

ECLANEWS #2 03/13

→ Tuesday March 15, 2013

Dear ECLA Colleagues and Friends,

ECLANEWS is the newsletter now regularly offered and circulated by ECLA. ECLANEWS is meant to be actively and largely circulated internationally among company lawyers, ECLA Advisory Group and friends of to our ECLA National organization members , each representing our company lawyer profession across Europe

Format of ECLANEWS is brand new for ease of reading. We hope you will enjoy scrolling it down. We await your feedback and news to be posted in the next issues.

This ECLANEWS drafted with the complicity of our General Manager Petr Smelhaus is your newsletter.

So please welcome to our second issue of ECLANEWS and make the best out of it.

ECLANEWSLY Yours,

Philippe Coen

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

❖ Key step forward achieved by the Belgium Company Lawyers Institute for this major success. See the next page:

Despite the Akzo ruling, Belgium Competition Authority cannot breach Company lawyers legal privilege in Belgium. Remember that Belgium has a unique model whereby company lawyers can register to the **IJE** and enjoy legal privilege. Further to a judgment dated on 5 March 2013, the Brussels Court of Appeal has recognized that documents produced by in-house lawyers are covered by legal privilege in investigations under the Belgian Competition Act.

The judgment diverges from the established case-law of the European Courts and goes against the decisional practice of a number of national competition authorities.

The Belgian Competition Authority has already stated that it is assessing the possibility of appealing the judgment to the Supreme Court. Diverse comments have already been released internationally including the one from [Clifford](#).



Breaking News: USA (ABA) eases access (certain qualified) foreign lawyers to US Bar

➤ **But: only for lawyers currently member of a regulated profession**



ECLA to engage discussions with the ABA (American Bar Association) on how to provide such access to all members of ECLA members. Project to facilitate foreign lawyers access shows the positive energy developed by the US bars and was already discussed in the USA back last [September](#). This is a major progress for the US Bar rules (in the past only 3 bars allowed foreign attorneys).

[more on new USA access rules for foreign lawyers](#)

Next is to open access with the help of ECLA to fully qualified company lawyers but not currently members of a local Bar (e.g.; France, Italy,).

This development can have a major impact for each jurisdiction. Share your views with ECLA.



New Head inside the Belgium Company Lawyers Association IJE

❖ Welcome to new Belgium President Hughes Delescaille



On Tuesday February 26 2013, IJE celebrated the official inauguration ceremony in order to welcome the new IJE leadership team now led by **Hughes Delescaille** successor of **Pierre Schaubroeck**. Celebration was held in Flagey retro style building (formerly Belgium National Radio broadcast Station). **Hughes Delescaille** is taking office for the next 3 years. **Philippe Coen**, President of ECLA attended the ceremony with ECLA's Treasurer **Jean Cattaruzza**. **Anne De Wolf** remains the General Manager of the IJE and was a central organizer of that warm and successful event with the assistance of all the IJE team and **Didier Pissoort**.

A competition was awarded to the best catch line for the IJE: *"Legal insight, inside"* won the prize and the catch line will be used for the communication of the IJE.



ECLA in Warsaw



❖ President of ECLA meets in Warsaw early March 2013 Jacek Kosuniak, VP of the Polish Counsel Bar (KIRP)

Poland expresses its wish to increase its involvement into ECLA. A reinforced implication of Poland into ECLA has been drawn during the meeting. In particular the Polish association represented by **Jacek Kosuniak** indicated to **Philippe Coen** its desire to participate in the Code of Ethics working group with **Jean Cattaruzza** and the Executive Board.



URGENT Mark your Agenda : (to ECLA Members) Do not miss our important next General Assembly in Lisbon on April

DID YOU REGISTER?

🌟 We will be kindly hosted in magnificent Lisbon by Ordem dos Advogados (Vitor Marques Moreira)



Program (summary):

April 18th, 2013

Welcome Reception at Ordem dos Advogados

Dinner kindly offered ([CMS Legal](#) law firm)

April 19th, 2013

General Assembly Meetings

Gala Dinner kindly offered by ([JAMS International](#))

April 20th, 2013

Visit of Lisbon kindly offered by Ordem dos Advogados

Program: This meeting will be a unique window to exchange among members on all of the initiatives prompted by new elected president (e.g.; ECLA code of ethics, better communication among members, ECLANEWS, White Paper on Independence, Preparation of 30th Anniversary, Recent updates, Results of survey conducted, ECLA Vision (video serie), partnerships). We'll discuss all the content in particular of this ECLANEWS in Lisbon.



Special partnering with ECLA: 9th IBA International Corporate Counsel Conference in Paris

✦ An interesting international [event](#) in Paris : Enjoy special ECLA rates

See [program](#)

Special price for ECLA company lawyers' members: 450€ vs 1,250€
15 April 2013 Automobile Club de France, Paris, France

A conference presented by the IBA Corporate Counsel Forum, supported by the IBA European Regional Forum, the AFJE (French Corporate Counsel Association) and ECLA (European Company Lawyers Association)

Topics will include:

- EU competition - recent developments
- International Compliance Programme: lessons from experiences
- Role and management of legal departments

President of ECLA and President of AFJE to speak.



Mark your Agenda : Major ECLA public event on September 26, 2013, 30th Anniversary ECLA conference, Brussels / General Assembly September 27th, 2013

✦ A Major ECLA Celebration a public event to come



See the next page:

Public event Thursday Sept. 26th: ECLA will host a major public event in 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 will then be followed by a celebration buffet dinner in a prestige venue of the head town of Belgium and of Europe.

Private event Friday Sept. 27th: Our General Assembly (second for 2013) will then be held in Brussels the day after on the Friday the 27th for a full day of meetings and updates.

National ECLA Representatives of the Members will then be invited for a General Assembly Celebration official dinner.

Jean Cattaruzza, Didier Pissort, Anne de Wolf and the IJE are actively helping out to make sure that this event be a major visible success and at the same time an unprecedented lobbying window vis a vis EU institutions.



Anthony Brooks appointed new Representative at ECLA for the Law Society of England and Wales

Anthony Brooks will soon meet ECLA President in order to be introduced to ECLA before our Portugal meeting.



Scope of legal privilege: a view from the UK (News brought to ECLA by the Law Society of England and Wales)

The UK Supreme Court dealt with the aspect of the legal professional privilege – an important issue for ECLA since its founding in 1982/1983 after the AM&S Case decision at the European Court of Justice. In the specific case of the application of Prudential plc. and another v. Special Commissioner of Income Tax and another (UKSC 2010/0215) the UK Supreme Court dealt with a general question whether legal advice privilege extends, or should be extended, so as to apply to legal advice given by someone other than a member of the legal profession, and, if so, how far legal advice privilege thereby extends, or should be extended. The UK Supreme Court took as granted and universally believed that legal advice privilege only applies to communications in connection with advice given by members of the legal profession.

See the judgement and the press summary here:

http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2010_0215_Judgment.pdf

http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2010_0215_PressSummary.pdf

ECLA comment:

This UK Supreme Court view is close to ECLA's and its members' view and shows that the lawyers as instruments of clients seeking their advice in the same manner as other privileged professions as medicine doctors and priests have special relations to clients and these special relations are universally privileged. The same as in the UK there should not be any obstacle for such special relation for employed lawyers in Europe in all aspects of their professional activities.

You too can actively contribute to ECLANEWS – So do send us your updates, appointments, etc.



ECLA Advisory Group

ECLA Advisory Group is being completed with distinguished experts in Company Lawyer questions. It is still time to come with suggested names from every country. A first list will be disclosed in Lisbon.



Outside legal roles: On the way to the “independent” in-house role?

❖ DPO developments of interest for Company Lawyers in the EU

The Commission’s recent proposal for a new Data Protection Regulation includes the obligation certain companies (large processors of data) to have an internal Data Protection Officer (DPO) charge of data protection compliance – interestingly, the draft regulation specifically allows the DPO be employed while setting out an obligation for the DPO to act “independently”. It provides that:

- (i) a DPO can be employed or operate under a service contract and
- (ii) must perform its duties independently and have a direct report to the management who must provide the necessary staff, premises, equipment and other resources to carry out its duties.

Further, the draft regulation stipulates potential fines of 2% of global turnover. It seems this may be inconsistent with the ECJ “Akzo” approach since employment and independence is compatible here and even mandated. Also, with this level of potential fine, it seems the DPO would need protection from self-incrimination and some sort of privilege for his/her advice.



Renovating ECLA Logo, website & eFlyer

ECLA continues its fast renovation efforts. After 30 years, our logo needs a reshape. Hold your breath; the Executive Board of ECLA will soon be disclosing our new logo. So stay tuned!



In the spring of 2013: a brand New ECLA LOGO will be revealed!

Petr Smelhaus and Han Kooy are overseeing the revamp of our web site which is in an advanced stage.

Also **Marina Kralj**, our ECLA Vice President is currently renovating our **ECLA eFlyer** so you'll have more soon in your file to disseminate ECLA's vision and role in Europe.

For all those refurbishments, we do humbly accept advice.



Just released: ECLA in a book on Legal function's management

http://editions.larcier.com/titres/125680_2/organisation-et-management-de-la-fonction-juridique-en-entreprise.htm

Charlotte Karila Vaillant just released a book in French on Management of the Legal function and interviewed our President over one chapter.



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



Your Feedback regarding ECLANEWS ? Sponsoring ECLANEWS?

We are innovating a new format for ECLANEWS. Your **comments** will be much appreciated. Please provide feedback and content for our next ECLANEWS issue.

Also let us know whom could be interested in **subscribing** to ECLANEWS.

Sponsoring ECLANEWS is possible. Contact us to brand this newsletter with your logo.

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