

The Chairman's Word

Dear members of the ELA,

Zurich here we come!!!!

In less than two weeks (May 21-24), we will meet again for our traditional Conference and Annual General Meeting. The SWISS FINANCIAL INDUSTRY (Banking Secrecy, Tax System and Money Laundering) and "SWISS MADE" are the topics of the conference. Attend the meeting and you will certainly more learn about the strongly contested and famous Swiss Banking Secrecy.

And: you will have a fantastic opportunity to meet your colleagues and friends again from London or Edinburgh.

I invite and strongly encourage you and your companion to participate in the Conference and Annual General Meeting. I know that many of you are planning to go. Please register if you haven't done so yet and contact your friends to encourage them to register also. It will be a great meeting!

I am very much looking forward to meeting you in Zurich!

European Lawyers Scheme in Edinburgh

The course is running and is a great success! I think that ELA can be quite proud that we succeeded to re-start the course in Edinburgh; not only is it up and running, but it is a huge success as you can see from the report in the newsletter from some of the participants. Thank you to everybody who has contributed to the success in Edinburgh, including the Scottish Office, the University of Edinburgh, our one-and-only Charles Mullin in Edinburgh and everybody involved in the candidate search process in the respective countries.

Kind regards and see you soon in Zurich.

Peter Bisgaard

Peter Bisgaard is Advokat and partner in the Danish law firm HORTEN. He specializes in Venture Capital, Corporate and Energy Law. He attended the EYLS in 1993 in Edinburgh.



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Eurodevils 2009

Henna, Fabrizio & Carsten on the European Lawyers Programme 2009

Dear Members of the European Lawyers Association,

Best wishes from Edinburgh and Eurodevils 2009!

We are participants of the European Lawyers Programme 2009 in Scotland's fascinating capital Edinburgh and we have been enjoying the well-known ELA exchange programme since January this year with nine other European lawyers.

The Programme was restarted after having been on hold for 3 years due to British Council's decision to stop funding the Programme after it began in London in the mid-1960s and in Edinburgh in 1975. The "rebirth" of the Programme was made possible by the Scottish Government's decision to take over the funding in 2008.

The Programme now runs again due to the joined efforts of the Scottish Government, the ELA, the University of Edinburgh as well as solicitors and advocates in Scotland. The hosts of the Programme have been more than happy to see Eurodevils back in Scotland again after the three-year break. The continuation of the Programme is also well appreciated by us participants. We have been very warmly welcomed by everyone involved and have felt ourselves at home from the very beginning. Despite certain peculiarities in the Scots law and legal system we have grown to be huge fans of Scotland in a very short time!

The Programme

The European Lawyers Programme started in mid-January with a six-week academic period at the University of Edinburgh School of Law. During that period we were introduced with various aspects of law in Scotland and the rest of UK. We gained preliminary insight of, inter alia, civil and criminal procedure, succession, trusts as well as employment, property and company law to name just a few. The lectures were given by the university staff and practising lawyers in Scotland.

In addition to the information provided by the lecturers we very much enjoyed the discussions among the Eurodevils as to the comparative aspects of the fields of law at subject. Besides the lectures at the university we also got to enjoy several visits to various Scottish institutions including, inter alia, different Courts, the Parliament and the Government.

The first academic period was followed by solicitors placements that lasted for seven weeks. The placements were arranged based on the Eurodevils' personal legal interests mainly within major law firms and public bodies in Edinburgh and Glasgow. The Eurodevils' tasks during the placements were various from legal research and document drafting to participating in client consultations and attending court hearings. One of us authors also sat at the Glasgow Employment Tribunal for one week following hearings and got also the opportunity to listen to the judges deliberate their decisions. For an employment lawyer coming from Finland that proved to be a very interesting experience. On the other hand also the judges at the Tribunal were interested in hearing about employment law and proceedings in the trainee's home country.

Now following the Easter break we are about to start with some additional studies at the university including a well-expected visit to the university's field centre in the countryside. As the last part of the Programme the Eurodevils will train with the advocates for nine weeks. During those last nine weeks the Eurodevils will work together with junior and senior counsels within their preferred fields of law and wherever possible also with judges for a short period.

Scotland

Regardless of all very official sounding programme it should be remembered, however, that the European Lawyers Programme is not only strict studying and working. As former Eurodevils who

Eurodevils 2009

participated in the programme in Edinburgh and everyone ever visited the city very well know, Edinburgh is a very attractive city offering a plenty of opportunities as regards cultural and other social activities and us Eurodevils have certainly taken advantage of all that to the extent possible.

The Eurodevils have received many invitations to various social gatherings arranged by our hosts of which probably the most memorable one was the Burns Supper hosted by the Edinburgh University's School of Law at one of the finest hotels in the city in February.



The authors prepared for the Burns Supper.

For the Burns Supper the male Eurodevils got to wear for the first time a traditional Scottish kilt outfit which experience proved to be a lot of fun and maybe a once-in-a-lifetime experience for the most. The experience was naturally topped off with haggis and whisky traditionally served at Burns Suppers as well as with some energetic highland dancing.

Social Contacts

In addition to all the abovementioned, an aspect of the European Lawyers Programme worth mentioning is definitely the day-to-day life of and cooperation among us participants. The Programme has brought together 12 colleagues previously unknown to one another. Along with the official programme we have learnt from each other about different legal cultures, but equally importantly due to many of us sharing accommodation together also about other cultural issues as well as deep-seated habits of lawyers aged 30+. Along the Programme new friendships have been formed and those ties will surely last for a long time. In our view this is one of the most important achievements of the Programme as in the legal world the significance of friendships and reliable contacts can hardly be overestimated.

The Future

Having said the above we very much hope that the European Lawyers Programme will continue its life span also in the future and hope that the members of the ELA actively continue to promote participation in the Programme in their respective countries. The European Lawyers Programme is definitely worth the effort. Despite the Eurodevils' having had to interrupt working in their home countries for the duration of Programme none of us have regretted taking that step. On the contrary! We have found the experience very beneficial. Inspired by the Programme some of us are now also in the process of gaining further expertise by studying for the exams to qualify as solicitors in the UK and hope that such qualification will help us further ahead in our careers.

Thus, once we have the European Lawyers Programme running again, let's do our best to promote its continuance also in the future!

With best regards,

Fabrizio Bergamaschi, Henna Kinnunen &
Carsten Koglin - Eurodevils 2009

Annual Meeting 2009 in Zurich

Register now!

XXV CONFERENCE AND ANNUAL MEETING

Zurich, 21 - 24 May 2009

As you are aware, the XXV Conference and Annual Meeting will take place in Zurich from 21 to 24 of May 2009.

The XXV Conference will deal with a very actual and burning topic:

SWISS FINANCIAL INDUSTRY

covering the aspects Swiss Banking Secrecy, Tax Law and Money Laundering.

Fill in the registration form (sent to you earlier) and return it to the Organizing Committee as soon as possible.



The European Lawyers Programme 2010

Candidates Wanted

The ELA is looking for candidates for the European Lawyers Programme (ELP) in Edinburgh in 2010. All members of the ELA are strongly encouraged to recommend candidates.

The European Lawyers Programme

The programme is modelled closely on the British Council's former European Young Lawyers Scheme which ran until 2006.

The ELP aims to give lawyers from across Europe an opportunity to study the law of Scotland (in Edinburgh), and to experience at first hand how law is practised in the United Kingdom. Its objective is to address current key reform agendas in the legal field as a committed partner in Europe

The emphasis throughout the six-month programme, which runs from mid-January to mid-July, is on both practical and academic aspects of law. The programme is managed by the School of Law of the University of Edinburgh: placements may be in either Edinburgh or Glasgow. Further information about the School of Law can be found at www.law.ed.ac.uk.

Selection Procedure

Up to 12 lawyers take part in the ELP. From June – to August 2009 the local selection process, including advertisement, application, shortlisting and interviews are to take place. The exact timetable for this is determined by the local representatives of the European Lawyers Association.

Contact your national representatives!

International judging in the Balkans

Tron Gundersen reports on his experience in Kosovo

The background

Kosovo was since 1974 until 1989 an autonomous province of the Federal Republic of Yugoslavia. Like all other territories in the Balkans, it has always been an ethnic patchwork. Among the population of approx. 2 million residents, 90 % are Kosovo-Albanians and 7% Kosovo-Serbs. The autonomy was abolished in 1989 by Serbia's Parliament. Then followed escalated violence. On 24 March 1999 NATO launched a military intervention (the legality of which has been widely discussed by international law experts) into Serbia which ended on 2 June 1999 with the surrender of the Milosvic regime.

The regime accepted - under United Nations auspices - the deployment in Kosovo of a civil and security presence. On 10 June 1999 the UN Security Council adopted resolution 1244 which formalised the deployment. An interim administration under UN (UNMIK) was established with - among other tasks - the purpose of establishing a civil administration and the rule of law. In legal terms Kosovo has since then been considered as a UN Protectorate. Extensive powers were given to the Special Representative of the UN Secretary General (SRSG) and he has introduced a large number of provisions. As part of the efforts to establish the rule of law, since the year 2000 international judges have taken part in adjudicating criminal cases throughout Kosovo. They are to sit in panels along with the local judges and in the ordinary local courts of Kosovo. Originally, it was proposed to establish special courts with international judges, however, this proposal was not adopted.

Before the year 2000 judges were part of international tribunals as at the Hague and Arusha, which stood separate from national judicial systems. In other peacekeeping missions judges had never participated or acted within the

domestic judicial system. Then, in February 2000, for the first time, the UN inserted international judges and prosecutors into a criminal justice system to work alongside with local judges.

They were granted the same competence and executive powers as the local judges, except that they were limited to criminal cases. The system with international judges in the national court system was unique and has later been established in East-Timor also (and subsequently in Sierra Leone and Bosnia-Herzegovina). However, only in Kosovo the international judges were given the broadest jurisdiction.

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Kosovo declared its independence on 17 February 2008. UNMIK is now under reconfiguration and EU has deployed a Rule of Law Mission (EULEX). A transition period has taken place. EULEX will, according to its Head of Mission, operate under the umbrella of UNMIK and UNSC Resolution 1244. The legal basis of EULEX has been under discussion. In the following I will explain how the system has been operating under UNMIK.

The system under UNMIK

The local judiciary operate on 3 main levels, the Municipality Courts (26), the District Courts (5) and the Supreme Court. There are also some courts dealing with minor offences. However, there have been several parallel courts operating in regions where there are significant number of ethnic Serbs. Although these courts have been

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considered to be illegal, they have to be mentioned since they have been a reality.

There are altogether (as of 2007) 312 judges in all Kosovo of which 84 are female. 15 are Serbs and a few of other ethnicity. As for criminal law the (UNMIK) Provisional Criminal Code and the Provisional Criminal Procedure Code came into force in 2004 under which UNMIK International Judges were adjudicating. UNMIK introduced a legal system based on a mix of Yugoslav laws enacted before 28 March 1989 (before the Milosovic regime), UNMIK Regulations and international human rights conventions.

The first section of the first UNMIK Regulation read:

"All legislative and executive authority with respect to Kosovo, including the administration of the judiciary is vested in UNMIK and is exercised by the Special Representative of the Secretary General (SRSG)".

This Regulation gave the SRSG full power to appoint any person to perform functions in the judiciary.

The international panels were assigned to cases of war crimes, and all significant cases of organized crimes including terrorism, inter-ethnic violence, political assassinations and corruption. The international judiciary was assigned cases which the local judges did not want to deal with or where their participations was deemed inappropriate. The reasons include the local judiciary being put under pressure or threat, under influence of bribes or ethnic implications which internationals could deal with. The SRSG would then (upon a request or ex officio) assign a panel with international judges (3 internationals or 2 internationals and 1 local). Another aspect of involving international judges was that it could bring some competence building among the local judiciary.

After the declaration of independence UNMIK has decided to "reconfigure" and the EU has deployed a Rule of Law Mission (EULEX) with the deployment of some 2000 persons, police, judges, border control and customs personnel to assist the local government. The mandate given from the EU Council is to: "...assist Kosovo institutions, judicial authorities and law enforcement agencies (to) ... strengthen an independent multi-ethnic justice system and adhering to internationally recognized standards and European best practices....."

This is the largest mission ever launched by the EU. Local ownership is the key word, however, there exist limited executive powers as for instance for EULEX Judges. The mission brings another momentum to the progress of assisting the local government to take Kosovo some further steps forward into the integration of International and European standards of the Rule of Law.

Few people think of Kosovo as a tourist destination. However it is a perfect place to explore magnificent mountains and rural villages with hiking. Pristina has also become a lively city with a lot of good cafes and restaurants - and prices are very modest. The coffee is extremely good also the local beer.

So why not put your next holidays or weekend to Kosovo. If you miss the sea it is just a few hours drive to Montenegro, Albania or Greece. Also Belgrade and Skopje are not far away. These are places with many attractions to offer and well worth visiting.



Tron Gundersen is judge in Norway, with experience in international missions in Afghanistan and Kosovo as legal advisor and international judge. He attended the EYLS in London in 1988.

Recycling Toxic waste

***Miguel Fabre* writes on new investment funds in Portugal**

This article is not about environmental issues but new legislative measures taken by the Portuguese Government in the Budget proposal for 2009 regarding Property investment funds for residential lease purposes (FIIAH) which in a way will have the effect of recycling default credit in owned by Portuguese banks and also known as toxic waste.

The said budgetary proposal clearly indicates the Government's intention of setting a (not so) new type of Property investment funds which will basically be composed of property sold to property funds by individuals or companies that which to dispose ownership of residential property purchased with money lent by a Bank.

The budget proposal introduces this new type of property investment funds whereby an individual who holds a loan used to acquire residential property may sell the said property to this new form of real estate investment funds and at the same time he has the option of taking it back as a Lessee in a lease contract with the Purchaser property Fund, in essence a leaseback.

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It is also established by article 5 of this newly established property investment funds legal framework that in case the individual chooses to trigger the lease option he automatically has the option to purchase the leased residential property

which he once owned. This option shall cease in case the Lessee defaults on the lease contract for more than three months and should be performed until December 31, 2020.

For investors on these property investment funds the cherry on top of the cake is yet to be ascertained as rules that will define and implement the main legal framework are yet to be defined and enacted nonetheless some tax consequences are already established by the Portuguese Budget proposal such as exemptions on income tax for these property investment funds as well as for the income generated for the investors on these property investment Funds shares (UP's) but not comprising capital gains on the disposal of such shares, stamp duty exemptions and property ownership transfer tax (article 7 on the legal framework proposal).

As stated above this property investment fund vehicle is not so new as one could imagine as Portuguese Law-Decree 60/2002 of March 20 which sets the legal framework for property investment funds also allows the possibility for property investment funds to acquire immovable property for leasing (article 26 Law Decree 60/2002 March 20) and also to establish the purchase option in such contracts albeit Property investment Funds and tenants would, in practice, only use this tool for commercial lease contracts as the residential market for leasing is, still, quite underrated due to several reasons, namely legal.

Thus one should wait and see the implementation rules on the main legal framework set out in the

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Budget proposal as there are key issues such evaluation of the property, yields generated by the funds, and so forth, in order to evaluate the real benefit for investors on these new property funds.

One main goal should be achieved by this new investment vehicle and that is to allow (alongside with Borrowers) banks the possibility of getting rid of residential property loans with a huge risk of default or already in default or even breach of contract (eg: subprime borrowers).

On the other hand it may contribute to an oligopoly in the Fragile Portuguese rental market as these Property investment Funds should absorb a huge number of property units directly from default borrowers.

Note: After this article was written and before it will be published the main legal framework was enacted by Law Decree 64-A/2008 and Ruling 1553-A/2008 both of December 31.



Miguel Fabre is advogado and principal at Miguel Fabre Law Office. He specialises in property, planning and Tourism law matters. He practiced in Portugal and Macau. He attended the EYLS in 2002 in Edinburgh.

Vialegis

Philippe Jadoul on recruitment

Five years ago, while I was still a practising lawyer, I set up Vialegis, a legal recruitment and interim company for the legal market. I had seen similar companies working successfully in the UK and in The Netherlands, and I thought the concept may also work in Belgium.

What started as a one man operation, with one of my co-founders being the operational partner, is now a successful business with 8 consultants and 3 support staff.

Vialegis (see also www.vialegis.be) focuses exclusively on legal and tax positions in Belgium. It is built on two pillars: recruitment and selection, and legal interim management (LIM). Key to its success is that all its consultants are experienced lawyers, so that they better understand how law firms work and/or what the needs of a legal department of a company are. Although recruitment and selection represents the majority of the company's turnover, the concept of LIM, which was new to the Belgian market, is also very successful. In LIM, Vialegis puts at the disposal of a company (or sometimes a law firm) one or more lawyers for a specific project, to replace someone in maternity leave, or for other reasons where flexibility is required. Most of the interim consultants which Vialegis uses are young lawyers with their own law firm but without enough work to be fully occupied.

I joined Vialegis at the beginning of 2008, with the task of internationalising the business, i.e. setting up similar companies abroad. We started up Luxembourg early 2008 (see www.vialegis.lu) with an experienced lawyer joining us from the European Commission, who also set up our new division EU Affairs (i.e. competition and EU lawyers and public affairs consultants – see www.vialegis.eu).

Recruitment

In September 2008, we also started in Spain, under the name Iterlegis (www.iterlegis.es). We are now actively looking at France and Italy, and other countries / cities may follow in due course.

In developing our international expansion, I talk regularly to ELA-members about the potential for a Vialegis business in their country. ELA is proving to be a very interesting and effective network in this respect. If any of you are interested in talking to us about possibly setting up a Vialegis company in your company, or have any ideas in this respect, please let me know. The purpose is to build a pan European group which is a top-quality specialist in legal recruitment and LIM, and which operates independently.

As a matter of fact, Vialegis is also in talks with the board of directors of ELA to see if we can team up with each other in order to relaunch the London part of the EYLS.



Philippe Jadoul, former Chairman of the ELA, is CEO of Vialegis International, a legal recruitment firm. He attended the EYLS in London in 1988. For further information contact him at philippe.jadoul@vialegis.eu.



Editor's Note

This newsletter has a number of contributions from members of the ELA. These members are active in very different areas – ranging from judging abroad to recruitment. It shows the great variety of the members and their professions. Please let us know what you are up to!

All members are welcome to contribute to the ELA newsletters two issues of which are published per year. It is one of the means to keep in touch with and to introduce yourself to the other members of the ELA.

Please contact me at cschroeder@goerg.de if you wish to contribute to the newsletter.



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