

THE CONFERENCE REVIEW: 20 YEARS OF APPLICATION OF THE COMPANIES ACT IN THE INTERDISCIPLINARY CONTEXT

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In January 2015 Croatian practitioners and members of the academic community celebrated twentieth anniversary of the application of the Companies Act. On this occasion, the Department of Law at the Faculty of Economics and Business in Zagreb contributed to this important anniversary by organizing the scientific conference “20 years of application of the Companies Act in the interdisciplinary context” on 29th of January 2015. The event was funded through the University of Zagreb tender for the allocation of funds for 2014 to finance research activities (support by area) as part of scientific research entitled “The right of the internal market of the EU in business practice” led by Professor Hana Horak, and with the support of the European Commission within the Tempus project 544117-TEMPUS-1-2013-1-HR-TEMPUS-JPCR *European and International Law Master Program Development in Eastern Europe*. The conference gathered around fifty participants, mostly attorneys, apprentices at law, judges of the commercial courts, members of business and academic community and students of law and economics.

The welcome speech was given by Professor Nataša Erjavec, Vice Dean of the Faculty Economics and Business in Zagreb. She pointed out that Faculty of Economics and Business in Zagreb has been developing the interdisciplinary approach in the economic education of young people in order to prepare them for contemporary labour market, which does not recognize vertical restraints. Subsequently, she referred to the significance of the Companies Act and stressed the importance of the legal education for the future economists.

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In her opening address Professor Hana Horak, the Head of the Department of Law, stressed that Croatian company law has been a part of European law since the very beginnings, as a result of choosing the German law as a legal model. The time has proven that Companies Act is a good legislation. The initial lack of case law has been compensated by the dedicated work of judges and lawyers. The amendments to Companies Act were the result of a desire for continuous improvement of the legal framework.

Emphasizing the modified socio-economic context after the Croatian accession to the EU, Professor Horak stressed that the legal regime of the EU doesn't recognize strict legal dualism of the national law in relation to the EU law. The solution of complex problems of the contemporary business operations requires an interdisciplinary approach in order to deal with problems. The substance of co-operation between the legal profession and other related fields is creation and implementation of such concepts that will anticipate suggestions of possible practical solutions.

The first part of the Conference focused on the legal issues and the presentations were given by Nevenka Marković, Judge of the High Commercial Court of the Republic of Croatia, Željka Bregeš, Judge-President of the Companies Registry of the Commercial Court in Zagreb, Zoran Vukić, a lawyer and Vice President of the Croatian Bar Association and Professor Hana Horak along with Kristijan Poljanec, Teaching and Research Assistant, both from the Department of Law at the Faculty of Economics and Business, University of Zagreb.

Judge Nevenka Marković presented her subject matter "Termination of the company without liquidation". She introduced to audience the substantive legal framework for the termination of the company and the rules on procedure for termination of the companies. Several obscurities that judges have encountered in their practice were pointed out, such as inconsistent usage of the legal terminology and definitions, undefined obstacles for termination without liquidation and uncertainties in computation of the terms, lack of legal clarity about the legal consequences of terminating companies when the bankruptcy procedure or liquidation of the company is running simultaneously. In this sense, it was emphasized that there is a need to improve the legal framework in this area in order to overcome the existing doubts.

In the presentation "Novelties in the court registry, with a special emphasis on cross-border mergers and acquisitions", Judge Željka Bregeš referred to the practical difficulties of cross-border mergers and acquisitions when such transactions have to be entered in the court registry on the basis of national regulations adopted in order to implement Directive 2005/56/ EC of the European Parliament and of the Council on cross-border mergers and acquisitions of limited liability companies. Diverse competence of the bodies involved at the various stages of

the proceedings in the EU Member States, and difficulties related to the fulfillment of an obligation to take certain procedural actions - such as the drawing up, delivery and publication of draft terms of merger and consolidation - are only few of the issues that legal practitioners face nowadays.

Lawyer Zoran Vukić presented the topic “The effects of the Companies Act on the status of the legal profession”. He pointed out the legal implications of the Companies Act on doing business for law firms in Croatia. Through the elaboration on legal forms of the law companies, their firms, capital, formation, economic activities, boards, acquisition of treasury shares, the termination of law firms and liability issues, Zoran Vukić presented the existing legal framework for the lawyers’ profession in the form of a company and statistical trends on the establishment, bankruptcy, liquidation and termination of law companies. In addition to the analysis of the Croatian legal framework, Zoran Vukić gave a comparative overview of the legal framework for the law companies in Austria, Italy, Germany, England and Wales.

In their joint discourse “The divergences in laws on mergers and acquisitions in the internal market of the EU as an obstacle to freedom of establishment”, Professor Hana Horak and Assistant Kristijan Poljanec gave an overview of development of the law on mergers and acquisitions in the EU. The problem of non-compliance of national mergers and acquisitions laws are recognized as an obstacle to the achievement of freedom of establishment. It was stressed that national laws are not providing adequate solutions and thus the practical problems should be dealt by adapting the concept, that would be based upon the direct application of EU law and the case law of the Court of Justice, since the constitutional ground for such approach has been set after 2010 amendments to the Constitution of the Republic of Croatia.

After the session on legal topics, the conference proceeded with a series of lectures, given by representatives of the academic community in fields of economics: Professor Darko Tipurić, Department of Organization and Management at Faculty of Economics and Business, University of Zagreb, Professor Boris Tušek, Department of Accounting, Faculty of Economics and Business, University of Zagreb, and Associate Professor Sanja Sever Mališ, Department of Accounting, Faculty of Economics and Business, University of Zagreb.

Professor Darko Tipurić introduced his paper “The status of the management in the two-tier and single-tier models of corporate governance - some problems and issues” outlining the context in which the corporate governance has been developed. The exposure thoroughly scrutinized the characteristics of two-tier, single-tier and mixed models of corporate governance. Particular emphasis was given to possibility of introducing one-tier model of corporate governance, which was brought in the Croatian legal system by the 2007 amend-

ments to the Companies Act. In that respect, the initial practical experiences were presented. The problem of the board efficiency and its role in creation of the value and participation in strategic actions as well as the quality of corporate governance ranking in South Eastern Europe are among the issues on which the speech put emphasis.

The topic “The establishment and operation of audit committees in Croatia” was presented by Professor Boris Tušek. He gave an exhaustive overview of the legislative framework for the operation of audit committees and of his own experiences and issues that he encountered in practice. Particular emphasis was placed on the role of audit committees in the monitoring of financial reporting. Through the exposition he pointed out that experiences in the operation of audit committees in Croatia are overall positive. However, the problems remain present when it comes to the conduct of the board members, especially regarding the procedures in running the company as well when it comes to the non-compliance of the Croatian legal framework with the requirements of modern auditing and the area of operation of audit committees.

Associate Professor Sanja Sever Mališ presented topic “Determinants of the quality of auditing the financial reports.” After introduction to the primary role and objectives of the auditing and the role of auditors in ensuring the quality of financial reporting, her presentation focused on the crisis of audit profession as a consequence of determined imperfections in the performance of statutory audits. The changes in the legal framework of the EU in the field of auditing aim to establish the independence of auditors and proclaim need for public supervision of the audit profession. It was concluded that changes to the legal framework should contribute to effective market-audit services in the EU, and better financial reporting should contribute to the protection of interests of the stakeholders.

In the last session, presentations were given by Associate Professor Kosjenka Dumančić, Department of Law, Faculty of Economics and Business, University of Zagreb, Tina Jakupak, Judge of the Commercial Court Zagreb, and Zvonimir Šafranko and Dominik Vuletić, both teaching and research assistants from the Department of Law, Faculty of Economics and Business, University of Zagreb.

Associate Professor Kosjenka Dumančić presented the topic “*Societas Europaea* - Czech experiences and Croatian possibilities” prepared jointly with Professor Hana Horak. Associate Professor Kosjenka Dumančić gave an overview of the legal framework for the establishment, operation and cross-border transfer of the seat of the European Company (*Societas Europaea*) as a type of supra-national legal entity. Furthermore, she referred to the issues of workers participation in decision making process, structure of companies’ bodies and

models of corporate governance. The presentation ended with the conclusion, that business operations through *Societas Europea* have been recognized as preferable form of operation on the EU Internal Market. This fact was persuasively proved by the experience of the Czech Republic as a member state, in which most of the European Companies were established.

Judge Tina Jakupak reviewed the system of the shareholders rights in the EU and Croatia in her treatise entitled “The exercise of shareholders rights in the Republic of Croatia and the EU.” After pointing out some of disadvantages which are mainly related to the poor participation of shareholders at general meetings and the lack of transparency, she stressed the main objectives of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2007/36/EC regarding the encouragement of long-term shareholder engagement and Directive 2013/34/EU regarding certain elements of the corporate governance statement. Judge Jakupak referred to some of the topical issues such as preventing the conflicts of interest while proposing the members of management and supervisory boards in the companies where the shares belongs to Republic of Croatia as well as whether the free movement of capital is violated by the membership of the state officials in supervisory boards.

Assistant Zvonimir Šafranko presented the topic “The role of the legal institute of sole traders in Croatian law and practice”. The central issue of the subject was weather the legal institute of sole trader is justified as such in respect of the business forms available in Croatia. After the analysis of the legal term of sole trader and its characteristics, its comparison with the traditional concept of craftsmen business and analysis of the available data from the company registry, the thesis that a sole trader as such is practically pointless, legal institute in both regulatory and practical aspect, seems to be confirmed. Furthermore, some proposals of possible solutions that should go in the direction of alignment of the Companies Act with the other regulations or a complete abandonment of the legal institute of a sole trader as such were given.

In his exposure “Simple limited liability company - the first experiences” Assistant Dominik Vuletić started from the factors that urged the development of simple limited liability company. It was said that the origins of such form of business incorporation could be find in the case-law of the EU, which has been introduced later on in national legislation of EU Member States. After overview of the basic regulatory framework, Dominik Vuletić gave available statistical data that are reflecting the first experiences in the establishment of a new sub-form of private limited liability company in the Republic of Croatia. He concluded that the liberalization of the companies’ formation in the Republic of Croatia, with respect to the introduction of the simple limited liability

company, proved to be one of the most significant novelties to the Companies Act since its adoption.

After all expositions were given, participants took part in the discussion. The conference became a place for exchange of experiences among practitioners and members of academia, which gave an opportunity to discuss the current issues of application of law of the Republic of Croatia in interdisciplinary context. During the discussion several new questions were set and some new directions considering the future of Croatian company law in the Euro-integration context occurred.

Finally, the efforts of the organizers should be commended and express the support for further work in promotion of the interdisciplinary approach to topics of interest for the general audience. On this occasion, authors would like to refer to the conference proceedings published by the Faculty of Economics and Business, University of Zagreb, available at <http://web.efzg.hr/dok/KID//Zbornik%20trg.%20drustva.pdf>.