

NEWSLETTER NO 49
Of the Association of Corporate Lawyers

**WHAT WAS HAPPENING DURING JULY, AUGUST, SEPTEMBER AND
OCTOBER OF 2014**

1. 5th ICC International Commercial Mediation Conference – PLAN TO SUCCEED
2. 6th Congress of Lawyers of Europe and Mediterranean – The Justice and the Economic Growth
3. Legal Practicum
4. 24th Conference of the Zagreb Stock Exchange – Conference of the Fund Industry
5. Incoterms 2010 and ICC International Agreement Models
6. 29th Symposium “Actualities of Croatian Legislation and Legal Practice”

1. The 5th ICC International Commercial Mediation Conference – PLAN TO SUCCEED

The international Commercial Mediation conference organised by ICC was held in Paris on 18th September, 2014. Iskra Gudan and Ana Zbiljski, members of the Association took part in the Conference. In addition to colleagues from the European Union (France, Italy, Spain, Belgium, Germany and Greece), participants from all over the world (USA, United Arab Emirates, Kuwait, Jordan, Nigeria, Canada, Israel and Australia) attended the Conference.

After greeting and introductory speeches, short lectures were held followed by actual exercises and practical works. The following topics were discussed: 5 keys for successful negotiations and making a deal, how giving of the first offer during the negotiation procedure can help us to achieve the goal, mediation 2014: real values of commercial mediation, be ready for making a settlement: how trading companies can define their interests, efficient preparation for making settlement in complex cases.

The Conference emphasised exactly practical exercises performed by participants at “one to one” principle applying subjects heard during short introductory lectures. After each exercise, results were discussed in the sense of preparations for negotiations and giving of a right offer in the negotiation procedure, and additional advice and instructions were given to participants.

Some of lecturers at the Conference were: Andrea Carlevaris (Secretary General of the ICC International Court of Arbitration), David M. Echenberg (Senior Legal Counsel at General Electric, Power and Water), Teresa Garcia Reyes (Senior Counsel at GE Oil and Gas), Jonathan B. Marks (full-time mediator and arbitrator in USA).

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2. 6th Congress of Lawyers of Europe and Mediterranean – The Justice and the Economic Growth

The Foundation for the Continental Law organised the 6th Congress of Lawyers of Europe and Mediterranean – The Justice and the Economic Growth cooperating with the Embassy of the Republic of France, the Embassy of the Republic of Serbia and the Legal Academy of the Republic of Serbia under the sponsorship of the Ministry of Justice of the Republic of Serbia at the Law Faculty of the University of Belgrade from 25th to 26th September, 2014.

Speakers at the Congress were representatives of the organiser and prominent lawyers of European companies, attorneys at law, public notaries and executors from France, Portugal, Poland, Germany, Italy, Belgium, Morocco, Rumania, Algiers, Egypt and Hungary.

The general target of the Congress was emphasising of the contribution of the Continental Law to the economic growth and social harmony. The topic of this year Congress was the Justice and the Economic Growth and it was considered from four different aspects: expert education of representatives of legal professions, expertises and expert witnessing, control and execution of court decisions.

In their lectures speakers emphasised relevant factors:

- Respecting of the Continental Law and recognising its German and Roman tradition, referring to the long term application of the OGZ (Austrian Civil Code) of 1811 (1502 Articles; novelties of 1914, 1915 and 1916) and Code Civile (French Civil Code) of 1804;
- Recognising economic interests through international private law explaining it with words that the area of the international private law is not a play ground for attorneys at law;
- Respecting the profession during court proceedings; and
- The importance of pre-court proceedings.

They emphasised the need to unburden courts and paid a special attention to the need of specialisation. As examples for the need of subspecialisation, they listed necessary special micro economic knowledge and knowledge from the area of market competing. They also discussed the issue of the tasks of law faculties asking themselves whether a special subject should be introduced to law faculties – the History of the Profession and opening the dilemma: whether the aim was a lawyer of a high general theoretical education or a professional lawyer skilled for a concrete working position?

Conclusion: Is the consciousness of lawyers in the sense of their own profession was waking up or the consciousness of the sense of the legal profession was waking up in the society?

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3. Legal Practicum

IUS – INFO Legal Portal organised a Legal Practicum – European Court and Enforcement Procedures. The practicum was held in Zagreb, on 10th October, 2014 and chaired by Jelena Čuveljak, a judge of the Commercial Court of Zagreb.

The Practicum started with presentation about the Lisbon Treaty that came into force on 1st October, 2009. Pursuant the Lisbon Treaty, the European Community stopped to exist transforming itself into the European Union. The legal base for establishing of the European Union was presented by two foundation agreements – Treaty on European Union and the Treaty on the Functioning of the European Union. Both treaties are equal and they have the same legal strength. The Lisbon Treaty expressly states authorities of the EU and divide them

into exclusive, shared and complementary. Exclusive authorities are specified individually, shared authorities are prevailing in the jurisdiction of EU Member States, while all Member States shall adopt complementary authorities and unless a Member State adopts a complementary authority, it does not apply it (e.g. Denmark).

At the Legal Practicum we were introduced to useful Internet links about: EU law summaries, EU institutions, EU book shop, EU court practices, EU Official Journal, Eurojurist web site, e-justice (fill-in forms for civil court proceedings), court atlas, the web site that was not up to date.

The attention of Practicum participants was drawn to the fact that the majority of jurisdictions of EU Member States did not have a provision on legal pleadings and terms in the sense it was prescribed by the provision of Article 113 of the Civil Procedure Law.

Bruxelles I Regulation on the court jurisdiction, recognition and enforcement of court decisions in civil and commercial matters was emphasised as well as the fact Bruxelles I Regulation would abolish the recognition as a condition for enforcement and that the burden of the evidence would be shifted from the enforcement creditor to the enforcement debtor starting from 10th January, 2015.

Regarding the law applicable to agreements as a source of collision rules on agreements, the Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 (Rim I) that came into force on 19th December 2009 was pointed out, while Regulation (EC) No 864/2007 of the European Parliament and of the Council on the law applicable to out of agreement obligations of 11th July 2007. (Rim II) that came into force after one and a half year vacation on 11th January, 2009 applies to out of agreement liability for damages. Rim II is an instrument of europeanisation and communitisation that unifies and federalizes the European international criminal law with the aim to enhance its predictability and legal security.

Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12th December, 2006 and provisions of the Civil Procedure Law apply to the European Payment Order Procedure. The stated Regulation prescribes the content and the procedure of issuing a European Payment Order and the manner of dealing with it, and its main aim and sense is making cross border proceedings regarding indisputable cash claims easier. The Commercial Court of Zagreb is the only one in charge of issuing and challenging of the European Payment Order as well as for issuing of the enforceability certificate. The Payment Order will be submitted within the Republic of Croatia pursuant the rules of the Civil Procedure Law, and within the European Union pursuant Regulation 1393/2007. In case the defendant submits an objection, the procedure will continue as a regular procedure pursuant the Civil Procedure Law. The European Payment Order that has achieved the feature of enforceability in the Republic of Croatia represents an enforceable document on the basis of which enforcement can be required as on the basis of any other enforceable decision reached by any Croatian court.

It was pointed out that an amendment was expected regarding the European dispute of a low value in such a manner that the value would be raised from EURO 2,000.00 to EURO 10,000.00.

It was stated for the European Enforceable Order that it was issued exclusively for indisputable claims in civil and commercial matters.

Regarding the European Fill-In Form Law (European Payment Order and European Enforcement Order) it was emphasised that the presentation of an attorney at law was not necessary in Member States where it was obligatory, neither.

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4. 24th Conference of the Zagreb Stock Exchange – Conference of the Fund Industry



**IZAZOV PROMJENE:
OTKRIVANJE BUDUĆNOSTI**

8. KONFERENCIJA FONDOVSKE INDUSTRIJE
24. KONFERENCIJA ZAGREBAČKE BURZE

15. - 18. LISTOPADA 2014.
HOTEL LONE ROVINJ, HRVATSKA

The Zagreb Stock Exchange and the association of companies in charge of retirement fund management and the association of companies in charge of investment fund management at the Croatian Chamber of Economy united their strengths two years ago and created a

conference that became a central place of meeting of the domestic and regional financial community.

This year Conference of the Zagreb Stock Exchange and the fund industry under the name “**Challenge of Change: Discovering Future**” was held in Lone Congress Centre at Rovinj from 15th to 18th October, 2014.

23 speakers and more than 350 participants from all the branches of the financing industry, i.e. domestic and foreign experts participated in the Conference and discussed the development and problems of economy.

Ivana Gažić, the Zagreb Stock Exchange Managing Board President, opened the Conference in the name of the sponsor emphasising that the main aim of this year Conference was to discover what was future bringing, how to find a way to contribute actively to the growth of the economy and which was the role of the capital in all the stated.

Mr Petar–Pierre Matek, the president of the Managing Board of the Croatian Agency for Supervision of Financial Services addressed participants with an introductory note, while Prof Ph Dr Boris Vujčić the governor of the Croatian National Bank gave a speech opening the working part of the Conference.

Lecturers from CommerzBank, Merrill Lynch Global Research, UniCredit Research, National Association of Pension Funds and Pensions Europe talked at the Conference.

It was emphasised that growing market governments should motivate demographic renovation if they liked to provide for a long term growth potential and that alimentation sector and consumer consumption sector and the health care sector would be the most attractive magnet for investment during the following 15 years.

The Zagreb Stock Exchange Round Table was held with the topic of the future and further development of the financial market. It was emphasised that there would be no recovering of the market without economic growth.

Lectures with the topic of a new legislative frame for the pension system and the whole development of the pension system were given during the second part of the Conference by Prof Dr Sc Mirando Mrsić, the Minister of Labour and Pension System and experts of the Bucharest Stock Exchange. Decreasing and aging of labour force was a process that had already started in Croatia. The current condition of the demographic projection showed that some 300,000 workers would miss in the Republic of Croatia in a 30-year-time.

It was emphasised that the condition in the pension system was not sustainable in the long run. Without an economic growth, it also required education of the population and necessary changes educating each person from the financial point of view and resulting in persons responsible for their own future.

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5. Incoterms 2010 and ICC International Agreement Models

The Croatian National Committee of ICC Croatian and the Croatian Chamber of Economy organised a seminar with the topic “Incoterms 2010 and ICC International Agreement Models” that was held on 22nd October, 2014. Koen Vanheusden, the Director of the Belgian Agency for International Trade and accredited lecturer for Incoterms rules, a leading member of the Commission for Commercial Law and Practice of ICC and the chairman of the working group for a model of the international sales agreement was the main lecturer.

The first part of the seminar referred to Incoterms clauses, while the second part referred to ICC contract models.

The title Incoterms represents an abbreviation for International commercial terms. These are official rules of ICC - International Chamber of Commerce for interpretation of commercial terms with the aim of managing of the international trade without unnecessary obstacles.

The lecturer introduced all 11 Incoterms clauses to seminar attendants explaining their application on exact examples through a discussion with the seminar attendants and on the basis of their own experience in contracting.

In the lecture he pointed out that a larger scope of the job in the sense of acceptance of additional obligations meant a larger security and a larger profit. He gave an example when the seller accepted the obligation of contracting of forwarding services because the seller had better information about forwarding service conditions and better contact with forwarding agencies in the area where the forwarding services were being contracted in that particular

case. The seller could calculate acceptance of the stated obligations into the price of its products. At the other hand, the budget was the most important fact for the buyer, and allocation of costs in a way resulting in savings for both parties would be suitable for it as well. When the seller had better information about the forwarding services in its area, it was reasonable to suppose that it would contract high quality forwarding services at an optimum price that would be cheaper than the forwarding services contracted by the buyer.

During the second part of the seminar, the lecturer presented a new ICC Model International Sale Contract, as well as ICC Model Agency Agreement, ICC Model Distributorship Agreement, ICC Model Occasional Intermediary Agreement and ICC Model Confidentiality Agreement. Special clauses and initiatives such as ICC Anticorruption Clause and ICC Force Majeure Clause were also discussed.

The lecturer also briefed resolving of disputes between contracting parties warning that an arbitration procedure seemed as a logical choice, but that it could last quite a long time and potentially it could cause higher costs than court proceedings.

Finally the lecturer brought the topic he talked about closer to the seminar attendants applying the lecture to situations from business practice.



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6. 29th Symposium “Actualities of Croatian Legislation and Legal Practice”

The Croatian Society for Civil Law Sciences and Practice cooperated with executive sponsors, company Organizator d.o.o. (Organiser Ltd.) Zagreb and the Magazine “Law in Economy”, and they organised XXIX Conference – Actualities of the Croatian Legislation and Legal Practice (European, Civil, commercial, enforcement and administrative law in practice) that was held in Opatija during the time period from 23rd to 24th October, 2014.

According to a free estimation, a little smaller number of participants was present compared to previous conferences, i.e. some 250 to 300 lawyers from legislative bodies, state attorney, administration, attorney at law and economy. Representatives of the Association of Corporate Lawyers from Hrvatska elektroprivreda d.d. (Croatian Power Authority Inc.) Zagreb, Instituta građevinarstva Hrvatske d.d. (Croatian Civil Engineering Institute Inc.) and Končar – Elektroindustrija d.d. (Končar – Electrical Industry Inc.) Zagreb were present as well.

After an introductory word of the editor of “Counselling”, Dr Sc Ivo Grbin, Mrs Sandra Artuković Kunšt, the Deputy Minister of Justice, talked. She pointed out that the condition of the legislation influenced the complete social life and consequently the economy as well and that a rationalisation of the legislation and a systematic reorganisation were in the due course in accordance with that influences. She especially emphasised a specialisation of operations and finalisation of application of IT within the systematic reorganisation. She pointed out the reform of the procedure of appeal within the specialisation segment through introduction of specialised second instant councils that would be well acquainted of the complex and numerous EU *acquis communautaire*. Regarding the stated it was estimated that only three County Courts would be in charge of resolving of appeals in land registry matters with the place of venue in Varaždin, Velika Gorica and Split, while County Courts in Zagreb, Split, Rijeka and Bjelovar would be in charge for resolving of appeals in labour disputes. Regarding finalisation of the introduction of IT technology, she specially emphasised that the possibility of holding video meetings and establishment of hitro.hr for IT communication was foreseen for the beginning of 2015. The stated reorganisation should result in a decrease of costs that was also expected for file delegations.

Explaining her paper under the title “European Regulation of the Submission in the Proceedings at Croatian Courts” that referred to civil and commercial matters in EU Member States, Vesna Katarinčić, the president of the Municipality Court of Opatija, draw a special attention of the present to provisions influencing the institute of the “note of delivery”. Namely, it went out from the provision of the Regulation, Article 20, that provisions of the Regulation prevailed over any other arrangement and when the delivery of documents was made in accordance with the provisions of the Regulation, it was not necessary to ask for a delivery note with the addressee’s signature as a delivery evidence. She also drew the attention of the present to special rules on delivery for small value disputes that applied when the value of the

dispute at the moment when the requirement arrived to the competent court did not exceed the value of EURO 2.000,00.

Dragan Katić, a judge of the Supreme Court of the Republic of Croatia presented his paper with the title "Open issues of implementation of the Civil Procedure Law of 1st April, 2013 – Do we need an amendment" discussing consequences of numerous new amendments and their contents. Too frequent interventions into the procedural law could put in question and often put in question the unique application of the law and equality of all the stakeholders in its application as the nature of the matter. Numerous amendments happened in the situation when the Supreme Court had 13,000 unsettled revision matters. Aims of changes were fastening of the legal procedure. That was tried to achieve through division of each lawsuit into two parts (a preliminary proceeding and the main hearing) and new facts and new evidences could not be stated any more at the main hearing and the countersuit should be filed before the conclusion of the preliminary proceeding. When the preliminary proceeding is concluded, the countersuit is an independent suit and instead of a unique proceeding we have two lawsuits. After the expert witness gives his/her opinion, the claim could not be increased without consent of the defendant, since it would be a change of the suit. Lack of consent of the defendant opens the issue of a pending suit and the statute of limitation that could result in real life with the fact that a party loses the indemnity through the costs of the procedure. The severe litigation discipline burdens the party. Further on, the institute of "retirement of the procedure" was deleted, terms for postponement of hearing and restitution were shortened and as a rule only one hearing, the main one is scheduled. Provisions of Article 335 of the Civil Procedure Law (Filing, publication, written compilation and delivery of the decision) – Official Gazette NN 25/13 is *je lex specialis* by its nature since it derogates general crucial provisions on the delivery, and the decision can be cancelled only once. Rules on electronic delivery to commercial courts have been applied, although the electronic delivery does not function in the real world and the low value dispute is decreased to the suit and the reply to the suit.

Reporting about the paper under the title "On the amendment of the Enforcement Law of 15th July, 2014", Prof Dr Sc M. Dika pointed out that the amendment of the Enforcement Law (Official Gazette NN 93/14) came into force partially and partially it would come into force on 1st January, 2015. Further on, the amendment introduced the first instant counsels of 3 judges, it abandoned the institute of denouncing statement and denouncing list of property and it divided incurred and foreseen costs, it introduced new things regarding enforcement through selling of real estates and that provisions on the delivery were incomplete. Regarding the decision of a foreign court, a foreign administration body or a public document the amendment prescribed that the enforcement could be determined and implemented in the Republic of Croatia if they fulfilled presumptions for recognition. Regarding promissory notes the amendment cancelled provisions that had referred to proceedings with promissory notes that were not registered into the Register and it de facto expected that differentiation in proceedings regarding promissory notes would appear to: a) registered in the Register and they would be base for proceeding as per legally valid decision on enforcement and b) not registered in the Register and they would be the base for proceeding as per enforcement decision that is not legally valid yet.

Out of the presentation of other topics, I would pointed out as significant novelties that the amicable divorce became an out of court procedure and the novelty from the land registry law that in addition to the notice of a dispute, parties now have the possibility to register the notice about the suit into the Land Registry pursuant the provision of Article 84.a of the Land Registry Law. The problem of registering of persons that were deleted from court registers was especially emphasised in the Land Registry Law.

This year materials comprised numerous notices given by colleagues, in fact thirty-five written notices that showed numerous actualities present in the legislation and in the legal practice.

Conclusion: It can be concluded from presentation of legal practitioners that legislative solutions and rationalisation and reorganisation of legislation do not result in efficient legal standards.

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