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Legal Services as Commodity: Reinventing the Lawyers' Services

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Abstract

Business service is a very broad, highly fragmented, highly labor-intensive, and capital-adverse industry that provides nonfinancial business-related services to other firms. Due to the broad nature of the industry, the definition of business service includes various services. Recently, powerful forces have reshaped the market for legal advice delivered to corporations. The “new normal” is characterized by a higher price pressure (clients demanding another megatrend, transforming workflows and business models. The volume of data used in legal advice has increased exponentially—a pattern seen in many other industries as well. Legal industry (as a part of business services) has experienced a global paradigm shift in the delivery model for legal services, known as legal process outsourcing, which transfers the work of attorneys, paralegals, and other legal professionals to external vendors located domestically and overseas. Legal outsourcing (both onshore and offshore) is transforming more for less) the deconstruction of formerly homogeneous legal services into different activities and the rise of legal process outsourcing. The digitization of legal data constitutes law practice as law firms and corporate legal departments seek to minimize costs, increase flexibility, and expand their in-house capabilities. With the emergence of legal services outsourcing, the future generation will lead a more sophisticated life, with a higher value of legal work, at a higher level of quality and speed, and dramatically at a lower cost. In this chapter, the author deals with the process of the transformation of legal service into a legal product and points to some dilemmas during that process. This chapter argues that outsourcing ultimately will have a positive effect on the legal profession and development of the quality of legal services. In the second part of this chapter, the author also stresses out some information about different possibilities, how to organize virtual law firms (with legal tech) for low-budget legal services into the Slovenian case.

Keywords: LPO (legal process outsourcing), LSO (legal service outsourcing), virtual law firms, new business model, legal tech, corporate secretary, corporate governance

1. Introduction

Recent reports and research studies in the legal services area predicted a significant change in the practice of the legal services industry. This covers 10 key legal trends including outsourcing, globalization, deregulation, virtual law firms, legal search engines and other web-based legal services, commoditization, multichannel communications, a growing number of lawsuits in every nation, a reduced state funding for those on low incomes in court cases, and rapid growth in the complexity of legislation and regulations [1].

The meaning of law is changing drastically due to a process where law is becoming more a good and less a service that is provided by legal professionals and law firms. The purpose of this chapter is to define and critically evaluate the challenges that such transformation is causing and to offer possible solutions and explanations for this global occurrence. As a product, law is rapidly entering the field of economics; in this newly shaped world, those lawyers who will find a way to adapt will be more successful. The fact of the matter is that powerful forces are reshaping the corporate legal-advice market, including price pressure from clients and the digitization of legal data. The chapter represents the objective on how legal-technology solutions can help law firms succeed in this new era, but this can be achieved only if they understand the tech landscape and redefine key elements of their business model.

In the era of tight economic conditions, the view on the legal profession and legal services has changed radically. The prevailing practice of accessing clients individually and offering them “universal” legal expertise has been superseded by providing knowledge belonging to narrow, specialized legal fields. Yet, it is not only specialization that has affected the way legal services are offered, the process of evolution of legal services has also been stimulated by the involvement of new technology. The ultimate objective of the emerging process was decreasing the costs of legal services; however, this was initially in total contradiction with the efforts to acquire high-quality expert legal knowledge and to ensure a 24/7 availability of lawyers to their clients. A combination of all these circumstances and goals, along with the technical advancement and easy access to Internet, has led to the occurrence of legal service outsourcing (hereafter referred to as “LSO”). Now, the process is slowly moving from the common law states to the states of the continental law system (the so-called transatlantic bridge).

Offering legal services to “larger” demanders in a technologically sophisticated manner has risen significantly, which has sparked the idea of offering “everyday” legal services to the legally illiterate in return of small fees, most effectively through the so-called virtual law firms. With the occurrence of LSO and legal process outsourcing (hereafter referred to as “LPO”), legal service became a good and is thus subject to all the rules of business. It is safe to say that it is well past time to face the fact that law is a business—and we better start acting like businesses, or soon, we will all be out of business. The exceptional growth of this new industry’s market is yet another proof of its ascent. Namely, the market of outsourced legal services jumped from 554 million USD in the year 2011 to 1109 million USD in the year 2014, which presents a 26% increase (“Legal Process Outsourcing: Crisis Creates New Opportunities for

LPOs," 2009).¹ It was estimated that outsourcing of legal services to evolving markets would be worth more than \$4 billion by the end of 2015 [2].

Key questions regarding the development of LPO are the following: what are the business risks related to the preparation and review of contracts worth millions of EUR? Will the quality of services be affected? What is the damage that could be caused by bad (unclear) contract clauses, bad managerial contracts, concluded employment relationships, cartels, violation of rules on competition, etc.? How much money can LPO really save? What about the risk of sharing sensitive legal information? How legal technology will change the business of law? Questions like these appear to the firms that do not have their own in-house legal departments on a daily basis. It is therefore even more important that the legal services offered on the market be of high quality, preventing any damage that could possibly be caused to the companies and individuals. Answers to those questions lead to the main objective—the process of changing the law from the offering of services to the offering of goods.

2. Characteristics of LSO/LPO

The basic characteristics of LSO are savings in the view of lower costs of legal services, possibility of acquiring expert knowledge from different fields of law, better and more effective exploitation of existing legal knowledge capacities (i.e., in-house lawyers), easier hiring and better availability of personnel and resources in case of larger unexpected projects, permanent availability of services considering different time zones and temporal difference, higher flexibility, etc. [3].

The times of large law firms employing a large number of legal professionals are passing. This observation is easily demonstrated with the fact that large law firms (employing more than 250 lawyers) are hiring as much as 67.5% of (external) contractual lawyers, while this number in smaller law firms amounts only to 38.4% [4]. Individuals in charge of law firms are evolving from being strictly lawyers to acting more as managers, marketing their products and conducting law business.² Consequently, an increased number of lawyers from large US firms are considering establishing or have already established smaller law firms, where they are hiring cheaper legal services from abroad (mainly from India) by using modern technology (e-business) [6]. Online providers of legal services are on the rise, since their number grew from 15 in the year 2005 to more than 200 in the year 2011 ([6], p. 9).

Constant pressure to lower the prices has triggered intense competition among providers of legal services, leading to an eventual lowering of prices and to a corresponding demand for higher effectiveness, with zero tolerance for any possible decrease in quality. Consequently, a conclusion can be made that from the users' viewpoint, there is a permanent race to the

¹For example, the top three firms for business services (by the Revenue—Global 100): Latham and Watkins LLP: Headquartered in Los Angeles with offices in 14 countries, generating a revenue of \$2.82 billion, Baker and McKenzie had a revenue of \$2.62 billion, and DLA Piper earned \$2.47 billion. Nadimpalli [1].

²Important information from the year 2010 indicates that 43% of corporations and 73% of law firms use legal outsourcing [5].

top, while the providers of services compete among themselves in a race to the bottom. At the same time, LPO is recognized as a positive trend in the global economy ([6], p. 6; “ABA Formal Opinion 08-451,” 2008). It should not be overlooked that LPO enables smaller law firms and individual lawyers to also run for larger deals, with no fear of being “undernourished” in terms of knowledge or staff. Thus, LPO will clearly blossom also in the future, in relation to not only large law firms connecting with other large firms but primarily among smaller law firms and individual lawyers who will be able to accomplish their goal of offering a high-quality and affordable legal service by connecting with smaller providers of legal outsourcing.³

Law firms from USA and UK consider India⁴ as their first-choice country for obtaining LPO (lately, India is followed by the Philippines and South Africa), taking all the characteristics of LPO into account. Generally, it is not the quality of legal services of Indian lawyers that is decisive (they are not recognized as better or superior), but the fact that an equally good service costs significantly less than a service rendered by a US or a UK law firm (Law Without Borders, 2011: pp. 8, 10). It should be pointed out that India earned such a position also due to historic facts and the official use of English language. The country is a real superpower on the legal market, having more than a million lawyers and more than 128 providers of legal outsourcing, who, in the year 2010, exported more than 640 million USD worth of legal services ([10]).

LPO has important effects also from the viewpoint of global (macro) economics, since the rise of LPO is increasing the welfare and corresponding consumerism.

When considering LPO, the well-known saying “small is beautiful” is very eloquent. Namely, the focus of legal business has switched from large law firms to boutique law firms, that is, providers of a smaller spectrum of legal services. Such firms are proving to be more responsive, the threat of possible conflict of interests is lower, they are more specialized in specific legal areas, and are, finally yet very importantly, cheaper ([6], p. 9).

LPO has also caused a change in the orientation of legal service providers and lawyers using LSO in their everyday work—law firms and lawyers are increasingly concentrating on the management and brokerage of legal services. They are thus expected to execute only the final transactions and deals, to negotiate, appear in court, supervise external consultants, and offer legal advice, while all the other work is done by external consultants and collaborators. As a consequence, a new branch is emerging, redirecting the lawyer from being a provider of basic legal services to being an organizer of providers of those services [11].

Due to the increasing presence of the LPO process, certain warnings and concerns are coming to light, particularly regarding (“The resurgence of corporate legal process outsourcing,” 2011) the following:

³A similar viewpoint also shares [7–9].

⁴As a result of this outsourcing, tens of thousands of legal jobs have moved offshore between nations. The majority of legal services outsourcing was moved to India due to the low hourly cost (80–90% less) of legal services, as compared to USA and Europe (Nadimpalli [1]).

1. **Security and confidentiality:** legal work is confidential by its very nature. Many general counsels worry about transferring data to outside parties, especially if the data are being sent across oceans.
2. **Quality:** corporate legal departments are accustomed to face-to-face interaction with the people performing legal tasks. Legal executives may fear that work performed remotely will not meet the department's quality standards. In addition, legal executives may be unwilling to support the cost of deploying internal resources to provide quality control over LPO-provided services.
3. **Ethical implications:** risks related to the unauthorized practice of law made many general counsels uneasy about using LPO providers.
4. **Client/outside counsel relationship:** whether due to the perceived threat of an LPO provider's impact on the bottom line or a lack of trust in the quality of outsourced work, legal departments had a difficult time obtaining outside counsel's buy-in for the use of LPO.

Users of LPO are overcoming these flaws principally by increasing the transparency in hiring external experts and by acquiring their clients' consent or at least approval for the work on their case to be partially executed by outside counsels. In addition, all providers of outsourcing have to be regularly monitored and supervised and be subject to valid certification, performed by independent institutions. Moreover, LPO users themselves are responsible for verification and supervision of the providers' competences and abilities in order to ensure the best education processes, knowledge transfer, and selection. On the other side, it is of the essence for the providers of outsourcing to avoid any possible conflicts of interests or inappropriate backgrounds and to assure psychological stability, adequate infrastructure, and protection of data transfer and storing.

3. LPO models

LPO, as a result of technological influences, can be observed in different (technical) forms ([12], pp. 1, 4–6):

1. as external (foreign) LPO (mainly across-ocean outsourcing, generally from related legal systems, leading to huge savings in terms of time and money due to obtaining cheaper services of the same quality);
2. as near LPO (nearsourcing) (meaning chiefly special knowledge gained through the division of work principle, where in-house lawyers retain enough time to work on special matters while the specialists in particular fields of law are hired);
3. as LPO executed by non-lawyers, which can be established as external LPO or nearsourcing (in these cases, LPO providers are performing especially the tasks of technical assistance and general legal work that can also be performed by non-lawyers).

Each of the listed technical forms can be implemented in several different manners, while certain aspects are explicitly underlined, measuring from strategic legal advice (reserved generally for law firms) through technical legal advice and general legal work to repeatable legal work. The latter is mostly attributed to external operators (outsourcing). In this way, law firms and outsourcing are approaching each other, each from its own side. As we move on the measuring rod from law firms' services to LSO providers, we can clearly identify a transformation from art into craft.

In addition, specific characteristics of different providers of legal services need to be noted. As regards law firms, a high-level complexity of their work is especially in the forefront, which is often judgment-based with a priority focus on legal substance. On the contrary, legal outsourcing services are based mainly on high volume with a priority focus on procedural issues.

On the grounds of such evaluation, it is achievable to indicate typical forms of outsourced legal tasks that include document review, contract and template drafting, contract review and analysis, pre-deal and post-deal due diligence, case law research, legal research, drafting of legal papers, legislative tracking and analysis, documents redaction, M&A preparation, witness interviews, medical summaries, etc.⁵ According to a recent study by Thomson Reuters and the Georgetown University Law Center, 51% of law firms and 60% of corporate legal departments use at least one outsourced service provider—but almost exclusively for document review [14].

In the future, such a legal-tech approach will determine the changes, namely [15]

1. stronger competition from boutique firms in respect of bespoke work and from legal process outsourcing providers and legal-tech vendors in respect of standardized work; and
2. evolving client expectations, which are becoming more sharply focused on efficiency (quicker, more tailored advice), along with a call for a greater transparency on fees and a more seamless collaboration between internal and external lawyers.

4. Legal process outsourcing in EU

The European Union (EU) countries have long been resisting the LPO process originally introduced in the English-speaking common law jurisdictions, including USA, UK, and Australia. Yet, regardless of the opposition, globalization and multinational corporations have inevitably brought this process also to EU.⁶

⁵Services of legal outsourcing consist of 26% documentation review, 22% work with contracts, 16% support in court proceedings, 15% legal research, 8% financial reviews, the residual part belongs to other services [13].

⁶For example, USA is home to several hundred legal-tech start-ups and established software providers. According to *TechCrunch*, such start-ups attracted more than \$150 million in total venture capital investment during 2013. The considerable investment has led to the development of more solution offerings available for adoption. By contrast, Germany has far fewer legal-tech providers (only about 10), and adoption rates among law firms and corporate legal departments are lower than in the USA (Veith et al. [16]).

Expansion of LPO has hit a number of obstacles, including different historical reasons, which is why the number of European providers of legal services remains scarce ([17], p. 4). Among the inhibitors of LPO in the European Union, language barriers are especially pointed out, since the significant multilingualism effectively shields EU from the invasion of foreign service providers. A further problem is also the continental law system as such, which is neither unified nor harmonized in the field of procedural issues and enforcement, where *lex nationalis* has retained a complete dominance. Ultimately, LPO in the EU is hindered also by the conservative mentality of continental lawyers, following predominantly the “wait-and-see” approach ([17], p. 4).

Notwithstanding the negative presumptions, an increased activity in using LPO can be observed in the EU, especially as regards international business of banks and technology companies. European LPO is oriented mainly toward offering help regarding the elements of common law system and contains notably less litigation support, while the development is primarily concentrated on LPO that ensures EU privacy standards and meets quality expectations, specific to the European area. A vast majority of LPO process are related to the civil relationships, especially in the department of corporate law.

A conclusion can be made that the progression of LPO in the EU is not thoroughly following the path the common law states have taken. Yet, due to the unstoppable globalization and international corporations that have essentially forced EU into adoption of LPO, a slightly modified LPO model has been shaped, used especially in the civil law sphere regarding contracts, representation, corporate compliance, due diligence, etc.

Unlike the autonomous US regime that leans on the American Bar Association Rules, the LPO system in Europe is subject to statutory norms on data protection and quality of services. The (rare) providers of LPO are thus obliged to obtain certain certificates in order to be allowed to pursue their activities,⁷ whereas the area of data protection is governed also by the Directive EU 95/46/EC.⁸ Autonomous arrangements can also be governed by master service agreements (MSAs), taking European *ius cogens* into consideration.

In EU, an internal LPO process can also be observed, introducing cooperation between different member states (where LPO providers primarily originate from the UK). The LPO process is thus steadily expanding and paving the way for the lower costs of legal services. EU and its member states will have the privilege of being able to follow the example of the evolution of LPO in the USA and use the American model to properly regulate the area of LPO in terms of quality control and data protection.

⁷For example, ISO 27001 (business continuity) and ISO 9001 (quality management) ([17], p. 6).

⁸Directive 95/46/EC of the European Parliament and of the Council of October 24, 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

5. Potential business models: case Slovenia

5.1. One-stop business model

In Slovenia, one of the EU member states, the LPO process has become apparent as well, seeing that an increasing number of law firms are using the opportunity to hire legal services from various external providers. Among the latter, especially noticeable are specialized institutions possessing expert legal knowledge in different areas of law and law firms and offices that are not necessarily employing only lawyers but are still capable of executing different legal tasks and services for their customers. Many non-lawyers can be found among such providers, resulting in a questionable level of quality of their services. The core of the arrangement between the user and the provider is governed by a master service agreement (MSA).

The LPO process in Slovenia is heading in two directions. Firstly, adopting the so-called division of work, Slovenian lawyers and law firms are utilizing high-quality expert legal opinions regarding their clients' matters to either eliminate the causes for potential court proceedings or substantiate and prove a certain legal position. Acquisition of expert legal opinions often benefits the clients, especially in terms of preventing the case to appear on court and thus removing possible risks of unpredictable judicial ruling, while also saving time that would eventually be spent before the court proceedings are wrapped up. On the other hand, when the court proceedings are already in place, these expert opinions help both the clients and the court to draw necessary objective and unbiased conclusions. In these cases, clients and law firms primarily order legal opinions from renowned top experts, generally employed at universities or institutes, specialized in a narrow scope of legal matters.

The other LPO model stems from the practical need to offer the clients different kinds of solutions in one place. Here, legal services present only one part of the provider's portfolio. The majority of clients using such services do not have their own legal departments, making their demand for legal services the number one reason for hiring an external provider. Afterwards, they become familiar also to other services offered by the same provider and, in accordance with the "phone booth" principle (if there is no phone booth, a wish to make a phone call cannot arise), start feeling the need to use those other services as well. The client is therefore offered a complete "service" in one place (one-stop business model, hereafter referred to as "OSBM") and given a possibility to use a full spectrum of services from the areas of law, economics, accounting, business, revision, company evaluation, taxes, marketing, PR, compliance, corporate governance, etc.

The described model has gained in relevance with the surfacing of the economic crisis, when a need emerged to shape a model for business and legal restructuring of corporations. OSBM has proven to be a suitable solution especially in the field of small and medium enterprises that lack the knowledge necessary to perform restructuring on their own. However, the purpose of OSBM is not only to restructure the clients and leave them to the unknown fate but also to help the clients raise their operation to a higher level and to keep offering them the services they require. These services can be executed either by a single entity or by a number of providers associated in a consortium. In the phase of realization, teams of people with

different skills are often formed, approaching the restructuring by (1) offering advice or (2) by taking over the functions in the corporation or taking over corporation's obligations.

Recently, Slovenia is witnessing an increased demand for simple legal services, including drafting of formal letters, complaints, objections, contracts, etc. When the need for such services appears, clients are afraid of hiring lawyers and law firms due to their high rates. This outlook gave rise to the idea of a low-budget lawyering that would enable customers to access simple legal services using modern technology. The first step was identifying a service provider that is close to the customers (e.g., banks, post offices, insurance companies), which was followed by establishing a pilot action, where the reception office acts as a vendor of legal services, offering low-cost answers to simple questions in the time frame of 48 h.

5.2. LPO and corporate governance: idea of business model with corporate secretary

Corporate secretaries have a central role among the corporation's employees in the Anglo-American legal system (Jovanovič, 2000). Perhaps, in the future, we should give a thought to introduction of such a position also in Slovenia, even though direct parallels between the two legal systems are not possible. In certain Slovenian companies, corporate secretaries can already be noticed; however, their roles and tasks are not clearly defined and generally gravitate more toward the questions of compliance and security of the corporation, while having less emphasis on the development and monitoring of the company's corporate governance (hereafter referred to as "CG"). In certain cases, an interference between the competences of compliance officers and internal revenue officers can also be observed, the latter even appropriating the concern for the homogeneous CG. Such situation is especially visible in relation to the groups of companies.

In Slovenia, an additional variant of the corporate secretary has been established, namely the supervisory board secretary, introduced by the CG Code of 2009 under Principle 11. The function of the supervisory board secretary is offering special help to the supervisory board, much more than taking care of homogeneous CG and its development within the corporation. The main duties of the supervisory board secretaries are writing minutes of the meetings, maintaining the archive of the supervisory board, and supporting the board on the organizational and managerial matters. In addition, members of the supervisory board should be able to cooperate with the secretary also outside the supervisory board meetings, making the supervisory board secretary a permanent bridge between the supervisory board, its members, and the company. This would also ensure a proper flow of information between the members of the supervisory board, the supervisory board as such, and the company.

The role of the supervisory board secretary also includes organizational and expert support to the supervisory board and, especially, to its president. In addition, the secretary of the supervisory board should be responsible for facilitating the training and acquiring external support for supervisory board's operation. The supervisory board secretary's function is thus very demanding and carries high responsibility with it, which calls for a special arrangement regarding safeguarding of confidential information to which the secretary of the supervisory board gains access during execution of the duties.

It can thus be observed that various types of secretaries have evolved in Slovenia, representing different interests as they are named by different bodies. It can also be seen that all these types of secretaries can act as in-house representatives, outsourced professionals, or a combination of both.

The function of the supervisory board secretary can therefore also be conceived in the form of outsourcing (basically as the nearsource model LPO), especially due to the reason that a single person could professionally execute its duties for more than one supervisory board. Such solution would be specifically reasonable for smaller companies that have a two-tier management system. In Slovenia, into such positions are generally named employees of the company; yet, we believe that in accordance with the proper understanding of the supervisory board secretary's duties and responsibilities, these positions should be occupied by highly qualified professionals who could, as experienced corporate lawyers or CG experts, valuably contribute to the work and decision making of the supervisory board. In most cases, companies lack such personnel, which is why hiring external professionals (individuals or institutions) who could provide supervisory board with quality services and support regarding CG questions seems a sensible move. This would also decrease the need to engage different external experts to support the supervisory board, while adding to a good corporate governance and good practice. In group companies, such function, spanning over supervisory boards of a number of subsidiary companies, could importantly contribute to a more homogeneous management.

The introduction of corporate or supervisory board secretaries in the form of LSO would materially contribute to a more professional and unified practice and the development of CG in Slovenia and elsewhere. In this sense, one could also interpret the new discussions and recommendations of the European Commission, relating to the quality of reporting on corporate management (Recommendation 2014/208/EU). Even though the recommendations explicitly apply only to the public limited companies with shares dealt in on a stock exchange, they can prove useful also to smaller companies. Namely, CG statements certainly contribute to a better CG, while a key role in their preparation and monitoring could be assigned to company's corporate or supervisory board secretaries.

6. Conclusion

Recent studies revealed that the legal market is a dynamic, fast-changing, environment due to a combination of technology and globalization. Cybersecurity and data privacy and media and technology are the two red-hot practices in the legal market [1]. Technology and international participation in the legal process has not only allowed workers to work from lower-cost locales but has allowed skilled domestic attorneys to provide services easily to the world. Outsourcing is a positive development, because it not only increases client access to legal services by allowing traditional clients to meet their needs on a smaller budget but also helps reach a new category of clients who could not afford legal services previously ([12], pp. 18, 11–12).

It is anticipated that changes in this industry will force lawyers to offer a fixed price deals, rather than an hourly-based billing system. In particular, it will motivate lawyers to be also more efficient [16]. Furthermore, law firms will need to implement more sophisticated, customer-focused, services that aim to overdeliver and exceed expectations. Reports and research studies in the legal services area predicted a significant change in the practice of the legal services industry, which covers 10 key legal trends including outsourcing, globalization, deregulation, virtual law firms, legal search engines and other web-based legal services, commoditization, multichannel communications, a growing number of lawsuits in every nation, a reduced state funding for those on low incomes in court cases, and a rapid growth in the complexity of legislation and regulations [1]. A direct influence of LPO can be seen in the form of lower costs for clients, specialization of legal work, standardization of the questionnaire for legal outsourcing, easy legal access for all consumers, and, last but not least, also less litigations, due to a better legal environment and knowledge. The legal tech will also have the impact on individual roles and legal education to supply the legal market with lawyers who have the knowledge and skills essential for success in a landscape reshaped by legal tech.

It is safe to state that technology has opened the door for outsourcing in the legal profession and that outsourcing has changed the territorial and professional limits of the legal profession. Yet, the amount of questions and challenges regarding the mechanism indicates a live process that will keep evolving in order to assure that all the requirements concerning security, confidentiality, quality, ethics, and client relationships are met. The service providers who will be able to provide the best service at the lowest rates will ultimately succeed. In the end, cost-efficient lawyers will be able to serve clients better in the new reality of small legal budgets.

Since legal service outsourcing is increasingly gaining attention and importance in relation to offering specific (narrowly professional) legal services, the role of corporate and/or supervisory board secretaries could also be pointed out, due to their ability to use their expert knowledge in order to contribute to the use and implementation of good corporate practice in companies. This could also affect preparing and monitoring CG statements using the “comply or explain” principle, as recommended by the EU.

To sum up, Slovenia has clearly joined the global race to the top in offering outsourced legal services.

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