

NEWSLETTER NO 42
Of the Association of Corporate Lawyers

WHAT WAS HAPPENING DURING MARCH AND APRIL?

1. **Round Table on Conciliation in Private Legal Disputes**
2. **Law Faculty Practical Student Work**
3. **ECLA Presidency 2013 Session in Lisbon**
4. **Association Members Participated at the Conference with the Topic LAND REGISTRY LAW – The Final 2013 Novelty Draft organised by Novi Informator**
5. **IBAN in national payment transactions**
6. **Belgium Victory for Legal Privilege in local competition matters**
7. **Another Victory for Legal Privilege for In-House Lawyers in Netherlands**

1. The Round Table on Conciliation in Private Legal Disputes was organised by the Mediation Centre at the Croatian Chamber of Economy, and held in Hall C of the premises of the Croatian Chamber of Economy, Roosevelt Square No 2, on 21st March, 2013 from 10:00 to 15:00.



Marijan Pavlović and Ivan Antić, members of the Association of Corporate Lawyers, Marina Kralj Miliša, Deputy President and Josipa Jurinić, President of the Association of Corporate Lawyers participated in the Round Table.

The Round Table presented:

1. **A view of the present situation;**
2. **How to motivate a wider implementation of the Government Decision on Recommendations for Motivation of Alternative and Out-Of-Court Resolving of Disputes (Official Gazette 69/2012.);**
3. **How to Proceed (with mediation)?**

The following topics were discussed;

- (1) Topic: moderator: KLARIĆ, officers: ŠIMAC, HUČERA, PAVLOVIĆ
- On General Issues of Out-of-Court and Court Mediation (Šimac, Hučera); Experiences, Suggestions of the Parties from Conciliation Procedures (Pavlović);
- (2) Topic: moderator: TEPEŠ, officers: DUSMAN-MEIJER, TUŠKAN, ANTIĆ
- On Implementation of the Decision from the Perspective of the Public Prosecutor Office (Dusman Meijer), Mediators (Tuškan) and (Potential) Mediation Users (Antić);

- (3) Topic: moderator: SAJKO, officers: KOLESAR, VUKMIR, JURINIĆ
- Proposals / Suggestions of Mediators (Kolesar and Vukimir) and Mediation Procedure Parties (Jurinić).

Marijan Pavlović from Dalekovod d.d. (Transmission Lines Inc.) had the presentation with the topic "Mediation in the Republic of Croatia today" and introduced positive experience from his company to the present participants.

Ivan Antić from Hrvatska pošta d.d. (Croatian Post Offices Inc.) analysed the change of the Decision on Measures for Motivation of Alternative and Out-Of-Court Resolving of Disputes in Civil Legal Procedures from the perspective of the mediation procedure user.

Josipa Jurinić from Ericsson Nikola Tesla d.d. gave a view of the role and the importance of the economy and its in-house lawyers in amicable resolution of disputes. She invited the present to cooperate with the Association of Corporate Lawyers emphasising that corporate lawyers could be a strong impetus for resolving disputes through mediation and reconciliation: giving their contribution through their own positive attitude towards mediation, spreading such an attitude in their companies, cooperating with company managements and cooperating at a wider scale as active participants, corporate lawyers could and would like to contribute to the affirmation of mediation.

At the end of this gathering, the conclusion was made from all presentations and discussions that the event justified itself and that it would be useful to make the Mediation Round Table a tradition.

Prepared by: Josipa Jurinić, ERICSSON – NIKOLA TESLA d.d.

2. Law Faculty Practical Student Work

In the Company KONČAR – ELECTRICAL INDUSTRY Inc. Tin Stipeč from Zagreb, a student of the fourth year of the Law Faculty of Zagreb performed his practical student work during the time period from 8th to 26th April, 2013. The practical work was based on the cooperation between the Law Faculty and the Association of Corporate Lawyers. During three weeks of his practical work, he was introduced to the operation of the Legal Department of the Company and all legal branches dealt with by colleagues - lawyers in the Company. He showed the largest interest for the Company Law and Commercial Law, Material and Labour Law, Insurance Law and Resolving of Disputes through Arbitration. He also resolved actual legal tasks. He spent a day in the manufacturing company KONČAR – GENERATORS AND MOTORS Inc. cooperating with the colleague – lawyer there. At the end of his practical student work, he answered the following questions:

- 1. Which choice of student practical works is available to a law student in Zagreb and what has motivated you to select a trading company to perform your student practical work?**

Tin: Students of the Law Faculty of Zagreb can perform their student practical work in trading companies, public notary offices and attorney at law offices. Practical student work in trading companies and public notary offices can be performed only in companies and public notary offices from the list defined by a Framework Cooperation Agreement made by and between the Faculty of Law of Zagreb and the Croatian Public Notary Bar and the Croatian Association of Corporate Lawyers. Student practical work to be performed in attorney at law offices that are members of the Croatian Attorney at Law Bar can be performed in any of the offices throughout Croatia.

When I chose the trading company to perform my student practical work I was motivated by the thought that I would predominantly deal with the Trade Law and the Company Law during my student practical work and those legal branches have been the most interesting legal branches I have met at my study up to now. I also took care when I was making the choice that I would go to a new and unfamiliar working environment where nobody would know me. If I had chosen an attorney at law office, I would probably have to know somebody and to use an acquaintance or a contact influential person and I would have lost the opportunity to get an objective and overwhelming insight into the work of lawyers.

2. What was your idea about activities of in-house lawyers before you performed your student practical work and after your performed your student practical work? What you would like to supplement or to change in your practical work?

Tin: My personal idea about the activities of in-house lawyers in a trading company was based on the presumption that they generally dealt with the financial and the commercial law and that they spent the majority of their working time at courts. During performance of my practical work I saw that my perception was almost completely wrong, and that the work of a lawyer in a trading company consists of various activities comprising the majority of legal branches I have faced during the course of my study. I also saw that the majority of working time of an in-house lawyer was not at court, but in an office in front of a PC. That completely broke my perception of a corporate lawyer that was like the image we can obtain from American legal TV shows.

I do not have any complaints regarding the organisation of my student practical work by the company where I have worked. I think that the concept of the student practical work I have experienced is appropriate and well-adjusted to the knowledge of an average law student. My mentor has done its best in each respect to give me an insight, as wide as possible, into everyday practical tasks, and to succeed to resolve individual problems I have been in charge of regardless the fact that up to now I have practically had no practical experience in the area of law. The most useful thing is the fact that I have met many interesting persons and heard their experience about problems they have been facing during, for example, passing of individual exams, looking for a job or sitting for the bar exam.

The only thing that should be changed regarding the concept of student practical exercises is that they should have been performed during each academic year and not only once during the whole studies lasting for three weeks. Students could learn and understand more through practical work compared to uncritical learning of monotonous facts.



3. Where do you see yourself after graduation?

Tin: After taking a degree I would like to deal with as many various activities as possible bound to the profession to achieve as large experience making me more competitive on the labour market. I would like to get a job as a lawyer in the economy and learn the most interesting branches of law for me in greater detail.

Prepared by: Ana Zbiljski, KONČAR – ELECTRICAL INDUSTRY, Inc.

3. ECLA Presidency 2013 Session in Lisbon



The host of the spring ECLA Presidency Session was the Attorney-at-Law Bar Association of Portugal - Instituto dos Advogados de Empresa (inst.advogadosempresa@cg.oa.pt, www.oa.pt) and the session was held in their premises in Lisbon on 18th April. Lawyers employed in the economy are also members of the Bar Association within a separate class in Portugal. What is specific for such an arrangement is that lawyers employed in the economy can also work as attorneys-at-law. Vitor Marques Moreira, the president of the Corporate Lawyer Section within the Bar Association talked

about the stated organisation of the Bar Association of Portugal and the position of corporate lawyers during his welcome speech of the Presidency Session. He was also a candidate for the office of President of the Bar Association. The following topics on the Agenda were ordinary session topics: financing and bound payment of association fees. After a discussion and several suggestions, a solution stating that members that had not paid the member fee would not have the right to vote at the general meeting was adopted as a compromise. The newly elected president, Philippe Coen, introduced proposals for improvement of the operation and communication with ECLA members (a continuance of works at the web site, a strengthened engagement of members inside ECLA-e, a new flyer prepared by a team including a member of ECLA Board, Ms Marina Kralj Miliša), while Sergio Marini, a Board member as well, presented activities on the Ethic Codes; Ethic Codes of ECLA member associations were being compared at the moment with the aim of determination of a common platform. The representative of the Belgian Institut des Juristes d'Entreprise informed us about the court decision that approved the right to legal privilege to lawyers employed in the economy in Belgium.

The next ECLA Board Meeting would be held in Brussels, when the 30th anniversary of ECLA establishment would be celebrated.

Prepared by: Martina Pejić, KONČAR – POWER PLANT AND ELECTRIC TRACTION ENGINEERING, Inc.

4. Association Members Participated at the Conference with the Topic LAND REGISTRY LAW – The Final 2013 Novelty Draft organised by Novi Informator

Novi Informator Ltd. organised the Conference “Land Registry Law – The Final 2013 Novelty Draft” that was held in Sheraton Hotel in Zagreb on 16th April, 2013. Taking into consideration the importance and the significance of the arrangement of land registries in the Republic of Croatia, the interest for this Conference expressed by a huge number of participants was not a surprise.

The Deputy Minister of Justice of the Republic of Croatia, **Vanja Bilić** held the introductory speech about the **reasons for adoption of the final draft of the novelty of the Land Registry Law as well as about new institutes** introduced with the stated draft. He pointed out fastening and simplifying of the procedure within the land registry area as main reasons for adoption of the Final Novelty Draft. He also briefed novelties brought by the Novelty: establishment of the Supreme Land Registry Court (with the aim of unification of the court practice and providing for legal security), keeping land registries exclusively in the electronic form, status of court counsellors and land registry officers, introduction of an objection as a new legal remedy, electronic application and

electronic resolution, issuing of land registry extract independently of the place of jurisdiction and the possibility of participation in financing of the arrangement of land registries.

The following topic refereeing to novelties in the **establishment and updating of Land Registry** was exposed by **Damir Kontrec**, a judge of the Supreme Court of the Republic of Croatia. The Novelty defines precisely when a land registry is to be established and when it is to be updated or supplemented. It is specially pointed out that land registries can be established and updated for parts of cadastral municipalities as well. To obtain harmonisation among real estate registries, it is proposed that the file making procedure for the certain procedure of establishment or updating of a land registry should be performed simultaneously with a cadastral procedure regarding exposing of cadastral data collected during the procedure of new measuring to public insight. He also talked briefly about the **land registry validation procedure** (transfer of the property from the old social ownership system), that applies after completion of all the files of a new land registry that is being established, updated or supplemented (one of important news here is the fact that the possibility of nomination of a temporal representative does not exist anymore).

Nives Radišić, the president of the Land Registry Department of the Municipality Civil Court of Zagreb, talked about **land registry note types proclaimed by the Novelty and about claims in the land registry proceedings**. New types of notes are introduced (the note of the proceeding initialled at a Court or an Administrative Body and the note of objection as a legal remedy in the land registry proceedings) and some existing notes are updated. She specially emphasised the note in the proceedings initialled at a Court or an Administrative Body, because with this institute parties that initialled certain proceedings could have the possibility to assure as favourable position in the priority order as possible for registration of that entry defined in such proceedings when they are not able to realise entering of the note of the proceedings. In the second part of the presentation, the presenter talked about claims based on the Land Registry Law (claim for cancellation of a land registry entry, claim for correction of a land registry entry). **It is important to mention here that on the basis of the Novelty, the Supreme Land Registry Court would be competent for making decisions on claims stated against the decisions made in proceedings opened on the basis of claims submitted pursuant the Land Registry Law.**

Blaženka Mičević, the Deputy Head of the Government Geodetic Authority, talked about **cadastral data in the Novelty**. In her speech, she emphasised the role of the Government Cadastral Authority in the system of collecting, updating, control and distribution of special data as well as the importance of those data for establishment of a modern and updated registry on the legal status of real estate. She said that it was necessary to invest strengths into construction of the common information system of the land registry and the cadastral with the aim of creation of a unique data basis and applications for keeping and maintenance of the cadastral and the land registry. Such cadastral and land registry would show a complete condition of real estate valid for legal transactions and it could be obtained only with participation of all the competent institutions.

Significant amendments of the Land Registry Law are proposed for the area of delivery and legal remedies. Mentioned proposed amendments were explained in the presentation of **Đuro Sessa**, a judge of the Supreme Court of the Republic of Croatia. Regarding delivery, the Novelty arranges persons to whom decisions of land registry proceeding decisions should be delivered, electronic delivery and the institute of power of attorneys for receipt of documents. **It is important to say that the Novelty excludes application of provisions of the Civil Procedure Act regarding the delivery as a subsidiary regulation**. Pursuant the Novelty, the delivery should be **serviced to the address stated in the Land Registry Entry Proposal**. When the receiver was not found at the stated address, the delivery would be serviced to any major person present at the address (it was important that the person present at the address and his/her relationship with the receiver was not important what could result in problems in practice) or the delivery could be serviced into a mail box. **Regarding legal remedies** the most important novelty consists of **introduction of an objection as a new legal remedy**. An objection is filed against a decision made by a court counsellor or authorised land registry officer and it is a demonstrative legal remedy. The judge should make a decision about it. As an exception, it filing is allowed against the decision made by a judge as well.

At the very end, **Ana-Marija Končić**, the head of the Land Registry Department of the Municipality Court of Sesvete talked about **novelties in the individual valid land registry proceeding**. At the beginning she emphasised that it was an important part of the land registry law because more land registry conditions were arranged through individual procedure compared to systematic arrangements. Pursuant the Novelty, the individual validation land registry procedure is applied if there is a justified interest and if it can be applied to one or more land registry files. Documents that are not public or that are not certified by the public notary can be also submitted as proves making the justification for initiation of the procedure valid. **Novelties also refer to the delivery on decisions about initiation of individual land registry proceeding**, the note on initiation and opening of individual land registry procedure, terms for submission of applications and objections. It was specially pointed out that the **institute of the temporal representative was cancelled** and that should contribute to the decrease of problems and standstills of individual land registry procedures.

Prepared by: Hrvoje Sokolić, KONČAR – POWER PLANT AND ELECTRIC TRACTION ENGINEERING, Inc.

5. IBAN in National Financial Transactions

SEPA Project

The usage of **IBAN** (International Bank Account Number) is an important precondition for participation of credit institutions having the main place of business in the Republic of Croatia in SEPA Project.

SEPA - Single Euro Payments Area is based on the idea of formation of a unique payment zone for payments executed in Euro for 32 states (27 EU Member States, Island, Norway, Switzerland, Monaco and Lichtenstein) enabling the customers, business entities and public government bodies to make and receive payments in Euro under the same basic conditions, rights and obligations regardless their location.

Establishment of SEPA Project is possible if technical, legal and market obstacles arising from the time before implementation of the common currency are solved.

The procedure of implementation of Euro as a common currency will be finished only when payment transaction users are able to perform no cash payments in the Euro area from one transaction account from any location within SEPA area using a unique set of payment instruments in a simple, efficient and safe manner in which domestic payment transactions are being made nowadays.

SEPA migration will be completed when SEPA products replace corresponding domestic payment products. During the migrations, the existing and SEPA payment instruments are offered simultaneously.

Due to a slow migration procedure and the necessity of interventions into national legislations in the EU, 1st February, 2014 is determined as a final term for the migration in the Member States in the Euro area and, 31st October, 2016 for Member States outside the Euro Zone.

IBAN in National Payment Transactions

IBAN is the international transaction account number of the payment transaction user and it consists of the code of the state and bank and the bank account as well as of a unique number for check up.

It enables recognition of the state, credit institution maintaining the transaction account from the transaction account structure as well as from the payment transaction user account party to whose name the transaction account is open.

Pursuant the Payment Transaction Law, transaction accounts are:

- a current account or a giro account opened and maintained by a credit institution in the name of one or more payment transaction users;

- an account maintained by a credit institution for the needs of performing payment transactions in its own name.

The transaction account IBAN structure in the Republic of Croatia consists of 21 alpha numerical signs to the difference of the "old" BBAN transactional account that consisted of 17 digits.

The advantage of implementation of IBAN is performance of over-border transactions with the same safety and under the same rules and prices as national payment transactions.

In addition, a unique and unrepeatable identification of each transaction account of payment transaction service users at the level of the whole system to the difference from the "old" BBAN that enabled unrepeatability at the level of only one credit institution, the same payment orders and the same payment instruments are assured independently whether they are intended for national or international transactions.

Credit institution obligations and IBAN implementation terms

Every credit institution **has been able to** enable usage of IBAN structure transaction accounts for **execution of national payment transactions** and it **has been able to** open new transaction accounts based on IBAN structure for execution of national payment transactions since 1st June, 2012.

IBAN structure transaction accounts **has been obligatorily used since 1st June, 2013** for execution of all financial transactions, and every credit institution has been opening transaction accounts **exclusively** based on IBAN structure.

During the transition period from **1st June, 2013 to 1st June, 2014**, every credit institution is obliged to receive payment orders comprising the receiver's account based on the "old" (BBAN) structure, process it and execute it **as if it was made in IBAN structure**.

Prepared by: Branka Andrassy, TESLA ŠTEDNA BANKA d.d.

6. Belgium Victory for Legal Privilege in local competition matters

- A crucial step of the Belgian In-House Lawyer Institute towards the success. Despite the Akzo ruling, Belgium Competition Authority cannot breach Company lawyers legal privilege in Belgium. Remember that Belgium has a unique model whereby company lawyers can register to the **IJE** and enjoy legal privilege. Further to a judgment dated on 5 March 2013, the Brussels Court of Appeal has recognized that documents produced by in-house lawyers are covered by legal privilege in investigations under the Belgian Competition Act.

The judgment diverges from the established case-law of the European Courts and goes against the decisional practice of a number of national competition authorities.

The Belgian Competition Authority has already stated that it is assessing the possibility of appealing the judgment to the Supreme Court. Diverse comments have already been released internationally including the one from [Clifford](#).

ECLANEWS, March, 2013

7. Another Victory for Legal Privilege for In-House Lawyers in Netherlands

Dutch Supreme Court confirms legal privilege for in-house attorneys

The Dutch Supreme Court recognised the existence of a general legal privilege for in-house attorneys in a case argued by Freerk Vermeulen of NautaDutilh for the Dutch multi utility company Delta.

In a landmark case decided on 15 March 2013, the Dutch Supreme Court recognised the existence of a general legal privilege for in-house attorneys. On 14 September 2010 the European Court of Justice had refused to accept such a privilege for Dutch in-house attorneys in the context of EU competition law (Akzo Nobel/Commission). According to the ECJ, the employment relationship precludes an in-house attorney from being sufficiently independent to justify granting him/her the privilege. Following that decision, the burning question was whether the Dutch Supreme Court would adopt the same approach for in-house attorneys if they are active in areas of law other than EU competition law. The answer is no: the Supreme Court has now firmly established a legal privilege for in-house attorneys who have been admitted to the bar and comply with requirements guaranteeing their independence.

The Dutch Bar Association (Nederlandse Orde van Advocaten) and the Dutch Association of In-house Attorneys (Nederlands Genootschap van Bedrijfsjuristen) supported the right of in-house attorneys to invoke the privilege. There are over 500 in-house attorneys in the Netherlands who have been admitted to the bar. The Supreme Court's decision safeguards the confidentiality of their advice and communications insofar as they are acting in the interest of their client-employer as an attorney.

www.ecla.eu

In Zagreb, April, 2013

The Association of Corporate Lawyers
www.udruga-korporativnih-pravnika.hr