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ECLAnews

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European Company Lawyers Association

Dear ECLA Colleagues and Friends,

*Did you notice our new **logo**? After 30 years of ECLA existence ECLA wanted to show its modernity and its spirit of renovation for our profession. Also our logo reminds of the colors of the European Union which is our core territory and with a mix of color which bring joy and freshness. We hope the new logo will help ECLA to incarnate our future.*

*What do we have more? A brand **new website** www.ecla.eu, **Legal privilege** new important developments within Europe with an **exclusive Interview**, feedback from our last Assembly in **Lisbon** (with pictures), new partners and tips. In sum: interesting news about the community of European company lawyers. Enjoy the reading and if you have content to share for our next issue, do not hesitate to distribute this newsletter around you and also, your feedback does matter to us: info@ecla.eu*

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ECLAnewslly Yours, Petr Šmelhaus

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Breaking News: Dutch Victory for Legal Privilege in local competition matters

➤ After the Belgium victory we referred about in the previous ECLAnews we can share with you another good news coming now out from the Netherlands.

NGB

Nederlands Genootschap van Bedrijfsjuristen

Netherlands: Dutch Supreme Court confirms legal privilege for in-house attorneys. In a landmark case decided on 15 March 2013, the Dutch Supreme Court firmly established a legal privilege for in-house attorneys who have been admitted to the bar and comply with requirements guaranteeing their independence.

Info [here](#).



"Company lawyers protect the general interest of the society" & ECLA **INTERVIEW** with Damien Gérard

➤ The court ruling in degree of appeal was issued in Brussels.



Belgium. A second ruling in a short time on the legal privilege of company lawyers matter was issued recently. The decision was based on the European convention on human rights. The core sentence of the ruling: Company lawyers protect the general interest of the society! Click and read the

[exclusive ECLA interview](#)

of the lawyer in the case: Damien Gérard from Cleary.



ECLA in Lisbon

➤ The 27th General Assembly of ECLA took place in Lisbon on 19th April 2013.



Watch our Videos: opening ceremony.

- Welcoming speech of Pedro Vale Gonçalves, Vice-President of IAE Instituto dos Advogados Portugueses: <http://www.justicativ.com/index.php?p=2594>
- Welcoming speech of Vitor Marques Moreira, President of IAE Instituto dos Advogados Portugueses : <http://www.justicativ.com/index.php?p=2595>
- Speech of Philippe Coen, ECLA President: <http://www.justicativ.com/index.php?p=2596>
- Speech of António Marinho e Pinto, President of Ordem dos Advogados (Portuguese Bar): <http://www.justicativ.com/index.php?p=2598>

Pictures from the meeting:



Philippe Coen, ECLA President, presenting on the general assembly. Photo by Anne-Laure Paulet



From left to right: Pedro Vale Gonçalves (Portugal), Anthony Brooks (England and Wales), Marie Brejchová (Czech Republic), Vitor Marques Moreira (Portugal), Thomas Marx (Germany), Petr Šmelhaus (General Manager), Philippe Coen (President), Hugues Delescaille (Belgium), James Kinch (Ireland), Jean Cattaruzza (Treasurer), Martina Pejić (Croatia), Anne-Laure Paulet (France), Giovanni Cerutti (Italy), Sergio Marini (VP), Han Kooy (VP), Didier Pissoort (Auditor), Ingrid Siimann (Estonia), Jonathan Brøns (Denmark)

ECLA general assembly got accustomed with the situation of company lawyers in Portugal, which can serve as a very good example for some other ECLA members. General assembly discussed internal issues of ECLA including but not limited to the new logo, new website and the 30th birthday conference scheduled to 26th September to Brussels. The gala dinner sponsor – JAMS International – presented to the general assembly and answered many questions of delegates.

The gala dinner sponsored by JAMS International offered a great view over the night Lisbon. It was a good occasion to thank to the previous president Dr. Peter Kriependorf for his service for ECLA.



Partnering with Lex Connect - the only directory of technology solutions dedicated to the In-house legal community

✧ A new Partner of ECLA:



ECLA welcomes a new ECLA Partner with an interesting solution for company lawyers. Lex Connect is the first complete, authoritative, Global directory of Software, Solutions and Consulting strictly for In-House Legal. Lex Connect makes it easier for In-House Legal (Buy-Side) to identify suitable suppliers.

Enjoy special:

–“Quick Search”: browse the directory

–“Solution Finder”: advanced matching engine. Identify suitable vendors based on your Legal Department size and company location

Check at <http://www.lex-connect.net>



Mark your Agenda and register now : 30th Anniversary ECLA conference, Brussels, September 26th, 2013

✧ A Major ECLA Celebration a public event to come. Register now on event2013@ecla.eu !

ECLA will host a major public event in one the finest venue of Brussels, the first of its kind with a high profile panel on Independence and Ethics applied to Company Lawyers across Europe and a celebration of our European profession. We rely on having a large delegation of representatives of our profession from each and any of our ECLA National members. The Event will include a session focusing on history and on vision for the future of our profession. Event (1:30pm-21:45 pm) will include a celebration buffet



dinner in a prestige venue of the head town of Belgium and of Europe.

See our PROGRAM on www.ecla.eu



European Company Lawyers Association



The European Company Lawyers Association
and Global Legal Group invite you to

**ECLA's 30th Anniversary
Conference and Awards**

Organised in association with:



ICLG
International
Comparative
Legal Guides



26 September, 2013
Palais d'Egmont, Brussels

Registration is FREE for in-house counsel -
numbers are limited, early booking recommended

Early bird ticket price of **EUR 800** for all other delegates
available until 1 July – **save EUR 400** on the standard rate

To book your tickets, contact event2013@ecla.eu

For sponsorship opportunities, contact Alex Fetrot
at alex.fetrot@glgroup.co.uk or on +44 20 7397 7043



Partnering with JAMS International

❖ A new Partner of ECLA:



From JAMS: *"In-house counsel has been the driving force behind much of the change in the provision of commercial legal services. Taking advantage of market liberalization in certain jurisdictions and more selective use of legal technology, corporate counsel have delivered impressive efficiency savings while continuing to add value to their company's bottom line."*

Alternative dispute resolution has been part of that trend. More effective, more cost-efficient, and more enduring resolutions are both a responsible use of shareholder capital, and a more commercial solution to the unavoidable difficulties of doing business at home and abroad. As in the United States, European corporate counsel are increasingly active both leading and guiding parties to use alternatives to litigation, and in appointing appropriate mediators and arbitrators.

JAMS International asked companies what assistance they needed to effect speedier, cheaper outcomes to disputes across all territories. The answers were clear: experienced, respected mediators and arbitrators; people who understand their business; people who speak their language, understand their culture, traditions, and values; people who know local law, but have international experience. And finally, people who can resolve disputes anywhere in the world.

At JAMS International, we have those people, and service levels to match.

Download our clauses and see how we can add to your company's bottom line.

www.jamsinternational.com



2013 Annual Meeting of the International Distribution Institute

❖ Choosing jurisdiction and applicable law in distribution contracts. Strategies and recent trends:



FRIDAY 14 JUNE AND SATURDAY 15 JUNE, MUNICH (GERMANY)

The conference is addressed to lawyers and executives involved in negotiating, drafting and managing international distribution contracts (agency, distributorship, franchising, etc.) and will deal with a number of topical issues which justify an in depth discussion between qualified expert in this field.



INTERVIEW: Philippe Coen, the ECLA President, talks to Edward Machin of GLG (www.cdr-news.com)



The year is 1983. Akzo Nobel, the seminal, much-derided ECJ decision which denied privilege to EU in-house lawyers, is nearly three decades away. Yet Europe's top court has, for the first time, heard a case involving legal professional privilege – AM&S Europe Ltd. In short, it doesn't bode well for the continent's countless corporate counsel. The European Company Lawyers Association (ECLA) is formed a matter of months later to represent those practitioners the ECJ would subsequently come to regard as second-class citizens. And in this, its thirtieth anniversary, ECLA is more involved with corporate counsel life than ever.

Responsible for some 32,000 practitioners – and 20 related associations – throughout Europe, it "continues to promote and defend the value of company lawyers and what organizations can gain from having them," says **Philippe Coen**, the body's current president and assistant EMEA general counsel at **Disney** since 1997. It wasn't always Mickey, magic and multimedia for Coen, 47. Life began as a trainee at leading French firm **Gide Loyrette Nouel**, before a year at Harvard Law School, where his classmates included a certain Barack Obama. Recruited on campus by **Linklaters**, Coen worked briefly in the firm's Manhattan office before returning to France, where he practiced finance and general corporate work. A move to **Berlioz & Co** saw an about turn in specialization: big-ticket disputes, including competition and media litigation. It also coincided with the dot-com bubble, meaning Coen was one of the lucky few to practice Internet-focused IP and technology law from the very beginning. It was a time, he says, when "every dream was possible."

"It's always very exciting to be part of the genesis of a legal development, rather than entering a 200-year old field," he adds. "And it's more difficult to be creative in a more mature area than at the start of a legal and economical domain; the two are increasingly connected."

Inside knowledge

Though many of those pioneering internet enterprises have long been resigned to history that background continues to inform Coen's approach to life at Disney. Indeed, he says an in-house lawyer's ability to emphasize with the counsel litigating his disputes shouldn't be underestimated: "Not only will it make you a better advisor to your company, but also a better client for the firms you retain. And the outside lawyers regularly comment on the difference between clients who have litigation

experience and those who don't. You have a much less remote approach to the case if you yourself have drafted writs, injunctions and pleadings."

Coen was elected by a majority vote to the ECLA Presidency in November 2012, having spent six months as the organisation's second in command. A number of European in-house counsel sources tell CDR that he couldn't have taken the reins at a more critical time.

That's not to say his group's original mandate – to connect and assist the continent's lawyers – hasn't changed the face of European corporate counselling. The numbers speak for themselves, with umbrella, rather than silo, remaining the battle cry. Yet Coen knows there's much work to be done.

Step one: ensure the bureaucrats in Brussels take in-house lawyers more seriously. "My aim is to make ECLA more vocal, and more listened to, by the EU institutions," he says.

"We need to ensure that they have company lawyers in mind when devising their next regulation, and to have in mind the value that we bring to our employers."

To that end, Coen and ECLA are drafting a white paper addressing the – still, in places – prevailing notion that corporate counsel are not truly independent. That, regrettably, remains the ECJ's position.

"In our view in-house means independent. Companies who employ in-house lawyers are expecting them to advise as an independent expert; if they aren't, why would these organisations hire them?" Coen says. "But the EU Commission doesn't appear to share that view."

Beyond borders

Law firms can be quick to lament the effects of the global financial crisis on their business model – cost-cutting; streamlining; fewer long lunches. But what of those that pay their wages? Unsurprisingly, Coen says the pressure to deliver results on a shrinking budget has also been a feature of in-house life. Yet the approach couldn't be more different: there is, he reports, a willingness among corporate counsel to take the risks needed for their businesses to weather the current economic storm. That's not quite the private practice experience, it's fair to say.

"One of the roles of the company lawyer is to evaluate risk; it's becoming one of the key values of the legal department," Coen explains. "We are expected to be quicker to react and and more informed – sometimes with a small budget and fewer resources." The willingness to toot one's own horn when things go right thus remains vital. Indeed, he says in-housers shouldn't be afraid to ensure management understands, and values, their work. Fail to do so and there will be little willingness from the board to invest in its legal department. (Its fellow support function, the finance department, seldom has such problems.)

Enter ECLA, and its ability to help legal teams across Europe benchmark their performance beyond national borders. Indeed, a localized mind-set simply won't cut it in the globalised market that many of the organization's members now find themselves. "ECLA is here to offer a more helicopter view of how you can compare your practice with that of someone who is working 500 kilometers away, but whose work is still relevant to yours," Coen says.

Part of that duty to educate falls on the shoulders of ECLA's national associations – no easy task, given the variety of legal cultures and practices the organization has to accommodate. And though the manner in which a Spanish counsel deletes his documents will hardly revolutionize life for his German counterparts, other aspects of the company lawyer's remit may be more rather more significant. Reporting lines, for one. Given that they are often dictated by a company's shareholding, local businesses tend to adopt – not unreasonably – the hierarchical structures used closest to home. And that's no bad thing.

Yet with in-house lawyers still grumbling about being marginalized, it might not be a bad idea to look beyond borders. For example, Coen reckons some 40% of legal departments in Latin and civil law countries still report to the finance director, a notion anathema to many Anglo-American and Nordic companies. "I think a support function reporting to another support function may not always be in the best interests of everybody involved," he says.



ECLA NEWS posted regularly on twitter: time to follow and retweet [@ECLACONTACT](https://twitter.com/ECLACONTACT)



Han Kooy, VP, presented at EUROJURIS congress in London

Start of cooperation?

Han Kooy, Vice-President of ECLA, paid a visit to London to speak on the EUROJURIS event for 135 attendees. He introduced ECLA and elaborated extensively on the privilege topic and also on the criteria on which larger companies select their law firms.

EUROJURIS is a group of European (mainly) law firms.



New book for you? European Supreme Courts. A Portrait Through History

Use ECLA discount of 25%

This lavishly illustrated volume written by leading legal historians of Europe provides the first comprehensive account of the historical character and role of supreme courts structures across the whole of Europe. It examines the supreme and supranational courts of contemporary Europe in the context of a European supreme courts tradition which has been largely forgotten by the legal community of today, but which is traceable in all European countries back to the late medieval period.

The project is a genuinely pan-European undertaking with the leading British publishing house Third Millennium Publishing from London working with a European team of editors supported by a panel of legal experts. The goal is to introduce the common history of today's highest courts in Europe in a gripping and incisive style, accessible to the target groups. The target groups will get a better understanding of the Common European legal system. The book might also be of interest of legal practitioners, scholars and students-in-law from other continents. More about the book can be found at http://tmilt.typepad.com/european_supreme_courts/.

For the ECLA discount use the promotion code EC25.



Draft revamp of the Directive on damages actions for competition law infringements: Legal privilege and business secrecy at stake

Reported by Kristina Norlander from Sidley Austin in Brussels:

“[Directive](#) on damages actions for competition law infringements and the broader draft recommendation on common principles for collective redress (both are expected to be published soon), but there is some language in the current drafts that touches on privilege and document disclosure:

- The explanatory memorandum to the draft Directive says: *“National courts should have at their disposal effective measures to protect business secrets or otherwise confidential information disclosed during the proceedings. Further, disclosure should not be allowed where such disclosure*

would be contrary to rights and obligations that exist under European Union law, such as those regarding the obligation of professional secrecy.”

- The recitals don't mention privilege/professional secrecy, but Art 5.5 provides “Member States shall take the necessary measures to give full effect to all legal privileges and other rights not to be compelled to disclose evidence that exist under the law of the European Union”.

It is not clear what this means, but it might be read as encouraging Member States to adopt the EU law approach (= Akzo) into national law. Something worth keeping an eye on . “

Kristina Nordlander was part of the pro bono lawyer team whom assisted ECLA in the Akzo case.



France (AFJE) works on a new Code of Ethics



✦ **Reported by Philippe Coen heading in France the Ethical Committee:**

With the support of AFJE President Hervé Delannoy, France is getting now equipped with a new Code of Ethic to come. The drafting is performed in Liaison with the ECLA study on code of Ethics driven by Sergio Marini, VP of ECLA.



ECLA interviewed

✦ [Interview of ECLA in LEXBASE](#) (in French)



ECLA Advisory Council: More brains inside

✦ **Welcome a new Member: Pr. Christophe Roquilly**

See Biography [here](#)



CCBE Study in French: PROFESSION AVOCAT

✦ Occupation Lawyer: key figures in six countries of the European Union - March 20, 2013

See the interesting CCBE study [here](#)



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