

→ Wednesday, August 28, 2013

**ECLAnews**

**#4-08/13**



**European Company Lawyers Association**

*Dear ECLA Colleagues and Friends,*

*are you registered already for the ECLA Forum celebrating the 30<sup>th</sup> anniversary of foundation of ECLA in 2013? Do not miss this excellent opportunity to meet your peers and to discuss and to connect closely to the past and current representatives of ECLA. The places are limited – this is not a traditional saying as you might have expected! All friends of ECLA – let´s meet in Brussels on 26<sup>th</sup> September 2013!*

*For your summer reading we would like to attract your attention to the international trade law principles of UNCITRAL a distinguished partner of ECLA, which can ease your life in negotiating your international commercial contracts. Forget the traps of local legislations (to the extent possible, of course) by choosing the UNIDROIT Principles of International Commercial Contracts. Do it right with the clauses we offer to you, now.*

*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](mailto:info@ecla.eu)*

*ECLAnewslly Yours,*

*Petr Šmelhaus, General Manager*



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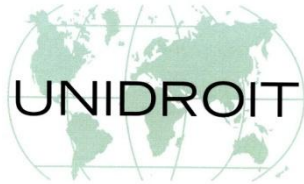
- Model Clauses choosing the UNIDROIT Principles as the Rules of Law Governing the Contract
- 30th Anniversary ECLA conference, Brussels, September 26th, 2013
- Partnering with JAMS International – Benefits for our Members
- CCBE Study in French: PROFESSION AVOCAT

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## MODEL CLAUSES CHOOSING THE UNIDROIT PRINCIPLES AS THE RULES OF LAW GOVERNING THE CONTRACT

✦ Ease your life with fair and smart international trade principles of UNIDROIT!



There are several reasons for which parties – be they powerful “global players” or small or medium businesses – may wish to choose the UNIDROIT Principles as the rules of law governing their contract or, in case of a dispute, as the rules of law applicable to the substance of the dispute. Except where one of the parties is in a position to persuade the other to accept its own domestic law, parties are usually reluctant to agree on the application of the domestic law of the other. The choice of a “neutral” law, i.e. the law of a third country, to avoid choosing the domestic law of either party presents obvious inconveniences, since such “neutral” law is foreign to both parties and to know its content may require time consuming and expensive consultation with lawyers of the country of the law chosen. The UNIDROIT Principles are a useful alternative to the choice of both the domestic law of one of the parties and the law of a third country. The UNIDROIT Principles provide a balanced set of rules covering virtually all the most important topics of general contract law, such as formation, interpretation, validity including illegality, performance, non-performance and remedies, assignment, set-off, plurality of obligors and of obligees, as well as the authority of agents and limitation periods. Moreover, and even more important, the UNIDROIT Principles, prepared by a group of experts representing all the major legal systems of the world and available in virtually all the major international languages, are designed for use throughout the world irrespective of the legal traditions and the economic and political conditions of the countries in which they are to be applied.

Find the model clauses to your contracts [here](#).

Find more about UNCITRAL [here](#).



**Mark your Agenda and register now : 30th Anniversary ECLA Forum, Brussels, September 26<sup>th</sup>, 2013**

✦ A Major ECLA Celebration a public event to come. Register now on [event2013@ecla.eu](mailto:event2013@ecla.eu) !

ECLA will host a major public event in one of the finest venues 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 [here](#).



European Company Lawyers Association

GLG

Global Legal Group

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

## AN EXCEPTIONAL EUROPEAN COMPANY LAWYERS' FORUM

PANELS • VISIONS • KEYNOTE SPEAKERS • NETWORKING

Celebrating the 30th anniversary of the



European Company Lawyers Association  
(19 company lawyers organisations in Europe)



26 SEPTEMBER, 2013  
PALAIS D'EGMONT, BRUSSELS

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

Single delegate ticket price: EUR 1,000  
To book your tickets, contact [event2013@ecla.eu](mailto:event2013@ecla.eu)

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## Before the ECLA Forum – Interview of Jean Cattaruzza on the Independence of Company Lawyers

✦ **Jean Cattaruzza, Head of Legal in ING Belgium SA, former President of IBJ, ECLA Treasurer, was asked by ECLAnews on independence of company lawyers. The topic will be discussed in Panel 3 of ECLA Forum in Brussels.**



### **Why do you think ECLA needs to elaborate on independence?**

Unfortunately, we have to notice that certain people, who consider in-house counsels as a possible threat for their own practice, like to focus on our lack of independence by making a mix between our status as employee and our characteristics. Let's also remember that the AKZO arrest used this as an argument, amongst others, to deny to the in-house counsels the legal privilege.

### **So, are we really independent?**

The purpose of the contribution we are working on is to clearly show that an in-house counsel who could not work on an independent way has no added value and that it is the common interest of everyone to benefit from independent in-house counsels. The idea that our managers are likely to put pressure on us to influence the content of our advice is really false. If they want to act without taking into account the legal risks, why should they spend money to pay in-house counsels? And let's be serious, our managers are aware of the complexity of the legal environment, perfectly know that, by ignoring this environment, their company and themselves incur serious civil and criminal liabilities.

### **What do you hope to give as a key message through this contribution?**

Each country has its own legal environment. Every company has own values. But this does not prevent each company lawyer in all those countries and in all those companies to build together a safer business framework through its daily work. So, I would like to evidence that independence is a basic characteristic of all European in-house company lawyers and not a phenomenon existing in several countries but not really present in some others. And this message is very important. I am really convinced that the Company lawyers' independence is a driver towards a full recognition of our professional status all across Europe.



## Association of Danish Company Lawyers - Danske Virksomhedsjurister (DVJ) provided interview for AFJE magazine

❖ Questions leading the presentation of the DJV for the In-House Counsel Magazine n°18 of the French Association for In-House Counsel.

### DVJ | Danske Virksomhedsjurister

#### 1. Could you please present the DVJ (foundation, number of members...)?

Danske Virksomhedsjurister (DVJ) was founded in 1988 in response to the AM&S case. Most of the original membership came from a group of lawyers from major Danish companies which had in-house lawyers which at the time was very unusual.

The purpose of DVJ – at the time known as Dansk Forening for Virksomhedsjurister (DFVJ) was to support ECLA and other in-house organizations in the AM&S case and to work for the recognition of in-house counsel as valuable providers of legal advice to clients and furthermore to provide training relevant to in-house counsel.

#### 2. What is the aim of your association? Did the original purpose evolve?

The tasks are fundamentally the same – i.e.

- to ensure that Legal Privilege (or rather Client Privilege which would a more appropriate term) is an integrated
- to further the recognition of the contribution of in-house counsel to companies and to society in general
- to provide training relevant to in-house counsel
- to provide opportunities for in-house counsel to network and leverage their qualities to the benefit of themselves and their employers

#### 3. How do you reach your objectives next to your members?

DVJ works on two levels the first being the provision of membership services in the form of seminars and professional training arrangements either organized by DVJ itself or in conjunction with other organisations. As an added benefit DVJ has made arrangements with the major recognized Danish law firms granting access to DVJs members to the law firms professional education programmes free of charge. Furthermore DVJ provides the platform for the organisation of network groups dealing with areas of joint interest.

On the second level DVJ works politically/organizationally to ensure that the contribution of the in-house lawyers is recognized and that in-house counsel has the same rights and duties as outside counsel.

Furthermore DVJ participates in hearings on various legislative initiatives either through the Danish Bar Association (Advokatsamfundet) or in its own name.

**4. Who are your members precisely: are they exclusively in-house counsel or general lawyers as well? On which criteria do you recruit your members?**

The members of DVJ consists of two groups –first the cand.jur or cand. merc. jur ie. people who has law degrees and second the lawyers who have law degrees plus 3 years of PQ training in a law firm and have passed the bar exam. Approximately 1/3 are law degree holders and 2/3 have been admitted to the bar as lawyers.

Membership in contingent on 1) having a law degree 2) working in a company and 3) advising the company on legal affairs. This means that a company lawyer can only advise his employer – including other companies within the same economic sphere but the company lawyer cannot advise customers as this would turn them into ordinary lawyers and the companies subject to special regulation.

**5. When did you join the ECLA and what impact does it have on your work?**

DVJ joined ECLA upon the foundation of DVJ in 1987 – ECLA being the agent for change so to speak.

**6. What about the status of In-House Counsel in Denmark? Are there any specificities compared to the general situation in Europe?**

If you are a member of the Bar (Advokatsamfundet) you are regulated by the same set of rules and regulations as outside counsel including the duty to keep professional liability insurance, keep proper financial records and maintain separation of client funds, to have controls against money laundering in place, to have controls against conflicts of interest in place and to fulfill the requirements for continuous professional education.

If you are not a member of the Bar you have only to adhere to DVJs ethical rules.

**7. Is the shift between corporate lawyers and lawyer in a law firm easy in Denmark?**

The shift is quite easy – as such there are no barriers going either way but the traffic is mostly one way in that more leaving law firms and joining companies than going the other way.

**8. What do you expect of the 30th anniversary of the ECLA?**

A chance to reaffirm our goals and ideas and to build for a stronger future where the in-house profession is seen as a valued and important player in securing the rule of law in Europe and the growth and health of European businesses.



## ECLA – ACC meeting in Washington DC

### ❖ Start of more intensive cooperation?

ECLA met with ACC in Washington DC on 13<sup>th</sup> August 2013 to exchange experience and to discuss how to better work together in advance of ECLA's 2013's Forum and 30th Anniversary. Philippe Coen, ECLA President met Veta Richardson CEO of ACC and her team together with Stephan Grynwajc, representative of AFJE (the French association, ECLA member).



On the picture from left to right: Julien Valliorgues (ACC), Stéphan Grynwajc (AFJE), Philippe Coen (ECLA), Robin Grossfeld (ACC) and Amar Sarwal (ACC)



## Partnering with JAMS International – benefits for our members

❖ **Exclusive conditions for ECLA from JAMS International a Partner of ECLA:**



Following to presentation of the ECLA Partner JAMS International in ECLAnews #3-08/13, here is the practical offer of JAMS International to company lawyers organized at ECLA members (19 associations in Europe):

- 1) On mediation cases referred by ECLA members with a value of Euro 1million or above, JAMS International will waive all case management fees. On arbitration cases valued at Euro 5million or above, Jams International will waive the filing fees only
- 2) JAMS International will offer timely and informative updates on ADR via free subscriptions to all ECLA members to the Jams International's industry-specific newsletters
- 3) Jams International will provide speakers for conferences and in-house seminars Europe-wide at no cost to ECLA members. Jams International will offer a 20% discount to all ECLA members on conferences or seminars it will organize.

See more about JAMS International, download their clauses and see how they can add to your company's bottom line at [www.jamsinternational.com](http://www.jamsinternational.com)



## ECLAnews talks to Stephan Grynwajc – international US and European Legal Advisor

❖ **American legal market viewed by the eyes of European lawyer.**



Stephan Grynwajc advises US and European corporations in their operations between Europe and the US, with a particular focus on technology law, IP/IT law, cyberlaw, digital and social medial law. A graduate of the University of Paris I Pantheon-Sorbonne School of Law, of ESCP Europe and of the NYU School of Law, he started his career in private practice with the law firms of Freshfields, Shearman and Sterling in Paris, and Anderson Kill & Olick in New York, before transitioning to an in-house career in 1997, occupying a number of senior positions at several blue chip technology corporations in Paris, London and NY, including Schlumberger, Intel and Symantec. He chairs the Foreign Practice Committee of AFJE (Association Française des Juristes d'Entreprise), the French Corporate Counsel Association, and was recently appointed as ABA (American Bar Association) Liaison to that association. In addition to his practice as a lawyer, Stephan also acts as a



consultant to foreign lawyers looking to establish themselves in the US, and regularly organizes conferences at law schools in the US to assist foreign LL.M.s and lawyers in their approach to the US legal market. He is a member of the Paris Bar, the Law Society of England and Wales, and the New York State Bar. He is based in New York.

### **1. How is the current job market in the US for European lawyers / with or without LL.M.s?**

By the sheer number of lawyers practicing in the US - over 1.2 million in 2012 - to which another 60,000 across the country aspire to add their number upon passing their State bar exam, the US legal market is both a very attractive market and a difficult one as there is a lot of competition, particularly in NY, California and the District of Columbia where most European lawyers choose to practice. At the same time, in a specialist market like the US legal market, European lawyers have a very good card to play from the moment they insist on marketing their unique set of skills and languages in a market that is heavily uniform with no resident expertise in European law. The recent adoption by the American Bar Association of a revised version of Rule 5.5 (Multi-Jurisdictional Practice) of its Model Rules of Professional Conduct to allow foreign counsel unrestricted access to all 50 States' in-house market sends an unequivocal message that the US wants to see more foreign lawyers coming to the US to practice. And this new regulation 107 does not require foreign lawyers to be members of a US bar or to have an LL.M. or other US legal education. In fact, the main purpose of the LL.M. is that it allows a fast track into being able to take the Bar in NY, CA or the District of Columbia, and become a US lawyer. The vast majority of foreign lawyers - particularly European lawyers - who come to study and pass the Bar Exam in the US make the recurring mistake of wanting to position themselves as US lawyers like thousands of others with a complete legal education (the 3 year Juris Doctor degree) in the US, and who, for many of them can't find work. From the moment European lawyers do customize their job search and profile marketing in such way as to emphasize what they bring that US-trained lawyers don't, there is definitely a market for them in the US, with or without an LL.M.

### **2. What could make European attorney be more marketable in the USA?**

A European attorney, precisely because he or she brings a unique set of skills, experience, and languages to a market that is formatted to only react to local standards of eligibility (most external and internal legal recruiters are themselves US-only lawyers by training and experience), needs to adopt the local standards of formatting their experience and degrees - by having their resume, job search, cover letters and interview preparation fit the local market requirements - but at the same time emphasize - remember, the US market is a specialist market, not a generalist market the way it is to a large extent in Europe - their unique skills and expertise in international law and markets. Local networking is key, but also having a solid presence on social (virtual) networks to get their personal and professional brand out, and joining local associations of lawyers. ECLA has a very important role to play in promoting European lawyers in the US by building partnerships with a number of those associations, having representatives sit on

leadership and diversity committees in those associations, but also co-sponsor US-EU cross-border events in both Europe and the US.

### **3. How are the European disparities perceived by US attorneys (especially Company Lawyer?)**

Most US attorneys are not familiar enough with the European legal market to know of these disparities. The most sophisticated lawyers, particularly those who have had a chance to do international work within companies or network with their colleagues in international law firms, will be aware. The vast majority of the others however do not know of those disparities. In most companies, looking at it from a US perspective, Europe is one region if not one zone. However, the absence of legal privilege protecting the advice of European company lawyers is an issue that puts a cloud over the perception of the profession in Europe as US company counsel would not feel comfortable involving European counsel on cross-border matters that are critical from a US perspective.

### **4. What can ECLA do for helping out EU Company Lawyers in the US?**

ECLA has a very important role to play to help EU company lawyers in the US through its ability to position itself as an effective representative of the profession, able to not only market it and defend its interests in various local chapters of the key professional associations of lawyers in the US, and in particular the American Bar Association and its 400,000 members, but also the State Bar Associations in those States in which European lawyers are most represented (NY, District of Columbia, and to a lesser extent California). All of these associations have a Corporate Counsel section, many have an International section. Building partnerships with these sections and associations, and having EU company counsel be a local resident representative in the leadership of those associations and sections is critical, as is an increased participation in contributing articles to be published in the magazines and newsletters of those sections - the vast majority of those coming from Europe are written by law firms whereas the majority if not all of the articles submitted here in the US are written by corporate counsel. ECLA should take the lead in organizing EU sponsored events in the US, leveraging local EU chambers of commerce, on issues of European law of interest to US corporate counsel, inviting EU counsel on panels organized by US organizations on issues of international law, all of which are currently staffed by US lawyers having had the experience of dealing with international issues. There is a lack of European perspective and representation in those organizations that govern, represent and defend the interests of corporate counsel in the US, and this is a great opportunity for ECLA to be present and represented at the highest and meaningful level.



## COURSE OF STUDY OF THE LEGAL SYSTEM OF GERMANY

❖ Course of study of the legal system of Germany provided in Brussels.



The German Bar Association (Deutscher Anwaltverein – DAV) together with the Dutch speaking Brussels Bar (NOAB) organizes a 60 hours Course of study of the legal system of Germany. The Course offers non-German lawyers and other interested parties a unique chance to learn about the basic principles of German law, dedicated to 10 different legal topics. The teachers are exquisite German attorneys or professors, specialized in their respectively area of expertise. The first module starts on 30 and 31 October 2013.

Please refer to attached programme for more detailed information and the registration form. The following link also provides further information on the Course, including the speakers CVs and reading lists: <http://www.baliebrussel.be/nl/course-study-the-legal-system-germany>.

Register before 1 August 2013 and benefit from the early bird rate. Should you have any question regarding registration, please contact [peggy@baliebrussel.be](mailto:peggy@baliebrussel.be)



## Legal English in Paris (or elsewhere) of LEGAL ENGLISH PROFESSIONAL

❖ Ask for the discounted rates for ECLA!

LEGAL ENGLISH PROFESSIONAL offers a legal English workshop for the members of ECLA, which will focus on summarizing contract provisions.

More information at: Melissa Marcello, LEGAL ENGLISH PROFESSIONAL,  
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