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The Law on Classified Information



**ANALYSIS BY THE CENTER FOR EURO-
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***R**eform of this area implies security system reform, constitutional and legislative amendments, education of staff, evaluation of condition in institutions, introducing positive and negative experiences into legal regulations, and our law is already mature to be innovated."*

Goran Matić, Director of the Office of the Council for National Security and Protection of Classified Information of the Republic of Serbia

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INTRODUCTION

The Law on Classified Information¹ was adopted in 2009, came into force on January 1, 2010, and the legal deadline of 2 years, during which time the competent authorities were obliged to adopt secondary legislation in order to make the Law enforceable – had passed – they were adopted long after expiry of the set deadline.

The Law on Classified Information regulates the uniform system of defining and protection of classified information that is of interest for national and public security, defense, restricted and foreign affairs of the Republic of Serbia, protection of foreign classified information, access to classified information cessation of its secrecy, responsibilities of the authorities and supervision of implementation of this Law, as well as responsibility for non-compliance with obligations from this Law and other questions of interest for protection of data secrecy. For the implementation of this Law, the Office of the Office of the Council for National Security and Protection of Classified Information was established, and the Ministry of Justice was entrusted with the responsibility to monitor the implementation of the Law. This Law has the following structure: Basic provisions; Defining classified information; Measures for protection of classified information; Access to classified information; procedure of issuance of clearance, i.e. permit; Control and monitoring; Penalty provisions; and Transitory and final provisions.

The Law was supposed to introduce into the legal system of the Republic of Serbia a new, systematic approach based on security, legal and technical standards that apply in the European Union, NATO, as well as regional countries that have implemented it in their legal systems.

Meanwhile, since the coming into force of this Law, the following secondary legislation has been adopted: Regulation on forms of security questionnaires², Regulation on the content, form and manner of submission of clearances for accessing classified information³, Regulation on defining activities of security protection of certain persons and buildings⁴, Regulation on increasing the salary of state officials and employees who perform work related to protection of classified information in the Office of the Council for National Security and Protection of Classified

¹ "RS Official Gazette" no. 104/2009

² "RS Official Gazette" no. 30/2010.

³ "RS Official Gazette" no. 54/2010

⁴ "RS Official Gazette" no. 72/2010

Information and the Ministry of Justice⁵, Regulation on content, form and manner of keeping records on access to classified information⁶, Regulation on the manner and procedure of marking classified information, i.e. documents⁷, Regulation on special measures of protection of classified information in information-telecommunication systems⁸, Regulation on special measures of monitoring the handling of classified information⁹, Regulation on special measures of physical-technical protection of classified information¹⁰, Regulation on more detailed criteria for defining the level of classification “Top Secret” and “Strictly Confidential”¹¹, Regulations on more detailed criteria for determining the level of classification “Confidential” and “Restricted” in the Security-Information Agency¹², Office of the Council for National Security and Protection of Classified Information¹³, Ministry of the Interior¹⁴, Ministry of Defense¹⁵ and public authorities¹⁶, Regulation on special measures for protection of classified information related to determining fulfillment of organizational and technical conditions under a contractual relationship¹⁷ and Rulebook on official ID document and manner of work of people authorized to conduct supervision¹⁸ over implementation of the Law.

Article 105 of the Law on Classified Information gives a deadline of two years from the coming into force of the Law on Classified Information, in which the handlers, public authorities, were obliged to evaluate the markings of the information and documents that were already marked with one of the confidentiality marks. Thus, the deadline for complete harmonization with the Law was seriously broken with the delay in adoption of the necessary secondary legislation.

Among others, the delay in adoption of the secondary legislation, neglecting the need for major harmonization of other normative – for example, the Criminal Code – with the Law on Classified Information as well as absence of familiarizing the relevant state representatives with the legal matter, both

⁵ “RS Official Gazette” no. 79/2010

⁶ “RS Official Gazette” no. 89/201

⁷ “RS Official Gazette” no. 8/201

⁸ “RS Official Gazette” no. 53/2011

⁹ “RS Official Gazette” no. 90/2011

¹⁰ “RS Official Gazette” no. 97/2011

¹¹ “RS Official Gazette” no. 46/2013

¹² “RS Official Gazette” no. 70/2013

¹³ “RS Official Gazette” no. 86/2013

¹⁴ “RS Official Gazette” no. 105/2013

¹⁵ “RS Official Gazette” no. 66/2014

¹⁶ “RS Official Gazette” no. 79/2014

¹⁷ “RS Official Gazette” no. 63/2013

¹⁸ “RS Official Gazette” no. 85/2013 and 71/2014

related to classified information, and other relevant laws (the Law on Availability of information of Public Significance, responsibilities from the Law on Protector of the Citizens, etc.) also resulted in contaminating the public space, through various affairs, with incorrect information as the result of ignorance of basic regulations that are directly related to both mentioned parties. All this (ignorance) contributes to creating an erroneous perception of the entire situation in the public and discrediting of independent institutions and other players who legitimately require the relevant institutions to act in accordance with the existing legislation of Serbia.

GOAL AND METHODOLOGY OF PROPOSED PRACTICAL POLICY

The goal of the project **“Promoting Comprehensive Security Sector Reform”**, which was supported by the National Endowment for Democracy, is to address in more details the issues that were initiated in the proposal in 14 points presented in July 2012 by the Protector of Citizens Saša Janković and The Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Šabić for improvement of actual condition in the area of data protection, which is still to a large extent at odds with the Constitutional guarantees – and which has not been fully adopted up to this date¹⁹.

Within the continuation of the Project, after the proposal of practical policy related to protection of whistleblowers, the Center for Euro-Atlantic Studies in this document presents an analysis of the current condition in the area of protection of classified information, with specific recommendations for improvement thereof. CEAS believes that these two topics – protection of whistleblowers and regulation of the area of classified information are closely related to negotiation chapters 23: Judiciary system and basic rights and 24: Justice, freedom and security in the process of accession to the European Union – CEAS is also a member of the National Convent on the European Union exactly for these chapters. These documents, building upon the basic principles of the rule of law, connect the necessity of existence of supervision over the security system with protection of human rights of members of armed forces and other employees in the security system.

The document has been made by the CEAS team, with exhaustive

¹⁹ Regular annual report of the Protector of Citizens for 2014. March 2015, the Protector of Citizens.

consultation with the Office of the Council for National Security and Protection of Classified Information, Office of the Protector of Citizens and Office of the Commissioner for Information of Public Importance and Personal Data Protection.

GENERAL POLITICAL CONTEXT

Serbia has entered the security system reform process after the democratic changes from October 5. However, this process has not been completed to this date. Still, after a longer period of evident neglect, a trend of insistence and direct messages sent by the Western international community on the necessity to continue the reforms in this area has become manifest again²⁰. This is exactly what the Center for Euro-Atlantic Studies insisted upon in its comprehensive study *“The Missing Link: Security System Reform, ‘Military Neutrality’ and EU Integrations in Serbia – How can the EU best use its influence to advocate sustainable reforms”*²¹ which analyses the current situation in the security system of Serbia; with special focus on mechanisms that the European Union has, in order to enable Serbia to implement sustainable reforms in the security system, with special emphasis on Chapter 31 and political criteria – taking into consideration that membership in the EU is a strategic orientation of Serbia; maps the needs and key areas in which reforms must be implemented, and provides specific conclusions and recommendations for all relevant players. Within the said recommendations, in the part that is addressed to the government of Serbia, CEAS also insists on “eliminating identified deficiencies and legal gaps in the existing Law on Classified Information, as well as creating conditions for more efficient implementation of the Law itself or promulgation of a new law”. If the existing Law should remain in force, to educate the public authorities on the Law on Classified Information, and harmonize the remaining relevant regulations in terms of terminology and treatment of classified information”²².

On January 15, 2015, the Individual Partnership Action Plan (IPAP)²³ with the NATO was agreed upon, envisaging building of the capacity of the Office

²⁰ Sherry Daniels, political advisor at the Embassy of the United States of America at the opening of CEAS the second Belgrade Week of NATO, December 15, 2015

²¹ [The Missing Link: Security System Reform, ‘Military Neutrality’ and EU Integrations in Serbia](#). November 2014. Center for Euro-Atlantic Studies.

²² Recommendations to the government of Serbia. [The Missing Link: Security System Reform, ‘Military Neutrality’ and EU Integrations in Serbia](#), November 2014, Center for Euro-Atlantic Studies.

²³ Individual Partnership Action Plan (IPAP) of the Republic of Serbia and North-Atlantic Treaty Organization (NATO). December 2014. The document was adopted on January 15, 2015

of the Council for National Security and Protection of Classified Information by adopting the necessary secondary legislation and regulations, achieving its full capacity and implementation of relevant standards in this area. It is also envisaged that the system of protection of foreign classified information is unified with special attention to the system of registries for classified information of the NATO and EU. Efforts will also be invested in further development and modernization of the system of protection of classified information. It is envisaged to expand the regional cooperation by concluding bilateral agreements in the area information security (INFOSEC) – establishment of auxiliary bodies of the Office of the Council for National Security and Protection of Classified Information will be given highest priority: Security Accreditation Authority (SAA), National Communication Security Authority (NCSA) as well as National Distribution Authority (NDA). The Center for Euro-Atlantic Studies sincerely welcomes the adoption of this document, but with a remark that it is necessary that both sides demonstrate political will in order to make possible the realization of possibilities provided by it

Data confidentiality is actually one of the most common reasons on the basis of which the authorities were denying information arising from the execution of power. In 2013, the number of such cases increased by as much as 4% against the previous year.²⁴ The Draft Law on Protection of Personal Data prepared by the Office of the Commissioner for Information of Public Importance, by introducing balance between information of public significance and personal data protection, the model handlers' avoiding to provide insight into information of public significance to interested party was finally rendered pointless. According to this Draft, the decision to make available the information that the authority considered to be classified is, as a rule, left to the Commissioner. Persons acting upon requests in public authorities often make decisions based on fear of consequences of disclosing the information, or reference discrepancies of certain provisions of regulations they implement within their area of responsibility with the regulations on free access to information of public significance, etc. The public authorities very rarely justify the decision to withhold information referencing confidentiality of information, by presenting some of the essential material reasons for such a decision. They often deny the request a priori, without applying the so-called *public interest test* on

²⁴ Annual report of the Commissioner for Information of Public Importance and Personal Data Protection on implementation of the Law on Information of Public Importance and protection and Personal Data Protection for 2013. Available at: <http://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2013/gizvestaj2013.pdf>

evaluation of prevalence of interest between the right of the public to know and another right or public interest that is protected with confidentiality and which could be seriously hurt by disclosing the information.

Many years of absence of supervision over implementation of the Law on Classified Information (The Law was adopted in late 2009) and long delay in adopting secondary legislation for its implementation, contributed to a large extent to such conduct of the authorities. Serbia has inherited from the previous political order, which was "a priori confidential", an enormous quantity of classified documents, which have not yet been reclassified in accordance with new standards stipulated in the Law on Classified Information. Today we have the Euro-Atlantic structure of classification and "Official" and "Military Secret" no longer exist, although, for example, The Criminal Code still contains provisions on disclosure of official and military secrets. Years have gone by, and Serbia has not changed this.²⁵

As a country, we are lagging behind other Eastern-European transitional societies in this area. It has only been five years that we have the Law on Classified Information, and comparative experiences confirm that it takes at least a decade to fully resolve this sensitive area. This Law would not do anything in itself, without the tools in the form of secondary legislation.

Meanwhile, in the contemporary information era, the question of protection and control of information and entire information spectrum was made especially current. The quantity of information that may be transmitted worldwide has become unlimited. The result is an explosion or "abundance of information" that is available to various users. Therefore, it can be said that significance of information and all activities related to transmission and production of information, has been increased and is of increased significance for the national security. In addition to traditional and obsolete division of components of national into restricted and external security, increasingly present is the concept of integral national security in which, in the contemporary information era, the information security has a prominent place.²⁶ Therefore, within the deregulation of confidentiality of information, Serbia should also take into consideration, as soon as possible, the adoption of the Law on Information Security.

Director of the Office of the Council for National Security and Protection of

²⁵ The Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Šabić, at the meeting "Implementation of the legislation on classified information in Serbia", available at: <http://www.alo.rs/vesti/aktuelno/imamo-vise-tajnih-dokumenata-nego-nato/59542>

²⁶ Milan Miljković. 2015. New Worldview: Contemporary Concept of Information Security. In *The World of Security*, March 2015.

Classified Information Goran Matić believes that the existing Law on Classified Information is a good framework for regulating this matter, and that it is compatible with EU and NATO standards, however, there is still the problem of lack of definition of the sector of national security, which must be the framework for successful reform in the field of security and state administration. The reform of this area implies the security system reform, constitutional and legislative amendments, education of staff, evaluation of condition in institutions, introducing positive and negative experiences in legal regulations, and our law is already mature enough to be innovated. Reforms of this type in all Eastern European countries are carried out slowly, because it must be implemented in parallel within the Ministry of Defense, Ministry of the Interior and the widest structures of state administration, so it is only natural that there is resistance in the environment that is not ready to be educated and implement new standards.

Around 3,000 people in the system of state security have been educated thus far for this matter, while it is actually necessary to create a critical mass of **around ten thousand educated administrators in order to overcome the inertia in the treatment of classified information.**²⁷

Thus, the Law on Classified Information should have introduced into the legal system of the Republic of Serbia a new, systematic approach that builds upon security, legal and technical standards that apply in the European Union, NATO, but also in the regional countries that have implemented it in its legal systems.

If we take into consideration the general state and obligations that arise from the IPAP, reform in the area of protection of classified information implies: national security system reform; constitutional and legislative amendments through harmonization of regulations with regulations and standards of the European Union in this area; education and training of staff that directly participate in creating and protecting classified information; evaluation by international organizations by establishing processes of bilateral cooperation, but also the one related to the European Union and NATO and translation of practical positive and negative experiences into the relevant laws and secondary legislation. The Law on Classified Information, despite the implementation in the area of work with foreign classified information (EU, NATO, EUROPOL, etc.), has not yet been fully

²⁷ Dr. Goran D. Matić. 2014. Practical aspects of implementation of the Law on Classified Information from 2009. In "Implementation of the Law on Classified Information: 10 Most Important Obstacles". (ed.) Dr. Saša Gajin and Dr. Goran Matić

applied in all state authorities.

OVERVIEW OF RECOMMENDATIONS AND EXAMPLES OF GOOD PRACTICE

The said examples from practice were selected on the basis of criterion of similarity of political order and heritage. Specifically, the example of Czech Republic has been selected because of the fact that the Law on Classified Information of Serbia was modeled after the Czech example.

EXAMPLE OF CZECH REPUBLIC

Since the Law on Classified Information was modeled after the Czech example, it is first important to emphasize that the Czech Republic regulated the majority of the issues addressed by such a document exactly with the Law itself. In this way, the risk of idle walk in the implementation of the Law that depends on timely adoption of all necessary related regulations within the defined deadline, has been avoided to a large extent.

Further, the Czech law clearly defines the obligations of physical entities who come into contact with classified information. So, for example, Article 65 of the Czech law stipulates that any physical entity who comes into contact with classified information – in the manner that is not defined by the Law itself – must forward such information to the National Security Council, police or Embassy of Czech Republic.

In cases when, in the process of implementation of security checks for issuing clearance to access classified information, the National Security Council has a dilemma with respect to eligibility of the person for which the check is carried out, the Council must appoint an expert who will prepare an eligibility report. This procedure is carried out in accordance with the Czech Law on Experts and Interpreters.

The Czech Law on Classified Information also stipulates fines for people who do not comply with the security check procedure itself – in the form of failure to show up for an interview that is an integral part of this procedure, giving false or incomplete testimony, or refusal to submit the requested data to the National Security Council.

EXAMPLE OF SLOVENIA

In case of Slovenia, the data of interest for the state is not a priori confidential, but a special attention is dedicated to establishing balance between confidential data and data of public significance in accordance with the Law on Free Access to Information. Thus, Article 21(a) of the Slovenian Law stipulates that if the responsible person believes that, in accordance with the Law on Free Access to Information, it is necessary to evaluate the relationship between public interest to know in accordance with the request for access to information of public significance and data marked with the degree of confidentiality, he/she may submit a proposal to the government. In such a case, the government will establish the Committee consisting of representatives of the Ministry of Defense, Ministry of the Interior, Ministry of Foreign Affairs, Slovenian Intelligence and Security Agency and National Security Council.

Since the issue of supervision of implementation of the Law on Classified Information in Serbia – currently entrusted to the Ministry of Justice – proved to be inefficient, maybe other forms of supervision should be considered that would be entrusted to experts in this area – Office of the Council for National Security and Protection of Classified Information. In such a case, it would be necessary to form another body within the Office – Body for supervision of implementation of the Law.

Finally, and maybe the most important, in the Law itself Slovenia has clearly prequalified the terms that ceased to have effect with this Law – in their case “Top Secret“, “Official Secret“ and “Military Secret“ – in accordance with new levels of classification of data – “Strictly Classified“, “Classified“, “Confidential“ and “Restricted“, and thus avoided legal illogicalities that Serbia is facing now.

EXAMPLE OF MONTENEGRO

Montenegro regulated the issue of classified information as opposed to free access to information similarly as Slovenia. Namely, Article 10 of the Montenegrin Law stipulates that information may be designated as classified if that is necessary in a democratic society and if that necessity is more significant than the interest for free access to information.

Montenegrin model also has another novelty against the Serbian, and that is

the principle “need to know basis”. The principle “need to know basis” defines justified need of a person to use classified information in order to perform his/her work on the basis of issued clearance to access classified information. Thus, for example, in accordance with Article 27, all employees in a certain body and organization have access to classified information with degree of classification “Restricted”, which may turn to be efficient from the perspective of administration.

INTERNATIONAL ORGANIZATIONS

Within the European Union, people who come in contact with classified information exercise this right on the basis of procedures defined by the Decision of the Council of the EU²⁸, which stipulates that within security personnel (employees/people who come in contact with classified information) access to classified information is achieved on the basis of “need to know” principle, positive security check, i.e. obtained security clearance and basic training about responsibilities and manner of handling information. An exception is access to information marked with level of classification “restricted”, where access is possible only on the “need to know” basis and basic training – therefore, without clearance to access classified information.

The same principle is present in the NATO. Access to classified information marked with level of classification “restricted” is allowed on the “need to know” basis and with implemented basic training about responsibilities, without clearance to access classified information. Therefore, except in cases when laws and regulations of other countries require this, security clearance is not necessary to access the information marked with level of classification “restricted”.²⁹

Such access reduces the volume of bureaucracy and procedures. The Law on Classified Information in Serbia, in Article 40, stipulates that state officials, employees and/or persons performing work in public authorities have access to classified information marked with level of classification “RESTRICTED”. This indicates a principle similar to the “need to know” basis, although it is nowhere explicitly defined as such. Accordingly, in order to fully harmonize these two approaches, it is first necessary to define the term “need to know” in the new Law on Classified Information, or modify

²⁸ Decision on the security rules for protecting EU classified information. September 23, 2013. Council of the European Union. 2013/488/EU.

²⁹ Security within the North Atlantic Treaty Organization. June 17, 2002. NATO. C-M(2002)49.

the existing one in this respect.

INDEPENDENT BODIES AND ACCESS TO CLASSIFIED INFORMATION

The Law on Classified Information of Serbia defines stakeholders who have access to classified information without clearance and/or security check. Those are, in accordance with Articles 37 and 38: President of the National Assembly, President of the Republic and Prime Minister, then state authorities elected by the National Assembly, directors of state authorities elected by the National Assembly, judges of the Constitutional Court and judges, for performing activities from their area of responsibility.

Although most of these players are also specified in other above listed examples of the legal framework in the area of classified information, lack evident is lack of independent institutions and supervisors – which, again, exist in the examples mentioned above. Thus the Czech model enables the Ombudsman (Protector of Citizens) and his/her deputy to have access to classified information without clearance; in Slovenia, access is enabled to the Protector of Citizens and his/her deputy, as well as the Commissioner for access to information of public significance; while in Montenegro access to classified information without clearance have the Protector of Human Rights and Freedoms (Protector of Citizens) as well as members of the Council of the independent supervisory body for the protection of personal data and access to information. Although this may be present in practice, CEAS believes it is necessary to unambiguously regulate the issue of access to classified information when it comes to independent institutions.

THE TERM OF INFORMATION SECURITY

In defining the terms of information of security, the United States of America have found the basis standpoint in the theory of Information Warfare - IW and Information Operations - IO. In the US, information security is defined as: protection of information systems against unauthorized access or modification of information whether in storage, processing or transmission, and against depriving of services of authorized users, including necessary measures of detection, documenting and eliminating such threats.³⁰

The Russian federation links the term information of security to security in the sphere of information – for information structures, information and its movement and personnel who performs different activities.

Information security may be achieved, among others, by introducing mechanisms that will enable safe exchange of information – including classified information. Thus, Article 9 of the Decision of the Council of the EU on the rules of security for protection of classified information EU³¹ specifies electronic exchange as the general mechanism of exchange of classified information of the EU, protected by *cryptographic measures*. NATO also refers to the use of cryptography when it comes to exchange of classified information, the implementation of which is ensured in cooperation with the NATO Military Committee (NAMILCOM)³².

In Serbia, however, even the Law on Information Security has not been adopted yet, and therefore the Strategy that would set the foundations for implementation of this Law, as well as the Regulation on cryptographic protection – although the Office of the Council for National Security and Protection of Classified Information implements the said standards in practice, in exchange of classified information with the EU and NATO.

In view of the current contemporary technology that is used for exchange of all types of data – including classified data – there is an indispensable obligation to also pay attention to the question of information security.

³⁰ Milan Miljković. 2015. New Worldview: Contemporary Concepts of Information Security. Published in *The World of Security*, March 2015

³¹ Decision on the security rules for protecting EU classified information. September 23, 2013. Council of the European Union. 2013/488/EU.

³² Security within the North Atlantic Treaty Organization. June 17, 2002. NATO. C-M(2002)49.

NORMATIVE CHALLENGES

One of the most significant novelties of the Law on Classified was prescribing three levels of classification, as well as determining central bodies in charge of its implementation. For the purpose of its implementation, transitory provisions of the Law on Classified Information stipulate a transitory period in order to harmonize the other laws (as well as secondary legislation) that include provisions related to this area with its provisions, with an obligation to review the previously ratified international agreements that regulate confidentiality of information. Therefore, it is not disputable that it is necessary to harmonize other regulations with the provisions of the Law on Classified Information, which became especially evident during adoption of new laws, which also contained individual provisions on confidentiality of information, and which had been practically copied from previous laws. This concerns the terms official and military secret and the crime of espionage, which mention both economic and official data – the violation of which is incriminated in the applicable Criminal Code

Article 14 of the Law on Classified Information defines four levels of classification (“Top Secret”, “Strictly confidential”, “Confidential” and “Restricted”), whereby it is unambiguously stated that only the said levels may be used for determining the level of classification. Therefore, not others. The same applies to the bodies in charge of implementation, control and supervision over implementation of the Law, which means that the Law is unambiguous, it does not envisage the possibility that the matter that is related to data confidentiality is regulated differently with a special law. In this respect, the Law on Classified Information essentially represents an “umbrella law” in this area, which means that other laws would have to be harmonized with it when they regulate issues related to data confidentiality. The main reasons for adoption of the Law were exactly the need to regulate this matter in a uniform manner, as well as to define the central bodies for its implementation in the Republic of Serbia.

Defining the central body was especially significant for international exchange of classified information, because such exchange was impossible without defining the central body. Additionally, it was of great significance for international exchange to define the said four levels of classification, as well as determining their equivalents to the terms from English language. Finally, we should also point out that the Law on Classified Information has

been harmonized with international standards, and that it mostly corresponds to comparative-legal solutions from others, primarily European legislations. All this indicates that different interpretation of the scope of its application is not even possible.

The statements above indicates the necessity to amend all those laws that contain, define and treat a secret as data, and which is not in accordance with the Law on Classified Information. Military secret and official secret as current terms in applicable laws can be solved easily and harmonized with the Law on Classified Information – they both relate to data that is of interest for the Republic of Serbia, and can be easily harmonized with the leveling of classification – with simple amendments to the Law.

What causes dilemma is the business secret – information regulated in the Law on Protection of Business Secret³³. The said Law stipulates that business secret is any information that has commercial value because it is not generally known or available to third parties that could gain economic benefits by using or disclosing it, and which has been protected by the holder thereof by means of appropriate measures in accordance with the law, business policy, contractual obligations or relevant standards, for the purpose of preservation of its confidentiality, and the disclosure of which to third parties could cause damage to the holder of the business secret. However, Article 23 of the Law on Security- Information Agency³⁴ says that a member of the Agency must keep the Agency data that constitutes top secret, military, official or business secret, methods, measures and actions that represent or contain any of these secrets, as well as other data the disclosure of which would cause damage to the interests of physical or legal entities or for successful conducting of operations of the Agency.

It would be logical to assume that terms official and military secret, since top secret is not mentioned, have been inherited, and are reflection of negligence and non-compliance of the relevant regulative we have discussed. Still, it remains unclear in which context the legislator identified “state” with business secrets? Article 23 further mentions methods, measures and actions that represent or contain any of these secrets, as well as other data the disclosure of which would cause damage to the interests of physical or legal entities or for successful conducting of operations of the Agency. What interests of physical or legal entities has the legislator referred to? What physical or legal entities? Successful conducting of

³³ The “RS Official Gazette”, no. 72/2011

³⁴ The “RS Official Gazette”, no. 42/2002, 111/2009 and 66/2014

operations of the Agency pursuant to the Law is protection of security of the Republic of Serbia and detection and prevention of activities aimed at undermining or overthrowing the constitutionally established order of the Republic of Serbia; research, collection, processing and assessment of security-intelligence classified information and knowledge significant for the security of the Republic of Serbia and informing the competent state authorities on such data.

Does the fact that the Law on Security-Information Agency also addresses business secret – although this secret is regulated by a separate Law in order to legally delineate business information and information of interest for Serbia – indicates a simple mismatch, or requires the issue of business secret to be readdressed, at least with respect to terminology?

ROUNDING OF THE NORMATIVE FRAMEWORK NECESSARY FOR IMPLEMENTATION OF THE LAW ON CLASSIFIED INFORMATION

The process of establishing a working group for preparing the text of the Law on Amending the Law on Classified Information is currently in progress. The working group will be interministerial, namely composed of representatives of different state authorities and experts in this area. The main goal is to amend the text of the Law for the purpose of further harmonization with international standards, elimination of deficiencies that have been identified in individual provisions during implementation of the Law, as well as reviewing the possibility of including new provisions that should be the legal matter, for the purpose of creating legal conditions for easier implementation of the already adopted secondary legislation. According to the Government Plan for 2014, the Bill was expected to be submitted to the National Assembly by the end of 2014, but this did not happen.

In parallel with this, it is necessary to continue and expedite the activities related to harmonization of other laws with the Law on Classified Information, in order to finally complete (and mutually harmonize) the normative framework in the area of data secrecy. By rounding the normative framework, the basic precondition for further improvement of the condition in this area will be fulfilled. After this, an even more significant task remains, and that is consequential implementation of regulations in practice and their full implementation.

It has been several years now that the Commissioner for Information of

Public Significance, from the perspective of his responsibility, has been pointing out the fact that for better quality implementation of the Law on Access to Information and elimination of dilemmas of the authorities in their operation, it is necessary to immediately adopt amendments to the Law that enable its realistic implementation or, in the extreme case, to adopt a new Law. A consequence of the **absence of supervision over implementation of the Law on Classified Information** and long delay in adoption of the secondary legislation is that the legal deadline of two years was unsuccessfully passed, during which time the authorities were obliged to implement the process evaluation of information and documents marked as confidential, and **there is still a large number of documents that were given in a certain period or moment the designation of confidentiality for which the need existed at that point of time, but which was never reviewed later or abolished once the reasons for this had ceased to exist.** All this significantly harms the implementation of the Law on Access to Information and creates confusion for people authorized to act upon this Law. **Risks of continuation of this situation not only harm the right of the public to know, but maybe to a much greater extent, the security interests of the country and general legal security.**

TECHNICAL CHALLENGES

According to the government Rules, the deadline for providing opinions of state authorities for all secondary legislation acts of the government (including regulations that regulate in more details the data confidentiality) has been strictly prescribed, for a period of **ten working days**. However, taking into account the manner of expedition, the time necessary for the opinion to be sent by mail, registering of the received opinion in the registry office, and until the moment until the proposer physically receives the written opinion, this deadline is practically further expanded. An additional problem is the fact that, in addition to precise provisions of the government Rules that, if the opinion was not provided within the period of ten working days, it is regarded that the state authority in such a case has no objection to the submitted text, this provision is not sufficiently used, which additionally prolongs the entire procedure of adoption of the act.

In accordance with the government Rules³⁵, together with submission of the proposed regulation, it is also necessary to provide opinion on the

³⁵ Rules of the Government of the Republic of Serbia. "RS Official Gazette", no. 61/2006, 69/2008, 88/2009, 33/2010, 20/2011 and 37/2011

objections put forward by the state authorities. This specifically means that, if the objections were accepted, it would be necessary to amend the provisions that were the subject to objections. In case of major amendments, there will be a new text of the bill, and the entire procedure of obtaining opinions must be repeated. When it comes to draft regulations that are related to data confidentiality, it has happened in practice that the texts would undergo major changes and the procedure of obtaining opinions would be repeated, and therefore the entire procedure of adopting the regulations lasts longer. On the other hand, if objections of other authorities are not accepted, it is also necessary to submit to the government a detailed explanation as to why they were not accepted.

OFFICE OF THE COUNCIL FOR NATIONAL SECURITY AND PROTECTION OF CLASSIFIED INFORMATION

Office of the Council for National Security and Protection of Classified Information is a professional office of the government with the status of a legal entity, responsible for certain activities of enforcement and control of implementation of this Law and supervision over the implementation of the Law on Classified Information. In accordance with the Law on Classified Information, Office of the Council:

- 1) acts upon requests for issuance of clearances and permits;
- 2) ensures implementation of standards and regulations in the area of protection of classified data;
- 3) takes care of execution of undertaken international obligations and concluded international agreements between the Republic of Serbia and other countries, i.e. international authorities and organizations in the area of protection of classified information and cooperates with relevant authorities of foreign countries and international organizations;
- 4) creates and maintains the Central Registry of foreign classified information;
- 5) proposes the form of security clearance questionnaire;
- 6) proposes the form of recommendations, clearances and permits;
- 7) maintains records on issued clearances, i.e. permits, as well as records of refusal to issue clearances, i.e. permits;
- 8) organizes training of users of classified information in accordance with standards and regulations;
- 9) proposes to the government the plan of protection of classified information for extraordinary and emergency situations;
- 10) revokes confidentiality of information in accordance with provisions of this Law;
- 11) after cessation of public authorities with no legal heir, performs activities related to protection of classified information;
- 12) cooperates with public authorities

in enforcement of this Law within its responsibility; 13) performs also other duties envisaged by this Law and regulations issued under this Law.

Director of the Office of the Council submits to the government annual report on activities within responsibilities of the Office of the Council. Exchange of classified information with foreign countries and international organizations is conducted through the Office of the Council, unless a special law or concluded international agreement stipulates otherwise.

The ministry in charge of judiciary system performs supervision over the implementation of this Law and regulations issued under this Law. In accordance with Law on Classified Information, in performance of supervision, this ministry: 1) monitors the situation in the area of protection of classified information; 2) prepares regulations necessary for implementation of this Law; 3) provides opinion on draft regulations in the area of protection of classified information; 4) proposes to the government the content, form and manner of maintaining records on classified information, as well as regulations that regulate the form of security clearance questionnaire, i.e. for of recommendations, clearances and permits; 5) imposes measures for improvement of protection of classified information; 6) controls implementation of the criteria for marking the level of classification and performs other duties of control in accordance with provisions of this Law; 7) files criminal charges, request for initiating misdemeanor proceedings and proposes initiation of other proceedings because of violations of provisions of this Law, in accordance with the Law; 8) cooperates with public authorities in enforcement of this Law within its responsibility; 9) performs also other duties envisaged by this Law and regulations issued under this Law. The minister in charge of judiciary system submits to the board of the National Assembly in charge of supervision and control in the area defense and security, annual report on activities in enforcement and control of implementation of this Law. In performing the activity of supervision, the ministry also controls the implementation of security measures, use, exchange and other actions of processing of classified information, without prior notice to the public authorities, authorized person, handler, i.e. user of classified information.

As already pointed out, the recently agreed upon Individual Partnership Action Plan (IPAP) with the NATO envisages building of capacity of the Office of National Security Council and Protection of Classified Information by adopting the necessary secondary legislation and regulations, achieving its full capacity and implementation of relevant standards in this area.

Taking into account the role of the Office in the area of classified information, it is important to empower this body in the right manner in order to make it efficient in performing the works that are under its area of responsibility. The Office is currently the only specialized expert body for the area of classified information in Serbia on the level of administrative body of the government of Serbia, while the adoption of the Law and regulations related to this area, as well as conducting supervision over the implementation thereof, are under the jurisdiction of the Ministry of Justice.

In the said examples of legislation in the area of classified information, the National Security Authority (NSA) – which is in case of Serbia the Office of the Council for National Security and Protection of Classified Information – has much wider power than is the case in Serbia, despite the same responsibilities when it comes to current and planned activities and duties. Thus, in Czech Republic, the NSA has been established as the central organ of the government with an act that establishes the Ministry. This means that NSA has the same legal obligations in terms of adoption of regulations as the Ministry, and the only difference is that the director of central authorities is not at the same time a member of the government – this is actually stipulated in Article 79 of the Constitution of the Czech Republic. In Slovenia, NSA has also much stronger position with respect to the area of classified information. In addition to supervision and coordination of processing and protection of classified information, the Slovenian NSA at the same time has the possibility to propose draft regulations related to classified information to the government, as well as to provide its opinion on compliance with the existing regulations to the Agency and organizations – therefore, much more than an administrative body. The Directorate for protection of classified information of Montenegro, although set up in a manner similar to the one in Serbia – the director is appointed and dismissed by the government upon the proposal of the minister in charge of defense – still has the possibility to propose measures for the purpose of improvement of protection of classified information, which is again not the case with the Office of the Council for National Security.

CONCLUSIONS

The Law on Classified Information has introduced a uniform that is of interest for national and public security, defense, restricted and foreign affairs of the Republic of Serbia, protection of foreign classified information, access to classified information and cessation of its confidentiality, responsibility of the authorities and supervision over the implementation of this Law, as well as responsibility for failure to fulfill obligations from this Law and other issues relevant for protection of data secrecy.

The Law stipulates deadline of two years after the coming into force, in which period the handlers, public authorities, were obliged to review the designations of information and documents already marked with some of the levels of classification.

In preparation of secondary legislation envisaged in the Law on Classified Information, it has turned out that certain regulations that are significant for the matter of data confidentiality are missing. One example is absence of the Law that would regulate information security.

The Law on Classified Information has also envisaged adoption of a number of secondary legislation acts in the form of regulations, the adoption of which is under responsibility of the government. However, because of the specific subject matter, as well as because of the Rules of the government, it is necessary to collect much bigger number of contributions and opinions from different state authorities than what is usually the case.

All this, among others, has also led to a delay in adoption of the necessary secondary legislation, but also to postponed implementation thereof – which altogether results in the breaking of the regulated deadline of two years and, thus, opens the question of the need to prescribe in practice more appropriate deadlines for full harmonization with the adopted laws and legal obligations that arise therefrom.

At the same time, data confidentiality is one of the most frequent reasons on the basis of which the authorities withhold information – because of fear of consequences of disclosing information as the result of ignorance of procedures, discrepancies among certain provisions of regulations they apply within their area of responsibility with regulations on free access to information of public significance, etc. They typically reject the requests a priori, without applying the so-called test of public interest on assessment of prevalence of interest between the right of the public to know and

another right or public interest that is being protracted with the secret and which could be seriously hurt if the information was disclosed.

On the other hand, the said discrepancy of other regulations results in the paradox that we have the Euro-Atlantic structure of data classification, where official and military secret no longer exist, and the Criminal Code still regulates the violation thereof.

Does the fact that the Law on Security-Information Agency also addresses business secret – although this secret is regulated by a separate Law in order to legally delineate business information and information of interest for Serbia – indicates a simple mismatch, or requires the issue of business secret to be readdressed, at least with respect to terminology?

As he recently agreed upon Individual Partnership Action Plan (IPAP) with the NATO envisages building of capacity of the Office National Security Council and protection of classified information and achieving its full capacity, it is extremely important to review the current position of the Office in the form of an administrative body of the government and think about possible amendments thereof in accordance with the responsibilities it has or those that are planned.

In the contemporary information era, the significance of information and all activities related to transmission and production of information, has been increased and is of increased significance for the national security. In accordance with this, it is necessary not only to adopt the Law on Information Security, but also harmonize with it a series of documents from the field of defense and national of security.

Finally, there is an evident absence of clear authorizations of independent institutions and supervisory authorities with respect to access to classified information without clearances but with security check – specifically by the Protector of the Citizens and/or Commissioner for information of public significance – which is in other countries a general practice of democratic supervision.

Despite these objections that arose from analysis of enforcement of the Law itself, it is necessary to emphasize that the Law on Classified Information is harmonized with international standards as well as that it mostly corresponds to the comparative-legal solutions from other, primarily European legislations.

RECOMMENDATIONS

For the purpose of improvement of the current situation in the area of data secrecy, and after exhaustive consultations with the Office of the Council for National Security and Protection of Classified Information, Office of the Commissioner for Information of Public Importance and Personal Data Protection and Office of the Protector of Citizens, the Center for Euro-Atlantic Studies has prepared the following recommendations:

- To amend the existing Law on Classified Information in order to eliminate shortcomings identified in practice;
- To harmonize other relevant regulations, such as the Criminal Code;
- Clearly define the manner of prequalification of classified information in accordance with the Law on Classified Information – in accordance with the Slovenian model – in order to establish the procedure for overcoming problems of presence of abolished terms of classification such as “Official secret” or “Military secret“;
- Revise the term “business secret“ or completely and unambiguously remove it from the Law on Security-Information Agency;
- Seriously evaluate more appropriate practical deadlines for supplementing the legal framework and harmonization with it in case of amendments to the existing Law or adoption of a new one, in order to prevent in advance the possible existence of idle walk in the enforcement of the Law, caused by the inability to adopt all the necessary associated regulations within the set deadline;
- Establish balance between classified information and information of public significance within the principles of a democratic society;
- Review the existence of the Office of the Council for National Security in accordance with its eventual powers within the meaning of supervision over the implementation of the Law on Classified Information, as the only specialized-expert body for the area of classified information in Serbia, as well as with planned further building of capacity of the Office within the Individual Action Plan of Partnership of Serbia with the NATO;

- Adjust the doctrinal documents of Serbia from the area of defense and national of security and improve the roles of organizations that participate in conducting of information operations in defense of national of security;
- Implement adequate training of relevant representatives of public authorities on the matter of data secrecy and other relevant legal matter;
- Continue with comprehensive reform of the security system in order to round-up the system that has started already after the changes of October the 5th, and without which the shifts such as adoption of the above mentioned recommendations will not achieve their full potential i in regulation and standardization of the security system in Serbia.

ANNEX

Report on activities of the Office of the Council for National Security and protection of classified information in 2014

In 2014, the Office of the Council for National Security and Protection of Classified Information (hereinafter the: Office of the Council), in accordance with the Law on Bases regulating Security Services (“the “RS Official Gazette“, no. 116/07), was engaged to support the work of the National Security Council and Bureau for Coordination of Work of Security Services, on implementation and control of enforcement of the Law on Classified Information (the “RS Official Gazette“, no. 104/09), as well as in activities in accordance with regulations on state administration.

1. Activities to support the work of the National Security Council and Bureau for Coordination of Work of Security Services

The Office of the Council is providing only expert and administrative support to the work of the National Security Council and Bureau for Coordination of Work of Security Services. In this respect, and on the basis of the Rules of Procedure of the National Security Council (Rules of the Council), we point out that the president of the Republic is the only one responsible to comment the work and activity of the National Security Council and that because of this the activities of this body are not subject of this Report.

2. Activities on implementation and control of enforcement of the Law on Classified Information

With respect to the implementation and control of enforcement of the Law on Classified Information, activities related to the following have been realized: enforcement of the Law and adopting secondary legislation, conducting professional supervision, issuing clearances for access to classified information, international cooperation, advance training of state officials from bodies of state administration and government services.

2.1. Implementation of the Law and adoption of secondary legislation

In 2014, representatives of the Office Council participated in the following working groups:

- In Working Group for preparation of the Law on Information Security. In accordance with the Law on Ministries, the proposer of this Law is the Ministry of Foreign and Domestic Trade and Telecommunications.
- In Working Group for amending the Law on Classified Information. In accordance with the Law on Ministries, the proposer of this Law is the Ministry of Justice.

Both activities are planned also for 2015, whereby the deadline for the preparation of the first Law has passed.

2.2. Expert supervision

In accordance with provisions of Article 86 of the Law on Classified Information (the "RS Official Gazette", no. 104/09), which regulates that the Office Council is in charge of certain activities of enforcement and control of implementation of this Law, as well as provisions of Article 94, paragraph 3 of the same Law, which regulates that a public authority shall submit to the Office Council a report containing numerical indicators of exchange of classified information with a foreign country or international organization, at least annually, Annual reports on operation with foreign classified information were submitted by the Ministry of Justice, Ministry of Foreign Affairs, Ministry of the Interior, Ministry of Defense and Security-Information Agency. The reports presented the situation related to implementation of the Law on Classified Information, as well as data related to exchange of classified information between authorities and a foreign country, international organizations or another international entity.

During 2014, the Ministry of Justice continued with implementation of the Law on Classified Information as well as the related secondary legislation. During 2014, the Ministry did not exchange data with foreign countries or international organizations in accordance with the Law on Classified Information.

The Ministry of Foreign Affairs (hereinafter the: MFA) has prepared Draft Solution on determining classified information at the MFA, as well as Catalog for documents marked with level of classification "CLASSIFIED" and "RESTRICTED", which are in the process of being adopted. Additionally, the MFA has prepared the following draft acts for the purpose of regulating the area of protection of classified information at this ministry: Decision on determining classified information within MFA, Decision on determining handlers of classified information within MFA, Decision on determining employees within MFA who will be in charge for specific activities related to

classified information and the “NEED TO KNOW” List.

The said acts are currently in the process of being adopted at the MFA. During 2014, the Ministry of Foreign Affairs received 47 NATO documents (17 “NATO UNCLASSIFIED“, 18 “NATO RESTRICTED” and 12 documents that were not decrypted) and 83 EU documents (1 without designation of classification and 82 up to the level “EU RESTRICTED“).

The Ministry of Defense (hereinafter the: MoD) adopted the Regulation on more detailed criteria for determining the level of classification “TOP SECRET” and “SECRET”, as well as Regulation on more detailed criteria for determining the level of classification “CLASSIFIED” and “RESTRICTED”. The MoD has been implementing the procedure of preparation of Draft Catalog of information with level of classification “CLASSIFIED” and “RESTRICTED” and Catalog of information with level of classification “TOP SECRET” and “SECRET”. The MoD has prepared the “NEED TO KNOW” Lists for people who have the right to access NATO, i.e. EU classified information, and these lists are being updated regularly. During 2014, the Ministry of Defense received 47 NATO documents (11 “NATO UNCLASSIFIED” and 36 “NATO RESTRICTED“) and 146 EU documents (40 “EU UNCLASSIFIED”, 105 “EU RESTRICTED” and 1 “EU CONFIDENTIAL“). In the same period, 2 NATO documents with level of classification “NATO RESTRICTED” were sent.

The Ministry of the Interior (hereinafter the: MoI) adopted the Decision on determining classified information marked with level of classification “TOP SECRET“ and “Secret“ and Decision on determining classified information marked with level of classification “CONFIDENTIAL” and “RESTRICTED”. They prepared a catalog of documents, data and information that should be marked with level of classification “TOP SECRET“ and “Secret“, as well as catalog of documents, data and information that should be marked with level of classification “CONFIDENTIAL” and “RESTRICTED”. Pursuant to the Law on State Administration and the Law on Classified Information, an authorization was signed appointing 160 authorized people for determining the level of classification in organizational units of the MoI. The MoI has prepared “NEED TO KNOW” lists for people who have access to NATO, i.e. EU to classified information. Additionally, the Decision was signed appointing the Department for Security of the Cabinet of the Ministry as the handler of classified information in that Ministry. The Ministry of the Interior, in struggle against corruption, on bilateral level,

exchanges data with ministries in charge of internal affairs of Hungary and Romania on the basis of the Protocol on cooperation between the national service for protection of the Hungarian Ministry of the Interior and Internal Control Division of the Police Department of the MoI of the Republic of Serbia (signed in June 2012), and Protocol on cooperation between the General Anti-Corruption Directorate of the Ministry for Administration and Internal Affairs of Romania and Internal Control Division of the Police Department of the MoI of the Republic of Serbia (signed in October 2012). Pursuant to the Law on Ratification of the Agreement on Operational and Strategic Cooperation between the Republic of Serbia and the European Police Office (the "RS Official Gazette", no. 5/14 – International agreements) and the associated Memorandum of Understanding between Serbia and EVROPOL, International Operational Police Cooperation Department, EVROPOL Operations Department, has been conducting exchange of personal data with level of classification "RESTRICTED".

In 2014, the Security-information Agency almost completely implemented the provisions of the Law on Classified Information and was the first organ of public authority in the Republic of Serbia to transfer to the new system of determining and protection of classified information. On the level of rounding-up the normative framework from this area, the Agency: adopted the Decision on determining classified information of the Security-Information Agency, with lists of classified information of the Agency, defined persons authorized for determining classified data within the Agency and regulated work positions in which members of the Agency have access to classified information in accordance with the "Need to know" principle. In the reporting period, the Agency exchanged with foreign partners a total of 1183 information related to terrorism, trans-national organized crime and illicit proliferation of weapons, military equipment and dual-use goods.

During 2014, the Military-Intelligence and Military-Security Agency (hereinafter the: MIA and MSA) continued to implement regulations that regulate the area of classified information in the Republic of Serbia. In its report, the Military-Intelligence Agency stated that it performs the work with classified information in accordance with the Law on Military-Intelligence and Military-Security Agency (Article 36), Directive on the manner and preparation of materials and acts under responsibility of the Ministry of Defense and Rules of official correspondence in the Serbian Army. In its response to the request of the Office Council to submit a report

on work with classified information in 2014, the Military-Intelligence Agency stated that the MIA is not able to submit the report because, in its assessment, the legal framework for work with classified information is not sufficiently elaborated on the national level. In its report, the Military-Security Agency also stated that in cooperation with authorities and security services of foreign countries and international organizations, it acts in accordance with Article 36, paragraph 1 of the Law on Military-Intelligence and Military-Security Agency, as well as in accordance with Article 5, paragraph 3, indent 4) of the Law on Bases regulating Security Services. According to the assessment of the MSA, the request of the Office Council for MSA to submit a report on work with classified information in 2014 constitutes a type of control over the work of the MSA in the area of protection of classified information, for which, in the assessment of the MSA, there is no legal basis in the Law on Classified Information. The Military-Security Agency concludes that the annual report on the work of the Office of the Council for National Security and Protection of Classified Information is not related to the activities of the MSA with classified information.

In accordance with obligations assumed under the concluded Agreement between the government of the Republic of Serbia and the North Atlantic Treaty Organization (NATO) on security of information and code of conduct (the "RS Official Gazette - International agreements" 6/11) and the Agreement between the Republic of Serbia and European Union on security procedures for exchange and protection of classified information ("RS Official Gazette - International agreements", no. 1/2012), during 2014, the representatives of the Office Council conducted regular expert supervision in order to determine the condition in sub-registries for the needs of work with foreign classified information within the Ministry of Defense, Ministry of the Interior, Ministry of Foreign Affairs, Security-Information Agency, as well as in sub-registries of the Mission of the Republic of Serbia to the European Union, Mission of the Republic of Serbia to NATO in Brussels and to SHAPE in Mons.

The Annual Analysis of functioning of the system of physical-technical security of the Central Registry for Foreign Secret Information was performed together with police officers of the Department for Security of Certain Persons and Buildings. Additionally, on two occasions, implementation of procedures in case of activating anti-burglary and fire alarms we rehearsed together with police officers. In 2014, anti-burglary alarm went off 4 times, when police officers acted in accordance with the

adopted and rehearsed procedures.

2.3. Issuing Decision on clearances for access to classified information

In accordance with the Law on Classified Information, in the reporting period, 189 decisions approving issuance of clearances to access national classified information were issued, (63 for the level of classification "CLASSIFIED", 77 for the level of classification "SECRET" and 49 for the level of classification "TOP SECRET").

On the basis of these decisions, a total of 109 security clearances to access national classified information were issued (20 for the level of classification "CLASSIFIED", 45 for the level of classification "SECRET", 43 for the level of classification "TOP SECRET") and 1 clearance for the level of classification "RESTRICTED" for a legal entity. The clearances were issued upon the request of:

- National Assembly of the Republic of Serbia – 4 clearances;
- The Ministry of Justice – 2 clearances ;
- The Ministry of Foreign Affairs – 6 clearances;
- Ministry of Defense – 46 clearances;
- Security-Information Agency – 6 clearances;
- KSNBiZTP – 19 clearances;
- Supreme Court of Cassation – 8 clearances;
- Administration for Joint Affairs of the Republic Bodies – 3 clearances;
- Krušik AD – 13 clearances; and
- Other – 2 clearances.

Additionally, the Office of the Council issued 62 clearances for access NATO to classified information, of which 57 for the level of classification "NATO SECRET" and 5 the level of classification "NATO CONFIDENTIAL".

Additionally, it issued 7 temporary clearances for the level of classification "NATO CONFIDENTIAL", 7 clearances for access "NATO RESTRICTED" to classified information, 10 certificates of holding "NATO CONFIDENTIAL" clearances and 29 certificates of holding "NATO SECRET" clearances.

The Office of the Council issued 4 clearances for access of "EU

RESTRICTED” classified information, 11 clearances for access “EU CONFIDENTIAL” and 23 clearances for access “EU SECRET” classified information.

During 2014, a total of 208 NATO and EU documents were received, of which 149 EU documents (110 “EU RESTRICTED“, 38 “EU LIMITED“, 1 “EU CONFIDENTIAL“) and 59 NATO documents (41 “NATO RESTRICTED” and 18 “NATO UNCLASSIFIED“), which were distributed to authorized users.

In accordance with the signed international agreements, during 2014 a total of 7 documents were sent to NATO (5 “NATO RESTRICTED“ and 2 “NATO UNCLASSIFIED” documents).

In 2014, the Office of the Council held several meetings with representatives of the Ministry of Defense and responsible state institutions in order to determine the procedure for conducting security checks and issuing security clearances for persons who are engaged to perform work related to preparation of the Defense Plan. In this respect, it was agreed that, prior to full implementation of the Law on Classified Information in terms of performing activities related to preparation of the Defense Plan, only provisions of the Law on Defense (“RS Official Gazette“, no. 116/2007, 88/2009, 88/2009 – dr. the Law and 104/2009 – other law) shall be applied.

2.4. International cooperation

In the reporting period, the Office of the Council, acting in accordance with expressed needs of the Ministry of the Interior, Ministry of Defense and Ministry of Foreign Affairs, made contacts and established cooperation in the area of exchange and protection of classified information with the Republic of Italy, Republic of France, Cyprus and Finland.

Representatives of the Office of the Council visited the Republic of Finland from April 7 to 9, 2014, in order to initiate cooperation in the area of exchange and protection of classified information and cyber defense.

Additionally, in 2014, by collecting opinions of the competent authorities, the Office of the Council started the internal procedure for concluding agreements in the area of exchange and protection of classified information with the Republic of Poland and Republic of Portugal.

Representatives of the Office of the Council agreed with representatives of the Russian Federation the text of the Agreement between the government

of the Republic of Serbia and of the government of the Russian Federation on mutual protection of classified information on October 14, 2014, in Belgrade. The said Agreement was signed on October 16, 2014, during the visit of the president of the Russian Federation Vladimir Putin to Serbia. The procedure preceding ratification of the Agreement is in its final stage.

At the National Assembly of the Republic of Serbia, on September 8, 2014, 5 international agreements on exchange and protection of classified information were signed. These are agreements with the Republic of Slovenia, Bosnia and Herzegovina, Czech Republic, Republic of Macedonia and Kingdom of Spain.

Representatives of the Office of the Council attended the fourth conference of representatives of the South East European National Security Authorities (SEENSA) on May 20, 2014, in Sarajevo, which was organized in cooperation between the Regional Cooperation Council (RCC) and Sector for Protection of Classified Information of the Ministry of Security of Bosnia and Herzegovina. At the meeting, reports were presented and discussion carried out on the work of Theme Working Groups (TWG) for training, cyber defense and security agreements. A more substantial financial and other support to the work of SEENSA was proposed at the meeting, and adoption of joint security standards of all of its members.

In cooperation between the Regional Cooperation Council (RCC), the Office of the Council organized on October 23, 2014, in Belgrade, a meeting of the Theme Working Group of the Forum of South East European National Security Authorities (SEENSA) for the questions of cyber defense. The meeting was attended by representatives of national security authorities: of Bosnia and Herzegovina, Bulgaria, temporary institutions from Priština, Macedonia, Moldavia, Montenegro and Slovenia. At the meeting, where representatives presented their own experiences related to normative and institutional framework of cyber security, the following was concluded: that the current name of the Theme Working Group for cyber defense should be changed to Theme Working Group for cyber security; to include training in the area of cyber security in the program of training and activities of Theme Working Group SEENSA for training; to organize within SEENSA training of members of communication and information security authorities; to create and establish a glossary in the area of communication and information security for the needs of SEENSA members, as well as to prepare legal framework for cooperation of SEENSA members in the area of cyber security.

On November 25, 2014, a delegation of the Office of the Council attended the meeting of directors of national security authorities of regional format "Six States" (hereinafter the: "6S"), organized in Zagreb: Bosnia and Herzegovina, Republic of Croatia, Republic of Macedonia, Montenegro, Republic of Serbia and Republic of Slovenia. The goal of "6S" regional initiative is to exchange experiences in the area of protection of classified information between Croatia and Slovenia, members of NATO and EU, with countries with partner status in these organizations. The following conclusions were achieved in Zagreb: permanent support to bilateral security cooperation in the region through exchange of relevant letters of intent and concluding international security agreements; preparation of general regional plan of needs and possibilities in organizing bilateral and multilateral security educations for the purpose of building harmonized security abilities in regional countries and analysis of possibility for financing of regional activities in the area security education and cooperation through TAIEX programs of the European Commission. It was agreed to submit the said conclusions to the NATO Security Office, General Secretariat of the Council of Europe, European Foreign Affairs Office and European Commission.

2.5. Advance training of state officials from the organs of state administration and government offices

Pursuant to Article 87, paragraph 1 of the Law Classified Information and Annual Plan of Education, the Office of the Council in 2014 held a number of seminars in the area of protection of classified information, focusing on the legal framework and presentation of the Law on Classified Information, as well as personal, administrative, information, cyber, physical-technical security, control and supervision. The said seminars were attended by a total of 293 people, of which 193 employees from the organs of public authorities of the Republic of Serbia (National Assembly, judicial authority, Administration for Anti-Money Laundering of the Ministry of Finance, Ministry of Health, Ministry of Defense, Ministry of Energy, Ministry of the Interior, Serbian Chamber of Commerce, Directorate for Civil Aviation and Agency for Ionizing Radiation) and 100 people from Holding corporation "Krušik" AD from Valjevo. Additionally, also in 2014, with respect to expert advance training of people in the area protection of classified information, the cooperation continued with the Center for Education of the Serbian Chamber of Commerce, Police Academy, Diplomatic Academy of the MFA, Office for managing personnel of the government of the Republic of Serbia (SUK), Military-Security Agency, Military Academy, etc.

3. Activities pursuant to regulations on state administration

As of December 31, 2014, the Office of the Council has 18 employees:

- 1 (appointed person-director),
- 10 state officials for indefinite term,
- 1 state official for a definite term,
- 1 member of the Security-Information Agency,
- 2 police officers of the Ministry of the Interior,
- 3 members of the Ministry of Defense.

The budget for 2014 amounted to RSD 30,506,000.00.

3.1. Legal and financial operations

Activities and tasks from Article 9, paragraph 1 of the Law on Budgetary System (the "RS Official Gazette", no. 54/09, 73/10, 101/10, 101/11 and 93/12) performed by the financial office of the direct user constitute works of preparation and creation of proposal of the financial plan, allocation of funds to indirect users of budgetary funds within the allowed appropriations, preparation and completion of documentation for realization of the financial plan, performance of tasks related to managing state property for which the direct user is responsible, maintaining books and records and reconciliation with the treasury general ledger and preparation of consolidated periodical annual reports, maintaining Central registry of employees, as well as other financial-material activities-.

In accordance with the above mentioned Article of the Law in Financial Service, the financial activities of the Office of the Council for 2014 included preparation of Medium-term plan for period 2014-2016, financial plan proposals and budget proposals, preparations for budget program planning, preparation of the Plan of Public Procurement, preparation of the report on implemented procedures, preparation of the Plan of work of the government for 2014, harmonization of the Financial Plan with the adopted Law on Budget and amendments to the Law on Budget for 2014, preparation of the periodical (quarterly) expenditure reports.

Other works that are continuously performed in the reporting year: budget planning for the reporting period, preparation of relevant requests for a

change in appropriation and change of quota, preparation of request for assuming obligations, requests for payment and transfer of funds, control of data for employee payroll, travel expenses for official travel, calculation of agreements on conducting temporarily entrusted works, monitoring presence of employees, preparing analysis, reports and other works significant for the work of the Office.

Appendix no. 1 to the Report includes and expert from the Law on Budget for the Office in 2014.

Appendix no. 2 to the Report includes Overview of spent funds for operating activities in the period January – December 2014.

Appendix no. 3 to the Report includes Overview of salaries of employees in the Office for December 2014.

In 2014, KSNBiZTP had one small value public procurement – computer equipment.

Office of the Council did not receive donations in 2014.

Records of fixed assets used by the Office of the Council are maintained by the Administration for Joint Affairs of the Republic Bodies.

Note: from 2015 budget year, the government i.e. the Ministry of Finance switched to the system of Program Financing.

3.2. Advance training of employees at KSNBiZTP

With respect to the Program of general advance training of state employees from the bodies of state authorities and government departments, in 2014, the Office of the Council issued the Program of special advance training and continued education of state employees. In this respect employees in the Office of the Council attended a total of 21 seminars, conference, workshops or trainings on the subject of public procurement, financial-legal operations, new trends in development of the information system, adjustment with EU standards in the area of protection of classified information, improvement of protection of national critical infrastructures, protection of whistleblowers, etc., which were organized by the state authorities, various associations, as well as foreign authorities and organizations in the country and abroad.

Chapter IV of the Individual Partnership Action Plan (IPAP) of the Republic of Serbia and Organizations of the North Atlantic Treaty Organization (NATO)



ИНДИВИДУАЛНИ АКЦИОНИ ПЛАН ПАРТНЕРСТВА (ИПАП)

РЕПУБЛИКЕ СРБИЈЕ
И
ОРГАНИЗАЦИЈЕ СЕВЕРНО-АТЛАНТСКОГ УГОВОРА (НАТО)

Београд, децембар 2014. године

IV ПОГЛАВЉЕ		
ЗАШТИТА ТАЈНИХ ПОДАТАКА		
	Циљеви и активности	Временски оквир
	ЦИЉ 1: Оконачање оснивања Канцеларије Савета за националну безбедност и заштиту тајних података	
Активност 1	Доношење неопходних подзаконских аката и прописа	2014 – 2015.
Активност 2	Јачање капацитета Канцеларије (у људству, техници, администрацији)	2014 – 2015.
Активност 3	Оснивање помоћних тела Канцеларије: - Орган за акредитацију у области безбедности (SAA) - Национални орган за безбедност комуникација (NCSA) - Национални орган за дистрибуцију (NDA)	2014 – 2015.
Активност 4	Оснивање система електронског преноса тајних података и његова заштита	
	ЦИЉ 2: Унификација мера за заштиту тајних података (НАТО и ЕУ) и билатерална сарадња	
Активност 1	Успостављање сертификационог система за приступ страним талим подацима	2014.
Активност 2	Успостављање функционалних регистара тајних података	2014.
Активност 3	Побољшање регионалне сарадње (билатерални споразуми о заштити тајних података)	2014 – 2015.
	ЦИЉ 3: Повећање осетљивости у циљу заштите осетљивих система везе и информација од сајбер напада	
	*Видети поглавље 1.2.3 о безбедносним изазовима	

ABOUT THE CENTER FOR EURO-ATLANTIC STUDIES

The Center for Euro-Atlantic Studies (CEAS) is an independent, atheist, socio-liberal, policy research think tank organization, driven by ideology and values. It was established in 2007 by a small group of like-minded colleagues who shared an awareness of the inter-conditionality between global and regional trends, foreign policy orientation of the country, security and defense sector reform, and transitional justice in Serbia. With these linkages in mind, CEAS was established with the following mission:

- To accelerate the process of Serbian EU integration and to strengthen its capacities to confront global challenges through collective international action, resulting in full and active membership of the EU,
- To strengthen the cooperation with NATO and advocate for full and active Serbian membership in the Alliance,
- To promote regional cooperation and raise public awareness of its significance.
- To impose a robust architecture of democratic oversight of the security system,
- To support the development of transitional justice mechanisms, their enforcement in Serbia and the Western Balkans, and the exchange of positive experiences; to emphasize the importance of mechanisms of transitional justice for successful security sector reform in post-conflict societies in transition towards democracy.

To accomplish its mission, CEAS is targeting Serbian policy makers and the Serbian general public, as well as international organizations, governments and other actors dealing with Serbia and the region of Western Balkans, or dealing with the issues that CEAS covers, through the promotion and advocacy of innovative, applicable and practical policies aimed at:

- Keeping up with the trends and developments in socio-liberal studies and practice, and at strengthening of socio-liberal democracy in Serbia;
- Adopting the principle of precedence of individual over collective rights, without disregard for the rights which individuals can only achieve through collective action;
- Strengthening the secular state principle and promoting an atheistic understanding of the world;
- Contributing to the erection and preservation of a more open, safe, prosperous and cooperative international order, founded on the principles of smart globalization and equitable sustainable development.

With its high quality research and devoted work CEAS generates accurate and recognized analyses primarily in the fields of foreign, security and defense policies with recommendations based on its core values, with specific focus on:

- Acceleration of the processes of Serbian EU integration and strengthening of its capacities for confronting global challenges through collective international action, resulting in full and active Serbian membership of the EU;
- Strengthening cooperation with NATO and advocacy for full and active Serbian membership in the Alliance;
- Promotion of the significance of regional cooperation;
- Supporting development of transitional justice mechanisms, their enforcement in Serbia and the Western Balkans, and the exchange of positive experiences; emphasizing the importance of mechanisms of transitional justice for successful security sector reform in post-conflict societies in transition towards democracy;
- Promotion of humanitarian and security norm Responsibility to Protect arguing that the state carries the primary responsibility for the protection of populations from genocide, war crimes, crimes against humanity and ethnic cleansing, that international community has a responsibility to assist states in fulfilling this responsibility and that the international community should use appropriate diplomatic, humanitarian and other peaceful means to protect populations from these crimes if a state fails to protect its populations or is in fact the perpetrator of crimes;
- Promotion of Open Government Policy, aiming to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.

CEAS is carrying out its mission through various projects within its five permanent programs:

I Comprehensive monitoring of contemporary international relations and foreign policy of Serbia

II Advocacy for full-fledged active membership of Serbia in the EU and NATO

III Advocacy for comprehensive Security Sector Reform in Serbia

IV Advocacy for development of the discourse of Energy Security in Serbia

V Liberalism, Human Rights, Responsibility to Protect, Transitional Justice and Open governance in the globalized world

CEAS is an active member of the REKOM coalition, which gathers more than 1,800 organizations of civil society, individually from all former Yugoslav republics. Among them are associations of parents and families of missing persons, veterans, reporters, members of minority ethnic communities, human rights organizations, etc. or states) establish REKOM, an independent, inter-state Regional Commission for the Establishment of Facts on all the victims of war crimes and other heavy human rights violations undertaken on the territory of the former SFRY in the period 1991-2001.

In 2012, CEAS also became the first organization of civil society in the region of Southeast Europe that was accepted as a regular member of the International Coalition for Responsibility to Protect – ICRtoP. The Coalition gathers non-government organizations from all over the world for joint action on strengthening the normative consensus related to the doctrine of Responsibility to Protect (RtoP), for the purpose of better understanding of the norm, pressure on strengthening the capacity of the international community to prevent or stop genocide crimes, war crimes, ethnic cleansing, and crimes against humanity, and mobilization of the non-governmental sector to advocate for actions of saving human lives in situations where RtoP doctrine is applicable. Some of the prominent members of the Coalition are organizations such as Human Rights Watch and International Crisis Group.

In April 2013, CEAS became the first organization of civil society in Serbia that joined the Commission of the Commission for Public-Private Partnership with the Serbian Chamber of Commerce in the security sector of Serbia. In addition to representatives of the private security sector, the Commission is also comprised of representatives of the MoI and other state authorities and institutions, which are, in carrying out the work of state administration, in charge also for cooperation between public and private security sector.

In September 2013, CEAS also became a member of the Sectoral Civil Society Organization for the Rule of Law - SEKO. The program of cooperation with organizations of civil society in the area of planning of development assistance of the Office for European Integrations, especially programming and monitoring the use of instruments for pre-accession assistance for 2011, envisaged establishment of a consulting mechanism with OCS, which implies as the main holders of activities the Sectoral Civil Society Organizations (SEKO). Sectoral Civil Society Organization means a consortium of

organizations of up to three partners , one of which is the leading partner.

In September 2014, CEAS became a regular member of the Policy Association for an Open Society – PASOS, an international association of expert NGO's (think-tanks) from Europe and Central Asia, which supports the building and functioning of an open society, especially with respect to questions of political and economic transition, democratization and human rights, opening of economy and good public management, sustainable development and international cooperation. PASOS has 40 regular and 10 associate members, including the prestigious European Council on Foreign Relations – ECFR.



CENTER FOR EURO-ATLANTIC STUDIES

ADDRESS: DR. DRAGOSLAVA POPOVIĆA

15/II/15 11000 BEOGRAD, SERBIA

TELEPHONE/FAX +381 11 323 95

79 WWW.CEAS-SERBIA.ORG

OFFICE@CEAS-SERBIA.ORG