NEWSLETTER NO 63

Of the Association of Corporate Lawyers

WHAT WAS HAPPENING DURING MAY AND JUNE 2017

1. **55th Traditional Reunion of Lawyers at Opatija**
2. **New Law on Amendments of the Law on Procedure with Illegally Constructed Buildings**
3. **NIS Directive**

1. 55th Traditional Reunion of Lawyers at Opatija

The Croatian Union of Association of Corporate Lawyers organised the 55th traditional Reunion of Lawyers – Opatija '17 that was held during the time period from 17th to 19th May, 2017 celebrating a small jubilee of the oldest regular traditional annual meeting of lawyers in Croatia where gathered lawyers discussed and were informed on novelties of the legislation and practices. Unlike previous years, this year the Reunion was opened and conducted by the new president, Prof PhD Petar Miladin, who specially thanked to the former president for his presiding during the majority of time of the existence of the Reunion, to academician, Jakša Barbić, because the Union of Association of Corporate Lawyers had not skipped any year regarding performance of its tasks and activities not even during the biggest challenges and difficulties such those faced during the 2nd World War.

It should be emphasised that the jubilee reunion of lawyers was extremely actual not only thanks to the merit and the inspiration of the new leader of the Union, but also thanks to the huge tectonic disturbances in the economic and political life of the youngest European Union Member State and seeking for answers to the sequentially formed legal situation. Naturally, it was all about the new law on the Extraordinary Management Board in Trade Companies of Systematic Significance for Republic of Croatia colloquially known as "Lex Agrokor" about which we had made a review in the previous, 62nd edition of the Newsletter of the Association of Corporate Lawyers. Accordingly, Prof PhD Jasnica Garašić, as one of the biggest critics of that expediently passed law had the first lecture with the topic "Government Extraordinary Management Board **in the State Associated Companies"** listing a range of reasons for her attitude, such as, for e.g.: weakening and indeed insecurity of the legal position of creditors in the "court" procedure of extraordinary management board, especially when creditors with lower or middle claims were involved, than because of the infringement of the basic principle of the insolvency law on the same legal position of the debtor's creditors, as well as because of devaluation of legal effects of real property law instruments of insuring of claims representing the base for the separate satisfaction right, and especially for the reason of impossibility of recognition of that kind of procedure pursuant the EU Regulation on Insolvent Proceedings and the danger of unrecognition in the states that are not members of the European Union. Prof PhD Garašić pleaded for the abolition of the law and adoption of new and modern rules for insolvency proceedings opened for the members of the group of associated companies and their insertion into the existing Bankruptcy Law. New rules should regulate cooperation and communication among bankruptcy administrators and courts that conducted such proceedings for members of the group of associated companies. The possibility of opening of so called coordination proceedings of the group should be regulated as well.

The topic treated and presented in a very inspired manner "**Suppositions of Challenging of Debtor's Legal Actions Pursuant the General Obligation Law and Bankruptcy Law"** of PhD Antun Bilić proved the necessity of the legislative intervention into the General Obligation Law as well as its adjustment with the Bankruptcy Law. Among numerous reasons, PhD Bilić pointed especially out the reason because of which the bankruptcy administrator could not contest debtor's legal actions after opening of the bankruptcy procedure on the basis of all the presumptions on the basis of which individual creditors had been able to contest them earlier positions, resulting in narrowing the right to contest in the case of bankruptcy instead of its widening and that was just contrary to the Constitution of the Republic of Croatia, Article 49, Para 4, according to which the rights obtained by investment of capital cannot be decreased by any other legal act. The reason for such a discrepancy is the fact that presumptions for contesting of legal actions in the bankruptcy procedure follow literally the German Bankruptcy Law that is adjusted with the German contesting right outside the bankruptcy procedure and that is different from solutions offered by the General Obligation Law, concluded PhD Bilić. Moreover, and again regarding the topic of the "Lex Agrokor", Mr Mladen Cerovec had an interesting presentation on "**Legal Regulation of Unfair Commercial Practices in a Food Supplying Chain"** regarding formation of every day bigger economic disbalances in individual commercial relationships resulting from significantly different levels of negotiating forces between entrepreneurs operating in a suppling chain in the common market of the European Union. Misuse of different negotiation powers in business relationships results in unfair commercial practices and negative effects especially on small and middle companies in food supply chains. Croatia accepted recommendations of the European Commission and the Government proceeded the draft Law on Prohibition of Unfair Commercial Practices in Food Supply Chains to the Parliament on 29th June, 2017.

In his presentation **"Community of Holders of Right to Vote in the Society",** Academician Barbić compared very impressively a community of holders of the right to vote in the society with bargains and rearrangements in the Parliament, since that it is possible to have more than one of such communities in a society depending on the willingness of individual society groups. Academician Barbić determined in the same way the legal nature of the community of holders of the right to vote as a compliancy that is created with an agreement on linking of votes made by and between members of the society who do not want the making decisions process about that society to be without control, but who wish the implementation of their mutual will. Therefore, it is important to distinguish the main society, i.e. the society in which the right to vote is realised and the community of those holders of the right to vote who make agreements to make it. The community can cease for the same reasons for which every compliancy ceases, with the exception of the mutual property since it does not exist and as a consequence no winding up procedure is to be performed, with the exception of a very special case, more theoretical, when members introduce their stocks, i.e. shares into the community. The conclusion is that there is no efficient mean to protect the interests of the community in case when some of their members vote contrary to the agreement on linking votes, since possible claims are not so effective, although they are possible, if we take into consideration the everyday dynamics of the society regarding the community of court practices.

In his presentation **"Violation of the Property Right in the Practice of the European Court for Human Rights",** a judge of the Supreme Court of the Republic of Croatia, Damir Kontrec warns to a significantly wider and different interpretation of the property in the practices of the European Court for Human Rights compared to the Croatian Court practices concluding that such a difference and lack of understanding have the main source in the first

line in the manner of education of lawyers in Croatia with the emphasised necessity of application of rules and regulations in the manner they read. In the same manner Prof PhD Željko Potočnjak gave a retrospection in his topic **"Protection of Vested Rights of Employees in Case of Transmission of a Company, Plant or Their Parts to another Employer Pursuant the European Union Law"** about a more flexible understanding of the right of employees in case of a merger of their company with another employer pursuant the practice of the European Union Court pointing out every time bigger need of a balanced approach that would respect the interests of employers in addition to protection of employees. On the basis of the opinion of Prof PhD Potočnjak, with such a righteous approach, the Court of the European Union tries to respect changes of social and economic circumstances conditioned by the need for global competence, but also to keep and strengthen the social dimension of the European Union on the other side as well.

Out of other topics represented at the conference the following were presented: "Risk management, internal control and compliance in insurance companies, investment companies and fund management companies", "Payment with debit and credit cards", "Loss of right to vote – sanction due to violation of provisions of informing, i.e. acquisition of joint stock companies", "Legal protection of participants pursuant new Public Procurement Law of 2016 - a reform or only amendments of the law". All the stated topics, i.e. papers presented at the Conference are published in the Proceedings of the 55th Conference of Lawyers, Opatija 2017, and a topic was presented on the last day and it did not enter the proceedings in which the secretary of the Permanent Arbitration Tribunal at the Croatian Chamber of Economy, Mrs. Andreja Čavlina, who was also a member of the Association of Corporate Lawyers, explained the practice of the arbitration proceedings and M. A. Giunio also explained examples of cancellation of awards with the help of the president of the Tribunal, PhD Hrvoje Sikirić, who answered the questions of all the interested.
Members of the Association of Corporate Lawyers that celebrates its 10th anniversary of the existence, participated in the Conference and associating informally with notable members of the Croatian Union of Association of Lawyers in Economy exchanged information and experiences from the practice expressing their wish for even better and closer cooperation of two mentioned associations due to the development of the community of lawyers in which everyone of us is going to find his/her place because, as the president, Prof PhD Petar Miladin says: *„…only few other professions have a bigger necessity for collectiveness as well as only few other professions have so many individual fields that communicate among themselves so scarcely. Therefore, spaces of freedom and responsibility are in front of us and we should conquer them not only as individuals, but also as the profession for the benefit of the complete society".*

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2. New Law on Amendments of the Law on Procedure with Illegally Constructed Buildings

At its 40th Session hold on 8th June, 2017, the Government of the Republic of Croatia accepted the Draft of the Final Bill of the Law on Amendment of the Law on Procedure with Illegally Constructed Buildings and forwarded it to the Parliamentary Procedure.

The valid Law on Procedure with Illegally Constructed Buildings (Official Gazette of the Republic of Croatia, NN No 86/12 and 143/13) came into force on 4th August, 2012 and it

was amended once by the time being. The main purpose of that Law is legalisation of so big number of illegally constructed buildings as possible.

The proposed amendments of the Law reopen the term for submission of applications by 30th June, 2018 with the same conditions of legalisation. Only buildings constructed and visible on the digital orthophoto map of the State Geodetic Directorate made on the basis of the shooting from the air that started on 21st June, 2011 or on any other state digital orthophoto map or cadastral plan or any other official cartographic official basic document compiled by 21st June, 2011 can be legalised. On the basis of the Law on the Procedure with Illegally Constructed Buildings, it would not be possible to legalise buildings constructed after 21st June, 2011 even with the new application.

To keep the achieved quickness of resolving applications, the manner of allocation of assets from the fee will be in the following manner:

- 30 %, instead of current 20 % of the assets of the fee represents the income of the budget of units of local, i.e. regional self-government whose administrative body issues as-built decisions;
- 30 %, instead of current 20 %, of the assets of the fee represents the income of the budget of the Republic of Croatia when as-built decisions are issued by the Agency;
- 40 %, instead of current 50 %, of the assets of the fee represents the income of the budget of the Republic of Croatia.

One of the novelties is also that registration of a legalised building in the cadastre is also possible on the basis of the as-built decision for an unfinished building and not only on the basis of the as-built decision for a finished building.

The efficacy of the implementation of the Law was improved with additional explanations and removal of doubts regarding:

- Delivery of notifications, resolutions and other acts on the notice board;
- Archiving of subject matter files;
- Terminological adjustment with the Law on Construction;
- Buildings that can be legalised with one as built decision;
- Legal consequences of legalisation of buildings that were legalised as finished;
- Postponement of execution of the decision of the construction inspector on removal of the building for which a legalisation application had been filed up.

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3. Directive on Legal Measures for High Common Level of Security of Network and Information System across the Whole European Union (NIS Directive).

Perceiving the importance of the information technology for functioning of the common inner market of the European Union and taking into consideration that in accordance with the recent research at least 80 % of European companies faced at least one cyber-attack during 2015, the European Parliament and Council passed the Directive on security of network and information systems "on legal measures to boost the overall level of cybersecurity in the European Union on 6th July, 2016" (NIS Directive).

Since the arrangement of the security of network and information system is regulated in various ways in individual Member States resulting in an unbalanced level of protection of consumers and companies and disturbing the overall level of security of the network and information systems in the European Union.

The intention of that Directive is to enhance cooperation among Member States and to introduce the minimum capacity and strategy to provide for a high level of security of network and information system in the state territory of individual European Union Member States. To comprise all relevant incidents and risks, the Directive should also apply to key service operators and digital service providers.

In its introductory statement, the Directive emphases the importance of cooperation between the public and the private sectors since the majority of the network and information systems are controlled by private entities.

Operators of essential services are both, public and private entities of the type stated in the Annex 2 of the Directive fulfilling criteria for identification of operators of essential services. Criteria are as follows: the entity provides for a service that is essential for maintenance of key social and/or economic activities, providing of such services depends on network and information systems and any incident would have a significant negative effect on provision of those services. Annex 2 of the Directive states certain sectors and subsectors of providers of services. Those sectors are: 1. Energy; 2. Transport; 3. Banking; 4. Financial Market Infrastructure; 5. Health Sector; 6. Supply and Distribution of Drinking Water; and 7. Digital Infrastructure.

Providers of digital services are listed in Annex 3 of the Directive, and they are: 1. Internet Market; 2. Internet Browser; and 3. Cloud IT Services.

The Directive determines the obligations for all the State Members to pass national strategies for security of network and information systems with which they have to define strategic objectives and appropriate policy and regulating measures with the aim of achievement and maintenance of a high level of security of network and information services that comprise at least sectors from Annex 2 and services stated in Annex 3. The Directive also orders to Member States to nominate national competent bodies, unique contact points and Computer Security Incident Response Teams (CSIRT) whose tasks are linked to the security of network and information systems. Member States shall ensure them appropriate resources for efficient and effective implementation of tasks that are allocated to them to enable fulfilling of objectives of the Directive.

Regarding operators of essential services and providers of digital services, Member States should made them take appropriate and proportional technical and organisational risk management measures for risks to which network and information services used by them in their business activities are exposed to, i.e. network and information services used by them within the frames of providing services in the European Union. Member States competent

bodies shall have necessary authorities and assets for assessment whether operators of essential services and providers of digital services fulfil their obligations form the Directive to give them obligatory instructions with the aim of correction of found out deficiencies.

The Directive creates a cooperation group to support and make easier the strategic cooperation and exchange of information among Member States as well as development of mutual confidence and reliance and a network of Computer Security Incident Response Teams (CSIRT) to promote quick and efficient operating cooperation among Member States.

This Directive governs and defines minimum standards for achievement of a certain level of security of network and information systems, while Member States can pass provisions aiming at achievement of a higher level of security and protection of those systems. Therefore, the decisive role in determination of obligations for providers of stated services arising out of this Directive will be on Member States that shall transpose it in their national legislation.

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In Zagreb, June, 2017

Association of Corporate Lawyers

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