



European Company Lawyers Association

Association Européenne des Juristes d'Entreprise (ECLA/AEJE)

DECEMBER 2008

Newsletter for the Member Associations of ECLA

President's Report Zagreb

At the ECLA Board meeting in Zagreb on 17 October, 2008 Han Kooy presented his first President's report. He emphasized that he supported the existing ECLA program made by his predecessors. This means that ECLA continues to represent in-house lawyers in Europe, provide them with education, training and information (at discounted rates if offered by third parties) and, last but not least, provide them with the best networking venue for in-house lawyers in Europe. However, he expected to refine the ECLA program in the next Board meeting in order to reflect the present situation where ECLA's goals are becoming more diversified.

Legal Privilege is, of course, still a key issue for ECLA. In particular, there is the appeal in the AKZO Nobel case before the European Court of Justice, where ECLA is, amongst many others, including two governments, an intervenor. Cleary Gottlieb Steen & Hamilton, as well as Sidley & Austin, have graciously offered to be ECLA's counsel in the intervention. Intervention documents were submitted in the spring and ECLA is waiting for further developments in the case.

Apart from this issue, ECLA intends to focus on lobbying for in-house lawyers and expand education, training and information possibilities. A new aspect is ECLA's representation in the session of the UNCITRAL Working Group VI (Security Interests) held in Vienna from 20 to 24 October. The organization is preparing an annex to the UNCITRAL Legislative Guide on Secured Transactions specific to security rights in intellectual property. ECLA was represented by a member of the Dutch member association (for more information see below).

In 2008, ECLA welcomed Bosnia and Herzegovina, Lithuania and Spain as new members. Discussions are being held with nine other national associations, active or in statu nascendi. "We are confident that we will increase the number of members and subsequently the number of in-house lawyers significantly in the coming years", said Han Kooy. The various visits of ECLA representatives to national associations and countries will bear its fruit over time. This has already resulted in welcoming Russia as an observer in Zagreb.

BOARD OF DIRECTORS MEETING IN ZAGREB

On 17 October the directors of ECLA held their autumn board meeting in Zagreb, hosted at the offices of the Croatian Association of Corporate Lawyers ("Udruga Korporativnih Pravnika"). The Croatian member association is one of the youngest members of ECLA; registered with the Croatian authorities on 1 June 2007 and admitted to ECLA by the board of directors meeting held in Dublin on 16 November 2007. The number of individual members is increasing very fast totaling almost 200 from 100 in July 2007. It almost doubled in little more than one year's time! The board members of ECLA enjoyed the very good, professional, as well as enthusiastic hospitality in Croatia, which they will remember for a long time.

NEW POTENTIAL MEMBERS

Natalya Podolskaya, member of the Russian Corporate Counsel Association-RCCA, was invited as observer at the board of directors meeting in Zagreb. She delivered an interesting presentation of RCCA's constitution and activities. She confirmed that RCCA would like to apply for membership in ECLA as soon as it will have approved the code of ethics.

Francesco Benigni is pursuing his contacts with in-house counsels in Vienna, who have confirmed that they are making good progress with the establishment of an association in Austria. Iwona Mirosz will soon have meetings in Finland with her contact there. Good progress for adding new members is also under way in other countries, including Georgia, Hungary, Luxembourg and Ukraine.

NEWS ON MEDIATION IN EUROPE

Mediation is one of the taskforces of ECLA, put under the responsibility of General Manager Francesco Benigni, with the aim of monitoring the evolution of mediation in Europe and expanding the knowledge among the members. ECLA and its members have always regarded mediation as an important tool for resolving business disputes efficiently, quickly, while saving costs and avoiding disruption of the business relationship.

Francesco Benigni reminded the board of directors at the meeting in Zagreb that it is very important to monitor the enactment of new legislation in the countries of the member associations, as well as exchanging experiences made. Another task should be monitoring the implementation of the European Union Directive on cross-border mediation in civil

and commercial disputes. The EU Directive was enacted by the European Parliament on 21 May 2008 and must be implemented by the member states before 21 May 2011. All member states are bound by the Directive, except Denmark who has exempted itself. The Directive does not apply to administrative actions, to matters in which the state itself may be liable and to rights and obligations on which the parties are not free to decide themselves.

The Directive focuses on the quality of mediation and therefore on mediators and on organisations administering mediation, on the enforcement of the agreement that results from mediation, and on confidentiality.

Confidentiality really constitutes the "core" of mediation. If the parties are not covered by the confidentiality during the mediation, they will hardly accept to mediate. Regarding confidentiality, the EU Directive is subject to criticism. In fact, Article Seven of the Directive provides that "mediators and those administering mediation shall not be compelled to give evidence in civil and commercial judicial proceedings or in arbitration" except in limited circumstances. Instead, confidentiality should apply to all participants in the mediation process including parties, counsel, and others attending for any cause. It should not only the mediators and the administrators. This should apply to any proceeding of any type in connection with the dispute brought in mediation. In any event, the EU Directive is a great step forward for bringing the mediation to the attention of the European states where, except for the united Kingdom, the mediation process is still not well known, or understood.

ECLA is Europe's leading association of in-house counsel in Europe. ECLA represents more than 33.000 individual in-house counsels and is represented in twenty-two European countries.

**NEXT ECLA
BOARD AND
ANNUAL
GENERAL
MEETING IN
WARSAW ON
MAY 8, 2009**

**Iwona Mirosz,
representing the Polish
association, has offered
to host the spring board
meeting .**



Besides the implementation of the EU Directive in the member states, the drafting of any national law encouraging the utilization of the mediation in civil and commercial dispute is very important for in-house lawyers. For instance, the Italian government, aiming at reducing the excessive duration of the civil proceedings in Italy, has recently approved and presented to the Parliament a draft law which would strongly encourage the utilization of mediation in civil and commercial disputes before making recourse to the court.

Francesco Benigni, at the board of directors meeting in Zagreb, asked for the formation of a working group composed by representatives of the member associations of ECLA to monitor:

- The implementation of the EU Directive on cross-border mediation in civil and commercial disputes; and
- The legal situation in the respective states on mediation in civil and commercial disputes, including the preparation of draft acts on mediation and/or on mediators.

The member associations were asked to appoint one or more individual members to co-operate in ECLA's mediation task-force.

ECLA OBSERVER TO UNCITRAL


Last summer, and for the first time, ECLA was invited as observer by UNCITRAL, following a meeting and discussion between Francesco Benigni and Jose Maria Estrella Faria, at that time Senior Legal Officer of UNCITRAL and since the beginning of October new Secretary General of UNIDROIT.

The first invitation related to the session of the Working Group II (Arbitration and Conciliation) held in Vienna at the beginning of September, which ECLA could not attend. The second invitation related to the session of the Working Group VI (Security Interests) held in Vienna from 20 to 24 October, for the preparation of an annex to the UNCITRAL Legislative Guide on Secured Transactions specific to security rights in intellec-

tual property. ECLA was represented by Frits-Joost Beekhoven van den Boezem member of the Netherlands member association and what follows below is his report.

From 20 to 24 October 2008, Working group VI (Security interests) of the United Nations Commission on International Trade law ("UNCITRAL") held its fourteenth session in Vienna. ECLA had been invited to attend this session as an observer, giving her the opportunity to be involved in the preparation of an annex to the UNCITRAL Legislative Guide on Secured Transactions specific to security rights in intellectual property. Board member Paul de Jonge had asked me to represent ECLA at this event, so as to facilitate the deliberations of the Working Group with ECLA's expertise and international experience on the matter.

UNCITRAL came into existence in the 1960s, as world trade began to expand rapidly and States realized the importance of removing legal obstacles to the flow of international trade. A global set of standards and rules had become necessary to harmonize and modernize national and regional trade regulations. Therefore, UNCITRAL's aim is to formulate modern, fair and harmonized



rules on commercial transactions, through consultations and negotiations. These include conventions, model laws and rules which are acceptable worldwide, legal and legislative guides and recommendations of practical value, updated information on case law and enactments of uniform commercial law, technical assistance in law projects and regional and national seminars on uniform commercial law. During the passed decades, UNCITRAL achieved much, especially in the field of the sale of goods, transport, dispute resolution, procurement and infrastructure development, international payments, electronic commerce and insolvency. The focus of UNCITRAL's current work is on international arbitration, transport law, security interests and public procurement.

The preparatory work of UNCITRAL is being done by six working groups (Procurement, International arbitration and conciliation, Transport law, Electronic commerce, Insolvency law and Security interests). All member States of UNCITRAL are represented in those working groups. Other States (non-members of UNCITRAL) and observers such as ECLA were invited to attend. Each working group meets once or twice a year. These sessions alternate between the United Nations Headquarters in New York and the Vienna International Centre.

Working group VI deals with security interests. A big achievement of this working group has been the adoption of the UNCITRAL Legislative Guide on Secured Transactions ("the Guide"). Secured transactions laws can have significant economic benefits for States that adopt them. Not only do they attract credit from domestic and foreign lenders, promote the development and growth of domestic

business and generally increase trade, but they also benefit consumers by lowering prices for goods and services and making low-cost consumer credit more readily available. Therefore, the Guide assists States in creating a national legal regime that promotes secured credit. States that do not yet have efficient and effective secured transactions laws can use the Guide as a road map for new legislation. States that do already have those laws may use the Guide for modernization or harmonization purposes.

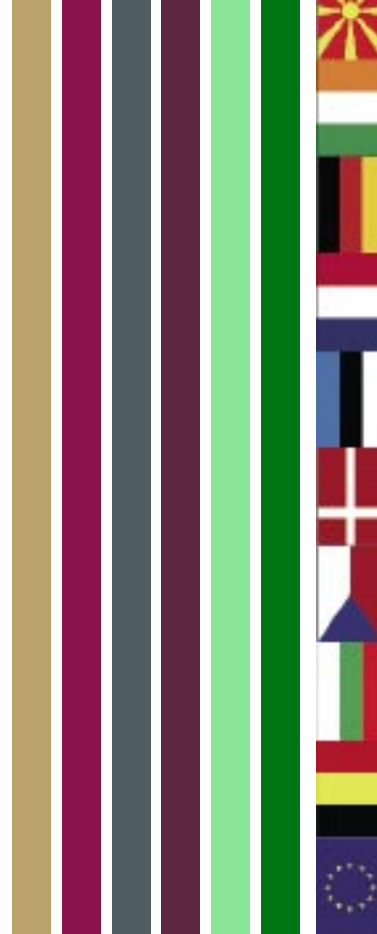
Intellectual property rights – such as copyrights, patents and trademarks – have become important assets to encumber. The recommendations of the Guide also apply to these rights as long as these recommendations are consistent with intellectual property law. However, since the recommendations of the Guide have not been made with the special intellectual property law issues in mind, UNCITRAL has finalized and adopted the Guide on the understanding that Working group VI would prepare an annex to the Guide (the "Annex") that specially deals with security rights on intellectual property rights.

ECLA ENDORSES THE FIRST CENTRAL EASTERN EUROPEAN IN-HOUSE COUNSEL SURVEY

ECLA endorses the first survey in Central & Eastern Europe (CEE) on how in-house counsel select and retain external counsel. LexisNexis Martindale Hubbell (International) commissioned this research which is the first of its kind to focus on this region in Europe. ECLA's member associations in the region are taking part in the survey which should be published shortly. Anyone who participated in the survey will receive a free copy of the report.

ECLA REPRESENTED AT THE FOURTH ANNUAL CPR EUROPEAN CONGRESS ON BUSINESS DISPUTE MANAGEMENT

The International Institute for Conflict Prevention and Resolution-CPR of New



York held its fourth annual European congress on Business Dispute Management on May 14-16 in Vienna. ECLA co-sponsored the event in return for a 25% discount on the fee for its members. Francesco Benigni moderated a very lively panel on "Real-Time" dispute management processes.

VISIT TO VSUJ, SWISS MEMBER ASSOCIATION

On 11 June 2008, Francesco Benigni attended the annual general meeting of Vereinigung Schweizerischer Unternehmensjuristen, the Swiss member association, receiving a very warm welcome by the president Daniel Petitpierre and by all board members and other members present. Francesco made a short presentation concerning ECLA's recent activities and projects, as well as on his own role in the organization. A drinks reception and lunch in the splendid Baur au Lac hotel in Zurich closed the meeting, after a very interesting seminar on sports law.

EVENTS ENDORSED BY ECLA

International Construction Contract in Eastern Europe, Rome 24 October

The conference was organized by our Foundation Sponsor Eversheds together with our partner ADR Center. The presentations focused on the construction contract and the resolution of disputes in three eastern European countries, namely Bulgaria, Poland and Romania. The participants, almost all from Italy, participated to a lively discussion and the organizers offered a very good lunch and a drink reception at the

end of the conference.

International Sales Contracts, Vienna 10-11 November

The conference was organized by ICC Austria, a very active national chapter of the International Chamber of Commerce of Paris and the members of ECLA receive a discount of 20%. The speakers were all renowned experts of the subject matter, coming from many European countries and discussed legal issues within and around international contracts, among which, as mere simplification:

- how to avoid expensive pitfalls
- how to deal with damages clauses
- choosing the right forum for resolving disputes.

Francesco Benigni intends to bring forward a cooperation with ICC and ICC Austria in particular also for promoting ECLA and facilitating the formation of a national association of in-house counsels in Austria, as reported elsewhere in this newsletter.

Les Strategies Juridique, Luxembourg 5 December

This is also an important event, particularly because it gave ECLA the opportunity to bring forward contacts established by Francesco Benigni with in-house lawyers in Luxembourg who could form a national association in Luxembourg, eventually joining ECLA. The conference is organized by the Luxembourg University and is free of charge. ECLA was represented, as discutant, by Mme Viviane de Beaufort appointed by AFJE, the French member association.

Fourth Forum For In-House Counsel, Brussels, 23-24 April 2009

The "Forum for In-House Counsel" organized by ECLA and ERA-Academy of European Law, will be held for the fourth year in Brussels on 23-24 April. Please save the date, as this is our association's annual

Seminars
Co-sponsored by
ECLA offer a 20%
discount to
individual
members

event expressly designed by and for its members! Topics are being selected with the contribution of all members of ECLA and will, as in previous editions, concentrate on European law's hot topics relevant to the in-house counsel, in the area of corporate, competition and private law. Speakers will be lawyers in private practice, in-house counsels, academics and officers of the EU Commission. All members of ECLA will enjoy a very attractive admission fee and are recommended not to miss this unique annual event of ECLA/ERA. If only one per cent of ECLA's individual members will attend, we can have at least 300 participants! Please do look at the website in the coming weeks!

IUS Laboris Organizes A Conference For ECLA in Milan on January 29, 2009

Carolyn Knox, Ius Laboris' executive director, and Francesco Benigni, who would like to enhance sponsor relationship initiated in 2006, are organizing a half day seminar on "Investigations at work" in Milan on 29 January 2009. This is a very sensitive and important subject for the in-house counsel who must handle the investigations in full compliance with the laws protecting the workers and the privacy. Ius Laboris members are among the best law firms specializing in labour law and this seminar will be conducted by its Italian member, the Franco Toffoletto's law firm in Milano. The conference will be free of charge for the ECLA members and will be held in the splendid Villa Necchi Campiglio and will end with a guided tour of the villa and a cocktail reception. Check our website for more information.

Law Europe Organizes a Conference in Bucharest on May 27, 2009

Law Europe, ECLA's sponsor since September 2007, is organizing a very interesting seminar in Bucharest on 27th May 2009. We only have a preliminary draft program of this one day event, which will deal on "Investing in Eastern Europe: Opportunities and Threats: A Legal Analysis ". The sectors to be examined should be real estate, banking and finance, and some industrial sectors like energy, ITC, transportation and automotive. You will receive detailed news in the coming weeks. Please do look at ECLA's as well as at member's associations websites and save the date as of now!

TRANSPARENCY AND INTERNATIONAL CAPABILITY BY EVERSHEDES

We are pleased to publish the following article from Eversheds, ECLA's foundation sponsor.

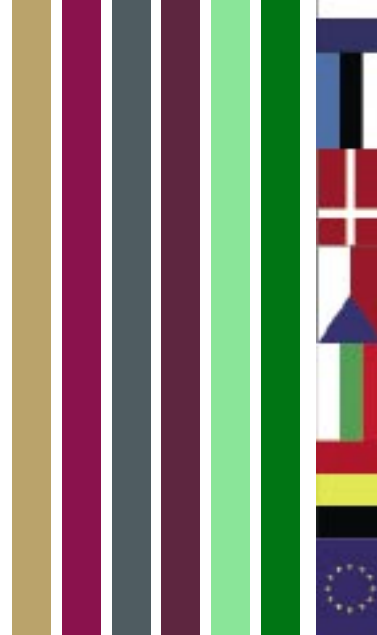
As one of the world's largest full service international law firms, our clients tell us that reliability, transparency and predictability are of paramount importance to them. In response to this we have invested in:

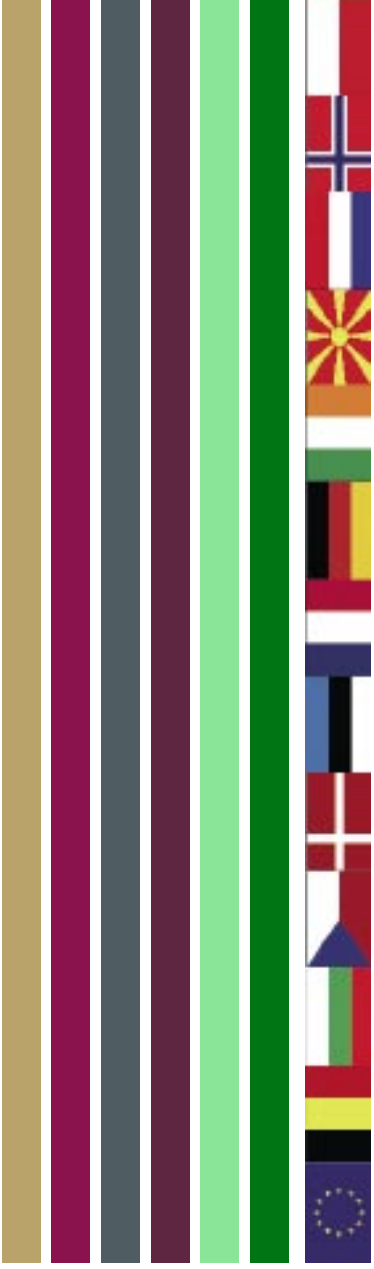
- developing innovative project management processes to provide transparency
- installing new IT systems to support our project management approach
- training all of our people to apply our project management methodology.

Our project management approach ensures effective planning, communication and genuine cost predictability.

No comparable law firm delivers the same level of project management and transparency. With Eversheds, you receive prices and plans that won't change without your knowledge or permission. You have control of your legal spend and total accountability from your advisers; nothing is left to chance, nothing is random or surprising. What you see is what you get - quality with clarity.

With 40 offices in major cities across Europe, the Middle East, Africa and Asia, Eversheds are





uniquely positioned to provide you with practical advice on doing business internationally. As such we have published a book on "How to be an international lawyer" which gives guidance on legal issues to be aware of when working internationally, as well as helpful hints and tips for the international lawyer on the road. To request a copy of the book please contact sallyrobinson@eversheds.com.

BOARD AND ANNUAL GENERAL MEETINGS IN 2009 IN WARSAW AND IN BUCHAREST

Thanks to the hospitality kindly offered by the associations of Poland and Romania, in 2009 the board and general meetings will be held in Warsaw on 8 May, 2009 and in Bucharest on 9 October 2009. Many thanks to Iwona Mirosz and Dan Stoica, respectively, who have offered the hospitality of their own organization for the 2009 meetings of ECLA.

For the Executive Board

Han Kooy
President

