



European Company Lawyers Association

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

MARCH 2009

Newsletter for the Member Associations of ECLA

NOTE FROM THE EDITOR

Dear Reader,

Our Newsletter has been recently renewed in layout and format and we are confident that you will appreciate it even more. However, we welcome any comments and suggestions that you may have.

ECLA will be publishing contributions from our sponsors and partners to make them better known to you. However, we also welcome contributions from the members on local events, new legislation, recent courts decisions, practical experiences, or any other legal commentary. In this issue you will find a contribution from Gjertrud Helland (Norway) on the class action legislation recently introduced in her country. If you wish to contribute to the upcoming issues of the Newsletter (June, September-October, December 2009) please notify me: francesco.benigni@ecla.org

FOURTH FORUM FOR IN-HOUSE COUNSEL, 23-24 APRIL 2009

As already announced, we will hold our Fourth Forum for In-House Counsel, organized together with ERA-Academy of European Law, on 23-24 April at the Bedford hotel in Brussels. The program has been sent to all the member associations and posted on our website. We have first class speakers among the legal practitioners on such hot topics as "the financial crisis-consequences for legal practitioners", "how to set up effective compliance programs" (competition law), "consumer collective redress", "recent developments in European environmental law-practical issues", "recent developments in cross-border litigation and enforcement within the EU". Networking events are also offered. On the first day, the participant may choose to attend a cocktail reception or a dinner. Please register soon for these networking events!

ECLA HAS BEEN AWARDED AN EC FUNDED PROJECT ON THE COST OF NON-ADR

The European Commission has recently awarded to ECLA, in partnership with ADR Center SPA, Rome, an important project: "The Cost of Non-ADR: Surveying and Showing the Actual Costs of Intra-Community Commercial Litigation". This is the first time ever during ECLA's 25 years that ECLA will participate in an EC funded project. ECLA's members will soon be called on to participate in this survey.

ECLA OBSERVER AT THE UNCITRAL WORKING GROUP II SESSION IN NEW YORK, 9-13 FEBRUARY 2009, ON THE REVISION OF THE 1976 UNCITRAL ARBITRATION RULES

Francesco Benigni, ECLA's general manager, represented ECLA as observer to the subject session of the UNCITRAL Working Group II (WG) on the revision of the 1976 UNCITRAL Arbitration Rules (the Rules). Francesco, in his more than 25 year activity as in-house lawyer, has developed a long experience on international arbitration and also as ICC arbitrator, as well as member of arbitration associations and working groups on arbitration.

The voice of the most extensive European group of "users" of the arbitration could be heard for the first time in the WG. There was attending only one other representative of the "users": Andrew Clarke of Exxon Mobil UK, who was sitting next to Francesco and was representing the 40-50 in-house lawyers members of the Corporate Counsel International Arbitration Group (CCIAG) while Francesco was representing the more than 33.000 in-house lawyers members of ECLA. As a way of example, some among the other non governing organizations represented as observers may be cited here: American Arbitration Association (AAA) American Bar Association (ABA) Center for International Legal Studies (CILS) Centre pour l'Etude et la Pratique de l'Arbitrage National et International (CEPANI) Council of Bars and Law Societies of Europe (CCBE) Forum for International Commercial Arbitration (FICACIC) International Court of Arbitration (ICC) International Bar Association (IBA) London Court of International Arbitration (LCIA) Swiss Arbitration Association (ASA) Union International des Avocats (UIA).


On Monday 9 February the WG resumed discussions at the United Nations in New York on the revision of the Rules from article 18 (statement of claim) and ended on Friday 13 February with the revision

of article 26 (interim measures) where the WG risked seriously to break the session without any decision taken. On this article 26 a solution could eventually be agreed on Friday morning after two and half days discussion. The WG was confronted with an article 26 extensively revised by the introduction of a detailed description of the interim measures which the arbitral tribunal might order, in accordance with the UNCITRAL Model Arbitration Law of 1985 as revised in 2006. The opposition of the representatives of some governments was very strong, in particular against the introduction of paragraph 5 of article 26 regarding the preliminary orders upon a request by a party, without notice of the request to any other party. It was pointed out, inter alia, that many legal systems did not permit such orders under the domestic arbitration law. In response to that argument it was stated that, in any event, domestic arbitration law would, if it did not allow preliminary orders to be granted by an arbitral tribunal, supersede the Rules. It was further stated that the deletion of paragraph 5 could give rise to an undesired interpretation of the Rules, as generally disallowing preliminary orders. After an exhaustive discussion the WG reached an agreement on a wording which could promote a neutral approach to the question of preliminary orders. Therefore, paragraph 5 should now read as follows: "Nothing in these Rules shall have the effect of creating any right, or of limiting any right which may exist outside these Rules, of a party to apply to the arbitral tribunal for, and any power of the arbitral tribunal to issue, in either case without prior notice to a party, a preliminary order that the party not frustrate the purpose of a requested interim measure". On this very crucial article 26 ECLA could express the opinion that the WG should favor all the amendments of the Rules which could facilitate the arbitrators and the arbitral proceedings. This for the simple reason that, when the in-house lawyers chose for their companies to go to arbitration normally

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 twentytwo European countries.

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

Iwona Miroisz, representing the Polish association has offered to host the spring board meeting which will be held in Warsaw on 8 May.



they want to arrive to the end of it as safely as possible, not a "Pirrus victory". And of course the in-house lawyers will avoid choosing any jurisdiction which does not favor the arbitration. The WG decided to ask the UNCITRAL commission, which will meet next July in New York, for a postponement of the revision of the Rule at the next session of the WG which will be held on 14-18 September 2009 in Vienna and, if necessary for the completion of the revision of the 41 articles of the Rules, at the session to be held in February 2010 in New York. The report of the WG on the works of the subject 50th session will soon be published on the relevant section of the UNCITRAL website (www.uncitral.org).

NEW WORKING GROUP ON MEDIATION

ECLA is forming a working group on mediation for the purpose of monitoring:

- (1) The implementation of the EU Directive 2008/52/EC on cross-border mediation in civil and commercial matters; and
- (2) The legal situation in the member associations' countries on mediation in civil and commercial matters, including the preparation of national legislation on mediation and/or mediators.

The same working group could take the lead in preparing the EC funded survey on the cost of non ADR indicated elsewhere in this Newsletter. As of the date of this Newsletter, only the following members organizations of ECLA have appointed one individual member to the working group: Bulgaria, Ireland, Italy, Lithuania, Macedonia and Norway.

Francesco Benigni, responsible for ECLA's mediation taskforce, continues to encourage the member organizations to appoint a representative to the mediation working group.

SALARY SURVEY AMONG THE EUROPEAN COMPANY LAWYERS

Following the decision taken by the board of directors last October in Zagreb, Croatia, Edward Smethurst, ECLA's director representing the C & I Group of the Law Society of England and Wales, contacted Tailor Root, company specialized in the lawyers' sector, for organizing and conducting a salary survey and comparison among the member organizations. Through the member associations, the individual members will be requested to answer a questionnaire concerning salaries. The results will constitute very useful information for all general counsel and for their associates in Europe.

CLASS ACTIONS – THE NORWEGIAN LEGISLATION

by Gjertrud Helland (Board Director, representing Norway)

From 1 January 2008, the new Norwegian Civil Law Procedure Act has opened up to permit class actions. In chapter 35, § 35-2, the conditions for class actions (group actions) are laid down:

- More than one legal person must have claims or obligations founded on the same (or prac-
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tically the same) legal and factual grounds;

- The claims can be handled by court with the same court-members and according to the same procedural rules;
- Class action is the best procedure;
- It is possible to select a representative for the group who can see to it that the groups interests and duties are maintained during the process; and
- Only legal persons who could have filed a civil suit or joined a civil action before a Norwegian court can be members of the group in a class action.

It is up to the court to decide whether or not the conditions for a class action are fulfilled. The group shall – as a main rule – have a lawyer as representative in court.

NEWS ON CLASS ACTION IN EUROPE

On 1 March the term set by the EU Commission for submitting views on consumer collective redress (commonly known as class action) expired. As you may know, the EU Commission, on 27 November 2008, published a Green Paper on consumer collective redress in Europe. The Commission put forward four options for consultation, ranging from no action at EU level to the most extreme option of an EU-wide measure that a collective redress judicial mechanism exists in all member states. In the course of 2009, the Commission could prepare a legislative proposal on consumer collective redress. Some member states have introduced legislation on class action (Norway and Sweden) while others are in the

process of introducing legislation (including Italy, among others). In the United Kingdom, the Civil Justice Council (an advisory group to the Minister of Justice) has published in mid-December 2008 its final recommendation on collective redress, including detailed draft procedural rules and the draft Collective Proceedings Act. There is enough material about this issue to revive the ECLA class action taskforce and candidacies are sought and most welcome. Please volunteer for this important taskforce!

THE LEXIS NEXIS MARTINDALE-HUBBELL SURVEY IN CENTRAL AND EASTERN EUROPE (CEE) ON HIRING EXTERNAL COUNSEL ENDORSED BY ECLA

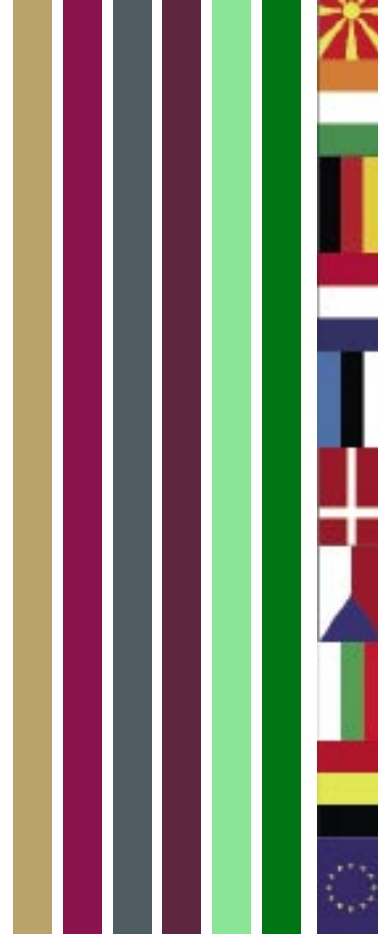
The result of the first ever survey on how in-house counsel select and retain external counsel has been completed recently by Lexis Nexis Martindale-Hubbell. ECLA endorsed the survey and the member associations in the CEE region have actively contributed and the participants received free copies of this very interesting survey.

PUBLISHED THE OXFORD UNIVERSITY CIVIL JUSTICE SURVEY ENDORSED BY ECLA

On ECLA's website, we posted the results of the survey organized by the University of Oxford Faculty of Law on "Civil Justice Systems in Europe: Implications for Choice of Forum and Choice of Contract Law". ECLA endorsed this important survey and many individual members of the member associations contributed to its completion and success.

NEW POTENTIAL MEMBERS

ECLA currently has 22 European countries as member organizations, representing a total of more than thirty-three thousands (33.000) individual members. Substantial progress is under way for adding new member organizations, including one in Russia and the other in Ukraine. In other countries, where a national organization of in-house lawyers has not yet been established – such as in Austria, Hungary and Iceland – ECLA is providing its expertise and assistance to help local in-house



lawyers build an organization which could eventually become a member of ECLA. Contacts have been initiated with the organizations of Finland and Scotland, former members of ECLA, to persuade them to return to ECLA. ECLA's member in Croatia is exerting efforts with the organizations in Serbia and Slovenia. ECLA encourages everyone who may have a contact in a country where ECLA does not yet have a member to contact Francesco Benigni.

EVENTS ORGANIZED OR PROMOTED BY ECLA

-World Legal Forum, The Hague 11 December 2008

This interesting seminar on "Public and Private Actors in International Lawmaking" was held at the Peace Palace in The Hague on 11 December and the ECLA members were granted a 25% discount.

-Investigations at work, Milan (Italy) 29 January 2009

On 29 January 2009 in Milan, Ius Laboris and its member law firm, Franco Toffoletto, organized a very interesting free of charge seminar on the Investigations at Work with the cooperation of ECLA and AIGI, the Italian member association. There were 55 participants and the outstanding speakers gave very practical insights on the subject matter. The location of the seminar was a superb villa built in the 1930s in the city center and a cocktail reception was followed by a guided tour.

-International Trade Finance Week, Vienna (Austria) 11-15 May 2009

The International Chamber of Commerce in

Austria is organizing the International Trade Finance Week from 11 to 15 May next in Vienna. The event will be divided in three parts:

- 4th Global Conference on Bank Guarantees, May 11-12;
- 3rd Global Conference on Letters of Credit, May 13-14;
- 1st Conference on Financial Instruments in Trade Finance, May 15

The complete program is posted on the ECLA website and the members will have a 20% discount.

-Investing in Eastern Europe: opportunities and threats. A legal analysis, Bucharest (Romania) 29 May 2009

In its Winter newsletter, ECLA has already provided preliminary information on this one day seminar. It should be noted that the date has been postponed to 29 May 2009. Law Europe, ECLA's sponsor, is organizing this very interesting event in cooperation with ECLA and ERA (Academy of European Law). The program will soon be distributed to the member organization in due course, as well as posted on ECLA's website.

-Annual Meeting of the International Distribution Institute, Barcelona (Spain) 12-13 June 2009

ECLA's partner International Distribution Institute-IDI is organizing the Annual Meeting in Barcelona on 12-13 June. The theme will be "Critical Issues in International Distribution" and will focus on termination indemnity to distributors, "illicit commissions", and revision of EC competition rules. The program has not yet been finalized. ECLA, and its member organization in Spain, are called on to cooperate and to invite other speakers from the individual members. Detailed news will soon be sent to all the member organizations and will be posted on the website.

ECLA procures at least a 20% discount for its members on activities that it sponsors.

NEW DESIGN OF THE TRANSLEGAL -ECLALINGUA

ECLA's alliance partner Translegal has recently launched a new design of the Translegal Digest-ECLALingua. ECLA members will continue to have free access to this powerful legal English resource through their free subscription to the Digest. ECLA member will also still have discounts on the Translegal products and services. Please look at the ECLA website for detailed information, also on how to get access to this very good resource.

BOARD AND ANNUAL GENERAL MEETING IN WARSAW ON 8 MAY 2009

ECLA's member organization in Poland is organizing the spring board of directors meeting and the general meeting of ECLA on May 8 in Warsaw. The Eversheds local law firm, ECLA's foundation sponsor, will provide assistance and cooperation to this important event for ECLA and its members.

BOARD MEETING IN BUCHAREST ON 16 OCTOBER

Dan Stoica, ECLA's director representing the member organization in Romania, has offered to host the autumn board meeting of ECLA on 16 October in Bucharest.

**Check out the New
Translegal Digest
-ECLALingua. See
the website for
more details.**

