



Summer Edition 2014

CONTENT

- [1. The new Newsletter of the EYBA](#)
- [2. Spring Conference 2014](#)
- [3. AGM & Summer Conference 2014 and the EYBA's Prize](#)
- [4. Contribution of David Nicholls in the "SPEAKER" \(the Barcelona YBA's Newsletter\)](#)
- [5. The EYBA's new brochure](#)
- [6. The Legal Article by Florian Rochat](#)

1. The new Newsletter of the EYBA

The EYBA informs that, thanks to the Barcelona Young Bar Association, it will have a new and unique image of its Newsletter, whose template has been designed by and whose content will be prepared by the Communication Department of the Barcelona YBA.

The present edition constitutes the first one publication with the new Newsletter's image of the EYBA.

It is important to highlight that each Newsletter's edition will contain some of the following points:

- a) A summarize of the previous meeting.
- b) An actualization of the tasks done by the EYBA Board.
- c) A "save the date" to the next EYBA meeting.
- d) An explanation of the contribution of the EYBA Board by the attendance in international meetings or their participation in other's Newsletters representing the Association.
- e) The legal article sent by one of the EYBA members.

We hope you enjoy the new Newsletter and you send us any proposal you may think interesting for the legal profession.

2. Spring Conference 2014 (March 2014)

This year's Spring Conference took place in Edinburgh, hosted by the Scottish Young Lawyers' Association. The conference, which was in March, was a weekend of learning, reflection and relationship building with colleagues in Scotland.

The headliner of the conference was *Progression in the Profession*; and on Friday we had some interesting lectures. Firstly, there was the topic of social media in the global village and then Richard Susskind gave us his view on tomorrow's lawyer.

On Saturday the Society's President Bruce Beveridge hosted a tour for delegates to the Court of Session and delivered the conference's closing address. In the evening, delegates were invited to the SYLA Ball, which was a delightful event!

Solicitor **Geoffrey Deliege** representing Belgium YBA, and attorney **Elisabeth Batista** from the Barcelona YBA and ExCo member of the EYBA were each asked to prepare an article, which were published at the of The Scoland Law Society's [website at the following link](#):

Some of the questions treated in both articles are the following:



“During conversations with Scottish colleagues and at various occasions during the speeches, the question of Scotland's independence was raised. Coming from a country where some also think about their independence, I have some views on the matter. The Belgian context is quite different though and not comparable. My feeling has been that the Scotsmen who were talking about it understood that it would be an adventure with its risks, but I quite sincerely felt that all of them would be proud to take up the challenge. I wish the best for the people of Scotland and hope they will do the best choice for their future. Be it as it may, I hope that Scotland, independent or in another form, will remain firmly attached to its strong European bounds”.



"(...) We were delighted to attend a private tour of Parliament Hall and had the honour to hear a talk from Lord Armstrong, Judge of the Supreme Courts of Scotland, who gave us a brief summary of the history of Scottish law, how the court system in Scotland works, and his stance on the current situation in Scotland from a political point of view, in relation with the Supreme Court. We had also a talk from the President of the Scotland Law Society, Mr. Bruce Beveridge, who received us wearing a kilt, the traditional Scottish dress for special occasions, and explained to us what life is like for Scottish lawyers, and the importance of the pro bono work, among other interesting topics revolving around Scotland's legal system".

3. AGM & Summer Conference 2014 and the EYBA's Prize

In only few weeks there will take place the AGM & Summer Conference, hosted by the Barcelona Young Bar Association. Concretely, from 12th till 14th of June 2014. Such important event has justified the creation of a website in which you will be able to keep informed of everything (scientific program, social program, presentation of the speakers, list of recommended hotels, how to register, etc.). You can consult the mentioned website at the following link: <http://www.eybaagm2014.com/4/>

This event constitutes a real challenge for the Barcelona YBA, since it is the second time that this meeting is hosted in Barcelona and considering the hard work that the organization of such meeting requires.

The AGM & Summer Conference of 2014 has a complete program: there will be several conferences of interest and three round-tables, in which it will be discussed questions the point of view of the laws of different countries. Specifically, these are the conferences:

Friday, 13th of June

a) The Jurisprudence of the International Criminal Court and the Universal Justice

Speaker: Elena Vallejo (Lawyer- Barcelona)

b) Going Dutch on mass claims for damages: a short introduction to an unique system for the benefit of member states of the EU

Speaker: Elvira de Young (Lawyer & Secretary of EYBA's Board, Holland)

c) The past and the present of the domain names: a study of its impact at an international level

Speaker: David Taylor (Lawyer and former President of the EYBA, France)

d) Networking Workshop: It will be proposed some networking dynamics and tools that will help us to meet new people. At the same time we will be able to learn how to introduce ourselves in 1 minute. This is called pitch elevator, a short summary used to quickly and simply define yourself, your profession, your

services, and your value proposition.

Speakers:

Amaia Helguera (Coach, yoga teacher and entrepreneurial, Barcelona)

Quim Chalé (Entrepreneurial, Barcelona)

Saturday, 14th of June 2014: Round Tables

a) Study of the Insolvency law: comparative law

- **Tomás Nart** (Lawyer, Barcelona)
- **David Nicholls** (Lawyer & current President of the EYBA, England)
- **Nicole Paredes Ludwig** (Lawyer and translator, Germany)

b) Study of the entrepreneurial regulation at an international level

- **Jordi Domingo** (Lawyer, Barcelona)
- **Gerben Metz** (Lawyer, Holland)
- **Mathias Krarup** (Lawyer, Denmark)

c) Labour law to be applied to young lawyers: comparative law from a critical point of view

- **Juan Bautista** (Lawyer, Barcelona)
- **Florian Rochat** (Lawyer, Switzerland)
- **Sebastian Buchholz** (Lawyer, Germany)
- **Cristina Tamburro** (Lawyer, Italy)

Regarding the SOCIAL PROGRAM, it has been organized a visit to the Catalonia Parliament, a touristic tour around the heart of the city of Barcelona and both dinners will take place in emblematic places from Barcelona (Club Astoria and the Tibidabo).

If you have not still registered, do not lose this chance and attend the AGM & Summer Conference of the EYBA in Barcelona!

And in case you would like your attendance for free, we encourage you to participate to the Prize created by the EYBA, consisting in preparing a legal article with the topic: ***“European money-laundering regulations: what are the implications and problems for the legal profession?”***

Deadline postponed until 5th of June 2014

All costs will be reimbursed. For more detailed information, please, consult the following link: [PRIZE BASIS](#)

4. Contribution of D. Nicholls in the “SPEAKER” (the Barcelona YBA's Newsletter)



David Nicholls, Barrister in London UK and President of the EYBA, was asked to prepare an article for the Barcelona YBA's Newsletter named SPEAKER, with the aim to encourage local lawyers to attend the AGM & Summer Conference.

Here you have the English edition of his article and at the following link you can consult the complete Newsletter:

[SPEAKER Nr. 3](#)

The European Young Bar Association is delighted to be returning to Barcelona for the second time in four years for its AGM & Summer Conference.

The Conference will be organised by GAJ Barcelona and it will be a great opportunity for local lawyers to meet their young counterparts from across Europe. Barcelona is always a popular destination and we expect delegates from countries as diverse as Norway, Latvia, Italy, Germany, France, Russia – and even the USA.

This offers a fantastic networking opportunity to make and develop international legal contacts, a unique chance to learn about European legal issues, and – of course – a moment to socialise and have fun.

So come and join us for the EYBA Summer Conference – 12 – 14 June 2014!



5. The EYBA's new brochure

The EYBA's Board wanted to create a brochure which effectively reflected what the organization is, and what it should be for its members. The aim was that it could be used actively for marketing purposes and

to transmit to EYBA's member diversity, plurality and union.

We hope we have succeeded in presenting EYBA as an organization that stands for diversity and opportunities to get a wide network of contacts that will be fruitful for both personal and business life.

The definite brochure will be presented at the AGM & Summer Conference in Barcelona.

6. The Legal Article by Florian Rochat



AnclaClaw back on bonuses - a Swiss law perspective

Executive compensation has been subject to increasing scrutiny in Europe since 2010, in the aftermaths of the global financial crisis, at the time when major financial institutions announced that they would return to their remuneration practices which are seen as unacceptable in the light of recent experiences. Switzerland is no exception, despite its liberal tradition.

In Switzerland, whilst the new legislation on shareholders' say on the salaries of directors of publicly traded companies, pioneered by Swiss voters in March 2013 (the so-called Minder initiative), made the headlines in Swiss and foreign press, a previous regulation enacted by the Swiss Financial Market Supervisory Authority (FINMA) was left relatively unnoticed.

On 1 January 2010 a FINMA circular on remuneration schemes of financial institutions came into effect setting out 10 principles that the FINMA considered to be minimum standards for remuneration schemes in the financial industry. The principles put emphasis on risk/ performance related compensation, transparency and a long term strategy . In particular, the FINMA stated that deferred compensation were appropriate if employees' remuneration was related to the future evolution of success or risk.

Admittedly, only large banks and insurance providers (at least CHF 2 billion in equity capital) are required to implement the Remuneration Schemes Circular. All other banks, securities traders, insurance providers and entities authorised under the Collective Investment Schemes Act, are to regard the principles of the Circular as guidelines for best practice when designing their remuneration schemes.

In the EU, despite the UK objections to the provisions relating to the cap on bonuses of banks and investment firms under the Capital Requirements Directive (CRD IV), CRD IV came into effect on 1 January 2014. And since then, the Bank of England's Prudential Regulation Authority recently proposed

that all regulated firms to amend existing employment contracts to provide the employers with a right to claw back vested variable remuneration.

CRD IV is not applicable to Switzerland as it is not a member of the EEA and a proposal such as the one of the Prudential Regulation Authority would not be compatible with the Swiss employment law.

From a Swiss perspective, claw back rules would be considered a significant departure from a system governed by liberal employment law and by the principle of the autonomy of the parties. This principle means that – except for relatively few mandatory rules – employers and employees are free to agree on the terms governing their relationship.

Swiss statutory employment law has no specific provision dealing with employees incentive plans (stock option plans, share plans, bonus schemes, etc.), let alone any claw back rule. The latter must be contractually agreed. Awards granted under an incentive plan are considered to be part of the employee's remuneration. They qualify either as a variable salary or so called discretionary "gratification".

Restrictions on the payment of salary are generally unenforceable. For example, incentive plans often provide that employees forfeit their rights and awards under certain circumstances in the event of termination of employment. The enforceability of such provisions is generally admissible only if such awards qualify as a gratification under Swiss law.

The classification as gratification depends on a number of criteria, such as the agreement between the employer and the employee, the language used in the relevant contractual provisions (in the employment agreement or the incentive plan), the percentage of total compensation (the ratio of salary versus gratification - recent case law suggests that gratification payments should not be higher than 50% of the total compensation), the frequency of grants (payment of gratification may become mandatory if paid for three consecutive years without any express reservation), and the position of the employee and the granting entity. Hence, it is of paramount importance to consider the overall compensation structure to assess whether or not a restriction on the bonus, such as a deferral, claw back or a vesting condition, would be enforceable.

Furthermore tax and social security contributions are generally charged when employees acquire a vested right in the bonus. Thus, irrespective of its qualification as gratification, claw back clauses on vested awards would trigger practical issues from a Swiss law perspective, as the employer would claim back benefits which the employee already cashed in and paid taxes on.

Swiss banking and financial sectors welcome the prospect that neither the Swiss parliament – nor the people (acting as a lawmaker by the way of referendum) - contemplate to enact rules similar to those advocated by the PRA. Thus, within the relatively flexible Swiss employment law and regulatory framework, the agreement of private parties still prevails when it comes to the terms applicable to bonuses. Any state policy interfering, respectively limiting, the freedom of contract remains exceptional in the Swiss legal landscape. But so was the approval of the Minder initiative.

Florian Rochat / Dunja Koch, FRORIEP, London / 21 April 2014

Interested in sharing your legal articles with all the members of the EYBA?

Please, send us them to the following E-Mail:

Elvira.de.Jong@loyensloeff.com

(Elvira de Jong, Secretary of the EYBA)

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