

NEWSLETTER

Association Européenne des Avocats
European Association of Lawyers
Spring 2024



Foreword of the President

Dear Colleagues,
Dear Friends,
Please let me wish you and your families all the best in the Spring Season. Let it bring you good health and good luck in your endeavors.

As in the previous Newsletters I would like to inform you about recent events of our Association, events for which we were invited as well as events we are going to organize in the coming months of 2024:

- on January 18, the AEA-EAL together with the Bialystok Bar Association of Attorneys-at-Law organized a study visit to the EU Agency for Fundamental Rights (FRA) in Vienna.

- on January 21-22, 2024, I represented the AEA-EAL – at the Ceremonial Opening of the Legal Year and participated in the Round table discussion of the Presidents of Bars, Law Societies, and International Organizations on the impact of Artificial Intelligence on the Legal Profession.

- on January 31 – February 1, the Committee of Experts and Observers (CJ-AV) working on the draft Convention for the protection of lawyers was held in Strasbourg, which I attended on behalf of the AEA-EAL.

- on February 8-10, four members of the AEA-EAL Board of Directors: Konrad Meingast, Monique Stengel, Vladimir Palamarciuc and myself took part in the 52nd European Presidents' Conference in Vienna.

- on March 6-8, the AEA-EAL together with the UMCS (Maria Curie-Skłodowska University in Lublin) organized the International Conference „Legal professions in the environment of modern digital transformations. Challenges and dilemmas” in Lublin. We publish below the article of our member Patrick van Cauwenberghé, which he presented at this conference. Other interesting articles presented by our speakers will be published in the newsletter below.

Please find more details on the past events in the newsletter below.

I cordially invite you to the upcoming events organized by our Association:

- on April 5, the AEA-EAL's Deontology Committee and the Azerbaijani Bar Association (ABA) will hold the online webinar "Lawyers: Communication, Publicity and Advertising. The Experience in Azerbaijan and Europe".

- on April 18, the AEA-EAL's Mediation Committee and the eBRAM International Online Dispute Resolution Centre in Hong Kong will hold the online webinar "Legal Situation of Mothers in Countries from the East to the West".

- on May 23, the AEA-EAL and the Opole Bar Association of Attorneys-at-Law will hold the online webinar "Legal Situation of Mothers in Countries from the East to the West".

The AEA-EAL was invited to participate in numerous events in the first half of 2024, including the international conference on which you may read below.

The first edition of the Mentoring Program organized together with the European Young Bar Association (EYBA) has been completed. We are collecting feedback from the participants to encourage mentors and mentees for the second edition.

I invite all our members to engage in the activities of the new Sustainable Development Law Committee, as well as of all other AEA-EAL Committees.

Maria Świążak
President

PAST EVENTS IN 2024

Study Visit to FRA – Vienna, Austria

Following the online meeting on learning about the EU Charter of Fundamental Rights ("Charter") and using it effectively in practice, the AEA-EAL, the Bialystok Bar Association of Attorneys-at-Law and the EU Agency for Fundamental Rights (FRA) organized the study visit at the FRA's seat in Vienna on January 18, 2024.

The delegation of the Polish Lawyers, led by the Dean of the Bialystok Bar of Attorneys at Law, Joanna Kamińska listen to the lectures (i) on procedural rights of cooperation in criminal matters between member States, and (ii) on the Agency's researches, sources and methods of obtaining knowledge on use of the Charter's provisions.

Another topic of the lecture regarded violations of environmental protection laws. The Agency pointed out the need of building public awareness and greenwashing. The Agency implements projects focused on research related to a sustainable green deal, with procedural problems regarding liability for violations.

The visit also included a joint sightseeing tour of Vienna.

Please find below a link to the most recent FRA's report on the European Arrest Warrant. The report deals with fundamental rights of requested persons and procedural rights. The research was conducted in 19 Member States and included interviews with defence lawyers, judicial authorities and detained persons; the report points out to challenges and identifies promising practices.

[REPORT](#)

Ceremonial Opening of the Legal Year - Hong Kong

On January 21-22, the AEA-EAL was represented by the President Maria Świążak at the Ceremonial Opening of the Legal Year in Hong Kong.

As in the previous years, our Association was invited to join this prestigious ceremony.

The first Ceremonial Opening of the Legal Year after COVID-19 was attended by more than 100 guests representing associations of lawyers from around 20 jurisdictions.

Maria Świążak was one of the speakers at the Presidents' Roundtable on the impact of Artificial Intelligence on the Legal Profession.

CJ-AV 7th meeting - Strasbourg, France

On January 31 – February 1, the Committee of Experts and Observers (CJ-AV) working on the draft Convention for the protection of lawyers was held in Strasbourg. The AEA-EAL having the status of observer was also present at this meeting.

CJ-AV examined both the draft of the future Convention and the draft of the Explanatory Report to the Convention on their interaction with a view to preparing the forthcoming stakeholders' consultation process.

52nd European Presidents' Conference - Vienna, Austria

On February 8-10, four members of the AEA-EAL Board of Directors: President Maria Świążak, Konrad Meingast, Monique Stengel, Vladimir Palamarciuc took part in the 52nd European Presidents' Conference in Vienna.

The topic of the discussion was: "Big data, fewer rights – will AI change the rule of law forever?". The European Association of Lawyers (AEA-EAL) provided a Report of its activities in 2023 to be published together with the reports of other European bars and associations.

You can find a copy of this report here:

[REPORT](#)

1st International Scientific Conference "Legal professions in the environment of modern digital transformations. Challenges and dilemmas" – Lublin, Poland

This conference took place on March 6-8, 2024. The event was co-organized by the Law and Administration Faculty of the Maria Curie-Skłodowska University (UMCS) and the European Association of Lawyers (AEA-EAL). The substantive panel discussions in the hybrid mode were held at the University Hall. The simultaneous interpretation (Polish-English) was provided.

The panel topics included research problems such as:

- a) the use of IT systems by legal professionals and their impact on the security of the provision of legal services,
- b) cybersecurity issues,
- c) the use of artificial intelligence (AI) in the provision of legal assistance,
- d) modern algorithmic solutions and their impact on the legal services market.

Aspects related to the COVID-19 pandemic situation and its impact on the indicated issues as well as elements of digitalization of individual legal systems were also taken into account.

AEA-EAL ensured the participation of experts from various legal cultures (the USA, Hong Kong, South Korea, India, Argentina, France, Spain, Italy, Georgia, Azerbaijan) in order to achieve the highest possible level of international cooperation and diversification. The speakers included, among others, the President of the Bar of India and legal counsels of such corporations as Mitsubishi Electric US, Inc. and Fujitsu Korea Limited.

Some members of the AEA-EAL also participated in the conference. You can find the full list of speakers in the attached program.

[PROGRAM](#)

UPCOMING EVENTS IN 2024

Events which will be organized by the AEA-EAL in the coming months:

online webinar "Lawyers: Communication, Publicity and Advertising. The Experience in Azerbaijan and Europe"
April 5, zoom platform
organized by the AEA-EAL Deontology Committee and the Azerbaijani Bar Association (ABA)

online webinar "Mediation for Cross-Border Business Disputes"
April 18, zoom platform
organized by the AEA-EAL Mediation Committee and the eBRAM International Online Dispute Resolution Centre in Hong Kong

online webinar "Legal Situation of Mothers in Countries from the East to the West"
May 23, zoom platform
organized by the AEA-EAL and the Opole Bar Association of Attorneys-at-Law

Events the AEA-EAL was invited to be a speaker:

International Conference on Development of the Human Rights Lawyers' Community: theory and practice
April 19-20, Vilnius, Lithuania
organized by the Center for Constitutionalism and Human Rights, the Faculty of Law of the Vytautas Magnus University, International Partnership ILIA, Belarusian Association of Human Rights Lawyers, Lawyers for Lawyers

International Conference on Legal Aid
May 9-10, Phnom Penh, Cambodia
organized by the Bar Association of the Kingdom of Cambodia

Summer holidays proposal:
Legal Skills Through English (Summer course)
July 8-12, Dublin, Ireland
organized by the Law Society of Ireland

INVITATION TO THE SUSTAINABLE DEVELOPMENT LAW COMMITTEE

Dear members of the European Association of Lawyers (AEA-EAL), greetings!

Firstly, I would like to briefly introduce myself – my name is Giorgi Tshkhanani and I am a lawyer by profession, admitted to practice law in Georgia. Currently, I serve as an Executive Director of the Georgian Bar Association, in addition I am a Council Member at the International Bar Association and Co-Chair of the Georgia Section at the New York State Bar Association. I am also a Board Member of the United States and Georgia Connect Network.

AEA-EAL is an organization that promotes corporate responsibility ideals and supports the implementation of sustainable development goals.

Recently, based on the decision of the AEA-EAL Board, the Sustainable Development Law Committee was established within the European Association of Lawyers and I was appointed as its Chair. The Sustainable Development Law Committee aims to mobilize legal professionals from Europe and beyond around the objectives of the 2030 Sustainable Development Goals. Legal professionals, as human rights actors, have a significant role in promoting and protecting sustainable development goals, especially in such areas as gender equality, labor rights and economic development, reduced inequality, and socially responsible business operations as well as ensuring justice and strong institutions. To promote the area of sustainable development law among legal professionals, the Committee will organize workshops, seminars, conferences, and other professional capacity-building activities. In addition, the Committee will conduct research concerning the issues under the scope of sustainable development law and disseminate its findings among legal professionals.

I hope that those of you who are interested in and eager to work on the issues related to sustainable development will join the Committee as members and will contribute to the implementation of the objectives of the Committee outlined above.

Sincerely,
Giorgi Tshkhanani
Chair

MENTORING PROGRAM

The very 1st edition of the Mentoring Program, organized by the European Association of Lawyers (AEA-EAL) and the European Young Bar Association (EYBA), has been completed.

All the mentors and mentees participating in this program were congratulated and awarded with special certificates.

They were also asked to share their feedback to encourage others to apply for the next edition of the program, that we are planning to launch in the near future.

DEMATERIALIZATION AND CONTRACT OF CARRIAGE

by Patrick Van Cauwenberghé

PREAMBLE

New technologies have always been a challenge, whatever they may be.

In this university named after Marie Curie, it seemed obvious to me to pay tribute to this lady who was a driving force for innovation in France, Poland and the world. In her own time, she took up the challenge of new technologies and saved many lives.

In 1914, Marie Curie was internationally renowned with a particularly brilliant career.

When the Germans attacked, Marie Curie quickly realised that there would be many casualties.

From September 1914, she decided to set up a radiology department for military hospitals, as she knew that only the largest hospitals in the major cities had this equipment.

Marie Curie was also aware of the danger of bullet or shell wounds and complicated fractures on the battlefield, and knew that because it was impossible to transport the seriously wounded, most of them had to be amputated.

Marie Curie came up with the idea of setting up mobile units equipped with X-ray. The army was initially opposed to the idea of a civilian woman with no military rank being able to travel around and see combat zones and give instructions to the military doctors.

But through persistence and with the support of the Minister for War, Alexandre Millerand, who had been her lawyer, she obtained the agreement of Marshal Joffre to set up mobile X-ray units for the army. In sea aid she received, Marie Curie was able to install 18 mobile units in motor vehicles by November 1914.

By the end of the war, France had 50 fixed X-ray units in hospitals and 50 equipped light vehicles.

For the entire war, it is estimated that around 1,200,000 patients were examined. This means that one wounded person in 5 (France suffered 6 million deaths and injuries during the conflict) was able to undergo an X-ray examination thanks to Marie Curie. A phenomenal figure, and one that needs to be remembered.

New technologies are always a challenge and rarely meet with consensus. Marie Curie is an illustrious example.

INTRODUCTION

The contract of carriage is a contract formed by the exchange of bills.

It is not always necessary for the contract to be in writing, what matters is the exchange of bills.

But there are limitations to this statement: certain international conventions, such as the English law of Montreal convention on air transport or the 1961 Geneva convention for the carriage of goods by road, require a written contract.

Where the contract of carriage is no more than a confirmation of the parties' agreement to the price and the various services to be provided, the contract, if transferred by electronic means, poses no real difficulty.

In addition to the international conventions governing transport, the States of the European Union have all adopted texts validating the value of a document transmitted electronically, at the instigation of the Commission.

Electronic writing therefore falls into the category of perfect evidence and can be used as proof of a legal act such as a contract.

In Common Law countries, the issue is also dealt with very liberally in the United Kingdom and more restrictively in the United States.

Everyone now agrees (even if there are reservations here and there) that a document transmitted electronically has the same evidential value as a paper document.

All the difficulties have therefore been resolved.

This would be the case if the sole purpose of the contract of carriage was to serve as a bill of lading contract. But this is not the case of the contract of carriage of good by sea, also called bill of lading.

Bills of lading have traditionally fulfilled three main functions in maritime transport:

- (1) contract for carriage of goods;
- (2) receipt of goods;
- (3) title of ownership.

If these three functions are not all fulfilled, it is not a bill of lading but another document.

In the current state of law in the European Union, a Shipper's Bill of Lading can be used as the basis for a documentary credit with the insurance contract and the contract of sale. The document transmitted electronically is not negotiable.

This is of the utmost importance when the sea voyage is long (5-7 days between Europe and East Asia for large container ships); the transport time means that the goods can be re-sold during the voyage. This is crucial for sea transport, particularly for carriage of raw materials.

It may seem like a trivial question, but you have to bear in mind that 80% of products sold in the European Union are transported by sea. This is therefore a key issue.

I propose firstly to examine the existing international convention and secondly national legislations.

I – Paper bill of lading and international conventions.

An American law dated 13 February 1893 is at the origin of all contemporary transport law.

A meeting was held in the Hague in 1921, and three years later the Brussels Convention for the unification of certain rules relating to bills of lading was signed. In 1968, an additional protocol updated the convention by modifying the limitation of liabilities and another protocol in 1979 introduced the SDR as a new unit of account. The amended text is known as the Hague-Visby Rules.

Internationally, the movement initiated by the Harter Act is not dead, since the convention, known as the Hamburg Rules, was adopted on 31 March 1978 and came into force on 1 November 1992.

Another convention is also ratified: the Rotterdam Rules. This is the latest United Nations text designed to govern the international maritime transport of goods. This convention, has also been signed by the developing countries and industrialized countries including Poland.

This text is much more precise than previous texts.

Article 1.1 defines the contract of carriage as follows:

Art. 1: "The term contract of carriage means a contract by which a carrier undertakes, in return for payment or freight, to move goods from one place to another. The contract provides for carriage by sea and may also provide for carriage by other modes. Any type of medium, including electronic. Charter parties are excluded".

This would seem to solve all the problems associated with electronic transmission of the bill of lading, but the convention has not entered into force.

It is no exaggeration to say that 95% of the world's maritime trade is carried out under the authority of an international convention dating from 1924, which does not define the contract of carriage and, of course, makes no provision for the electronic transmission of this document.

II - The electronic bill of lading and texts

All electronic bills of lading are not covered by any convention currently in force.

Even though thousands of containers travel under electronic bills of lading every day, there is no convention governing the matter. It should also be pointed out that most electronic bills of lading are non-negotiable or are sea waybills.

The main difficulty in dematerialized the bill of lading was not the transmission of information but the signature.

It should also be added that information technology is succeeded by computer fraud; documentary fraud is succeeded by computer fraud; the computerization of bills of lading posed a question of law.

In June 1990, the CMI adopted the "Rules for Electronic Bills of Lading".

These rules are not mandatory, but only applicable if the parties agree.

The best known systems for electronic bills of lading are the Bolero system (bill of lading for Europe) and the ESS system (Electronic Shipping Solutions paperless system). The best known Bolero system is based on the CMI rules. There are also different other systems.

Whichever system is chosen, however, the electronic bill of lading remains less complete than a traditional bill of lading because, unlike it, it does not have the role of receipt of the goods and proof of the contract of carriage, its negotiability is imperfect.

At present, there is a real legal vacuum at international level on the question of the electronic bill of lading, so it is necessary to refer to the rules of evidence of the country of the court seized.

Let us examine briefly a few examples of domestic rules on literal evidence and electronic signatures.

By domestic laws

Electronic signatures

In the European Union, electronic signatures have been governed since 2014 by the eIDAS regulation, the first stage in a vast plan to harmonise digital transactions and promote interoperability between EU Member States.

Recent developments

There have been a number of developments in Europe in recent years to promote the use of eBills. One of the most important developments is the adoption of the Model Law on Electronic Transferable Records (MLETR).

The MLETR provides a framework for the use of electronic transferable records, including eBills, and aims to remove legal barriers to their use.

However, the question of the negotiability of bills of lading has not been resolved in the Union.

What is the situation outside the Union?

The People's Republic of China has no legal framework for electronic bills of lading; the Chinese text on the maritime bill of lading dates back to 1993.

The first Chinese bank to use a negotiable electronic bill of lading did so in 2013, using a document generated by the Bolero system.

The situation is similar in Russia.

In the United States, the situation is no simpler: legislation on electronic signatures exists at federal level (Electronic Signatures in Global and National Commerce Act "ESIGN Commerce Act"). Transport law is federal in nature, but commercial law is a matter for the federated states; you have to refer to the law of the federated states to find out whether the electronic bill of lading is provided for in the legal arsenal. In New York State, for example, the electronic bill of lading is recognised under commercial law, but it is not a negotiable document.

In the United Kingdom, the Carriage of Goods By Sea Act of 1924 (COGSA) authorises the Secretary of State to extend the law to dematerialised transactions, which of course includes electronic bills of lading. This is done today.

The Electronic Trade Documents Act of 2023 came into force on 20th of September in the United Kingdom, giving legal recognition to digital and electronic trade documents, including electronic bills of lading.

The Act sets out provisions relating to the use of electronic trade documents in practice, such as indorsement and change of medium between electronic and paper trade documents.

Deliberately broad in scope and with a non-exhaustive list of the types of documents covered, the act includes definitions of "paper document" and "electronic trade document" and provides that, if certain criteria are met, an electronic trade document "has the same effect as an equivalent paper trade document".

The Electronic Trade Documents Act 2023 has an approach which is light on detail and flexible.

It is interesting to note that this law gives judges considerable discretion.

CONCLUSION

A bill of lading is a document head in the carriage of goods by sea which, when transferred to a buyer (or any subsequent lawful holder), gives to that holder constructive possession and a right to claim delivery of them from the carrier.

International trade involves moving goods across borders in order to get them from the seller to the buyer. This process typically involves multiple actors, including those involved in transportation, insurance, finance and logistics. In a transaction covered by a bill of lading, it is common to find 50 sheets of paper in a package of shipping documents that must be exchanged between as many as 30 different parties.

Today, electronic bills of lading currently account for only 1.2% of the 45 million bills of lading issued annually.

As 80% of the bills of lading issued in the world are ruled by English law, it means that European Shippers and Receivers have now the choice of a complete dematerialization of their contract.

Patrick Van Cauwenberghé
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