the ownership, ownership structure, data on companies owned, overall business and financial obligations considering possible security risks;

- security vetting of the owner, director, members of the managing and supervisory board, shareholders and stakeholders, who, due to their function, may have access to Classified Information;
- security vetting of the person who is to be appointed security officer and their deputy and
- employees who have access to Classified Information.

II. 2. Basic Security Vetting

Article 13

(1) Basic security vetting shall be performed for:

- persons who have been appointed or are to be appointed to a special duty;
- persons who have been appointed or are to be appointed as managing state officials;
- persons who have been employed or are to be employed in bodies of the security and intelligence system of the Republic of Croatia;
- persons who have been employed or are to be employed in state bodies specialized in fighting organized crime and corruption;
- persons who have been employed or are to be employed in bodies, facilities or plants which are of special significance for national security and for jobs of physical and technical protection of bodies, facilities or plants which are of special significance for national security;
- persons who have been employed or are to be employed for jobs of physical and technical protection of protected persons and facilities;
- responsible persons in legal entities registered for personal protection;
- heads and employees of diplomatic and consular missions of the Republic of Croatia;
- persons who have been employed or are to be employed in structural units of the Ministry of Foreign Affairs and European Integration, who are in charge of security issues;
- for foreigners who reside in the Republic of Croatia and for persons who are to gain Croatian citizenship;
- for members of the Council for the Civilian Oversight of the Security and Intelligence Agencies.

(2) Basic security vetting shall be performed for other persons as well, pursuant to a special Act or Regulation of the Government of the Republic of Croatia.

Article 14

(1) The request for basic security vetting shall be submitted by the competent authority to the competent security and intelligence agency.

(2) The request from paragraph 1 of this Article shall include:

- name and surname of the person for whom the request is submitted;
- duties or jobs for which the security vetting is performed;
- type of security vetting;
- written consent of the person to be vetted;
- completed questionnaire.

II. 3. Security Vetting for the Protection of Protected Persons and Facilities

Article 15

(1) Security vetting for persons who have direct access to protected persons and facilities shall be performed on the request of the state body competent for security and/or counterintelligence protection of protected persons, by applying the procedures stipulated for security vetting for access to I, II and III degree Classified Information.

(2) The degree of security vetting referred to in paragraph 1 of this Article shall be decided by the competent security and intelligence agency, based on the information provided by the competent authority.

(3) Security vetting for persons who have direct access to protected facilities, plants or means of special significance for national security shall be performed on the request of the competent authority by applying procedures stipulated for security vetting for access to I, II and III degree Classified Information.

(4) As an exception to Article 5 of this Act, the security questionnaire shall not be completed and the consent of the vetted person shall not be required for the security vetting referred to in paragraph 1 of this Article.

III. Security Vetting Degrees and Procedure

Article 16

Security vetting degrees are:

- I degree security vetting;
- II degree security vetting;
- III degree security vetting.

Article 17

Depending on the need for access to Classified Information, the following security vetting procedures shall be performed:

- for information classified as TOP SECRET, I degree security vetting;
- for information classified as SECRET, II degree security vetting;
- for information classified as CONFIDENTIAL, III degree security vetting.

Article 18

I degree security vetting shall be performed on the basis of security questionnaire for I degree security vetting and by applying the following procedures:

- insight into public sources, official records and data records of the competent security and intelligence agencies and other state and public authorities;
- insight into records and personal data records, business and other official documents which legal entities are to keep pursuant to the law;

- mandatory interview with the person vetted;
- interview with the persons stated in the security questionnaire as persons who can confirm the information mentioned in the questionnaire (hereinafter referred to as the referent persons);
- interview with other persons, according to the assessment of the competent security and intelligence agency.

Article 19

(1) I degree security vetting shall also be performed for husband/wife or cohabitant of the person who has access to Classified Information, and who resides abroad with the person who has been sent to work to a civil or military body belonging to an international organization or to a Croatian mission to international organizations, and for which TOP SECRET certificate is requested.

(2) Security vetting for persons referred to in paragraph 1 of this Article shall be performed pursuant to the provisions of this Act.

Article 20

Depending on the security assessment, apart from the procedures set in Article 18 of this Act, during I degree security vetting secret information gathering methods stipulated by the special Act may be applied, whose authorization is under the competence of the director of the security and intelligence agency.

Article 21

II degree security vetting shall be performed on the basis of security questionnaire for II degree security vetting and by applying the following procedures:

- insight into public sources, official records and data records of the competent security and intelligence agencies and other state and public authorities;
- insight into records and personal data records, business and other official documents which legal entities are to keep pursuant to the law;
- interview with the person vetted, based on the assessment of the competent security and intelligence agency;
- interview with other persons, according to the assessment of the competent security and intelligence agency.

Article 22

III degree security vetting shall be performed on the basis of security questionnaire for III degree security vetting and by applying the following procedures:

- insight into public sources, official records and data records of the competent security and intelligence agencies and other state and public authorities;
- insight into records and personal data records, business and other official documents which legal entities are to keep pursuant to the law.

Article 23

- (1) Basic security vetting shall be performed on the basis of questionnaire for I degree security vetting and by applying the procedures stipulated for security vetting for access to I degree Classified Information.
- (2) As an exception to paragraph 1 of this Article, basic security vetting for foreigners and for persons who are to gain Croatian citizenship shall be performed on the basis of questionnaires (forms) stipulated by a special Act, that is Sub-Act of the competent authority and by applying the procedures stipulated for security vetting for access to I or II degree Classified Information.
- (3) The degree of security vetting referred to in paragraph 2 of this Article shall be decided by the competent security and intelligence agency, based on the assessment or the information stated in the questionnaire. Security vetting referred to in Article 13, paragraph 2 of this Act shall be performed by applying the procedures for security vetting for access to II degree Classified Information.

Article 24

During basic security vetting the decision whether the interview with the person vetted or third persons is necessary, which is performed by applying procedures stipulated for security vetting for access to I and II degree Classified Information, shall be made by the competent security and intelligence agency.

Article 25

- (1) During basic security vetting polygraph testing may be applied, upon the consent of the person vetted.
- (2) The decision on applying polygraph testing shall be made by the competent security and intelligence agency.
- (3) During basic security vetting, which is performed when the person is to be employed in bodies of the security and intelligence system, measures of secret information gathering may also be applied, pursuant to special Act.
- (4) For other types of basic security vetting measures of secret information gathering may be applied, if under the competence of the directors of security and intelligence agencies.
- (5) Polygraph testing shall refer only to the information stated in the questionnaire and cannot be the basis for making the final decision on security impediments.

Article 26

(1) When basic security vetting is performed by applying the procedures stipulated for security vetting for access to I and II degree Classified Information for the person who is to be employed and the person is employed to the position which requires access to Classified Information, the competent security and intelligence agency, based on the security vetting already performed, shall send the report on security vetting results to the Office of the National Security Council.

(2) If necessary, on the request of the Office of the National Security Council, the update of the security vetting shall be performed.

Article 27

(1) If, during security vetting, information that is contrary or not reliable is found or not enough information is found in order to make a reliable assessment of security impediments, the competent security and intelligence agency may perform a higher degree security vetting, with the consent of the person vetted given on the appropriate security vetting questionnaire.

(2) The competent security and intelligence agency shall inform the authority which has submitted the request on the procedure referred to in paragraph 1 of this Article.

Article 28

When performing security vetting, the competent security and intelligence agency shall check whether the person vetted is in contact with other persons, including close family members, who might be a security risk or threaten the national security of the Republic of Croatia.

Article 29

The interviews with persons performed pursuant to this Act are not considered informative interviews stipulated by the Security and Intelligence System Act (Official Gazette 79/06, 105/06).

Request for Security Vetting and Questionnaire for Security Vetting

Article 30

(1) The questionnaire for security vetting shall include the questions significant for determining the existence of security impediments.

(2) The content, form, way of completing and handling the security vetting questionnaire for natural and legal persons shall be stipulated by the Regulation of the Government of the Republic of Croatia.

Article 31

Completed and signed security vetting Questionnaire shall be classified as RESTRICTED.

IV. Renewal and Update of Security Vetting

Article 32

Security vetting shall be renewed after the expiry of 5 years period. The procedure referred to in paragraph 1 of this Article shall be performed pursuant to the provisions of this Act which regulate the performing of security vetting referred to in Article 7 of this Act.

Article 33

(1) Security vetting update shall be done even before the expiry of the period set in Article 32 of this Act on the request of the state body authorized to submit the request for security vetting.

(2) Request for security vetting update may be submitted in case the report on security vetting is incomplete or in case new information is obtained, which was not known during security vetting performance.

(3) In case the competent security and intelligence agency, in relation to the security vetting performed, gains new information on possible security impediments, it shall immediately inform the authority which submitted the request.

Article 34

(1) The persons vetted shall without delay inform the state body or legal entity where employed all the information which are different to the ones stated in the security vetting questionnaire.

(2) State body or legal entity referred to in Article 1 of this Act shall without delay inform the Office of the National Security Council on any change of the information in case security vetting for Certificate issuance was performed.

(3) State body or legal entity referred to in paragraph 1 of this Article shall without delay inform the competent security and intelligence agency on any change of the information in case basic security vetting was performed or security vetting for the protection of protected persons and facilities.

(4) Failure to report the information referred to in paragraph 1 of this Article without any justified reason shall be taken into consideration when assessing the security impediments stipulated by this Act. Failure to act in accordance with paragraphs 2 and 3 of this Article by the competent person in state body or legal entity referred to in paragraph 1 of this Article shall be considered violation of official duty. State bodies or legal entities referred to in paragraph 1 of this Article shall designate the person to whom the employees shall report the changes of information referred to in paragraph 1 of this Article.

V. Reporting on Security Vetting Performed

Article 35

After security vetting is performed, the competent security and intelligence agency shall submit the report to the authority which submitted the request for security vetting.

Article 36

The competent security and intelligence agency shall mention in the report on security vetting the period or information which was not possible to be vetted.

Article 37

The competent security and intelligence agency shall submit the report on I degree security vetting to the authority which submitted the request in the period not shorter than 30 and not longer than 120 days, the report on II degree security vetting within the period not shorter than 20 and not longer than 90 days and the report on III degree security vetting within the period not shorter than 10 and not longer than 30 days from the day that the request was received.

Article 38

The competent security and intelligence agency shall submit the report on security vetting of the legal person referred to in Article 12 of this Act to the Office of the National Security Council within 120 days from the day that the request was received.

Article 39

(1) The report on security vetting results shall entail the opinion on the existence of security impediments.

(2) The content and form of the report referred to in paragraph 1 of this Article shall follow the structure of stipulated questionnaires and shall be classified at least as CONFIDENTIAL.

Article 40

The authority which submitted the request for security vetting shall, on the basis of the report on security vetting, make final assessment on the existence of security impediments.

Article 41

As an exception to Articles 35 and 39 of this Act, when security vetting is performed for foreigners who will reside or reside in the Republic of Croatia or for persons who are to gain Croatian citizenship, the competent security and intelligence agency shall submit only the opinion on existence or non-existence of security impediments to the authority which submitted the request.

VI. Transitional and Final Provisions

Article 42

Security vetting procedures which have started before entering into force of this Act shall be completed pursuant to the regulations in force at the time when request for security vetting was submitted.

Article 43

The Government of the Republic of Croatia shall, based on the proposal of the competent bodies, adopt the Regulation defining protected persons and facilities, that is plants or means of special interest for national security.

Article 44

The Regulations referred to in Articles 30 and 43 of this Act shall be adopted by the Government of the Republic of Croatia within 15 days from entering into force of this Act.

Article 45

By entering into force of this Act the Regulation on security vetting for Classified Information access (Official Gazette 72/07) shall cease to have effect.

Article 46

This Act shall enter into force 30 days from the day of its publication in the Official Gazette.

Class: 200-01/08-01/03
Zagreb, 09 July, 2008

THE CROATIAN PARLIAMENT

The President of the Croatian Parliament

Luka Bebić, m.p.