

NEWSLETTER NO 47
Of the Association of Corporate Lawyers

WHAT WAS HAPPENING DURING MARCH AND APRIL, 2014

- 1. We Continue Presenting Our Colleagues from ECLA**
- 2. Association Annual General Meeting**
- 3. ECLA –EEJÜ Conference and ECLA General Meeting**
- 4. Private Legal Mediation in the Republic of Croatia**
- 5. EU PAYMENT ORDER – EU Directive 1896/2006**
- 6. Data on the Association in Wikipedia**
- 7. Association Membership**
- 8. Law Faculty Student Practical Work**

1. We Continue Presenting Our Colleagues from ECLA

In this Newsletter we present you colleagues from Belgium.

IJE (Institut des Juristes d'entreprise) – the Belgian Corporate Lawyer Institute



The Belgian Corporate Lawyer Institute is an organisation founded by law and managed by the Managing Board consisting of 10 members from the Dutch speaking area and 10 members from the French speaking area.

The Managing Board elects its members into the Executive Board in charge for every day management of the Institute. The Executive Board consists of a president (a Dutch and a French speaker in turns), 2 deputy presidents, two secretaries and a treasurer headed by a director.

The current president is Hugues Delescaille, a lawyer of Cliniques de l'Europe. His term of office ends on 31st December, 2015. Deputy presidents are Martine Delieurieux and Saskia Mermans.



Membership rights and obligations

The law of March 2000 (amended in 2010) defines rights of the Institute. The right to be emphasised is if the right that members can use the title of the corporate lawyer and when the advice is given by such a lawyer, it is protected with the legal privilege and it cannot be used in a suit against the company employing the lawyer. That means that such an advice cannot be a subject of a legal suit initiated by the regulator. That is the most important content of the Law on the Institute assuring corporate lawyers the freedom to express legal opinions and attitudes warranting independency of the legal profession. It also especially emphasises that the Company employing corporate lawyers has to take measures to assure independency to stated lawyers identifying necessary documents in an appropriate manner to prevent their uncontrolled circulation.

The amendment of the law of 2010 assures the right to deontology to be respected by members. A disciplinary commission is institutionalised and nominated by judges selected by the Belgian king.

Further on, the Institute has task to connect corporate lawyers with other law professions, judges, public notaries and attorneys-at-law. Cooperation with attorneys-at-law is especially important and therefore the Institute has signed agreements with the Francophone and Germanophile attorneys-at-law pursuant which attorney-at-law trainees can work a part of their internship in the economy and vice-a-versa, young corporate lawyers can work a part of their internship at an attorney-at-law office. Agreements protect confidential data exchanged among attorneys-at-law and corporate lawyers.

The Institute provides for training, mentor programmes supported by experienced lawyers, specialist programmes for its members. Well organised Corporate Lawyer Day should be also emphasised.

It is important to note that managing boards of companies employing corporate lawyers appreciate the importance of such lawyers and the importance of the Institute.

The Institute has 1700 members.

2. Association General Meeting

The Annual Meeting of the Association will be held in the premises of the Croatian Chamber of Economy at No 5-7 of the Nova Cesta Street at 12:00 a.m. on 23rd May, 2014. A lecture organised by the Association will precede the Meeting. One of actual topics is proposed for the lecture: pre-bankruptcy agreement / actualities from round tables on the law from the Croatian Academy of Arts and Sciences.

We will send the Meeting Agenda to members together with the invitation to participate in the General Meeting.

3. ECLA –EEJÜ Conference and ECLA General Meeting, Talinn, 29th to 31st May, 2014



ECLA-EEJÜ Conference and ECLA General Meeting will be held in Talinn from 29th to 31st May.

We invite all the members to participate in the Conference that will deal with important topics bound to the status of corporate lawyers. The reason why corporate lawyers should participate in conferences and symposiums is not only to make some expert improvement, but also to improve the status of corporate lawyers. The programme is published at the Association web site.

4. Private Legal Mediation in the Republic of Croatia

The Mediation Centre at the Croatian Chamber of Commerce organised the 2nd Round table on mediation under the name “Private Legal Mediation in the Republic of Croatia – Anatomy and Perspectives” (further on referred to as the “Round Table”). The Round Table was held on 21st March, 2014. The Round table treated mediation from the point of view of legal solutions, economy and promotion.

Initial lectures having topics “Influence of the mediation procedure to the course of limitation and other terms” (Ivan Antić – Hrvatske pošte d.d. – Croatian Post Office Inc.); “The Beginning and the End of a Mediation Procedure” (Vesna Kovačević Fras, an attorney-at-law) and “Court Mediation Practices” (Tanja Hučera, a judge of the Municipal Civil Court of Zagreb) had the point of view of the “Mediation in the Republic of Croatia Today”. Lectures were followed by a discussion:

Initial lectures having topics: “Mediations Bound to Trading Companies (Gordana Štanfel, Končar Inc.) and “Role of Corporate Lawyers” Josipa Jurinić, Ericsson Nikola Tesla Inc. had the point of view of the “Mediations bound to Trading Companies”. Lectures were followed by a discussion.

Initial lectures having topics: “Perception of the Mediation Procedure by Potential Users” (Mladen Vukmir, an attorney-at-law),



“EU Strengthening Efforts and Member States” (Srđan Šimac, a judge of the High Commercial Court of the Republic of Croatia) and “European Policies: Importance of Managing Boards and Legislation System for the Competitive Economy – Where is Mediation?” (Suzana Kolesar, Croatian Craftsmanship Chamber) had the point of view of the “Promotion of Mediation and the European Union”. Lectures were followed by a discussion.

During the discussion about the stated topics, examples of the good experience by the moment were given as well as the significance of the contribution given by members of the Croatian Chamber of Economy and their corporate lawyers to alternative ways of resolving of disputes with and without international characteristics. Further on Round Table participants recognised the need for articulation and unification of relevant facts bound to trading companies by the Commission for Promotion of Alternative and Out-of-Court Resolving of Disputes in Civil Procedures in which one of the parties is the Republic of Croatia through the Croatian Chamber of Economy.

Consequently, one of the Round Table conclusions was an amendment draft of the Decision of the Government of the Republic of Croatia on Establishment of the Commission for Promotion of Alternative and Out-of-Court manner of Resolving of Disputes in Civil Proceedings in which one of the parties is the Republic of Croatia (Official Gazette No 69/12 and 09/14) in such a manner that a representative of the Croatian Chamber of Economy would be a permanent member of the Commission with the aim to contribute to as efficient resolving of numerous disputes between the Republic of Croatia, i.e. a trading company whose founder or a member was the Republic of Croatia and other trading companies.

Events bound to the Round Table were presented in mass media as well – more specifically in “Privredni vjesnik” (Trading Herald) No 3821 of 31st March, 2014 in the article “Court Disputes are the Luxury the Economy Cannot Afford” (Pages 18 - 19). The article emphasised that the Association of Corporate Lawyers saw the Croatian Chamber of Economy as a natural partner gathering the Croatian Economy and it worked hard on establishment of the Corporate Law at the Croatian Chamber of Economy with the aim of strengthening of the position of corporate lawyers.

Prepared by Gordana Štanfel, LLB, Končar – Electrical Industry Inc.

5. European Order for Payment – Regulation (EU) No. 1896/2006

When Croatia acquired the status of a full European Union Member State on 1st July 2013, the **Regulation (EU) No. 1896/2006** having the name “European Order for Payment Procedure” started to apply to collection of cash claims having a defined amount. The Regulation applies to cross border civil and commercial cases regardless the type of the court. The stated regulation defines the content and the procedure of issuing of an order for payment and the manner of proceedings with it and its main sense is making a cross border case easier. It is important that the cash claim is not disputable for the European Order for Payment.

The European Order for Payment applies to the following cases: ownership rights from marriage relationships, inheritance rights, bankruptcy and winding up procedures, social insurance, out of contract claims. The Regulation defines the cross border transaction as any case in which at least one party has its permanent or temporary residence in another member state regarding the member state where the court treating the case is placed. Identification of a temporary residence and a regular permanent residence is defined by **Regulation No 44/2001** on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Regulation Brussels I).

An application for issuing of an order for payment should be submitted on a standardised form that is a constituent part of the Regulation 1896/2006. The form comprises data on clients’ names and addresses, their representatives, court to which the application is submitted, the amount of the claim in the sense of the capital and the interest, the interest rate, time period for which the interest is claimed. The term of the state of origin is also defined as the state where a European Order for Payment is issued. The term of the enforcement member state means the state in which the enforcement of the due and enforceable order for payment is required.

The statement given by the prosecutor of this form procedure is interesting and it says that he has stated all the data on the basis of its best knowledge and conscience as well as that he accepts any sanctions foreseen by the origin member state jurisdiction for intentional erroneous statement of data. When the prosecutor submits a European order for payment, he/she can state that in case of the defendant's objection, he/she refuses to conduct the case as a regular case.

The Regulation foresees submission of the application in a hard copy, but it also foresees application of an electronic communication if the origin member state accepts it.

The origin court only examines the proposal to see whether it complies with the prescribed content and whether it comprises elements prescribed by the Regulation. In case of an incomplete application, the court can ask the prosecutor to supplement data within the defined time period. Unless the prosecutor performs the required supplement, the court will reject the European order for payment completely. The Court issues the European order for payment within the time period of thirty days from the date of submission of the application.

The data of the Commercial Court say that some 20 European orders for payment were received and issued during the time period from 01/07/2013 to the end of the year.

The whole procedure is a form procedure and the Regulation foresees forms from A to G:

- Form A – EUOP application
- Form B – Requirement submitted to the application to fill in or to correct its EUOP application
- Form C – Applicant's proposal to amend its application to EUOP
- Form D – Decision on rejection of a EUOP
- Form E – European Order for Payment
- Form F – Objection to EUOP that is not translated correctly and a corrected one should be used
- Form G – Statement on enforceability

It is a huge change of operation for our legal system not only for parties in a procedure, but also for the court since all the communication is reduced to numerical identifications from forms such as for example: 01, 02 etc. and you should go to the form to read what it is about. It is also of a high importance to read well instructions for filling in of Forms that are attached.

It is also recommended to check up the translated form in a foreign language as well, since there are translating mistakes. Training course lecturers prefer German language and not English, since it is the closest to the Croatian legal system.

Important Internet sites where you can find forms and instructions are the following ones:

https://e-justice.europa.eu/content_european_payment_order_forms-156-en.do

https://e-justice.europa.eu/content_order_for_payment_procedures-41-en.do

http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_filling_en.htm

<http://www.tszg.hr/cro/TSZG/Djelokrug-Suda/Parnica/Europski-platni-nalog>

The European Commission is in the middle of performance of the project of improving of European Union web sites and some of the above mentioned sites will be closed, while there are indications that a web site under the name of euro just is going to be additionally developed.

The only court competent for making decisions on applications for issuing and examining of European Orders for Payment, as well as for issuing of a certificate on EUOP enforceability in the Republic of Croatia is the Commercial Court of Zagreb.

Regarding submission of the European Order for Payment in the Republic of Croatia, the submission is performed pursuant the Civil Procedure Act, Article 507, Para k. If a European Order for Payment is to be submitted in another member state, it will be submitted pursuant **Regulation No. 1393/2007** applying Articles 503 to 503, Para d. A special attention should be paid to the interpretation of terms and presumptions from the Croatian Law where the submission of documents to the post office is supposed to be the date of submission and that presumption does not apply to all the member states. The same is with the time period considered as a month. When we calculate parts of such a month, we should take that a month has thirty (30) days. It should be also taken into consideration that public holidays, Saturdays and Sundays are also included in such periods when they are not explicitly exempted or expressed in working days.

If a defendant submits an objection to the EUOP, the procedure will be conducted pursuant provisions of Articles 445, Para a, and 451 to 456 of the Civil Procedure Act. The objection period is 30 days from the date of submission of the application. The court examines the EUOP and makes a decision against which a claim is not allowed. If it is found out that a

EUOP is null and void, the procedure will be stopped. It is important to emphasise that it is not allowed to ask return to the previous conditions due to missing of a term.

An enforceable EUOP issued by the Court in the Republic of Croatia is a document on the basis of which enforcement can be asked for as on the basis of an enforceable decision of a Croatian court.

There are no procedures for acceptance of other member state court decisions for EUOP.

The debtor has an obligation to attach a translation of its EUOP to Croatian language certified by an authorised person.

The full membership of the Republic of Croatia in the European Union has make easier and simpler for physical and legal persons who make business with such persons in other member states (with the exception of Denmark) to collect its due and indisputable claims in a compulsory manner applying the EU legislation. Experience of EU member states shows that the European Order for Payment is used more frequently and that it is quicker and more efficient than initiation of a regular procedure.

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6. Membership in the Association

The Association Presidency Session held on 25th February, 2014 pointed out the problem of a high dropout rate of the Association membership. On 30th April, 2014 the Association had 188 members and a year ago 197 members, while in 2012 there were 215 of them. Reasons of stopping of membership were failure to pay the membership fee for 23 members who had not paid any fee from the entrance into the Association, retirement or changing of the employer without informing the Association about new contacts.

We invite all the members to be active in Association activities and attracting new members.

We kindly ask the Association members to inform the Association about any changes of their contacts.

We kindly ask the Association members to pay their annual member fees regularly since it is one of obligations each member accepts entering into the Association and it is also a precondition for taking part in the Annual General Meeting.

We are waiting for your comments, proposals and suggestions at the e-mail address of the Association.

7. Data on the Association at Wikipedia



As we informed you in a previous issue of the Newsletter, the first data on the Association of Corporate Lawyers have been published at Croatian Wikipedia. You can read published data at the address: http://hr.wikipedia.org/wiki/Udruuga_korporativnih_pravnika.

We can boast that we have published the data at the same time when ECLA published their data at English Wikipedia at the address:

https://en.wikipedia.org/wiki/European_Company_Lawyers_Association)

We are inviting you again to make supplement drafts to be published.

8. Law Student Practical Work

Within the frames of cooperation between the Law Faculty and the Association of Corporate Lawyers three students of the fifth year (Ivana Babić from Sveta Nedelja, Josipa Rosandić from Sibirj and Anita Sučić from Zagreb) performed their practical work in Company KONČAR – ELECTRICAL INDUSTRY Inc. during the time period from 17th March to 4th April, 2014. The operation of the Legal Department of the Company was presented to them including all legal areas present in the Company. They were resolving actual legal tasks and issues. Students

expressed intense interests for practical part of the law and performed their practical work with a professional approach to the profession and working tasks.

Prepared by: Ana Zbiljski, LLB, Končar – Electrical Industry, Inc.

In Zagreb, April, 2014

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