Legal Privilege et secret professionnel des avocats

regards croisés franco-américains

Intervenant: Me Nicolas TOLLET – Avocat aux barreaux de Paris, New-York et de la Cours Suprême des États-Unis

Introduction

When preparing for this conference and trying to figure out what topic I could discuss this morning, I thought: there are quite a number of distinguished outside counsels who will be speaking. What am I going to add to what they could possibly say? Then, I remembered that the French secret professionnel or the US legal privilege are not just a topic for outside counsels. They are also a topic for corporations, and in particular multinational companies, whether as clients or as entities having legal departments internally. Therefore, I thought I would wear again my hat of Vice President for Compliance at a multinational company which I was still wearing a year ago.

As in-house counsels, we work for companies which have offices all around the world, we travel all around the world and we give legal advice to the various inside stake-holders. Ourselves we are in-house lawyers who are either non-qualified; qualified with the French bar, or another foreign bar; and sometimes we are dual or triple qualified. For instance myself, I am qualified in France and in the United States, and while working at a multinational company, I was traveling around the world and I was sometimes based abroad.

What privilege attached to my work then?

The status in France

In respect of the legal departments and in-house counsels in France, it seems very simple at first sight. It is very well known; there is no privilege. Whether the in-house counsel is qualified in France, in the United States, elsewhere or simply not qualified at all, there is no privilege. All in-house counsels are all treated the same way in France. It implies that in-house counsels are not held by the French secret professionnel, but they still have a duty of confidentiality.

In 2012, Philippe Coen from The Walt Disney Company was already noting that with the increase of compliance requirements within companies, the absence of privilege for in-house counsels would cause an increasing problem for companies[1]. They have to set up compliance

[1] Ch. Roquilly, La protection des échanges et avis juridiques dans une économie mondialisée : pour une réforme du statut des juristes d'entreprise en France, Revue Lamy droit des affaires, N° 77, 1er décembre 2012. Philippe Coen (Directeur juridique de The Walt Disney Company EMEA), « d'un côté, il y a un encouragement, via la compliance, à mettre en place des contrôles, à réaliser des audits de conformité ; de l'autre, il y a une exposition supplémentaire de l'entreprise car le résultat des audits et les informations qui en découlent ne sont pas

programs and compliance departments, to conduct an increasing number of due diligence, perform compliance audits and conduct internal investigations, while the work is not protected.

On one side we Americanize the internal processes of French corporations, but on the other side, we do not give French corporations the same level of protection as American corporations.

It has been a long run since I started working in the area of FCPA investigations and compliance 10 years ago. In 2017, with Sapin II which incorporates compliance into law; makes it official, we are at a paroxysm. The absence of in-house privilege is not sustainable and this is not in the interest of both:

- the French economy: because corporations can set up their compliance departments outside France and recruit non-French lawyers; and
- French avocats who are missing big time on an opportunity to gain tremendous competitive advantage over non-lawyers; especially auditors.

According to a report dated 2013 issued by the former anti-corruption service, SCPC, back then, out of 31 CAC 40 companies interrogated by the SCPC, 29 had set up a structure handling ethics at a level highly strategic within the organization, in charge of notably preventing corruption. Among them, 27 had set up a compliance department specifically. With Sapin II, all French multinational but also large French companies are setting up compliance departments. Over the recent years, we have seen the birth of a new profession in France: the compliance officer. Besides, such new profession has a big influence within the organization and Chief Compliance Officers, most of the time, have direct access to the CEO and sometimes sit on the ExCom next to the General Counsel. Some even get to sit on the board of directors of multinational companies.

But do not get too overwhelmed by it. It does not necessarily mean more work opportunities for avocats, whether in-house or external. The profile of the professionals working in compliance departments is not always legal. Many come from audit, some come from HR, others from the business. And when they externalize, auditors have a tendency to externalize to audit firms rather than to law firms.

Granting the secret professionnel to in-house lawyers, at least those who are qualified:

---

protégeables. Aussi, on nous demande de travailler en quelque sorte pour l'autorité de sanction aux frais de l'entreprise. Il faut à la fois augmenter la conformité de manière transparente tout en ne nous donnant pas les moyens de se protéger : c'est un système autofinancé d'auto-sanction et d'autorégulation ».

would give a very important competitive advantage to the French avocats willing to work in-house at a time where positions in compliance, by contrast with legal departments, are not necessarily filled-in by lawyers, and

- would give lawyers more influence within the organization; and would more often get the work externalized. And I am thinking here of investigations which too often in France, are externalized to audit firms when they could be externalized to law firms.

I note that the French avocats are starting to consider the existence of compliance, at least in respect of internal investigations. Thus, on March 8, 2016, the Paris Bar deliberated that internal investigations are part of the professional scope of French avocats. On September 13, 2016, recommendations (a vademecum[2]) were issued to detail how French avocats shall conduct investigations.

Distinction entre l'activité de l'avocat-conseil (ou avocat-enquêteur) couverte par le secret professionnel et l'activité de l'avocat expert qui n'est pas soumise au secret professionnel.

- ***L'avocat-enquêteur*** *est celui qui est mandaté unilatéralement par un client pour mettre en œuvre une enquête interne visant à donner un avis ou un conseil sur une situation factuelle donnée à la lumière du droit positif. Depuis la délibération du Conseil de l'Ordre en date du 8 mars 2016, cette activité entre dans le champ de de compétence de l'avocat et relève de sa mission générale de conseil et d'assistance prévue aux articles 6-1[3] et 6-2 du Règlement Intérieur National (RIN). Dans l'exercice de ces prérogatives, l'avocat reste tenu au secret professionnel. La mission de l'avocat menant une enquête interne n'est pas coercitive[4], de telle sorte que la personne auditionnée ne peut être contrainte de répondre aux questions de l'avocat-enquêteur[5].*

- *L'**avocat-expert** est celui qui est mandaté par deux parties (une autorité juridique et une entreprise ou une entreprise et l'un de ses salaries ou dirigeants) pour réaliser une mission d'expertise. Dans cette situation, l'avocat est un tiers neutre et objectif compétent pour évaluer une situation factuelle donnée.*

---

[2] Annexe XXIV du RIN

[3] Article 6-1 RIN: *«[L'avocat] fournit à ses clients toute prestation de conseil et d'assistance ayant pour objet, à titre principal ou accessoire, la mise en œuvre des règles ou principes juridiques, la rédaction d'actes, la négociation et le suivi des relations contractuelles. Il peut collaborer avec d'autres professionnels à l'occasion de l'exécution de missions nécessitant la réunion de compétences diversifiées et ce, aussi bien dans le cadre d'interventions limitées dans le temps et précisément définies, que par une participation à une structure ou organisation à caractère interprofessionnel. Dans l'accomplissement de ses missions, l'avocat demeure, en toutes circonstances, soumis aux principes essentiels.* ***Il doit s'assurer de son indépendance, et de l'application des règles relatives au secret professionnel et aux conflits d'intérêts*** ».

[4] Vademecum de l'avocat chargé d'une enquête interne, Recommandation 1.3 : *« Préalablement à tout contact avec des tiers en vue de l'accomplissement de l'enquête interne, [l'avocat] expliquera sa mission et le caractère non coercitif de celle-ci ; il leur précisera que leurs échanges ne sont pas couverts par le secret professionnel à leur égard ».*

[5] E. Daoud, C. Boyer, L'avocat chargé d'une enquête interne : enjeux déontologiques, AJ Pénal 2017, p.330 : *« Aux États-Unis, les personnes auditionnées sont au contraire tenues de coopérer et encourent des sanctions disciplinaires en cas de refus. Au-delà de l'existence ou non d'une telle sanction, la personne auditionnée dispose-t-elle d'un droit au silence ? À ce jour, la notification du droit au silence de la personne auditionnée ne fait pas partie des obligations de l'avocat-enquêteur. Nous recommandons cependant d'informer la personne auditionnée de la possibilité, si tel est son souhait, d'opposer le silence aux questions posées par l'avocat-enquêteur ».*

At about the same period, on July 1, 2016[6], the Conseil National des Barreaux modified its internal regulations to allow that a French avocat open a secondary office[7] within the premises of a company[8], whether in France or abroad, including in the United States (with the prior approval of the French Bar[9]). The avocat has to follow the rules of both the French Bar where he or she is qualified, plus the rules of the Bar in the United States where he or she would establish the secondary office.

I do not know how many avocats are already benefitting from this new option (it seems none or barely none) and how the secret professionnel will be challenged for them. I also hear the critics raised by certain French avocats that it will weaken the economic stability of French avocats and that in-house lawyers will not want to give up the rights attached to their employment contracts for this new status. And I also understand the frustration of in-house lawyers who still claim for the privilege.

Considering the current status quo of the privilege for in-house lawyers, I choose to see this problem differently. First of all, French avocats opting for this way of working are not going to end up in open space. Companies and General Counsels are smarter than that. If they choose to hire a French avocat domiciled within their premises, they will set up a proper office, locked, guaranteeing the confidentiality required by the secret professionnel.

In respect of the economic instability for the lawyer, we have to remember that we are a profession founded on the principle of freedom. We are not employees. We are free to decide what we want to do. We should not be talking here of associates being seconded at companies for a short period of time, but of outside counsels willing to establish a long term relationship with a client. It does not mean that the avocat should work exclusively for the client. Otherwise, the economic dependency would make it too easy to demonstrate the link of subordination. The avocat must work for various clients, including the one where he or she established a secondary office.

Many associates are hesitating going in-house. They like the freedom of private practice and not being employees; sometimes they would like to be their own boss and set up their own law firms; and sometimes they would like to work in-house because they cannot bear the pressure of private practice. Here, we are giving them the opportunity of a working partly in-house, while staying outside counsels and guaranteeing them a steady income to be completed with other clients they could develop. The other way around works too. Many in-house counsels asked me how they could go, or go back, to private practice because they do not want to be subordinated anymore. The business development is often the biggest barrier. This new option guarantees them a minimum income which will be better than starting from scratch.

---

[6] Décision à caractère normatif no 2016-001 portant modification de l'article 15 du RIN de la profession d'avocat

[7] Le bureau secondaire étant défini par le RIN comme *« une installation professionnelle permanente distincte du cabinet principal ».*

[8] Le nouvel article 15.2.2 précise ainsi que *« Le bureau secondaire, qui peut être situé dans les locaux d'une entreprise, doit répondre aux conditions générales du domicile professionnel et correspondre à un exercice effectif et aux règles de la profession notamment en ce qui concerne le secret professionnel. L'entreprise au sein de laquelle le cabinet est situé ne doit pas exercer une activité s'inscrivant dans le cadre d'une inter professionnalité avec un avocat. »,* étant précisé que *« L'ouverture d'un ou plusieurs bureaux secondaires est licite en France et à l'étranger ».*

[9] Article 15.2.3 RIN

From the in-house perspective, I am interested in hiring a law firm, or encouraging the setting-up of a law firm of 2, 3, 4 avocats who will be located part time next door to my own office internally. They are physically here and I can easily go talk to them. No need for emails or phone calls. They can relay themselves to advise me, work on conducting internal investigations, conduct third party due diligence, etc. Their work is privileged. In the absence of secret professionnel for in-house counsel, I believe this new option is a good alternative for both avocats and clients.

Even more recently, the Paris Bar enhenced the status of in-house counsels with its deliberation of Februrary 28, 2017[10], in line with the position of the European Bar Council. Pursuant to it, a French avocat can work in-house abroad and keep his or her avocat status so long as the host country recognizes such status. Thus, a French avocat could work in-house for the U.S. subsidiary of a French multinational for instance, and remain registered at the Paris Bar. Even though there is still a link of subordination which prevents the legal privilege to apply in France as per case law, this will reinforce the status of French in-house counsels working for a period of time in the U.S. offices to be recognized the U.S. privilege.

The Status in the United States

Indeed, in the United States, the duty of confidentiality, attorney-client privilege and work product doctrine apply to a member of a U.S. Bar, whether he or she is practicing at a law firm or in-house, wherever geographically (United States v. United Shoe Machinery Corp. 89 F. Supp. 357 (D. Mass. 1950)). According to Section 8.5 of the Model Rules of Professional Conduct of the American Bar Association, followed by the State of New York, a U.S. lawyer remains held by the rules of professional conduct.

Although in-house counsels in the United States are generally afforded the same privilege protections as external counsel, the application of privilege protections to in-house counsel becomes much more uncertain when a U.S. court has to take foreign laws of privilege into consideration.

When a question of privilege arises in a multi-jurisdictional context in the course of a U.S. legal proceeding, the analysis is very fact specific and the choice of law analysis used to determine which jurisdiction's privilege law will be applied varies by jurisdiction within the U.S. There are essentially 6 approaches which can be tested[11]:

---

[10] Le Conseil de l'Ordre du barreau de Paris a adopté le 28 février 2017, une résolution en ligne avec la position du Conseil des barreaux européens (CCBE) pour admettre que *« l'avocat parisien qui est autorisé à exercer son activité dans un autre pays de l'Union européenne doit être inscrit sous son titre d'origine auprès du barreau de l'État d'accueil et peut ainsi exercer en qualité de salarié dans une entreprise, si les dispositions légales de cet État d'accueil l'y autorisent, et ce, sous le contrôle des autorités de ce pays ». « Il en ira de même de l'avocat parisien désirant exercer sa profession dans un pays étranger, autre que ceux de l'Union européenne, à la condition d'être inscrit sur la liste des avocats de ce pays et de pouvoir exercer en qualité d'avocat salarié d'une entreprise si ce mode d'exercice est autorisé aux avocats de ce pays, et ce, sous contrôle des autorités de ce pays »* http://www.affiches-parisiennes.com/avocat-en-entreprise-une-revolution-tranquille-7058.html

[11] Nathan M. Crystal & Francesca Giannoni-Crystal, Using Occam's Razor to Solve International Attorney-Client Privilege Choice of Law Issues: An Old Solution to a New Problem, N.C. J. INT'L L. 276, 292-311 (2016).

1. Law of the forum (lex fori): Privilege is treated as procedural, so the court follows the rules of the forum.
   - 8 U.S. jurisdictions follow this approach
   - Functional lex fori approach: The court asks whether the functions performed by the foreigner who is engaged in the communication are the "functional equivalent" of those of an attorney
   - In Heidelberg Harris, Inc. v. Mitsubishi Heavy Indus., Ltd.,[12] the court decided that documents prepared by plaintiff's patent agent in Germany were protected by attorney-client privilege because in Germany the patent agent was the functional equivalent of a U.S. attorney and his agents.
   - In Renfield Corp. v. E. Remy Martin & Co. S.A.,[13] the court applied privilege under U.S. law to communications between a French client and French in-house counsel (not a member of a bar) because the court found that such in-house counsel were the "functional" equivalent of U.S. lawyers, as they were competent to render legal advice and permitted by law to do so.

2. Section 139 of the Restatement (Second) Conflict of Laws: If the law of privilege of the Forum State and the State with the most significant relationship to the communications at issue differ, then the communication is admissible unless admitting it would conflict with strong public policies or there are special reasons for the communication to be privileged (flowing from one of the relevant jurisdictions)
   - This approach is followed or "cited with approval" by 13 U.S. jurisdictions

3. "Touch Base" Approach: U.S. law applies if the communication for which privilege is claimed has a relationship with the United States that is more than "incidental", meaning that it concerns legal proceedings in the U.S. or advice regarding U.S. law. Foreign privilege law typically governs communications relating to foreign legal proceedings or foreign law.
   - This is the test often applied by New York courts

4. "Center of Gravity"/ "Most Significant Relationship" Approach: applies the law of the country with the most direct and compelling interest in whether the communication should remain confidential

5. Law of the Decision Approach: the law that governs the substance of the dispute also applies to determine the law of attorney-client privilege (most likely to be asserted in a situation where the parties have a choice-of-law clause in their contract)

6. Reverse Comity: when the court determines that foreign law applies, but then applies U.S. law as a matter of comity to protect the interest of foreign jurisdictions

However, whether in a pure U.S. context or when a French in-house counsel is recognized the U.S. privilege, this is not absolute. In particular, it does not apply to business decisions which in-house counsels are sometimes making[14].

---

[12] *Heidelberg Harris, Inc. v. Mitsubishi Heavy Indus.,* No. 95 C 0673, 1996 U.S. Dist. LEXIS 19274 (N.D. Ill. Dec. 9, 1996).
[13] *Renfield Corp. v. E. Remy Martin & Co. S.A.,* 98 F.R.D. 442, 444 (D. Del. 1982).
[14] *Ranch LLC v. Superior Court,* 113 Cal. App. 4th 1377, 1390 (2003)

Despite the uncertainty of privilege for in-house counsels when multiple jurisdictions are involved, there are some steps that in-house counsels can take to help protect the privilege provided by U.S. law to in-house counsel. These steps should be followed as best practices whether in France or in the United States to manage both the legal privilege of in-house counsels and external counsels:

Clearly Identify the Client

- When representing a corporate entity, identifying who the client is, becomes more difficult. The corporation's counsel represents the corporation itself, and not the individual agents or employees with whom the lawyer interacts. The ABA Rules state that attorneys must clearly explain whom they represent when communicating with client organization's employees or officers.

Distinguish Legal Advice from Business Advice

- To assist in-house counsel in preserving privilege, they should label legal documents as "privileged", "for legal purposes" or "prepared in anticipation of litigation" when applicable.

- In-house counsel should file legal documents separately from business documents, perhaps in a separate room or cabinet in order to make a clear distinction between business and legal work. Employees can also label their communications as "attorney-client privileged" or "for legal advice" when contacting counsel for legal advice. The same applies to electronic documents and communications stored on the server of the company.

- In-house counsel may also state clearly on the face of the document, that it has been prepared to seek or provide legal advice at the request of the client.

- In-house counsel can also use email disclaimers, prefatory language and email subject lines that indicate that the communication is for legal purposes

Avoid Waiving Privilege

- Disclosing the contents of privileged attorney-client communications to a third party outside the scope of protection, such as a government agency, may sometimes result in a waiver of the applicable privilege.

Mark Correspondence as Legal in Nature

- Establishing policies and procedures in relation to communication with the in-house counsel can help protect privilege. Employees should be told to use explicit statements such as "I need your legal advice" or "request for legal advice" when emailing in-house counsel for such purposes.

- Employees should be taught not to inter-mingle business and legal issues in the same emails, and to be mindful of whom they copy in an email chain. For instance, a business associate should not be cc'd on an email that seeks legal advice.

- Use the standard privilege language "Confidential, Subject to Attorney-Client Privilege" on communications that fall under this category. However, try not to use this language on non-legal documents so that the use of the disclaimer does not extend to non-privileged materials (and risk diluting its effectiveness).

Maintain Privilege in Employee Interviews

- It is generally best if employee interviews in the context of an investigation are conducted by attorneys so that attorney-client privilege applies. For the same reason, counsel should make clear that the employee interviews conducted in an investigation are for the purpose of rendering legal advice.

- In conducting employee interviews as part of an internal or government investigation, it is a good idea to have another lawyer take notes as opposed to simply recording the interview. This way, the attorney's notes are likely to be protected under the work-product doctrine, whereas a simple recording might be deemed to be a factual communication (a verbatim transcript) that is not subject to the attorney work-product doctrine. Opinion work-product receives greater protections than factual work-product.

- When memorializing the content of the interview, the attorney's summary should expressly state that it does not constitute a verbatim transcript of the interview and that the summary contains the thoughts, mental impressions and legal conclusions of counsel. Again, this improves the chances of the material being protected by the work-product doctrine.

- At the beginning of the interview, at attorney should consider giving employees what is called an "Upjohn warning", which clarifies that the communications between company counsel and the employees are confidential and protected as attorney-client privileged, but specifies that the privilege belongs to the company and that the company may choose to waive that privilege in the future.[15]

- The term "Upjohn warning" gets its name from the case Upjohn Co. v. United States, in which the United States Supreme Court held that a company's attorney-client privilege could extend to the company counsel's communications with employees in certain prescribed circumstances.[16] Now, an "Upjohn warning" generally serves to clarify and distinguish the lawyer's relationship to the company and to the company employee being interviewed in an effort to avoid a situation where the company's attorney-client privilege would extend to the communications of the attorney with the company employee.

---

[15] Richard M. Strassberg and Meghan K. Spillane, Privilege: *The US Perspective* in The Practitioner's Guide to Global Investigations (Jan. 5, 2017), available at http://globalinvestigationsreview.com/benchmarking/the-practitioner%E2%80%99s-guide-to-global-investigations/1079414/privilege-the-us-perspective.

[16] *Upjohn Co. v. United States*, 449 U.S. 383 (1981).

Ensure Attorney Direction and Oversight throughout the Investigation

- To extend the attorney-client privilege to investigations, internal investigations should be initiated by attorneys, whether they are outside or in-house counsel.

- Although a company's lawyers may not be the first people to learn of potential misconduct, and even if non-attorneys begin the process of gathering facts or information in relation to the potential misconduct, a company's counsel should formally initiate the investigation and retain oversight of the entirety of the investigation process.

- Non-attorneys may conduct or participate in investigations without jeopardizing attorney-client privilege if they are acting as agents of attorneys (hence the importance of attorney oversight throughout the process).

- This point is particularly important to consider vis-à-vis Sapin II which requires to set up whistleblowing procedure and to designate a point of contact. It will be best to ensure that such point of contact is a lawyer.

Establish a Clear Attorney-Client Relationship

- At the beginning of an internal investigation when externalized to a law firm (because not all internal investigations can be externalized), the retainer agreement between the company and outside counsel should clearly state that counsel is being retained to conduct an internal investigation for the purpose of providing legal advice to management and the board. This will establish a clear attorney-client relationship and thereby make attorney-client privilege applicable to communications to the outside counsel for the purpose of obtaining legal advice.

Avoid Editing Externally-Prepared Documents

- Due to differences in the applicability of attorney-client privilege to in-house counsel in Europe, in-house counsel should refrain from making any additions or amendments to legal advice or materials prepared by external counsel so that the external counsel's privilege is not removed or threatened.

Conclusion

We see that the U.S. legal privilege requires discipline to effectively apply to in-house counsels and even to ensure it is maintained with respect to U.S. external counsels, and I will now let Kevin speak more precisely of the U.S. privilege itself, from his perspective of U.S. outside counsel.

***

	American Authorities	French Authorities	European Authorities
In-house Counsel (“*Juriste* ”) omitted from a French Bar	***If US law is applied***: Privilege protected under lex fori and if communication “touches base” with the U.S.; no privilege if Restatement §139 used ***If French law is applied***: No privilege	Un juriste français, qu’il soit détenteur du Capa ou non, qu’il ait exercé la profession d’avocat ou non, est rayé de la liste de son barreau dès lors qu’il adopte le statut de salarié en entreprise en France. Cela implique que le juriste français n’est pas tenu au secret professionnel qui est une obligation incombant à l’avocat. Pour être soumis au secret professionnel et bénéficier de la confidentialité des échanges tout en travaillant au sein d’une entreprise, l’avocat français peut, sans être omis: (1) établir un domicile secondaire au sein de l’entreprise ; (2) s’agissant de l’avocat parisien, travailler comme avocat salarié dans une entreprise dans un Etat admettant cette possibilité, à condition d’être inscrit sur les listes de l’Etat d’accueil.	La CJUE, dans un arrêt *Akzo Nobel Chemicals* Ltd. e.a. / Commission européenne[17], a confirmé que les échanges au sein d’une entreprise avec un avocat interne ne bénéficient pas de la protection de la confidentialité des communications entre avocats et clients. Selon la Cour, la protection de la confidentialité implique l’absence de tout rapport d’emploi entre l’avocat et son client, si bien que cette protection ne s’étend pas aux échanges au sein d’une entreprise ou d’un groupe avec des avocats internes. Elle ajoute que l’avocat interne, du fait de sa dépendance économique et de ses liens étroits avec son employeur, ne jouit pas d’une indépendance professionnelle comparable à celle d’un avocat externe.
In-house Counsel (“*Juriste* ”) admitted to a U.S. Bar	***If US law is applied***: Privilege protected under *lex fori* or if communication “touches base” with U.S.; no privilege if Restatement §139 test used ***If French law is applied***: No privilege	En France, les avis juridiques rendus par les juristes d’entreprise ne bénéficient pas du *legal privilege*. La cour de cassation a admis l’inopposabilité du *legal privilege* du juriste américain aux mesures d’instruction in futurum en droit français. Cass. Civ. 1re, 3 novembre 2016 : une mesure d’instruction *in futurum* (art 145 cpc) peut conduire à l’appréhension de correspondances de juristes américains des lors que ces derniers n’ont pas la qualité d’avocat au regard du droit français	No privilege
In-house Counsel (“*Juriste* ”) without a legal degree	***If US law is applied***: For a French “juriste”: privilege protected under *lex fori* or if communication “touches base” with U.S.; no privilege if Restatement §139 test used. If the person is a U.S. “lawyer” yet not a member of a Bar, likely no privilege because privilege generally only applies to lawyers who are members of a Bar under U.S. law. ***If French law is applied***: No privilege	En France, les avis juridiques rendus par les juristes d’entreprise ne bénéficient pas du *legal privilege*. Compte tenu de son lien de subordination et son absence d’indépendance, le juriste français n’est pas tenu au secret professionnel qui est une obligation incombant à l’avocat. La confidentialité des avis juridiques des juristes d’entreprise n’existe pas non plus à l’heure actuelle en droit français.	Conformément à l’arrêt *Akzo Nobel*, les échanges avec un juriste ne bénéficient pas de la protection de la confidentialité des communications.

[17] CJUE, 14 sept. 2010, n° C-550/07, Akzo Nobel Chemicals Ltd. e.a. / Commission européenne