



**SERGIO MARINI,**  
President of **ECLA**  
**(EUROPEAN COMPANY**  
**LAWYERS ASSOCIATION),**  
and General Counsel at **FENDI**

## « We fight in the interest of in-house lawyers »

Sergio Marini has taken on the challenge of obtaining the same rights for in-house lawyers as for professional lawyers in his role as President of ECLA, but sees disparity in receptivity of his measures across Europe.

**Leaders League.** As ECLA President, what are your priorities?

**Sergio Marini.** My mission is to raise awareness and recognition of in-house lawyers at the European level. In some countries such as Belgium, the United Kingdom and Denmark, in-house lawyers are perfectly recognized, we have access to the Bar, and can stand in front of the Court and can release legal opinions. In other countries this is not the case at all, while in others still there is a mixed situation. The most problematic situations are found in France and Italy. In these countries, for example, lawyers and in-house counsels have the same curriculum, take the same exams - essentially have the same qualifications - but in-house counsels do not enjoy the same rights as professional lawyers due to an alleged lack of independence. The situation is worst in Italy, where there are two categories of in-house lawyers: those employed by the Public Administration or State-owned companies, who can enroll in the Bar like professional lawyers and share the same status, and those who work for private companies who may not.

My challenge is to obtain the same rights for in-house lawyers as professional lawyers enrolled in the Bar. This achievement would not only be in the interest of the in-house lawyer but also in the interest of the company for which she/he works. A company willing to compete globally, whose communications with the internal lawyer are not covered by the legal privilege, may not have the same opportunities as a company based in the U.S., for example, where confidentiality is granted. We seek fair competition among companies present in the market. Unfortunately there is not enough awareness of this European disadvantage.

**Leaders League.** Concretely, which actions have been taken in order to increase awareness?

**S.M.** Over the last two years we have released the *Code of Ethics*, which reflects the shared values of the many national in-house lawyers' associations, which are members of ECLA, and should represent a point of reference for new associations which are not yet part of ECLA. Moreover, we have also issued our White Paper evocatively entitled "Company lawyers: Independent by Design." In this book we explain why in-house lawyers are independent as a matter of fact, having received the spontaneous contributions of over fifty prominent personalities from 27 countries. We try to balance the negative effects of some sentences of the European Court, which in order to grant the most complete power of inspection of the European Antitrust Authority,

have denied the legal privilege to in-house lawyers. We believe in-house counsels to be at least as independent as the lawyers enrolled in the Bar, as if we were not independent we would be absolutely useless to the companies. We work to protect the manager, help him make the right decisions, avoid mistakes, and navigate, in full compliance, the dangerous waters of the markets. In-house counsels are paid to guarantee the proper behavior of a company, in the interest of the company itself, of the manager and most of all the shareholders. The very culmination of our mission is in the interest of the civil society. Although in today's society we see a high demand of legality and compliance, it is the general counsel who, not alone but more than others, ensures this for companies. However, in several European countries our work is not as recognized as it deserves to be.

**Leaders League.** In which countries are you witnessing an improvement of in-house lawyers' rights?

**S.M.** As I previously said, the European in-house lawyer situation is developing differently country by country. In some regions there is intense legislative activity in order to improve our position. For instance, in Germany there is a big debate on the pension scheme of the two categories of lawyers, in-house and professionals. Every three years we conduct a survey in order to understand the situation of in-house lawyers across Europe. In the Eastern European countries the situation is developing in a particularly positive way, as there is recognition of the capacities for in-house counsels to release legal opinions valuable also in the courts. In Estonia and Latvia, for instance, they require a constant updating for in-house lawyers. In France there is dialogue, but the position of the Bar is really firm, as well as in Italy where maybe there is also less public interest about the situation of in-house lawyers. In Spain, in-house counsels and lawyers are positively enrolled in the same Bar. So as you can see the situation varies country to country, but the last five to seven years we have noticed that almost everywhere in Europe it is more and more common for in-house lawyers to go work in law firms, and for young and also senior professional lawyers to start a carrier as in-house lawyers. So if the two professions are interchangeable why should they be subject to different rules? Why should our industry suffer from a lack of competitiveness? With this in mind, we will continue to fight in the interest of the in-house lawyers and the European industry: ♦