

.hr Domain Management Committee composed of Associate Professor Gordan Gledec, PhD sc., Mirjana Gabriel, Goran Blagus, Vanja Librić Radojević and Professor Alan Uzelac, PhD on the sessions held on November 5<sup>th</sup> 2013 and January 29<sup>th</sup> 2014, based upon the Article 4, Item 2 of the Ordinance on the Organisation and Management of the National Top-level Domain (furtheron as: Ordinance) has brought the following

## DECISION

1. By the way of derogation of the Article 15, Item 4 of the Ordinance, the legal entities that have their business establishment in one of the Member States of the European Union for registration of the secondary payable domains do not have to have a registered representative office, branch or other permanent organizational form in Republic of Croatia.
2. Legal entities that have their business established in one of the Member States of the European Union shall not be the subject of the limitation of the Article 18, paragraph 1, Item 3 of the Ordinance (limitation of no more than one registered secondary domain), but limitation of Article 18, Paragraph 1, Item 1 (limitation of maximum 10 registered domains).

## Explanation

On the date of accession of the Republic of Croatia to European Union the obligation of registering the representative office for the foreign founders that have business established in one of the Member states of European Union has ceased. Such conclusion is a result of the amendments of the Article 52 of the Trade Act (Official Gazette 87/08, 96/08, 116708, 76/09, 114/11 and 68/13) which is, as of July 1<sup>st</sup> 2013, based upon the Article 83 of the same Act, no longer applicable to entities that perform economic activities and have their business established in other Member State of EU (see the Interpretation of the Ministry of Economy, <http://www.mingo.hr/default.aspx?ID=3264>).

The obligation of registering the representative office is cancelled as being in the contrary to the principle of free movement of goods and provision of services in the internal market of the Member States of EU. Furtheron, there is no reason that legal entities with business established in EU, in the process of registration of domains, are required to prove they have a registered branch office in the Republic of Croatia. For such legal entities, the authorised registrars are obligated to establish a fact that the legal entity has a business establishment in one of the Member States.

With the accession of the Republic of Croatia to the EU the legal possibility that legal entities of EU, which perform economic activities in the market of the Republic of Croatia, are placed in a less favourable position than legal entities based in the Republic of Croatia ceased. Therefore, the limitation set on the basis of the Article 18 of the

Ordinance which says domestic legal entities can register maximum 10, and foreign legal entities maximum one .hr domain, could no longer be applicable to the rights of the entities with the business establishment in EU in process of registering additional domains as stated in the Article 22 of the Ordinance. Namely, additional secondary domains are registered for the reason of gaining all interests of the authorised users which in praxis are often used for performing economic activities. For that reason, this limitations that would put entrepreneurs in unfavourable position are no longer valid because all entrepreneurs that have their business establishment in EU on the basis of the market freedom contained in the Treaty on the Functioning of the European Union and the competition law and policy, act under equal conditions, in non-discriminatory manner and regardless of their headquarters, provide conditions for access and participation on the market (see opinion of the Croatian Competition Agency, Class: 034-08/13-01/057, Reg. no.: 580-07/26-13-002 dated May 15<sup>th</sup> 2013).

Since the stated constitution of the legal entities from EU that perform economic activities is held in the international agreements that have immediate application and power above law, which are also contained in the legal acts (Trade Act), the application of these regulations and principles take precedence over the Ordinance as a bylaw, and it is therefore decided as stated in the operative part of this decision.

In relation to the secondary .hr domains through which the right to virtual identity is executed in the national information space being a fundamental right of every legal and natural entity with residence or headquarters in Republic of Croatia (Article 5 and 6 of the Ordinance), the Ordinance provisions are still applicable in the same way. The right to virtual identity within the top-level domain as a starting point for structuring, organization and presentation of the information related to the Republic of Croatia on the Internet derives from the concept of the national domain being a national resource to which the principles of virtual space and special protection of the secondary domains is applied. The right to non-payable domain is not established for the purpose of market competition, but for the forming of the identity within the .hr domain for the entities from the Republic of Croatia, and for the purpose of gaining and forming that right (including regulation of the allowed names) the priority is set to the public interest. Namely, in order to be present at the unique European market and in gaining the right for the equal position and right to register a domain, which purpose is to provide "information on the activities and services of the domain user; information on goods and products that domain user is placing on the market; information on patents and licences, copyrights, trademarks and brands and other forms of intellectual property" (Article 23 of the Ordinance), as well as domains which are used as a domains for realization of other interests (including economic activities), can be registered (additional secondary domains from the Article 22 of the Ordinance) which are therefore equalized in the possibility to operate in Republic of Croatia under the same conditions as the domestic entrepreneurs.

Regardless of the Items 1 and 2 stated in the operative part, we emphasize that due to the technical execution of this Decision it is necessary that the entities to whom the one is referred to have their personal identification number. Requests submitted under this basis without stating the personal identification number will not be executed, as they are being incomplete.

Zagreb, February 3<sup>rd</sup> 2014

President of the .hr Domain management Committee  
Associate Professor, Gordan Gledec, PhD  
*(stamp and signature)*