

LEGAL PRIVILEGE FOR IN-HOUSE LAWYERS

BRIEFING PAPER :

STATUS IN THE VARIOUS MEMBER STATES : COMPARATIVE TABLE

	BELGIUM	UK/SCOTLAND	FRANCE	GERMANY	ITALY	SPAIN	NORWAY	FINLAND	NEDERLAND
PROFESSIONAL ASSOCIATION	Instituut van Bedrijfsjuristen /Institut des Juristes d'Entreprise	Law Society - Commerce and Industry Group The law society of Scotland Public Service and Commerce Group (PSCG)	Association Française des juristes d'entreprise	Arbeitsgemeinschaft der Syndicus-Anwalte im Deutschen Anwaltverein E.V.	Associazione Italiana Giuristi di Impresa (AIGI)	Asociacion Espanola de Abogados de Empresa	Norges Juristforbund	Teollisuuslakimiesten Yhdistys - Industrijuristfoeningen RY	Nederlands Genootschap van Bedrijfsjuristen (NGB)
LEGAL RECOGNITION	Yes	yes but not separate	yes (to some extent)	not separate*	no (except public adm. lawyers)*	Yes	no; voluntary membership of the Norwegian Bar Association	no*	no*
FORM OF LEGAL RECOGNITION	Institute created by law. Title protected.	member of law society or bar subsection Industry & Commerce Group	exception to monopoly of legal advise of avocat	Kammer (disciplinary) member of association (subsection in-house counsel Deutsche Anwaltverein)	N/A	Abogado	if member of Bar Association : barrister	N/A	yes; advocaat if registered with bar
PROFESSIONAL ETHICS	yes	yes	yes	yes**	yes	Yes	yes	yes	Yes
DISCIPLINARY RULES	yes	yes	yes	yes**	no	Yes	yes : if member of bar Bar Association Rules; if not member license subject to withdrawal by Minister of Justice in severe cases	yes	Yes

	BELGIUM	UK/SCOTLAND	FRANCE	GERMANY	ITALY	SPAIN	NORWAY	FINLAND	NEDERLAND
RULING BODY + APPEAL	committee from board members. Appeal before an appeals body including outside judges	England :law society council no appeal Scotland : Council of the Law Society of Scotland; Scottish Solicitors Discipline Tribunal; appeal : Court of Session	the board	bar council + courts	No	national bar association + courts	national bar/minister of Justice	N/A	yes
SANCTIONS	yes	yes			yes			yes	Yes
RIGHT TO PLEAD	no*	yes	yes*	no***	no**	yes	yes	yes*	Limited if not member of bar
WHAT COURTS	/	England :lower courts Scotland : lower courts + higher courts if necessary skills and experience showed	1st degree those courts where private citizens can act for themselves - Tribunal du Commerce, Tribunal des Prud'hommes, Tribunal Administratif			all	all	all	lower and administrative courts
LEGAL PRIVILEGE BEFORE THE ORDINARY COURTS - OUTSIDE LAWYERS - IN-HOUSE	yes N/A	yes	yes	yes	yes	yes	question unresolved*	yes**	yes
OPINIONS	opinions are confidential (art. 5 new law; no case law)	yes*;**	no	yes****;*****	no	yes		no	yes if member of the bar

	BELGIUM	UK/SCOTLAND	FRANCE	GERMANY	ITALY	SPAIN	NORWAY	FINLAND	NEDERLAND
LEGAL PRIVILEGE BEFORE ANTI TRUST AUTHORITIES _ OUTSIDE COUNSEL IN-HOUSE OPINIONS	Yes yes	yes**	no	yes*****	no	yes	question unresolved*	no	Yes if member of bar
FOR LEGAL PRIVILEGE BEFORE ANTITRUST AUTHORITIES FOR IN-HOUSE LAWYERS : SEE SEPARATE NOTE ATTACHED									
WITHOUT PREJUDICE CORRESPONDENCE	with other in-house counsels : yes	yes	not legally recognized yes with other in-house counsel by statute of association	no, except by private arrangement (idem outside counsel)	no	no	yes	no	Yes if member of bar

	LUXEMBURG	IRELAND	SWEDEN		DENMARK	PORTUGAL			
PROFESSIONAL ASSOCIATION		1. Law Society of Ireland 2. Corporate and Public Services Solicitors Association (CPSSA)	Bolagsjuristernas Förening (BJF)		Dansk Forening for Virksomhedjurister (DFVJ)	Orden de Abogados (not obligatory for inhouse lawyers)			
LEGAL RECOGNITION	Yes; indirectly through exception to barristers monopoly of legal advise	yes but not separate	No.		not separate ;	not separate			
FORM OF LEGAL RECOGNITION		member of law society and CPSSA	N/A.		+/- 50% member of bar (advokatsamfundet); title of advokat granted by Minister of Justice and requires membership of advokatsamfundet	abogado			
PROFESSIONAL ETHICS	None	yes	Yes, in the form of ethical rules for members of BJF.		yes	yes			
DISCIPLINARY RULES	No	yes	Yes		yes	yes			
RULING BODY + APPEAL	N/A	law society of Ireland/ President of the High Court	Board of BJF, with possibility to refer the issue to the general assembly of BJF.		board of directors Danish Company Lawyers Association and (if advokat) Danish law society control ordinary	national bar association + courts			

					courts				
SANCTIONS	N/A	Yes	Exclusion from membership in B.J.F.		yes	yes			
RIGHT TO PLEAD	No	Yes	Yes.		yes if advokat and passed bar examination of High Courts	yes, if abogado			
WHAT COURTS	/	all courts	All.		all	all			
LEGAL PRIVILEGE BEFORE ORDINARY COURTS _ OUTSIDE COUNSEL _ IN HOUSE OPINION	No	yes, same for in-house and outside lawyers	1) yes 2) no		yes yes	yes yes			
LEGAL PRIVILEGE BEFORE ANTI TRUST AUTHORITIES _ OUTSIDE COUNSEL IN-HOUSE OPINIONS	No	yes, where there is a possibility of litigation	1)Yes. 2)No.		yes	Yes			
FOR LEGAL PRIVILEGE BEFORE ANTITRUST AUTHORITIES FOR IN-HOUSE LAWYERS : SEE SEPARATE NOTE ATTACHED									
WITHOUT PREJUDICE CORRESPONDENCE	not with other in-house counsels	Yes	No.		yes for advocates				

Notes

1. Belgium

* except where a private individual can defend their own case

2. UK

* only for lawyer's advice as lawyer, or for purposes of litigation

** provided the title solicitor is stated on the correspondence (as far as the law society is concerned)

3. France

* only to the extent private citizens can defend their own cases without assistance from counsel (certain lower courts in administrative, labour and commercial cases)

4. Germany

* however, via argument a contrario par. 46 Bundesrechtsanwaltschaft : yes

** if member of bar (Kammer) set out in Bundesrechtsanwaltschaft

*** not for the employer, except before labour court, those courts where private citizens can defend their own cases and before anti-trust authority where no Rechtsanwalt is required

**** if member of bar or professional assistance of member of bar

***** but some doubt as to protection of documents against seizure

5. Italy

* legal counsel to privatised companies can remain at bar

** only to the extent private citizens can defend their own cases without assistance from counsel (certain lower courts in administrative, labour and commercial cases)

6. Norway

* there are statements in legal theory and obiter dictum statements in judgments which touch the problem, but the only answer to give is that the problem is unresolved

7. Finland

* no monopoly of pleadings exist; any citizen can defend his/her own case before the courts

** certain rights to refuse testifying