



European Company Lawyers Association

CELEBRATING 30 YEARS *of ECLA*

26 SEPTEMBER, 2013
PALAIS D'EGMONT, BRUSSELS

ABOUT ECLA: A EUROPEAN LAWYERS' HISTORY





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A EUROPEAN COMPANY LAWYERS' HISTORY

A history of the European Company Lawyers Association (ECLA) needs to be preceded by some explanatory words on the company lawyers, the company legal departments and the organisations of company lawyers in Europe.

Company lawyers

Jurists working in Europe for a company as salaried employees in a legal department are company lawyers. Of course, not every jurist employed by a company is a company lawyer. There are employees with legal training who work in sales, HR and finance. These individuals are not employed as company lawyers.

Therefore, 'company lawyer' means

a jurist employed as a lawyer within the legal department of a company.

Hence the words 'European company lawyers' appear in the English name of the international association which is known as ECLA.

The terms house counsel, in-house counsel, corporate counsel, in-house lawyer, business lawyer, and juriste d'entreprise in the French language, are used synonymously. Association Européenne des Juristes d'Entreprises, AEJE, is the official statutory French name of ECLA.

Company legal departments

The development of company legal departments occurred more or less simultaneously in the USA and in Europe.

In the USA, company legal departments began to develop at the end of the 19th century. One of the first legal departments was

established in 1882 at Standard Oil, New Jersey. Railroad, insurance and public utility companies began to employ lawyers in their business.

The period since 1930 has brought a great expansion of legal departments in size, number and influence. World War II brought numerous new governmental agencies. Full-time legal counsel proved to be a necessity to cope with the myriad of new rules, regulations and directives. Legal departments which had existed earlier grew in size and even smaller companies established their own legal departments.

In Europe, interestingly enough, the law of the 1 July 1878, regulating the German Bar, provided already in its paragraph 5 that a jurist could be admitted to the Bar even if permanently employed by a company.

A similar development of the legal departments occurred in many other industrialised European countries. It should ➡

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⇒ be noted here, however, that only in very few of those countries may the company lawyers be admitted to the Bar (or to other professional organisations like the Law Society in the UK and Ireland). Reference is particularly made, in addition to the UK, Ireland and Germany, to Norway, the Netherlands (limited to advocates), Poland, Spain and Portugal.

Organisations of company lawyers

Organisations of company lawyers are established in many countries of the world. As far as the European countries are concerned, the oldest (probably in the world) dates from 1930 and is the Netherlands N.G.B. (Nederlands Genootschap van Bedrijfsjuristen). The Swedish organisation was founded in 1954, the Belgian in 1968, the French in 1969, the Italian in 1976 and the German ASDA in 1978, all reuniting the lawyers in permanent employment. In England and Wales, as well as Scotland and Ireland, the company lawyers belong to the Law Society (and on a voluntary basis, to the Commerce and Industry Group of the Law Society) if they are solicitors, or to the Bar Association for Commerce, Finance and Industry if they are barristers.

The Founders and the constitution of ECLA

But how and why was ECLA born?

In 1980, an organisation of company lawyers in Belgium took the initiative to contact other similar organisations in the Netherlands, England and Wales, Germany, Italy and France.

These organisations began exchanging experiences and best practice on legal matters with particular reference to the international business and the European laws affecting the activities of their respective companies. In addition, the company lawyers were realising that the legal status of their profession was not the same in the European countries as in the Netherlands, the UK and Germany, the company lawyers could be admitted to the national Bar, or to other professional associations (such as the Law Society) while in Belgium, France and Italy that was not permitted by law.

1980 saw the beginning of regular meetings between these organisations of company lawyers. In 1983, ECLA was

formed in Belgium as a private non-profit international association following the A.M. & S. case decided in 1982 by the Court of Justice (more below) and the appointment of John Boyd as the first Secretary General.

The first ECLA President was appointed in September 1984: Prof. Dr. Walter Kolvenbach, who authored the landmark book *The Company Legal Department* (Kluwer, 1979) who remained in office until October 1987 and who dedicated much of his efforts to designing the route to be followed towards the recognition of the company lawyer profession across Europe.

Under the presidency of Barry O'Meara (October 1987 – May 1990) the cooperation among the European organisations of company lawyers became more and more integrated, not only on the scientific level, but also with respect to the ethic principles (exercise of the profession respecting harmonised deontology rules, as well as honesty and fairness).

Therefore it was decided to reinstate the constitution of ECLA in Brussels as a scientific-oriented international association under Belgian law, which was then publicly recognised by Royal Decree of 25 June 1990.

The purpose of ECLA as laid down in the 1990 by-laws:

- the representation of its members at the international level, principally in Europe;
- the creation of centres for studies, documentation and contacts for the purpose of improving the exchange of professional information among the members;
- the organisation of meetings, conferences or seminars relating to legal matters; and
- the promotion of legal research.

By 1990, ECLA's membership had grown significantly and included the organisations of company lawyers in Belgium, Denmark, Germany, Finland, France, Italy, the Netherlands, Scotland, England and Wales (The Bar Association for Commerce, Finance & Industry and The Commerce and Industry Group of the Law Society of England and Wales).

From May 1990 to May 1992, ECLA's president was George Carle from Belgium, who was involved in the above mentioned A.M. & S case of 1982. The vice presidents were Marco Allegra, Italy and Daniel Froessel, France. The secretary general ⇒



COLM MANNIN TAKES OFFICE
JUNE 1998

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⇒ was Anne Scheltema Beduin, the Netherlands, who remained in office for eleven years; and the treasurer was Françoise Sweets, Belgium.

The governance and organisation

The by-laws provided for two governing bodies: the General Assembly constituted by one representative of each member organisation and the board of directors composed by one nominee director of each member organisation.

General Assembly meetings were held once a year within six months of the beginning of the year. For the board of directors, they were held twice per year – the first at the same time of the General Assembly and the second in autumn.

The by-laws were amended in 2010 providing for a General Assembly which now meets twice a year, and an Executive Board elected by the General Assembly and composed by the president, one or more vice presidents, a secretary general and a treasurer. The General Assembly also elects an internal auditor.

As of 2007, ECLA had personnel, including a general manager, a web master, an accountant and now an intern.

Until now, General Assembly meetings were hosted, on a rotational basis, by a member organisation in its own country.

The Executive Board is vested with all the powers, not reserved to the General Assembly, for conducting the activity of ECLA.

The general manager conducts the daily and administrative activity of the association.

The A.M. & S. case and the beginning

The first few years of ECLA's life consisted of many major events and milestones.

The years running between the foundation in 1983 to the renewed foundation in 1990 were mostly dedicated to a thorough discussion of the basic differences which existed among the legal status of company lawyers in each member organisation. In fact, ECLA's birth arrived directly after (and with all probability was caused by) the famous A.M. & S. case decided in 1982 by the European Court of Justice which denied the legal professional privilege (LPP) to the company lawyers in an antitrust case.

That decision could affect all the company lawyers, even those of the UK, Ireland and the USA where the LPP was recognised. Therefore, ECLA's efforts were mostly directed at making contacts with the European Institutions such as the European Commission in Brussels, other international bodies such as the Council of the Bars and Law Societies of the European Community (known as CCBE) and with the company lawyers organisations of other European countries not yet members of ECLA, as well as organisations of other continents.

ECLA's code of conduct and position papers

In 1993, under the presidency of Alan R. Boyd (May 1992 – October 1994), ECLA adopted the CCBE code of conduct. Therefore, from that year on, ECLA requires each organisation of company lawyers to:

- verify the professional qualifications of their members (minimum degree in law); ⇒



FIRST BOARD MEETING IN EASTERN EUROPE
PRAGUE, OCTOBER 1999



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- ⇒ - have a code of professional ethics and disciplinary rules; and
- look after the continuous legal education of their members.

At that time ECLA was already organising annual conferences on themes relevant to company lawyers, mostly in cooperation with the CCBE. In 1992 ECLA received support from the European Commission. Later on, ECLA started cooperating with ERA (Academy of European Law) of Trier, Germany, for the organisation of annual conferences in Brussels.

ECLA also had non-member organisations of company lawyers participating to the board meetings as observers, such as those of Luxembourg, Sweden and Switzerland. The last two later became full members of ECLA.

Under the presidency of Pio Cammarata (October 1994 – May 1996), ECLA initiated working on a position paper released in November 1996 during the presidency of Philippe Marchandise entitled *The Company lawyer in Europe*.

The words of Pio Cammarata, as reported in the minutes of the board meeting of June 2, 1995, reflect very clearly ECLA's most important role: "ECLA's priority is the non-uniformity of the status of the company lawyer. As long as there is this discrimination, legal privilege will be very difficult to obtain".

ECLA's position paper was presented to the European institutions, especially the Commission DGIV, to attract their attention on the company lawyers' status in Europe.

It contained a description of the company lawyer's role and function, insisting on the concept of intellectual independence, a description of ECLA and its members, and concluded with ECLA's proposals, reported below in summary:

- the company lawyer, being subject to a code of professional ethics and disciplinary rules, should be recognised as a branch

of the legal profession, in its own right, by the authorities of the European Union and the Member States;

- that the use of the title "company lawyer" should be protected and reserved to the holders of university qualifications at a common level throughout Europe;
- that the function of company lawyer should be capable of being freely exercised under that title throughout Europe;
- that the duties and rights of attorney-client privilege (or legal privilege) shall be clearly ascribed to company lawyers on the same basis as to other lawyers;
- that non-exclusive rights of audience for their company... as existing in several Member States, be maintained and, where possible, extended to the same extent as for practising lawyers;
- that holders of the title of company lawyer who have performed that function... should be free to join in a national bar or law society or notaries order; and
- that company lawyers should, under conditions to be determined... be eligible for appointment to judicial functions in tribunals and courts having jurisdiction on commercial matters.

In 1996, two other organisations of company lawyers had joined in ECLA as members: Norges Juristforbund, Norway and Asociacion Espanola de Abogados de Empresa, Spain (this organisation also includes private practitioners). The Law Society of Ireland became a member at the beginning of 1997.

During Philippe Marchandise's presidency (May 1996 – June 1998), ECLA multiplied its efforts towards the recognition of the legal privilege for company lawyers.

To this end, at the board meeting of 23 May 1997 a new position paper was approved specifically dedicated to the legal privilege issue: Legal Privilege for in-house lawyers. Quoted from the conclusion: "it ⇒



ECLA BOARD MEETING
DUBLIN, NOVEMBER 2007

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ECLA WEBSITE GOES ONLINE
EDINBURGH, SUMMER 1999



⇒ is time for the institutions of the European Union to begin the process of exploring with ECLA the steps which might be taken to remove this anomaly” (e.g. denial of the legal privilege for in-house lawyers).

At the board meeting of 11 October 1997 the members of ECLA discussed the request made by the Commissioner of the DGIV, Mr Faull, regarding the importance of taking measures for the verification of the professional qualifications of the members, to have a code of ethics and to look after the continuous legal education.

Therefore, the members were asked to implement an efficient procedure to verify the professional qualifications of their members and also the code of ethics and the continuous legal education.

This became an official requirement for all ECLA members, for implementation in their by-laws and no new member could since then be admitted until fully complying with these requirements.

Website goes live

It is noteworthy remembering that under the presidency of Colm Mannin (June 1998 – May 2001) ECLA established a dedicated website in order to facilitate communication between member organisations and their members and to give greater visibility by establishing its presence on the net. The website went live in summer 1999 at a launch ceremony in Edinburgh held on the occasion of the 75th anniversary of the Law Society of Scotland. In addition to profiles of the member organisations, the site hosted a number of papers on in-house legal practice as well as a dedicated section on legal professional privilege. Within months of its launch, the website was averaging 2,600 visitors a month from more than 50 countries around the world.

European Parliament’s approval of an ECLA amendment

Under Colm Mannin’s presidency, a significant impulse to the lobbying activity at the European Commission was given even though the position of the DGIV, at that time headed by Mario Monti, remained unchanged against the recognition of the legal privilege: “because the in-house lawyers are not independent...” (letter dated 11 April 2000 from Mario Monti to the president of ECLA, Colm Mannin).

However, ECLA managed to obtain a favourable vote by the European Parliament in 1999 at the time of the revision of Regulations 17 and 19 concerning Vertical Restraints. In fact, the Parliament approved an amendment proposed by ECLA with the effect of protecting, with the legal professional privilege, communication between a client and in-house counsel, provided that the legal counsel is properly qualified and complies with adequate rules of professional ethics and discipline which are laid down and enforced in the general interest by the professional associations to which the legal counsel belongs.

It should be mentioned at this point the untiring work which Jettie Van Caenegem, vice president and later general secretary of ECLA, put into the privilege issue over the years.

The development of in-house legal practice in Central and Eastern Europe

With the opening of the Eastern Bloc, following the collapse of the Berlin Wall in 1989, the development of in-house legal practice in Central and ⇒

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⇒ Eastern Europe became one of ECLA's major priorities. A dedicated programme designed to achieve this objective was adopted at a board meeting held in Cordoba, Spain in autumn 1998. Under what became known as the Cordoba Initiative, ECLA resolved to provide advice to existing organisations of company lawyers in the countries of the former Eastern Bloc while encouraging company lawyers where none yet existed to establish such organisations with the active support of ECLA. The Cordoba Initiative thus enabled the national organisations of the Czech Republic (1999), Estonia (2000), Poland (2000) and Bulgaria (2001) to meet the ECLA standards and be admitted to full membership. Other Central and Eastern European organisations of company lawyers were subsequently admitted (to be mentioned later).

During Colm Mannin's presidency ECLA also admitted the organisations of company lawyers of Sweden and Switzerland (the latter unfortunately left ECLA at the end of 2009) and at the same time the Finnish and Spanish organisations resigned and ECLA currently expects to reinvigorate its membership and reinstate such important members.

Not only legal professional privilege

President Erik Vilen (May 2001 – September 2003) saw the need for ECLA to expand its activities beyond the issue of legal professional privilege for company lawyers. Investing a lot of time and efforts in preparing questionnaires and through the use of other means of communications to the members, the ECLA board tried to align the future activities of ECLA to the desires and needs of its members. This democratic process was very successful and members felt that they had a real opportunity to influence the future work of ECLA. They simply appreciated and used this opportunity to voice their own opinion. The result of the member survey was that members agreed with and consented to the opinion that ECLA was running the risk of becoming a "one question" association unless its activities were expanded.

Eventually a new programme for ECLA's activity was approved by the members in 2002 reflecting a broader scope of activities than only the legal professional privilege. Therefore, the tasks of representing company lawyers, providing legal education, networking opportunities and access to training and information became equally important.

On 19 August 2003, another position paper on the legal privilege issue was approved the purpose of which was to counter the EU Antitrust

Commission position against the recognition of the legal privilege to the company lawyers: "In-house counsel legal privilege is needed with modernisation of EC competition law".

In September 2003 ECLA decided to intervene in the AkzoNobel case with the pro bono assistance of John Temple Lang and Maurits Dolmans of Cleary Gottlieb Steen & Hamilton and of Christine Nordlander of Sidley Austin.

Under the presidency of Colin Anderson (September 2004 – August 2005), ECLA continued changing focus from a single item interest group to an organisation focused on benefits for organisations and individuals.

The organisation of company lawyers in Romania obtained membership, while the Law Society of Scotland left.

In 2005, president Bengt Gustafson (August 2005 – November 2007) continued on the avenue set by his predecessors Erik Vilen and Colin Anderson.

Bengt Gustafson introduced a new programme aiming at providing "visible and real benefits" to all the individual members of the member organisations. A new operating model was introduced: an executive board for the daily administration of ECLA, whose members were the president, two vice presidents, the secretary general and the treasurer (this board was formally instituted, as reported earlier, under the revised by-laws of 2010). Each member of the executive board was assigned their area of responsibility.

In addition, a number of taskforces headed by various member representatives were set up to develop, inter alia, the following projects: the ECLA directory; the Eastern training initiative; the contract database; language certificates in English and French; the European mentor programme; the website management; ECLA conferences; and ECLA communication.

Not all the projects were finalised, but much progress was made thanks to the work of the executives.

ECLA's cooperation with Translegal/Cambridge for the language certificate English resulted in a legal resources portal being established on the ECLA website.

ECLA was also represented in the advisory board of "Caselex" safeguarding that the views of the company lawyers were duly considered (Caselex is a consortium of European publishers, case law content holders and legal research centres sponsored by the EU, which launched a project to develop an internet service offering national case law across European jurisdictions). ⇒



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ECLA LAW & TECHNOLOGY CONGRESS
TOULOUSE, SEPTEMBER 2000

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⇒ The increased focus on education led ECLA, together with the Italian member organisation (AIGI) and the Italian company ADR Centre, to hold several conferences in Milan and Rome on alternative dispute resolution.

The general manager then supported ECLA to become a working partner of UNIDROIT in its work on the new edition of the Principles of International Commercial Contracts (UPICC).

ECLA was represented by Jettie Van Caenegem at the Academy of European Law (ERA) in Trier, a reputable institute for training and education in Germany, whose collaboration resulted in a successful ECLA conference in Brussels. In order to increase focus on education it was also decided that ECLA would hold annual conferences focusing on changes in EU law giving company lawyers an annual legal update on issue of interest to their profession.

Increased visibility in the profession and in Europe was another priority and the collaboration with the magazine European Lawyer certainly helped ECLA to become more visible and known to the outside world and to company lawyers.

In order to improve the communications with the member organisations and their own members, the ECLA website was updated and made more user-friendly and it was decided a newsletter entitled “The in-house counsel” was to be published six times a year and distributed via email.

Under the term of Bengt Gustafson, ECLA:

- had the largest number of professional sponsors;
- had the first remunerated staff: a general manager; a web master; and an accountant;
- admitted three new members: the organisations of company lawyers of Macedonia, Croatia and Portugal;
- increased the lobbying efforts for the recognition of the profession of the in-house lawyers and the granting of the legal professional privilege; and
- intervened in the appeal against the decision of the AkzoNobel case with the assistance of Cleary Gottlieb Steen & Hamilton and Sidley Austin.

In November 2007, Bengt Gustafson resigned and Paul de Jonge was appointed interim president of ECLA until the election of the new president at the next board meeting.

In April 2008, the new president, Han Kooy (April 2008 – October 2010), confirmed the programme of his predecessor, as well as the staff.

New members joined: the organisation of company lawyers of Bosnia and Herzegovina, Lithuania, Spain (the new Asociacion Profesional de Juristas de Empresa), The Law Society of England and Wales and Finland (back again). While others left: the organisations of Switzerland and Romania and the C&I Group of the Law Society of England and Wales.

In 2008, ECLA obtained observer status at the UNCITRAL through the efforts of the general manager who represented ECLA at the session held in New York in February 2009.

In 2010, after the unfortunate appeal decision of the Court of Justice in the AkzoNobel case, Peter Kriependorf took over the presidency (October 2010 – November 2012) and dedicated many efforts to reaffirm ECLA's future activity also beginning the preparation of a white paper on the professional profile of the company lawyers.

Philippe Coen, elected president in November 2012, is now implementing his vast and ambitious programme, which is aimed at raising the profile of company lawyers, their image, influence, interactivity and prerogatives. This includes: renewing the image of ECLA with a new logo and a new website; a European Code of Ethics; a white paper named “Company Lawyers: independent by design”; an ECLA Advisory Council; major partnerships with international legal organisations; and the celebration of ECLA's 30th anniversary with a major international Forum at the Palais d'Egmont in Brussels, together with its nineteen member organisations representing several tens of thousands company lawyers.

Long and healthy life to ECLA! 🍀

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