



Représentant les avocats d'Europe
Representing Europe's lawyers

Regulated legal professionals and professional privilege within the European Union, the European Economic Area and Switzerland, and certain other European jurisdictions

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This report has been prepared in conjunction with, and based upon information supplied by, the Bars and Law Societies of the CCBE

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PREFACE

At the request of the Council of the Bars and Law Societies of the European Union, I have prepared the attached Report with a view to it forming part of the CCBE's intervention in Case T-253/03 Akzo Nobel Chemicals Limited and Akros Chemicals Limited against the Commission of the European Communities, with particular reference to the status of "in-house counsel" and professional privilege within the Member States of the European Union.

The CCBE is the representative body for the national Bars and Law Societies of the European Union, and includes amongst its members Bars and Law Societies from the European Economic Area, Switzerland and a number of the Bars and Law Societies from the current and future accession countries to the European Union. I have included (as far as possible) contributions from those particular jurisdictions as well.

I am very grateful to the various delegations to the CCBE for providing me with relevant data and information. I am particularly grateful to the staff of the CCBE and especially the Secretary-General Jonathan Goldsmith, legal adviser Agnès Masquin and researcher Nuria Perez without whose help it would not have been possible to compile this Report.

It is important to bear in mind that given the time constraints, I was obliged to impose strict guidelines on the contributors so as to ensure that the information was compiled in an organized and focused manner. Professional privilege is of course a very complex subject, and while every effort has been made to eliminate any errors or inaccuracies, readers of the Report might kindly bear in mind that, in order to ensure uniformity, some degree of simplification was inevitable.

Nevertheless it is my hope that this Report will prove to be a useful contribution towards the debate and will assist the Court and other interveners in establishing an overall picture of the issues arising in the various jurisdictions covered by the Report.

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INTRODUCTION

The purpose of this Report is to examine the manner in which “professional privilege” is treated by the law of the various jurisdictions which are within the European Union at the time of its preparation, the law of some of the jurisdictions of the current and future accession states who will become full members of the European Union, and the law of jurisdictions of the European Economic Area as well as Switzerland.

It is important to bear in mind that this Report is not a comparative analysis of professional privilege as it is applied in each of these Member States. The focus of the Report rests on the extent to which rules of professional privilege in those jurisdictions may or may not be applied in relation to the activities of legal professionals who are in the employment of, primarily, corporate bodies (often referred to as “in-house counsel”).

The Report is divided into two sections.

Section 1 deals with some issues of terminology which arise in regard to the definitions of “in-house counsel” at a European level and the definition of professional privilege as well as the definition of “competent authorities”. There is also a paragraph in this Section containing some general observations.

Section 2 deals with the application of professional privilege in the jurisdictions covered by this Report and in particular from two points of view, namely:

- the extent to which professional privilege can be asserted in relation to written communications and documents in the context of civil and criminal proceedings and in particular in the context of anti-trust investigations in the various jurisdictions; and
- the extent to which in-house counsel or their clients may or may not be entitled to professional privilege in similar circumstances.

SECTION 1: TERMINOLOGY AND GENERAL OBSERVATIONS

1. Legal Professionals

One of the difficulties in considering the status of “in-house counsel” within the jurisdictions covered by this Report is that the expression “in-house counsel” is itself somewhat misleading. It includes, in some jurisdictions, legal professionals who are only entitled to carry on their professional activities where they are registered with a Bar or Law Society in the relevant jurisdiction; in some jurisdictions, the expression covers legal professionals who are not so registered; and in other jurisdictions, such legal professionals are not required or entitled to be so registered but their activities may be subject to limited rights or obligations as to privilege.

In most jurisdictions, the applicability of rules and procedures relating to professional privilege to persons involved in the provision of legal advice for a client or employer is largely determined by the question whether such a person is registered with the relevant Bar or Law Society.

As explained below, this is not the case in the United Kingdom (with the possible exception of Scotland) and Ireland, where the application of professional privilege is based upon the legal relationships between lawyer and client and is not necessarily dependent on whether the legal professional is or is not registered with the Bars or Law Societies in those jurisdictions.

Neither is the expression “in-house counsel” particularly apt, at least from a European point of view, in respect of legal professionals who provide legal services solely for their employers, especially when one considers that, within many European jurisdictions, a distinction is made between legal professionals who are regarded as “independent” and those who are regarded as employees.

Indeed, it is this very concept of independence which underlies the scope of application of professional privilege in EC competition law as emphasised in the *AM&S* decision where independence is used as the criterion to distinguish between legal professionals.

It is perhaps noteworthy that this concept of independence at Community level is to be found in the imposition on legal professionals, pursuant to the EU money laundering Directive of reporting obligations concerning suspicious financial transactions. In particular, it will be noted that the exclusion from a reporting obligation by independent legal professionals can arise in certain privileged circumstances as described in Article 6 of Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering as substituted by Council Directive 2001/97/EC.

A further difficulty which arises when considering the status and recognition of legal professionals at the European level is to distinguish between legal professionals whose

activities are regulated by a recognised professional body and legal professionals who are not so regulated, either because they have not completed the necessary qualification requirements or, not being nationals of a Member State of the European Union, are not covered by the principal Directives relating to the pursuit by lawyers of professional activities within the European Union. These Directives are:-

- (a) Council Directive 77/249/EEC of 22nd March 1977 to facilitate the effective exercise by lawyers of freedom to provide services;
- (b) Council Directive 89/48/EEC of 21st December 1989 on a general system for the recognition of Higher Education Diplomas awarded on completion of professional education and training of at least three years' duration; and
- (c) Directive 98/5/EEC of the European Parliament and of the Council of 16th February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (“the Establishment Directive”).

The Establishment Directive is of particular importance because under Article 1.2 (a) a lawyer is defined as meaning any person who is a national of a Member State and who is authorised to pursue his professional activities on a permanent basis in a Member State other than that in which the qualification is obtained. These professional titles are repeated at Schedule 1 of this Report. It will be further noted that under Article 1.2 (f) of that Directive a relevant professional title or relevant profession is defined as meaning the professional title or profession governed by the competent authority with whom a lawyer has registered under Article 3 of that Directive. The Directive applies both to lawyers practising in a self-employed capacity and to lawyers practising in a salaried capacity in the home Member State and, subject to Article 8 of the Directive, in the host Member State. Article 8 provides that a lawyer registered in the host Member State under his home country professional title may practise as a salaried lawyer in the employ of another lawyer, an association or firm of lawyers or a public or private enterprise to the extent that the host Member State so permits for lawyers registered under the professional title used in that state. Thus the Directive recognises that in some jurisdictions there are both self-employed and salaried legal professionals who are entitled to be registered with a competent authority and that in other jurisdictions within the European Union salaried legal professionals cannot be registered, and thus are not regulated by a competent authority.

For the sake of clarity concerning these critical distinctions, it is proposed to refer in this Report to self-employed legal professionals and salaried legal professionals whose activities are regulated by a recognised competent authority as “**Regulated legal professionals**” and “**Regulated salaried legal professionals**” respectively.

In so far as any legal professional is neither a regulated legal professional nor a regulated salaried legal professional, it is intended in this Report to refer to such persons as **non-regulated salaried legal professionals**, notwithstanding that in some instances such legal

professionals may belong to a regulated profession outside the European Union or of the other jurisdictions dealt with in this Report.

In summary, therefore, the expression “**regulated legal professional**” means any person who is authorised by a competent authority in the relevant jurisdiction to pursue his/her professional activities under one of the recognised professional titles in the jurisdictions covered by this Report.

A “**regulated salaried legal professional**” means one who is a regulated legal professional but who provides legal services on a salaried basis for an employer.

A “**non-regulated salaried legal professional**” for the purposes of this Report means any person (regardless of whether or not he has completed a course of legal training or education within jurisdictions covered by this Report or outside) who provides legal services but who is neither a regulated legal professional nor a regulated salaried legal professional.

It can be seen that the colloquial term “in-house counsel” masks the key point that, depending on applicable local rules, an individual employed lawyer may be either a regulated or a non-regulated salaried legal professional. The term “in-house counsel” is therefore avoided in this Report and is best avoided in the debate.

2. **Professional Privilege**

Another expression which can give rise to some confusion is the word “privilege”. Whilst it is not intended for the purposes of this Report to carry out a detailed analysis of the general issue of privilege as it is applied throughout the jurisdictions covered by this Report, nevertheless it is desirable to keep general principles in mind. These are dealt with in some detail by D. A. O. Edward QC in his Report of 1975 to the CCBE on “The professional secret, confidentiality and legal professional privilege in the nine Member States of the European Community”. The Edward Report was prepared at a time when Edward was a member of the Delegation of the United Kingdom to the CCBE. He subsequently became President of the CCBE and thereafter a Judge of the Court of First Instance and then of the Court of Justice. It is to be noted that the Report was prepared before the *AM&S* case.

In his Report, Edward states that in all the (then nine) Member States of the European Community the law protects from disclosure information communicated in confidence to a lawyer by his client, an essential point which was made also by the Court of Justice subsequently in the *AM&S* case. The Edward Report analyses rules and procedures relating to professional privilege within the Member States at that time and the legal basis in these jurisdictions for the recognition of privilege and the rights of clients and/or legal professionals in that regard. Most of the observations and conclusions contained in the Edward Report are as relevant today as they were when originally published. The CCBE has prepared an update of the Edward Report, noting in particular where the laws of professional privilege in the jurisdictions covered by the Edward Report have changed, and dealing with the subject

generally in the States which have joined the European Union after the Edward Report was prepared.

As the Edward Report clearly demonstrates, there are distinctions between common law concepts of legal professional privilege and continental concepts of professional secrecy, and in the case of Denmark there is a somewhat different approach. It is suggested that the use of the expression “legal professional privilege” or “LPP”, which derives from the common law jurisdictions, can lead to confusion when applied also to cover the continental concept of professional secrecy. It is noted that in the Order of the President of the Court of First Instance of 30th October 2003, the Court itself used the expression “professional privilege”. As the objective of the present Report is not to carry out a detailed analysis of how the concepts are applied in the various jurisdictions, but rather to ascertain the extent to which they may cover salaried legal professionals (both regulated and non-regulated), it is proposed that the Court’s usage will be followed and the expression “professional privilege” as used throughout this Report should be taken to include these differing concepts unless the context otherwise requires.

3. Competent Authorities

As will be apparent from the foregoing, and the subsequent jurisdiction by jurisdiction summaries in Part I of this Report, the obligation to preserve professional privilege in most jurisdictions is linked to the recognition of the legal professional as a member of a Bar or Law Society which is entitled to exercise regulatory authority in relation to the activities of that legal professional pursuant to powers invested in it by the State. The expression “competent authority” is used throughout this Report to refer to such a Bar or Law Society (and the term “Bar” will be used as a convenient shorthand to cover both types of regulatory authority). As will be apparent from the Report, many salaried legal professionals are members of voluntary associations or bodies which, although in many cases they oblige their members to observe codes of conduct, do not do so pursuant to any statutory authority. The possible exception to this is the Belgian “Institut de Juristes d’Enterprise/Institut voor Bedrijfsjuristen” which was established by a law of 1st March 2000. It is doubtful, however, whether this body could be regarded as a competent authority as envisaged by the EU Directives referred to above regarding the exercise of the profession of lawyer within the European Union.

4. General Observations

As will be apparent from the review of the position in each of the jurisdictions covered by this Report, it is clear that the application of professional privilege in most jurisdictions is linked to membership by the legal professional of a recognised Bar. Furthermore, in a number of jurisdictions, a salaried legal professional cannot be a member of the Bar, whereas in other jurisdictions such membership is possible.

The position may be summarised as follows:

1. **Jurisdictions where the obligation to preserve the professional privilege is solely confined to legal professionals who are members of the Bar**

Within the European Union

Austria, Belgium, Finland, France, Greece, Italy, Luxembourg and Sweden

Within the European Economic Area and Switzerland

Liechtenstein and Switzerland

Within some jurisdictions from the current and future Accession States

Croatia, Czech Republic, Hungary, Lithuania, Poland (advocates), Slovak Republic and Slovenia

2. **Jurisdictions where professional privilege relates to salaried legal professionals provided that they are members of the Bar**

Denmark, Germany, the Netherlands, Portugal, Spain and United Kingdom (Scotland)

Within the European Economic Area

Iceland and Norway

Jurisdiction from the current and future Accession States

Poland (Legal Advisers)

3. **Jurisdictions where clients' professional privilege is not confined solely to legal professionals who are members of the Bar**

Within the European Union

Ireland, Finland, Sweden and the United Kingdom (England and Wales, Northern Ireland)

It should be noted, however, that in relation to the United Kingdom and Ireland, the extent to which the recognition of professional privilege to persons who are neither solicitors nor barristers in England and Wales, Northern Ireland and Ireland may be determined by reference to the nature of the professional legal relationship between the parties. Generally speaking in those jurisdictions, in order to confer privilege the communication must be made to or by a lawyer during the course of a professional legal relationship or with the intention of establishing one.

The definition of lawyer for this purpose includes not only solicitors and barristers but also salaried legal professionals and foreign lawyers. However, it does not include persons without a professional legal qualification who give legal advice or persons who have ceased to practise as a lawyer. In an English case (*New Victoria Hospital v. Ryan* [1993] IRLR202, Mr. Justice Tucker held that

“privilege should be strictly confined to legal advisers such as solicitors and counsel who are professionally qualified, who are members of professional bodies, who are subject to the rules and etiquette of their professions, and who owe a duty to the court.”

The position in Scotland is that there are no decided Scottish cases which would suggest that professional privilege may be extended to legal professionals other than solicitors and advocates.

It should also be pointed out that in Finland and in Sweden only members of the Bar have an obligation to preserve the professional privilege. However, any legal professionals, whether member of the Bar or not, can act as a representative or counsel in court proceedings and as such cannot be compelled by the judge to testify regarding his clients' secrets. That is the reason why Finland and Sweden are classified under paragraphs 1 and 3.

SECTION 2: JURISDICTIONS COVERED BY THIS REPORT

Introduction

This Section deals with the various jurisdictions covered by this Report. Part I refers to the jurisdictions within the European Union. Part II refers to the jurisdictions of the European Economic Area as well as Switzerland. Part III refers to some of the jurisdictions from the current and future accession states to the European Union.

In order to identify the extent to which professional privilege may or may not be applicable in circumstances where regulated salaried legal professionals or non-regulated salaried legal professionals are involved, each jurisdiction will be dealt with under the following headings.

1. A statement as to the application of professional privilege where a regulated legal professional is involved.
2. A statement as to the applicability of professional privilege where a regulated salaried legal professional is involved, if recognised in the particular jurisdiction.
3. A general description of the legal basis upon which professional privilege is based. It should be noted that in all jurisdictions the relevant Bars and Law Societies have adopted Codes of Conduct which, inter alia, impose obligations of professional conduct. In many instances, these obligations include observing the professional secret. Save where such obligations have the force of law, as opposed to giving rise to disciplinary action in the case of a breach of obligation, it is not proposed to refer specifically to such provisions.
4. A description of specific rules regarding professional privilege and the production or seizure of documents and other written materials or communications in civil and criminal proceedings, with particular emphasis on the production or seizure of such materials in anti-trust investigations or proceedings.
5. A statement as to the application of the national rules of professional privilege to non-regulated salaried legal professionals.

The foregoing will necessitate a certain amount of repetitive wording since the principles of professional privilege and their applicability are similar in a number of jurisdictions. This notwithstanding, it is hoped that the relevant descriptions for each jurisdiction will as a result be easier to follow.

PART I

MEMBER STATES OF THE EUROPEAN UNION AS AT 1ST JANUARY 2004

AUSTRIA

1. Regulated Legal Professionals

In Austria, the duty to preserve the professional secret is imposed upon legal professionals who are authorised to pursue their professional activities under the professional title of Rechtsanwalt. Insofar as the exercise of the professional secret in Austria is protected by statutory provisions applicable to a Rechtsanwalt, it follows that those who are not entitled to pursue their activities under this professional title do not fall within these statutory provisions.

2. Regulated Salaried Legal Professionals

The concept of a regulated salaried legal professional does not exist in Austria, neither are there any other competent authorities in Austria which regulate the activities of persons who provide legal services to their employer. However, a Rechtsanwalt may enter a salaried employment which encompasses activities belonging to the field of Rechtsanwalt activity only with another Rechtsanwalt or a Rechtsanwalt-Company (“Rechtsanwaltsgesellschaft”) and only insofar as the fulfilment of his professional duties is secured¹. In such a context, the Rechtsanwalt under the definitions set forth before is a fully-fledged “regulated legal professional”.

3. Legal Basis for Professional Privilege

Statutory Provisions

The duty to preserve the professional secret is provided for in the Rechtsanwaltsordnung (Lawyer’s Act - RAO) and – correspondingly the right to refuse to give evidence – in the statutory procedural rules such as under Section 152 Code of Criminal Procedure (Strafprozessordnung – StPO), Sections 320ff and 321 subpara 1 alinear 4 Code of Civil Procedure (Zivilprozessordnung – ZPO), Section 49 General Administrative Procedural Rules Act (Allgemeines Verwaltungsverfahrensgesetz – AVG), Section 24 Administrative Offences Act (Verwaltungsstrafgesetz – VStG) which refers to Section 49 AVG. For anti-trust procedures those rules on professional privilege are equally applicable; there is no specific provision on professional secrecy for cartel procedures.

Whilst the above mentioned rules have been set out in full in German at paragraph 1 of Schedule 2 to this Report, broadly speaking they provide that a Rechtsanwalt is entitled to refuse to give evidence in matters which have been confided in him by his client or have become known to him in his capacity as a Rechtsanwalt².

¹ Section 21g Rechtsanwaltsordnung (Lawyer’s Act - RAO), Section 5 Richtlinien für die Ausübung des Rechtsanwaltsberufes, für die Überwachung der Pflichten des Rechtsanwaltes und für die Ausbildung der Rechtsanwaltsanwärter (RL-BA 1977).

² § 49 AVG e.g. more broadly refers to authorized professional representatives in proceedings (“berufsmäßige Parteienvertreter“).

Professional Rules of Conduct

Pursuant to Section 9 of the Lawyers' Code (Rechtsanwaltsordnung), a Rechtsanwalt is bound by professional secrecy in matters which have been confided to him and which have otherwise become known to him in his capacity as a Rechtsanwalt whose confidentiality is in the interest of his client. A Rechtsanwalt is entitled to claim professional secrecy in court and any other proceedings according to the relevant procedural provisions. This right of the lawyer may in principle not be circumvented by any legal and other official measures, in particular by hearing of the lawyer's staff or by imposing requirements relating to the delivery of documents, pictures, recorded speech or data carriers or their confiscation.

4. Production and Seizure of Documents and other Written Communications

It should be noted, first, that search and seizure of documents occur in penal proceedings including anti-trust proceedings only. Civil procedural law – depending on the subject matter in issue – is largely characterized by the freedom of the disposition of the parties.

1. In civil proceedings, a court order for production of documents held by opponent party or a third person who is not party to the proceeding may be obtained only in limited situations on narrow grounds. The above-cited statutory procedural provisions on professional secrecy apply concurrently.

For example, under Section 304 ZPO a court order to submit a clearly specified document, whose relevance for the case and whose possession by the opponent has to be established first, can only be obtained after a hearing and if the opponent document possessor himself has referred to this document in the course of the proceedings, if he is obliged to hand out the document under civil law; or if the document is according to its content a joint document as defined under procedural rules e.g. a document for the persons, in whose interest it is issued or whose mutual legal relationship is certified in it. Such Court Order on the production of the document in possession of the opponent party is not enforceable; if the opponent does not comply with the order, it is in the discretion of the Court to decide whether the statements of the party about the content of the documents are proven or not.

A third person, i.e. any person different from the litigation parties, has to produce a document upon court order after hearing and clarification whether there is at all a duty to produce the specific document, only, if he/she is obliged to hand it out under Civil Law or if this document is according to its content a joint document for the third party and the party requesting it as proof (Section 308 ZPO). If such court order were issued, it would be appealable and only enforceable under the rules of execution procedure once a final decision is given.

2. In relation to criminal proceedings, the search of premises is governed by Section 139 ff of the Code of Criminal Procedure. The Criminal Code also governs confiscation (seizure) (Section 143 ff). In principle, everybody is obliged to hand over the objects covered by seizure order, including documents. Otherwise a fine or imprisonment for contempt can be imposed on the possessor. Regarding the objects search esp. opening of seized documents, there are provisions for sealing, storage at court, judicial review.

As confirmed by case law the right to refuse to give evidence (concerning professional secrecy more specifically Section 152 of the Code of Criminal Procedure) may not be nullified through confiscation. As a Rechtsanwalt is not obliged to give evidence in matters which had been confided to him in his capacity as a lawyer by his client, it is not permitted to confiscate documents/records of the Rechtsanwalt containing “privileged” information. Thus, written notes which have information/advice sought from the Rechtsanwalt are neither subject to a duty to hand over nor to confiscation. However, only the information file is protected; if a Rechtsanwalt should keep other documents or papers of the client in his office, confiscation is possible in order to avoid “immunisation” of any evidence just by handing it over to a Rechtsanwalt.

If the Rechtsanwalt keeps information-files together with other documents, the information files and the documents and papers, which can be confiscated, have to be separated when the search takes place. In order to facilitate the distinction between what can or cannot be confiscated, a Representative of the Bar to which the Rechtsanwalt belongs must be present when the search takes place. According to Section 23a RL-BA, in case of a search is being conducted at the office of the apartment of a Rechtsanwalt, the Rechtsanwalt has to insist that a representative of his Bar is called to participate in order to watch that professional secrecy is preserved. In case of doubt, the requested documents (files) have to be sealed and submitted to the court for judicial review. These rules do not apply in case of a search at the clients’ place regarding documents stemming from the Rechtsanwalt which the client keeps at his place.

Searches in anti-trust procedures are ordered by the Cartel Court according to the provisions of the Competition Act (Wettbewerbsgesetz). If the possessor of business documents would not consent to search and inspection of documents, the documents have to be secured by appropriate means against unauthorized inspection or change and have to be submitted to the Cartel Court; they may not be inspected or scrutinized before. The Court has to screen the documents and to issue an appealable decision as to whether and to what extent they may be examined, inspected or copied or whether they have to be handed back to the possessor. Section 142 resp 145 Criminal Procedural Law has to be applied mutatis mutandis (Section 12 WettbewerbsG).

5. Non-Regulated Salaried Legal Professionals

In Austria, there is no specific legal scheme (nor a legal definition) for “non-regulated salaried legal professionals”. Accordingly, the above paragraphs 3 and 4, insofar as they deal with Rechtsanwalt, specific rules do not apply. Whether and to which extent a “non-regulated salaried legal professional” may refuse evidence or refuse to hand out documents/means of evidence is to be determined by the respective rules governing witnesses/production of evidence in general for the respective procedure (partially dealt with above sub 4. and to be derived from the enclosed copies of the procedural rules). For example, insofar as a “business secret” is concerned, no witness is required to give evidence about questions which he could not answer without disclosing a business secret.

BELGIUM

1. Regulated Legal Professionals

In Belgium, the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of Avocat/Advocaat/Rechtsanwalt (hereinafter “Avocat”). Insofar as professional secret in Belgium is protected by statutory provisions applicable to an Avocat only, it follows that those who are not entitled to pursue their activities under this professional title do not fall within the statutory provisions.

2. Regulated Salaried Legal Professionals

In so far as an Avocat must be a member of the Bar in order to carry on his professional activities pursuant to that title, the concept of a regulated salaried professional does not exist in Belgium, neither is there any other competent authority which regulates the activities of persons who provide legal services to their employers.

3. Legal Basis for Professional Privilege

Statutory Provisions

The duty to preserve the professional secret is provided for in Article 458 of the Belgian Criminal Code (a copy of which is set out at paragraph 2 of Schedule 2 hereto).

Persons, with whom professional secrets have been entrusted, commit a criminal offence if they reveal them except where they are called to give evidence in legal proceedings or the law requires them to disclose the secrets in question. Decisions of the Court have held that it is not open to the client of an Avocat to waive the professional secret. However the obligations may be overridden in certain cases in favour of the right of defence if the Avocat believes that it is his duty to do so. Otherwise a breach of the obligation occurs where the disclosure is voluntary even in the course of legal proceedings.

4. Production and Seizure of Documents and other Written Communications

As regards Civil Proceedings, the production of documents and other written materials are subject to the professional secrecy obligations of the Avocat.

In criminal investigations, once a document is seized and reaches “the dossier” it may be used as evidence against an accused person unless positive steps are taken to have it excluded from consideration. The same principles would apply in relation to proceedings involving a competition matter as there is no separate legislation in Belgium dealing with the production and seizure of documents arising out of an investigation by the relevant authorities. It is therefore important in

order to ensure protection of the professional secret to prevent a document from being seized and thus reaching the dossier.

The procedure in Belgium is that documents in the hands of an Avocat are protected against search and seizure. Where a search does take place it must be carried out by the “juge d’instruction” rather than by the police and in the presence of the Bâtonnier or his delegate. The Bâtonnier or his delegate determines what documents are protected by the professional secret.

5. Non-Regulated Salaried Legal Professionals

As stated above, legal professionals who are in employment regardless of their legal qualifications and whether such qualifications have been obtained in other jurisdictions are not covered by the law of professional secrecy in Belgium. Accordingly, the provisions of paragraphs 3 and 4 above have no application in regard to communication between non-regulated salaried professionals and their employers.

However, it should be noted that salaried legal professionals who do occupy positions of employment have formed an association known as the “Institut des juristes d’entreprise/Institut voor Bedrijfsjuristen”. Membership of this institute is not mandatory. The establishment of this Association was recognised by the Belgian law of 1st March 2000. Whilst this law contains provisions which state that advice given by a salaried legal professional who is a member of the Institute and within the framework of his activity as a legal adviser is confidential, it is uncertain (and has not yet been decided) if this obligation is the equivalent to an obligation of professional secrecy as imposed upon regulated legal professionals.

Certainly, it is the strongly held view of the Belgian Bar that “confidentialité” is not equivalent to the obligation of professional secrecy.

Neither is it certain whether the procedure referred to at paragraph 4 may be invoked by non-regulated salaried legal professionals in relation to documents seized or sought to be seized by the authorities under any relevant criminal procedures.

Apart from this it should be noted that under Belgian Employment Law a non-regulated salaried legal professional would be subject to obligations of confidentiality to his employer in his capacity as an employee.

DENMARK

1. Regulated Legal Professionals

In Denmark, the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of Advokat.

2. Regulated Salaried Legal Professionals

The duty to observe the professional secret is also imposed upon legal professionals who are in the employment of another party. Such persons are authorised to pursue such professional activity under the professional title of Advokat provided that they are members of the Bar and that they hold a practising certificate issued by the Bar.

In principle, it would appear that regulated salaried legal professionals are subject to the same rules as to professional secrecy as those of regulated legal professionals but insofar as the issue of professional privilege and regulated salaried legal professionals has not been tested in Court, there remains some doubt as to whether or not they and the companies where they are employed will eventually be able to obtain entirely the same level of secrecy. Furthermore, it has been claimed that in competition cases involving the European Commission that a regulated salaried legal professional cannot claim the same degree of secrecy obligations as other members of the Bar who are self-employed.

3. Legal Basis for Professional Privilege

Statutory Provisions

The obligations to preserve the professional secret are provided for in Article 170 of the Danish Code of Procedure. A copy of this article is set out at paragraph 3 of Schedule 2 to this Report. This article provides that an Advokat may not be required to give evidence on matters which have come to his knowledge on the practice of his profession against the wish of the person who has the right that secrecy be maintained. Furthermore the court may order an Advokat, other than a defence Advokat in criminal cases, to give evidence when the evidence is considered decisive for the outcome of the case, and when the nature of the case and its importance to the party concerned or to society is found to justify a requirement that evidence should be given. In civil cases, such an order cannot be extended to include what an Advokat may have learned from a law suit entrusted to his care or to the advice he may have given in such a law suit.

The courts may also determine the extent to which evidence shall not be given, having regard to that which, by virtue of the law, the witness has the obligation to keep secret and about which the maintenance of secrecy has essential importance.

David Edward, in his Report to the CCBE pointed out that in contrast with the United Kingdom and the other Member State of the then European Union. Further subjective tests are applied in Denmark namely: “(i) Is the evidence decisive for the outcome of the case? (ii) Is it important to the party concerned or to society? (iii) Does the maintenance of secrecy have essential importance?” David Edward in his Report went on to state that the introduction of these subjective tests marks a major difference between Denmark and the other eight states.

Professional Rules of Conduct

The Danish Code of Conduct does not have force of law in itself. However, according to the law, the standards regulating the activities of regulated legal professionals, including regulated salaried legal professionals, are based on case law produced by the Disciplinary Board and the Courts. The role of the Board of the Bar and Law Society is to set up a code of conduct reflecting the standards developed in case law.

4. Production and Seizure of Documents and other Written Communications

The obligation to produce documents in the possession of an Advokat and the Advokat’s obligation to appear in Court as a witness are regulated in the legislation concerning civil and criminal proceedings. When an Advokat is appearing in Court as a defence counsel or is representing a person in civil proceedings, the Court cannot order the Advokat to give evidence as a witness or to produce documents. Apart from that, the Court can order an Advokat to give evidence or to produce documents in circumstances where the Advokat is not representing a client in Court proceedings whether these are criminal or civil. This subjective test applies only when the Advokat is giving legal advice or business advice.

In civil proceedings the client can refuse to produce documents. If the client refuses to produce documents, this can be held against him when the Court is examining the evidence in the case. In criminal proceedings, the client can in principle refuse to produce documents in his possession, but this decision can be overruled by a Court order allowing the police to take into its possession documents belonging to the client.

As regards competition investigations and proceedings there are no specific regulations applicable in Denmark and accordingly the foregoing principles as to the production of documents would apply.

5. Non-Regulated Salaried Legal Professionals

Legal professionals who are in employment and regardless of their legal qualifications and whether such qualifications had been obtained in other jurisdictions, and who are neither regulated legal professionals or regulated salaried legal professionals, are not covered by the laws of professional secrecy in Denmark. Accordingly, the provisions of paragraphs 3 and 4 above have no application as regards communications between such non-regulated salaried legal professionals and their employers. It should be noted however that in Denmark that such persons have established a group called “Dansk Forening for Virksohedsjurister”. Membership of this association is not mandatory.

For the sake of completeness, it should be noted that in Denmark, Danish Employment Law requires that persons in employment (which of course would include non-regulated salaried legal professionals) owe duties of confidentiality to their employer. However such duties would not be regarded as justifying the non-disclosure of documents and written communication in legal proceedings.

FINLAND

1. Regulated Legal Professionals

In Finland, the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of Asianajaja/Advokat (hereinafter advocate).

2. Regulated Salaried Legal Professionals

Insofar as an advocate must be a member of the Bar in order to carry on his professional activities pursuant to that title, the concept of a regulated salaried legal professional does not exist in Finland, neither is there any other competent authority which regulates the activities of persons who provide legal services to their employer. However an advocate may be employed by another advocate or by a firm owned by an advocate. In such a context, the advocate under the definitions set forth before is a fully-fledged “regulated legal professional”. It should also be noted that any non-regulated legal professionals can act as a representative or counsel in court proceedings and that in that context only he is bound to preserve professional secret.

3. Legal Basis for Professional Privilege.

Statutory Provisions

The duty to preserve the professional secret is provided for in Finland under paragraph 5 c in the Act of Advocates: “An advocate or his assistant shall not, without permission, disclose the secrets of an individual or family or business or professional secrets which have to his knowledge in the course of his professional activity”.

Furthermore, Chapter 17 (paragraph 23) of the Code of Judicial Procedure provides that an advocate may not be questioned as a witness in a court procedure regarding anything which has been confided to him acting as a representative or counsel in court proceedings or which he has learned in connection thereto. Exclusions from this rule are prescribed regarding certain particularly serious crimes but do not apply if the advocate (whether asianajaja/advokat or not) was acting as a defence attorney. Copies of these particular provisions are set out in paragraph 4 of Schedule 2 of this Report.

Professionals Rules of Conduct

The Finnish Code of Conduct provides that an advocate shall preserve confidentiality with respect to his client’s affairs and may not without permission, unless there is a statutory duty to give information, reveal anything which has been confided to him in his professional capacity or which he has learned in connection therewith.

4. **Production and Seizure of Documents and other Written Communications**

The obligation to produce documents in the possession of an advocate and the advocate's obligation to appear in Court as a witness are regulated in the legislation concerning civil and criminal proceedings. When an advocate is appearing in court as a defence counsel or as representing a person in civil proceedings, the Court cannot order the advocate to give evidence as a witness or to produce documents.

The same applies in relation to competition investigations or proceedings.

5. **Non-Regulated Salaried Legal Professionals**

Legal professionals who are in employment regardless of their legal qualifications and whether such qualifications had been obtained in other jurisdictions are not covered by the laws of professional secrecy in Finland. Accordingly, the provisions at paragraphs 3 and 4 above have no application in regard to communications between non-regulated salaried professionals and their employers.

It should be noted however that if a non-regulated salaried legal professional acts as a defence counsel in court proceedings, he may not give evidence on confidential matters divulged to him in this capacity without the consent of the client who may be his employer. The prohibition not to reveal a business secret applies to non-regulated salaried legal professionals as is the case for any other employee.

FRANCE

1. Regulated Legal Professionals

In France the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of Avocat. Insofar as the exercise of the professional secret in France is protected by statutory provisions applicable to an Avocat only, it follows that those who are not entitled to pursue their activities under this professional title do not fall within the statutory provisions.

2. Regulated Salaried Legal Professionals

Insofar as an Avocat must be a member of the Bar in order to carry on his professional activities pursuant to that title, the concept of a regulated salaried legal professional does not exist in France, neither is there any other competent authority which regulates the activities of persons who provide legal services to their employer. However, an Avocat may be employed by another Avocat or a firm of Avocats. In such a context, the Avocat under the definitions set forth before is a fully-fledged “regulated legal professional”.

3. Legal Basis for Professional Privilege

Statutory Provisions

The duty to preserve the professional secret is provided for in France under the provisions of Article 160 of the Decree of 27th November 1991, Article 66-5 of the Law of 31st December 1971, modified by the Law of 7th April 1997 and by Article 226-13 of the French Criminal Code. Copies of these particular provisions are set out in paragraph 5 of Schedule 2.

These provisions expressly require that an Avocat shall not disclose information which contravenes the professional secret. In particular, Article 226-13 of the French Criminal Code provides that disclosure of secret information by a person entrusted with such a secret, either because of his position or profession, or because of a temporary function or mission, is punished by one year’s imprisonment and a fine of €15,000.

Professional Rules of Conduct

Regarding Article 2 of the Regulatory Decision at No. 1999-001 establishing harmonised practice rules for the French Bar, the professional secret is an obligation imposed by law. It is general, absolute and unlimited in time. A violation of the provisions of Article 2 would expose the Avocat to disciplinary proceedings and sanctions under the provisions of the Criminal Code.

4. Production and Seizure of Documents and other Written Communications

As regard civil proceedings, the production of documents and other written materials are subject to the professional secrecy obligations of the Avocat.

In general, in criminal and competition investigations and proceedings once a document is seized and reaches the “dossier” it may be used as evidence against an accused person unless positive steps are taken to have it excluded from consideration. It is therefore important in order to ensure protection of the professional secret to prevent a document from being seized and thus reaching the dossier.

Documents in the hands of an Avocat are protected against search and seizure to the extent that, the procedure for search of the office of an Avocat in the context of Article 56-1 of the Code of Criminal Procedure, has to be carried out according the provisions of the law n°2000-516 of 15 June 2000. The search must be carried out by the “juge d’instruction”, rather than the police, and in presence of the Bâtonnier or his delegate. The Bâtonnier or his delegate determines what documents are protected by the professional secret. In France, the Code of Criminal Procedure expressly requires the police and the juge d’instruction before instituting a search, to take all appropriate steps beforehand to ensure that the professional secret and the rights of the defence are protected. The only documents which may be seized by the juge d’instruction are documents which constitute the “corps du délit”.

However it should be noted that in France there have been decisions of the court which have tended towards restricting these rights as, for example, in a case in the Appeal Court (12/3/92) the seizure of correspondence exchanged between an Avocat and his client can in exceptional circumstances be ordered or maintained only if the seized documents are likely to establish the proof of the participation of the Avocat in the relevant infringement. In another case before the Appeal Court of the 30/6/99 professional secrecy does not apply in matters of legal counselling, considering that professional secrecy must be reserved in relation to the exercise of defence rights. Furthermore, an order by the President of the Tribunal de Grande Instance of Paris of 7 July 2001³ applied the new provisions of the law of 15 June 2000 and set up the position of the case-law. This order showed that professional secrecy of an Avocat, as set up in the article 66-5 of the law of 31 December 1971, has not an absolute character which would make the provisions of the law of 15 June 2000 ineffective. It was noted in the order that professional secrecy of the Avocat is a European concept which must not be considered as being restrictive, only authorising the seizure of correspondence between an Avocat and his client only if it clearly showed that an Avocat committed or was party to an offence. Besides, in an order of 2 October 2000⁴, the President of the Tribunal de Grande Instance of Paris decided that "only documents for which the content can show the existence of the offence of undue influence to which the Avocat took part are likely to be kept by the judge". Therefore, it is on the basis of the principles of necessity and proportionality that the judge will take a decision after examination of the disputed documents.

³ (Gaz. Pal. 25/07-9/08 p. 2; Gaz. Pal. 29 August 2000 p. 18 note Damien; JCP 2001.I.284 n° 1 obs. R. Martin)

⁴ (Gaz. Pal. 13-14 October 2000 p. 7)

5. **Non-Regulated salaried legal professionals**

As stated above, legal professionals who are in employment regardless of their legal qualifications and whether such qualifications had been obtained in other jurisdictions are not covered by the laws of professional secrecy in France (other than those employed by an Avocat). Accordingly, the provisions of paragraphs 3 and 4 above have no application in regard to communications between non-regulated salaried legal professionals and their employers.

It should be noted however that there are voluntary groupings of such persons in France as, for example, the Association Française des Juristes d'Entreprise or the Cercle Montequieu. Non-regulated salaried legal professions would, under the terms of their employment contracts, be subject to obligations of confidentiality to their employers in their capacity as employees. Such obligations would not justify a non-regulated salaried legal professional from being entitled to refuse to make disclosure in court proceedings.

GERMANY

1. Regulated Legal Professionals

In Germany, the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of Rechtsanwalt. Insofar as the exercise of the professional secret in Germany is protected by statutory provisions, it follows that those who are not entitled to pursue their activities under this professional title do not fall within the statutory provision.

2. Regulated Salaried Legal Professionals

However, it is open to a salaried legal professional to be registered by the Bar and to pursue his/her professional activity under the professional title of Rechtsanwalt.

According to Article 46 paragraph 1 of the German Federal Lawyers Act (BRAO), a salaried legal professional (Syndikusanwalt) is regarded as a Rechtsanwalt who has been admitted to the Bar and who is working in a permanent private employment relationship or a relationship similar to a permanent employment relationship with a non-attorney and who has to provide his working time and service to his employer. To be admitted to the Bar the person must prove that his permanent employment relationship does not endanger his independence when acting as Rechtsanwalt according to paragraph 7 Nr.8 Federal Lawyers' Act. The Rechtsanwalt is not considered to conduct business or trade but is an independent organ of legal administration. The core value of independence is safeguarded by the aforementioned paragraph 7 Nr. 8 Federal Lawyers' Act due to the fact that there is a general hindrance of being admitted if independence cannot be granted. On the other hand, it is important to state that the mere fact of being employed does not exclude independence. It is crucial to stress that the Attorney acting as a salaried legal professional only arises as an issue in the case of employment with a non-Attorney. An Attorney employed by another Attorney is not considered to be a salaried legal professional. To this extent, the independence factor is decisive. The independence of an Attorney employed in a law office is uncontested. Here dependant employment must not be equated with dependency.

It should be further noted that a Syndikusanwalt is subject to specific limitations of his professional practice to ensure his independence.

There is a general prohibition of legal representation acting as a Rechtsanwalt before the court and the arbitration court on behalf of the employer (Article 46 BRAO).

However, the Syndikusanwalt may represent the employer provided he does not use the title "Rechtsanwalt" and does not act as a Rechtsanwalt but acts, for example, as a member of a Managing Board or like a normal employee.

The Syndikusanwalt can act as a Rechtsanwalt before the Court for a third party.

As to whether or not a Syndikusanwalt enjoys the privileges of a Rechtsanwalt in so far as he works for the employer outside court is disputed.

The Supreme Court (Bundesgerichtshof, BGH) does not acknowledge the right to deny testimony and the immunity of files as long as a Syndikusanwalt acts for the employer within the employment relationship (BGH in Neue Juristische Wochenschrift 1999, page 1715, 1716). Some legal authors argue that the Syndikusanwalt is to be treated as a Rechtsanwalt also within the employment relationship.

3. Legal Basis for Professional Privilege

Statutory Provisions

The duty to preserve the professional secret is provided for in Germany under Article 203 of the Criminal Code and Article 43A of the German Lawyers Act (Bundesrechtsanwaltsordnung).

Copies of these particular provisions are set out in paragraph 6 of Schedule 2.

The obligation of professional secrecy according to Article 43A of the Federal Lawyers' Act is more extensive than the obligation to professional secrecy set down in Article 203 of the Criminal Code. The obligation of professional secrecy according to Article 43A of the Federal Lawyers' Act applies to everything which has come to the knowledge of the Rechtsanwalt whilst conducting his profession whereas the obligation of professional secrecy dealt with in Article 203 of the Criminal Code is limited to a "Third Person's Secret"

A Rechtsanwalt who discloses a secret of another without authorisation, in particular a secret which belongs to the realm of personal privacy or a business or trade secret which was confined to, or otherwise made known to him, can be punished with imprisonment for not more than one year or a fine under Article 203 of the Criminal Code. In addition, there are extensive procedures to be followed in the event of a violation of the professional secrecy as required by the Bar

Broadly speaking, these provisions expressly require that a Rechtsanwalt shall not disclose information which contravenes the professional secret.

4. Production and Seizure of Documents and other Written Communications

In Civil proceedings the production of documents and written materials are subject to the obligation of professional secrecy when in the possession of a Rechtsanwalt.

Article 97 of the Code of Criminal Procedure (which also applies in anti-trust investigations and proceedings) provides protection against seizure of specific types of documents namely, (i) written communications between the accused and persons who are entitled to refuse to give evidence, (ii) notes which such persons have made about matters confided to them by the accused or about

matters which are covered by the right to refuse to give evidence and (iii) other objects which are covered by the right to refuse to give evidence. These limitations of seizure only apply if the objects are in the actual possession of the person who has the right to refuse to give evidence. The limitations do not apply if those entitled to refuse to give evidence are suspected of involvement in or encouragement of “crime or of receiving stolen property”.

5. Non-Regulated Salaried Legal Professionals

Legal professionals who are in employment regardless of their legal qualifications and whether such qualifications had been obtained in other jurisdictions are not covered by the laws of professional privilege in Germany. Accordingly, the provisions at paragraphs 3 and 4 above have no application in regard to communications between non-regulated salaried legal professionals and their employers.

Non-regulated salaried legal professionals would, under the terms of their employment contract, be subject to obligations of confidentiality to their employers in their capacity as employees. Such obligations would not justify a non-regulated salaried legal professional from being entitled to refuse to make disclosures in court proceedings.

GREECE

1. Regulated Legal Professionals

In Greece, the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of Dikigoros. In so far as the exercise of the professional secret in Greece is protected by statutory provisions, applicable to a Dikigoros only, it follows that those who are not entitled to pursue their activities under this professional title do not fall within the statutory provisions.

2. Regulated Salaried Legal Professionals

In Greece, the concept of a salaried regulated legal professional does not exist, as a member of the Bar who carries on his professional activities pursuant to the title of Dikigoros, cannot be salaried. However, he can give legal advice internally for a company. In such a case, he renders his services either as a self-employed legal professional or as an “employed” legal professional (on retainer only) or even both at the same time, i.e. partly as “employed” (on retainer only) and partly as self-employed legal professional.

3. Legal Basis for Professional Privilege

Statutory Provisions

The duty to preserve the professional secret is provided for in Greece under Article 371 of the Penal Code (Act 1492/1950) and Article 212 of the Code of Criminal Procedure and Article 400 of the Code of Civil Procedure (which contains similar provisions to those of Article 371 of the Penal Code and 212 of the Code of Criminal Procedure). Copies of these provisions are set out at paragraph 7 of Schedule 2 hereto. Broadly speaking, professional secrecy has been defined in Greece as the secret which has come to the knowledge of a person who carries out a specified function or profession, by reason of the conduct of such function or profession, or as a consequence of finding out a private secret from the party who has an interest in maintaining the secret.

Professional Rules of Conduct

Article 49 of the Code for Lawyers (LD3026/1954) and which has the force of law provides that a Dikigoros is obliged to keep inviolable the required secrecy in favour of his principal client. Anything else, which may come to his knowledge as a consequence of the practice of his legal function, is left to him, in good conscience to decide as to whether and to what extent he should depose if he is called as a witness.

Furthermore, in any event, a Dikigoros cannot be examined as a witness in respect of a case in which he was involved in that capacity without the prior permission of the executive council of his Bar or in case of extreme urgency of the President of the Bar. This prohibition applies also to a

Dikigoros who renders his services on a fixed periodical retainer (i.e. as defined above in paragraph 2) in respect of all the cases of the party to whom he renders his services.

4. **Production and Seizure of Documents and other Written Communications**

Under Article 261 of the Code of Penal Procedure, a Dikigoros is obliged, if so ordered by the person who conducts the enquiry, to deliver to the judicial authority, the documents, even originals, as well as any other object in his possession due to his duties, his function or profession, unless he declares in writing, without even giving any reasons, that it is a diplomatic or military secret relating to the safety of the state or a secret related to his function or profession.

These provisions would apply both in civil and criminal proceedings and there are no separate provisions applicable in the case of investigations or proceedings arising out of anti-trust matters.

5. **Non-Regulated Salaried Legal Professionals**

It should be noted in the first instance that under the Greek Penal Code (Article 175) the provision of legal services is reserved to a Dikigoros (whether as a self-employed legal professional or as an “employed” legal professional on a fixed periodical retainer).

In the event of other persons providing legal work, then they would contravene the provisions of the Penal Code. It follows that any principles of professional privilege/secretcy could not and would not apply to their activities.

However, it cannot be ruled out that there may be persons who are in fact employed under terms of contracts with their employers to provide some form of legal services either in a legal department or possibly claims departments of corporate bodies. As one might expect under the terms of their contracts, they would have obligations to observe the secrets of the business of their employer and not to disclose information about their employer’s business to competitors. These obligations would not be the same, however, as rules of professional privilege/secretcy as applicable to a Dikigoros and under no circumstances would such contractual obligations confer any right of “professional privilege/secretcy”.

IRELAND

General Remarks

In Ireland as in the United Kingdom, the issue of privilege and the right to assert privilege is in essence different in concept to that of professional secrecy in continental jurisdictions. In continental jurisdictions, the obligation to observe the professional secret by legal professionals is a duty imposed by law, whereas under the common law system in Ireland and the United Kingdom, the concept has been defined by the courts as a privilege to be asserted as of right by clients in the course of the administration of justice. As a result, the application of professional privilege in any set of circumstances whether in civil or criminal proceedings are determined in accordance with criteria laid down by the Courts. As a general rule, privilege belongs to the client and can be waived by the client in certain circumstances.

The law in Ireland recognises two types of communication. The first is legal professional privilege (secrecy as between lawyers and their clients). The second is litigation privilege (which may not always be confined to lawyers).

In order for privilege to attach, the communication must be made to or by a lawyer during the course of a professional relationship or with the intention of establishing one. As a result, the definition of the term “lawyer” for this purpose includes solicitors and barristers but also salaried legal professionals whether regulated or not (and foreign lawyers). It does not include persons without a professional legal qualification who give legal advice or persons who have ceased to practice as a lawyer. However, as described in the English case of *New Victoria v. Ryan* (previously referred to) it is likely that privilege would be strictly confined to legal advisers such as solicitors and counsel, who are professional qualified, who are members of professional bodies, who are subject to the rules and etiquette of their professions and who owe a duty to the court.

The following points may be made about those involved in providing legal services and the basis for the attachment or privilege.

1. **Regulated Legal Professionals**

In Ireland, the regulated legal professionals are barristers and solicitors who are authorised to pursue their professional activities under those professional titles.

2. **Regulated Salaried Legal Professionals**

Whilst in the case of solicitors, such persons are authorised to pursue their professional activity under the professional title of solicitor provided that they are enrolled on the roll of solicitors and hold practising certificates, no distinction arises as between a salaried legal professional and a self-employed legal professional who are so regulated by the Law Society of Ireland

In the case of a barrister whilst such persons frequently hold positions as salaried legal professionals, they are not subject to regulation by the Bar Council. However, having regard to the fact that the legal basis upon which professional privilege is applied in Ireland their employers would continue to be entitled to assert privilege as it is applied in Ireland by reason of the professional qualification of the barrister concerned.

3. **Legal Basis for Professional Privilege**

Please see the foregoing introductory remarks.

4. **Production and seizure of documents and other Written Communications**

No distinction is made in Irish Law as to the rights of a client to assert privilege in the event of requirements to produce documents in Court (usually as part of the discovery process in civil proceedings) or to resist seizure arising out of criminal investigations or proceedings. In Ireland there is no separate legislation which governs the issue of professional privilege in the context of anti-trust investigations and in proceedings and where such issues should arise, the same principles relating to professional privilege would apply.

5. **Non-Regulated Salaried Legal Professionals**

There are persons in Ireland who do occupy positions as salaried legal professionals and who are not subject to regulation by a competent authority such as the Bar Council or the Law Society of Ireland. In general, provided that they do not hold themselves out as being solicitors or barristers, there are no restrictions upon the application of professional privilege provided that the court is satisfied that they are persons who do hold a professional legal qualification.

Such salaried legal professionals would of course have duties under the terms of their contracts of employment to observe confidentiality in relation to the affairs of their employer but such rules would not confer any additional rights on their employers in the proceedings save where professional privilege applied.

ITALY

1. Regulated Legal Professionals

In Italy, the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of *Avvocato*. Insofar as the exercise of the professional secret in Italy is protected by statutory provisions applicable to an *Avvocato* only (and subject to the statements in paragraph 2 hereof) it follows that those who are not entitled to pursue their activities under this professional title do not fall within the relevant statutory provisions.

2. Regulated Salaried Legal Professionals

There is an exception in Italy namely in relation to a salaried legal professional who is in the employment of a public body and works in the legal department of such body. These persons are entitled to be registered with the Bar and are subject to the Codes of Conduct of the Bar.

Article 3 (paragraphs 2 and 3 of Royal Decree Law No. 1578 of 1933) (the “Professional Law”) states that the profession of *Avvocato* is incompatible with any public or any private employment. Therefore salaried legal professionals may not be *Avvocati*. However, Article 3 sub-paragraph 4 excepts *Avvocati* of public bodies from this restriction. Such *Avvocati* are enrolled on a special list maintained by the Bar and may only act for their employer.

3. Legal Basis for Professional Privilege

Statutory Provisions

The Italian provisions on legal professional secrecy are contained in the Code of Criminal Procedure, in the Code of Civil Procedure and the Professional Law. These provisions apply only to *Avvocati*. The scope of professional privilege rights under Italian Law is however, quite narrow. All the relevant provisions seem in fact to be designed more with a view to protecting Attorneys, rather than their clients. In particular, these provisions protect Attorneys and their offices whereas in general clients may not themselves invoke protection against search or seizure of documents sent to or received from the Attorney (other than certain correspondence).

In relation to criminal proceedings, Article 200 of the Code of Criminal Procedure provides that *Avvocati* have the duty and the right to abstain from testimony regarding any information acquired in connection with their activities as Attorneys. The same rules apply in civil proceedings. Divulging without reason (or using for one’s own or a third party’s profit) a professional secret and thereby procuring damage, is a felony (Article 622 of the Criminal Code).

Copies of the relevant legislation in this respect is set out at paragraph 9 of Schedule 2 to this Report.

4. **Production and Seizure of Documents and other Written Communications**

The obligations of an Avvocato to produce documents to the Court are effectively the same in both civil and criminal procedures. An Avvocato who is ordered to submit to the Court documents in his possession may refuse to do so by declaring that these documents are confidential and inherent to their professional activity. The legitimacy of such declaration is however subject to scrutiny by the Court.

Furthermore under Article 103 (paragraph 1) of the Code of Criminal Procedure, inspections and searches at the office of defence counsel are permitted only when either

- (i) an Avvocato himself is being prosecuted or
- (ii) in order to discover traces or other material evidence of the crime or
- (iii) in order to search for items or individuals identified specifically in advance.

Pursuant to Article 103 (paragraph 2) documents may be seized, in the hands of defence counsel or technical experts, only if they constitute the corpus delicti. The judicial authority must notify the local Bar Association prior to any inspection, search or seizure so that the President or a councillor may be present. Failing such notification the evidence collected may not be used in any such proceedings.

As regards anti-trust investigations and proceedings, there are no specific provisions covering professional secrecy in the administrative proceedings before the Italian anti-trust authority. Apparently the case law on the point is very limited. Nevertheless the principles outlined above should apply, however, since the penalties for anti-trust infringements are of a quasi-criminal nature. Case law has held that correspondence between company executives and a non-regulated salaried legal professional is not covered by any professional privilege in any anti-trust investigations, but has not yet ruled on whether or not the privilege is applicable in the case of regulated legal professionals. The Italian anti-trust authority has at least on one occasion seized correspondence between companies and regulated salaried legal professionals at the company's premises and used such correspondence against the company.

5. **Non-Regulated Salaried Legal Professionals**

Legal professionals who are in employment regardless of their legal qualifications and whether such qualifications had been obtained in other jurisdictions are not covered by the laws of professional privilege in Italy. Accordingly, the provisions at paragraphs 3 and 4 above have no application in regard to communications between non-regulated salaried professionals and their employers. It should be noted however that as employees such persons would be subject to the normal rules regarding disclosure of the employer's commercial secrets. However, these restrictions are not sufficient to justify a refusal of disclosure by the person in question in legal proceedings.

LUXEMBOURG

1. Regulated Legal Professionals

In Luxembourg, the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of Avocat. Insofar as the exercise of the professional secret in Luxembourg is protected by statutory provisions applicable to an Avocat only, it follows that those who are not entitled to pursue their activities under this professional title do not fall within these statutory provisions.

2. Regulated Salaried Legal Professionals

Insofar as an Avocat must be a member of the Bar in order to carry on his professional activities pursuant to that title, the concept of a regulated in-house legal professional does not exist in Luxembourg. Neither is there any other competent authority which regulates the activities of such persons who provide legal services to their employer. However, an Avocat may be employed by another Avocat or by a firm owned by an Avocat. In such a context, the Avocat under the definitions set forth before is a fully-fledged “regulated legal professional”.

3. Legal Basis for Professional Privilege

Statutory Provisions

The duty to preserve the professional secret is provided for in Luxembourg under Article 458 of the Criminal Code and Article 35 of the Law on the Profession of Lawyer as modified by the law of 10th August 1991.

Copies of these provisions are set out at paragraph 10 of Schedule 2.

These provisions impose an obligation on an Avocat not to disclose information which contravenes the professional secret, a violation of which would expose the avocat to imprisonment and a fine.

4. Production and Seizure of Documents and other Written Communications

Seizure of Documents

An Avocat cannot be compelled to produce documents and other written materials in civil proceedings where professional privilege applies.

In relation to criminal proceedings, the investigation judge (juge d’instruction) has the authority to issue a warrant for search and seizure in order to seize a document which may be used against an

accused person. If, however, the search is to be carried out at a regulated legal professional office, the procedure of search is regulated by an agreement between the Bar and the prosecuting authorities in the sense that the search must be carried out by the juge d'instruction. By application of Article 35 (3) of the Law of 10th August 1991, the search and seizure may only be carried out in the presence of the Bâtonnier or his delegate or after the Bâtonnier has been duly called to assist the legal professional.

However, the Bâtonnier or his delegate has no authority to prevent the juge d'instruction from seizing a document judged by the Bâtonnier to be protected by professional secrecy. If the Bâtonnier or his delegate is of the opinion that a seized document is protected by professional secrecy he is entitled to make such observations he considers necessary. His observations have to be mentioned in the minutes relating to the seizure. It is then up to the Court to decide if a seized document is protected by professional secrecy and consequently has to be withdrawn from the file, and must not be used against the accused person. Furthermore, where such documents and communications are in the possession of the client and if the client is a "confidant" by state or in the exercise of his profession then that client is bound by professional secrecy.

There are no particular rules or procedures in relation to investigations and proceedings in anti-trust matters and the position regarding the production and seizure of documents would be the same as above.

5. Non-Regulated Salaried Legal Professionals

As stated above, legal professionals who are in employment, regardless of their legal qualifications and whether such qualifications had been obtained in other jurisdictions, are not covered by the laws of professional privilege in Luxembourg. Accordingly, the provisions of paragraphs 3 and 4 above have no applications in regard to competition between non-regulated in-house legal professionals and their employers.

Under Article 2 (3) of Part 3 of the Law of 10th August 1991, a non-regulated salaried legal professional practising his activities within the framework of an employment contract within a company or group of companies can render every advice and carry out every legal operation necessary to the activity and directly linked with their employers activities. It is further provided that such a legal professional is not bound by professional secrecy except that of the employer as, for example, in relation to bank secrecy. This was confirmed by the Cour de Cassation on 21st March 1957 which held that the obligations of professional secrecy are retained exclusively for those persons who by state or profession are necessary "confidant" of another person. Accordingly if the person who employs a salaried legal professional is itself by state or profession a depository of secrets, then the salaried legal professional may rely on professional secrecy in the same way as his employer. If the employer is not by state or profession a depository of secrets then the salaried legal professional cannot rely on professional secrecy.

However as noted above where a non-regulated salaried legal professional provides legal services for his employer who in turn is entitled by state or profession to be a depository of secrets then in this instance the non-regulated salaried legal professional would be bound by the same obligations of professional secrecy as that of his employer. If however, the employer is not a depository of secrets then the non-regulated salaried legal professional cannot rely upon professional secrecy.

THE NETHERLANDS

1. Regulated Legal Professionals

In the Netherlands, the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of Advocaat.

2. Regulated Salaried Legal Professionals

The duty to preserve the professional secret is imposed on all Advocaten, irrespective of whether they are in the employment of another party or not i.e. whether they are salaried or not.

In principle, therefore, so far as the obligation to observe the professional secret is concerned there is no distinction between the duties of a regulated legal professional and a regulated salaried legal professional. A regulated salaried legal professional is sometimes also referred to in the Netherlands as “Cohen-Advocaat”.

There is no distinction as far as it concerns the status of Advocaat, for both the regulated legal professional and the regulated salaried professional are referred to as Advocaat. Please keep in mind that a regulated salaried professional and his employer have to sign the Professional Statute (See Article 3, paragraph 3 Bye-law on the advocaten in employment), guaranteeing the independency of the regulated salaried professional.

3. Legal Basis for Professional Privilege

Statutory Provisions

The obligations to preserve the professional secret are provided for by way of statute and also by professional regulation, and the principle of professional privilege is confirmed in established case law of the Dutch Supreme Court.

Article 51 of the Dutch Competition Act provides for the application of professional privilege in the context of the seizure of documents during competition law investigations (see below).

Article 272 of the Dutch Criminal Code provides that a person who deliberately violates a secret of which he knows or has reason to suspect, or which he is obliged to preserve by reason of his office or profession or a legal regulation as well as of his former office or profession shall be punished.

Furthermore, Article 218 of the Dutch Code of Criminal Procedure provides that those who, by virtue of their status, profession or office have an obligation to maintain secrecy, may excuse

themselves from giving evidence or from answering specific questions, but only about that of which the knowledge was entrusted to them in that capacity.

Article 165 (paragraph 2b) of the Dutch Code of Civil Procedure also contains provisions regarding the observance of the professional secret).

Copies of the relevant articles are set out in paragraph 11 of Schedule 2 hereto.

Professional Rules of Conduct

The Dutch Code of Conduct in which the obligation to preserve the professional secret is laid down, does not have the force of law in itself. However, disciplinary proceedings can be brought against an Advocaat who breaches his obligation of professional secrecy contrary to his duty of care towards his client. These proceedings are based on article 46 of the Dutch Bar Act.

4. Production and Seizure of Documents and other Written Communications

The principle of professional secret will apply in relation to the production of documents and other written materials in civil proceedings as well as in criminal proceedings.

In the Netherlands, the code of criminal procedure distinguishes between seizure (beslag) and search (huiszoeking). This distinction does not affect the issue of professional privilege where letters or other documents to which the obligation in maintaining secrecy extends are in the possession of persons entitled to excuse themselves from giving evidence as provided by Article 218, such letters or documents may not be seized without their consent. A search may only take place in the premises of such persons without their consent insofar as it can proceed without breaching the secrets of their status, professional or office; and such search may not extend to letters or documents other than those which constitute the corpus delicti or which have served towards the commission of the crime. However it should be noted that in the Netherlands where the search involves the office of an Advocaat, the involvement of the Dean of the local Bar is required as a result of an agreement entered into between the Council of General Prosecution and the Netherlands Bar Association.

As regards competition law investigations, reference should be made to article 51 Dutch Competition Act, to which the European Commission refers at paragraph 80 of its Defence. Article 51 Dutch Competition Act describes the application of professional privilege to the seizure of documents in anti-trust investigations, and provides that the rights of the investigating authorities to seize documents are limited on the grounds of professional privilege of communications “exchanged between the undertaking and the Advocaat”. It is the view of the Nederlands Orde van Advocaten that no distinction should be made in this context between salaried Advocaten and those who are not. The Nederlandse Orde therefore does not agree with the Commission’s observations in this regard at paragraph 80 of its Defence.

5. Non-Regulated Salaried Legal Professionals

Legal professionals who are in employment - and regardless of their legal qualifications and whether such qualifications had been obtained in other jurisdictions - who are neither regulated legal professionals nor regulated salaried legal professionals, are not covered by the laws of professional secrecy in the Netherlands. Accordingly, the provisions at paragraphs 3 and 4 above have no application as regards communications between such non-regulated salaried legal professionals and their employers. The fact that in the Netherlands non-regulated salaried legal professionals can become member on a voluntary basis of an association known as the “Nederlands Genootschap van Bedrijfsjuristen” does not alter this.

The non-regulated salaried legal professional is nevertheless entitled to represent its employer in court cases where representation by an Advocaat is not required. In this instance, these legal professionals do not have the right to use the title Advocaat, for they are not registered with the Bar. Insofar as they conduct proceedings they do so as a legal adviser and are not subject to professional secrecy.

For the sake of completeness, it should be noted that non-regulated salaried legal professionals are bound by confidentiality agreements in accordance with the terms of their contracts with their employer. However, such obligations would not be the equivalent of professional secrecy as applied to Advocaten in the Netherlands.

Professional privilege continues for ex-regulated salaried legal professionals where it concerns cases in which they acted as an Advocaat. An Advocaat can only be released from this obligation by the client, in which case the Advocaat still has the duty to verify the release very conscientiously in order to prevent disadvantage or damage to the client concerned.

PORTUGAL

1. Regulated Legal Professionals

In Portugal, the duty to preserve the professional secret is imposed upon legal professionals who are authorised to pursue their professional activities under the professional title of Advogado.

2. Regulated Salaried Legal Professionals

The duty to observe the professional secret is also imposed upon legal professionals who are in the employment of another party. Such persons are authorised to pursue such professional activity under the professional title of Advogado provided that they are members of the Bar. Accordingly, no distinction is made as between a regulated legal professional and a regulated salaried legal professional provided that they are registered with the Bar.

3. Legal Basis for Professional Privilege

Statutory Provisions

Article 135 of the Portuguese Code of Criminal Procedure imposes statutory obligations of professional secrecy.

Professional Rules of Conduct

In addition professional secret is governed by the Portuguese Bar Association Bye Laws which have the force of law. The last revision of these laws is 80/2001 of the 20th July 2001.

Copies of the relevant sections are set out at paragraph 12 of Schedule 2 hereto.

4. Production and Seizure of Documents and other Written Communications

It would appear that there is no distinction in regard to the production and seizure of documents as between civil proceedings and criminal proceedings. Article 81 (N.4) of the Portuguese Bar Association Bye Laws extends professional secrecy to documents and other materials related directly or not with the facts subject to professional secrecy.

Only with a mandate of a court can an investigation be done in a lawyer's office, and that diligence must be presided by a judge, with the presence of the Advogado and the President of the Bar or some other person nominated by the President.

Article 60 of the Bye Laws excludes the seizure of correspondence exchanged between the Advogado and his client that is in his possession unless the judge has reasons to believe that the correspondence is the object of a crime.

5. **Non-Regulated Salaried Legal Professionals**

Legal professionals who are in employment regardless of their legal qualifications and whether such qualifications had been obtained in other jurisdictions are not covered by the laws of professional privilege in Portugal unless such person (including foreign lawyers) have registered with the Portuguese Bar [and complied with the Bar's requirements]. Accordingly, the provisions at paragraphs 3 and 4 above have no application in regard to communications between non-regulated salaried professionals and their employers.

As is common in many jurisdictions, any such persons would, under the terms of their employment contracts be subject to obligations of confidentiality to their employers in their capacity as employees. Such obligations would not justify a non-regulated salaried legal professional from being entitled to refuse disclosures in court proceedings.

SPAIN

1. Regulated Legal Professionals

In Spain, the duty to preserve the professional secret is imposed upon legal professionals who are authorised to pursue their professional activities under the professional title of Abogado.

2. Regulated Salaried Legal Professionals

The duty to observe the professional secret is also imposed upon legal professionals under the title of Abogado who are in the employment of another party. Such persons are authorised to pursue such professional activity and bound by professional secrecy provided that they have the professional title of Abogado as members of the Bar. Accordingly, no distinction is made as between a regulated legal professional and a regulated salaried legal professional provided that they are registered with the Bar.

3. Legal Basis for Professional Privilege

Statutory Provisions

There are a number of provisions in Spanish Statute Law which protect the professional secret namely, Articles 20 and 24 of the Spanish Constitution, Article 199 of the Penal Code, Article 437.2 of the Judicial Power Law and various provisions from the general statute relating to the legal professional. An Abogado who breaches the provisions of the Penal Code relating to professional secrecy is subject to penal sanction.

Extracts from these provisions are set out in paragraph 13 of Schedule 2 hereto.

Professional Rules of Conduct

In addition, under the provisions of the “Estatuto General” Real Decreto 658/2001 both regulated legal professionals and regulated salaried legal professionals are bound by obligations of professional secrecy.

4. Production and Seizure of Documents and other Written Communications

The production and seizure of documents and other written communications are subject to professional secrecy obligations of an Abogado in both civil and criminal proceedings. An Abogado may in certain circumstances be advised nevertheless to comply with the requirements of the authorities by the President of the Bar if the obligations can result in serious irreparable damage. There are no specific procedures relating to anti-trust investigations or proceedings.

5. Non-Regulated Salaried Legal Professionals

Legal professionals who are in employment regardless of their legal qualifications and whether such qualifications had been obtained in other jurisdictions are not covered by the laws of professional privilege in Spain unless such persons have registered with the Spanish Bar [and complied with the Bar's requirements]. Accordingly the provisions at paragraphs 3 and 4 above have no application in regard to communications between non-regulated salaried professionals and their employers.

There are however non-regulated salaried legal professionals who have established an association known as the AEAE – Asociacion Espanola de Abogados de Empresa. However this is a voluntary organization and is not the equivalent of a competent authority as referred to earlier in this Report.

As is common in many jurisdictions any such persons would, under the terms of their employment contracts be subject to obligations of confidentiality to their employers in their capacity as employees. Such obligations would not justify a non-regulated salaried legal professional from being entitled to refuse disclosures in court proceedings.

SWEDEN

1. **Regulated Legal Professionals**

In Sweden, the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of Advokat.

2. **Regulated Salaried Legal Professionals**

The concept of a regulated salaried legal professional does not exist in Sweden insofar as a salaried legal professional is not permitted to become a member of the Bar. However, such persons are entitled to claim professional privilege in certain instances. This entitlement is limited to where the salaried legal professional acts as a representative or counsel in court proceedings.

3. **Legal Basis for Professional Privilege**

Statutory Provisions

The duty to preserve the professional privilege is provided for in Chapter 8 (Section 4, paragraph 1) of the Code of Judicial Procedure whereby an Advokat is obliged to conceal something that he becomes aware of in the exercise of his profession when professional ethics so requires.

Furthermore, Chapter 36 (Section 5 paragraph 2) of the Code of Judicial Procedure provides that an Advokat may not be questioned as a witness in a court procedure regarding anything which has been confided to him in the exercise of his profession or which he has learned in connection thereto. Exclusions from this rule are prescribed regarding certain particularly serious crimes but do not apply if the Advokat was acting as a defence Attorney.

Professional Rules of Conduct

The Swedish Code of Conduct - Section 19 - (which an Advokat by law is obliged to follow) provides that an Advokat shall preserve confidentiality with respect to his client's affairs and may not without permission, unless there is a statutory duty to give information, reveal anything which has been confided to him in his professional capacity or which he has learned in connection therewith.

Copies of the relevant provisions are set out at paragraph 14 of Schedule 2 hereto.

4. **Production and Seizure of Documents and other Written Communications**

Both the Civil and Criminal Codes of Procedure exclude from the obligations to produce documents and other written procedures and seizure where they are subject to professional privilege. The same applies, with regards to an Advokat, in competition cases.

5. **Non-Regulated Salaried Legal Professionals**

Save in the instances referred to above, salaried legal professionals who are in employment regardless of legal qualifications and whether such qualifications had been obtained in another jurisdiction, are not covered by the laws of professional privilege in Sweden.

Non-regulated salaried legal professionals would, under the terms of their employment contracts, be subject to obligations of confidentiality to their employers in their capacity as employees. Such obligations would not justify a non-regulated salaried legal professional from being entitled to refuse to make disclosures in court proceedings.

UNITED KINGDOM

General Observations

As the competent authorities within the United Kingdom comprise the General Council of the Bar of England and Wales in relation to Barristers in England and Wales, the Law Society of England and Wales in relation to Solicitors in England and Wales, the Faculty of Advocates in relation to Advocates in Scotland, the Law Society of Scotland in relation to Solicitors in Scotland, the General Council of the Bar of Northern Ireland in relation to Barristers and the Law Society of Northern Ireland in relation to Solicitors, it is proposed, save to the extent that rules relating to professional privilege are equivalent in each of these jurisdictions to treat each jurisdiction separately.

In general, however, the issue of privilege and the right to assert privilege is in essence different in concept to that of professional secrecy in continental jurisdictions. In continental jurisdictions, the obligation to observe the professional secret by legal professionals is a duty imposed by law, whereas under the common law system in the United Kingdom, the concept is one developed by the courts as a privilege to be asserted as of right by clients in the course of administration of justice. As a result the application of professional privilege in any set of circumstances whether in civil or criminal proceedings are determined in accordance with criteria laid down by the Courts.

ENGLAND AND WALES

1. Regulated Legal Professionals

In England and Wales, the regulated legal professionals are Barristers and Solicitors who are authorised to pursue their professional activities under those professional titles.

2. Regulated Salaried Legal Professionals

Salaried legal professionals who occupy their positions by virtue of their qualification as Barristers are deemed to be part of the profession and furthermore are represented on the General Council of the Bar of England and Wales. Such Barristers are also entitled to provide advice to clients of their employer provided that the employer is a Solicitor.

Similarly in the case of Solicitors such persons are authorised to pursue their professional activity under the professional title of Solicitor provided that they are enrolled on the roll of Solicitors and hold practising certificates, in which case they are subject to the same professional duties and obligations as their counterparts in private practice.

In relation to salaried legal professionals who are solicitors, there are two Law Society voluntary associations, the Commerce and Industry Group and the Solicitors in Local Government Group who partially represent salaried legal professionals. Apart from the fact that both groups are represented

on the Council of the Law Society, neither group has a role in the regulation of salaried legal professionals.

3. **Legal Basis for Professional Privilege**

Please see the foregoing introductory remarks.

4. **Production and Seizure of Documents and other Written Communications**

No distinction is made in English law as to the rights of a client to assert privilege in the event of requirements to produce documents in Court (usually as part of the discovery process in civil proceedings) or to resist seizure arising out of criminal investigations or proceedings. In relation to competition investigations and proceedings by the UK authorities, Section 30 of the Competition Act 1998 makes statutory provision for professional privilege to be recognised.

Under that Section, a person shall not be required under any provision of the relevant part of that Act, to produce or disclose a privileged communication. A privileged communication is then defined as a communication.

- (a) between a professional legal adviser and his client or
- (b) made in connection with or in contemplation of legal proceedings and for the purpose of those proceedings

which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege.

Insofar as the Act does not define a professional legal adviser, it would appear that it may have a wide application to persons who are legally qualified to give legal advice. If the issue was determined by the courts it is likely that this statutory right to professional privilege would be as wide as that which is governed by the common law (see comments in paragraph 5 below).

The general rule under common law is that communications with and advice from salaried legal professionals is subject to professional privilege. The reasoning for this general rule is that salaried professional lawyers are regarded by the law as in every respect in the same position as those who practice on their own account. The only difference is that they act for one client only, and not for several clients.

5. Non-Regulated Salaried Legal Professionals

There are persons in England and Wales who do occupy positions as salaried legal professionals and who are not subject to regulation by the competent authorities i.e. the General Council of the Bar of England and Wales or the Law Society of England and Wales.

Clients of such persons would in general be entitled to assert professional privilege provided that the Court is satisfied that they are persons who do hold a professional legal qualification which can include foreign lawyers

Such salaried legal professions would of course have duties under the terms of their contracts of employment to observe confidentiality in relation to the affairs of their employer but such rules would not confer any additional rights on their employers in proceedings save where professional privilege applied.

SCOTLAND

General Remarks

Scots Law adopts the common law principle of legal professional privilege (or, as it is called in Scotland, confidentiality) as opposed to professional secrecy. Privilege attaches to certain types of communications between lawyers and client whether written or oral, namely information provided by the client to the lawyer and advice provided by the lawyer to the client. Documents attract privilege whether in the hands of the client or the lawyer and privilege belongs to the client and may be waived. It is based on common law principles as modified from time to time by legislation and the position in Scotland remains broadly as stated in the Edward Report.

1. Regulated Legal Professionals in Scotland

The Regulated Legal Professionals are Advocates and Solicitors who are authorised to pursue their activities under those professional titles.

2. Regulated Salaried Legal Professionals

A member of the Faculty of Advocates may accept employment with a commercial company and continue to call himself an advocate. But he ceases to be regarded as a practising member of the Bar and no longer has rights of audience which are accorded to practising advocates.

Similarly in the case of employed Solicitors such persons are authorised to pursue their professional activity under the professional title of Solicitor provided that they are enrolled on the roll of Solicitors and hold practising certificates. They are represented on the Law Society of Scotland.

It would appear that in Scotland there is no clear case law that the employer of a salaried legal professional would be entitled to assert professional privilege, insofar as its availability is dependent upon membership of one or other of the competent authorities i.e. their professional standing as a solicitor or advocate.

3. **Legal Basis for Professional Privilege**

Please see the foregoing remarks.

4. **Production and Seizure of Documents and other Written Communications**

No distinction is made in Scots law as to the rights of a client to assert privilege in the event of requirements to produce documents in Court (usually as part of the discovery process in civil proceedings) or to resist seizure arising out of criminal investigations or proceedings.

Section 30 of the Competition Act 1998 includes provisions for Scotland which parallel those for England and Wales. Communications between a professional legal adviser and a client need not be disclosed if they would be protected by privilege in proceedings before the Court of Session.

5. **Non-Regulated Salaried Legal Professionals**

A person carrying out legal work for an employer who is not a Solicitor or Advocate has no professional standing and professional privilege would not attach to communications by or from such a person. However, in relation to foreign lawyers whilst there are no Scottish decisions on this, it is considered that the Scottish Courts would hold that professional privilege would attach to communications of the type described above between a client and a foreign lawyer i.e. a non-EU lawyer in professional practice. Whether it would extend to a lawyer who is qualified to practise but is a regulated salaried legal professional is uncertain. No privilege would attach to communications with a foreign legal adviser who is not qualified to be a member of any Bar.

Salaried legal professionals can of course be subject to terms of their contracts of employment to observe confidentiality in relation to the affairs of their employer but such rules would not confer any additional rights on their employers in proceedings save where professional privilege applied.

NORTHERN IRELAND

In Northern Ireland, the regulated legal professionals are Barristers and Solicitors who are authorised to pursue their professional activities under those professional titles

1. **Regulated Legal Professionals**

In Northern Ireland, the regulated legal professionals are Barristers and Solicitors who are authorised to pursue their professional activities under those professional titles.

2. **Regulated Salaried Legal Professionals**

Salaried legal professionals who occupy their positions by virtue of their qualification as Barristers are deemed to be part of the profession. Whilst such persons continue to be subject to the discipline of the Bar, they can be employed by a company, but are not entitled to report private clients. Furthermore it appears that they could not be employed by a solicitor unless converting to the status of Solicitor.

In the case of Solicitors, such persons are authorised to pursue their professional activity under the professional title of Solicitor provided that they are enrolled on the roll of Solicitors and hold practising certificates.

3. **Legal Basis for professional privilege**

Please see the foregoing introductory remarks.

4. **Production and Seizure of Document and other Written Communications**

No distinction is made as to the rights of a client to assert privilege in the event of requirements to produce documents in Court (usually as part of the discovery process in civil proceedings) or to resist seizure arising out of criminal investigations or proceedings.

However as Section 30 of the Competition Act 1998 extends to Northern Ireland the position regarding privileged communication in competition matters is the same as in England and Wales.

5. **Non-Regulated Salaried Legal Professionals**

There are persons in Northern Ireland who do occupy positions as salaried legal professionals and who are not subject to regulation by a competent authority such as the Bar Council of Northern Ireland or the Law Society of Northern Ireland.

It would appear that clients of such persons would in general be entitled to assert professional privilege provided the Court is satisfied that the persons who do hold a professional legal qualification which can include a foreign lawyer.

Such salaried legal professions would of course have duties under the terms of their contracts of employment to observe confidentiality in relation to the affairs of their employer but such rules would not confer any additional rights on their employers in proceedings save where professional privilege applied.

PART II

**MEMBER STATES OF THE EUROPEAN ECONOMIC AREA AND
SWITZERLAND**

ICELAND

1. Regulated Legal Professionals

In Iceland, the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of “Lögmáður” hereinafter referred to as Advokat.

2. Regulated Salaried Legal Professionals

In Iceland, a salaried legal professional is entitled to be a member of the Bar and is entitled to carry on his professional activities pursuant to the title of Advokat provided that he holds a valid licence from the Bar and notwithstanding the fact that he is in the employment of another party. However, the professional activities must be within the scope of the employer’s interests, e.g. the Advokat may not carry out his professional activities for third parties.

3. Legal Basis for Professional Privilege

Statutory Provisions

It is unclear however whether or not the obligations imposed upon an Advokat in relation to professional secrecy under the Law on Lawyers No. 77/1998 applies both to practising Advokats and to regulated salaried legal professionals.

There are no court decisions handed down in Iceland which clarifies this position.

Although it is quite possible that in the event of the matter being disputed and in particular on the grounds that a salaried legal professional does not enjoy the same level of independence as compared with a regulated legal professional, nevertheless insofar as no distinction is made between a practising Advokat and a regulated salaried legal professional, a strong argument can be made that the rules of professional secrecy would apply in the latter case.

The duty to preserve the professional secret is provided in Iceland under Section 22 of the Law on Lawyers 77/1998. Furthermore the obligation to preserve the professional secrecy is imposed upon Members of the Icelandic Bar under the Icelandic Bar Association’s Code of Conduct Section 17.

Professional Rules of Conduct

Section 17 of the Icelandic Bar Association’s Code of Conduct imposes a legally enforceable obligation of professional secrecy on an Advokat based upon Section 22-1 of the Law on Lawyers.

Copies of these provisions are set out at paragraph 16 of Schedule 2 hereto.

4. **Production and Seizure of Documents and other Written Communications**

Under Section 22 of the Law on Lawyers No. 77/1198 as well as Section 17 of the Code of Conduct, documents and other written communications and materials in the possession of an Advokat in the course of legal proceeding are subject to professional privilege and an Advokat cannot be compelled to produce this information in court proceedings, except by a Court Order (the Appeal Court) or a clear stipulation by law applicable to the subject matter. Furthermore, a defence lawyer is compelled to produce information in Court on whatever information he has obtained in respect of the case, either from his client or through other sources, according to Section 41.3 of the law on Criminal Procedure No. 19/1991.

Under Section 39.3 of the Competition Law N° 8/1993, the Competition Authorities are authorised to request information and documents from other administrative authorities including tax and custom authorities, irrespective of their duty not to reveal confidential information. It is likely that a regulated salaried legal professional working within the administrative sector (for example with the tax and custom authorities) would be obliged to provide confidential information to the Competition Authorities insofar as under Section 17 of the Code of Conduct, a duty to supply confidential information would arise if clearly stipulated in law.

5. **Non-Regulated Salaried Legal Professionals**

Non-regulated salaried professionals (i.e. salaried legal professionals who do not have a valid licence to practice as Advokats and who are not registered with the Bar) are not bound by obligations of professional secrecy. Such persons can be members of The Icelandic Lawyers Association which is engaged mainly in continuing legal education, holding seminars and legal publications.

Insofar as there are non-regulated salaried professionals in Iceland who provide legal services to their employers pursuant to a contract of employment they would be bound pursuant to those terms to any provisions relating to confidentiality. However, such obligations would not be similar to those professional privilege/secrecy obligations as applicable to an Advokat and as outlined above.

LIECHTENSTEIN

1. Regulated Legal Professionals

In Liechtenstein, the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of Rechtsanwalt. Insofar as the exercise of the professional secret in Liechtenstein is protected by statutory provisions applicable to a Rechtsanwalt only, it follows that those who are not entitled to pursue their activities under this professional title do not fall within the relevant statutory provisions.

2. Regulated Salaried Legal Professionals

Insofar as a Rechtsanwalt must be a member of the Bar in order to carry on his professional activities pursuant to that title, the concept of a regulated salaried legal professional does not exist in Liechtenstein, neither is there any other competent authority which regulates the activities of persons who provide legal services to their employer.

3. Legal Basis for Professional Privilege

Statutory Provisions

The duty to observe the professional secret is provided for in Liechtenstein pursuant to the following Section 321 Paragraph 3 of the Civil Procedure Act dated December 10th, 1912 (as amended), Section 107 Paragraph 1 sub-paragraph 3 of the Criminal Procedure Act dated October 18th 1988 as amended and Article 15 of the Lawyer's Act dated December 9th, 1992 as amended.

Copies of these relevant provisions are referred to in paragraph 17 of Schedule 2 hereto.

Professional Rules of Conduct

The duty to observe the professional secret is further provided under Section 26 of the Code of Conduct dated the 5th May 1994 (as amended). A violation of this code can be the subject of disciplinary proceedings, the disciplinary authority in Liechtenstein being the Upper Court (Obergericht).

The professional secret in Liechtenstein is an obligation imposed by law upon a Rechtsanwalt, a violation of which can expose the Rechtsanwalt to criminal sanctions.

4. **Production and Seizure of Documents and other Written Communications**

A Rechtsanwalt cannot be compelled to produce documents and other written communication and materials in civil or criminal proceedings. This does, however, only apply with regard to matters confided to him and with regard to facts that have otherwise become known to him in his professional capacity.

An unlawful court order to produce or to seize documents which are subject to professional secrecy can be challenged to a higher authority.

The person charged (or a third party) may refuse to produce documents in case the documents referred to the relationship between the defence counsel and the person charged in criminal proceedings. This does, however, not apply where a Rechtsanwalt advises or represents his client with regard to other matters (Decision of the Liechtenstein Constitutional Court dated February 28th 2000).

There are no specific laws in Liechtenstein and procedures regarding the production of documents where the documents and communications are required by the authorities in relation to an investigation into an issue concerning competition.

5. **Non-Regulated Salaried Legal Professionals**

Legal professional who are in employment regardless of their legal qualifications and whether such qualifications had been obtained in other jurisdictions are not covered by the laws of professional privilege in Liechtenstein. Accordingly, the provisions at paragraphs 3 and 4 above have no application in regard to communications between non-regulated salaried professionals and their employers.

As in many other jurisdictions, a non-regulated salaried legal professional who provides legal services for his employer may well be subject to obligations of confidentiality pursuant to the terms of his employment contract. The provisions of such contracts are not equivalent to the obligations of a Rechtsanwalt regarding professional secrecy.

NORWAY

1. Regulated Legal Professionals

In Norway, the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of Advokat.

2. Regulated Salaried Legal Professionals

The duty to observe the professional secret is also imposed upon legal professionals who are in the employment of another party where they are engaged in providing legal services and where they have a licence to practise. In this context, they are authorised to pursue their professional activities under the professional title of Advokat.

3. Legal Basis for Professional Privilege

The obligations to preserve the professional secret in Norway provided under Section 144 of the Penal Code, Section 119 of the Criminal Proceedings Act and Section 205 of the Civil Proceedings Act. Copies of the relevant section are set out in paragraph 18 of Schedule 2 hereto.

Professional privilege in Norway consists mainly of a general provision in the Criminal Code. In addition both the Civil Procedure Code and the Criminal Procedure Code regulate the Court's access to evidence. The point of departure is that the professional privilege in Norway is absolute and not subject to an assessment. The exemptions must be made in an Act passed by the Parliament. The Supreme Court was asked to decide upon whether the professional privilege is subject to an assessment or if it is absolute for decision in a case. The majority of the judges decided that it was not subject to assessment (Ref: Rt.1983/430).

Complementing these provisions is the Code of Conduct of the Norwegian Bar Association. The provisions of the Code of Conduct applied to both members and non members of the Bar Association although through their status as administrative regulations from the Ministry of Justice.

Professional Privilege is based on the need of absolute trust between the legal professional and his client in order to secure that the legal professional fully attends to his client's interests. Exemptions are only made in very specific cases.

4. Production and Seizure of Documents and other Written Communications

The documents and other written materials in the possession of an Advokat are, both in civil and criminal proceedings (including any investigations carried out by the Competition Authorities), subject to professional privilege and an Advokat cannot be compelled to produce these either in the course of court proceedings or investigations.

In a ruling from December 2000 the Norwegian Supreme Court held that the decisive point when deciding if the secrecy principle applies when presenting evidence in Court, is whether the work that is performed for the employer can be considered to be “legal work” or not.

5. **Non-Regulated Salaried Legal Professionals**

A non-regulated Salaried Legal Professional (persons who have no licence to practice as Advokat) but nevertheless who may work as a salaried legal professional is not bound by obligations of professional secrecy.

Insofar as there are non-regulated salaried professionals in Norway who provide legal services to their employers pursuant to contracts of employment they would be bound pursuant to any provisions relating to confidentiality. However, such obligations would not be similar to those professional privilege/secrecy obligations as applicable to an Advokat and as outlined above.

SWITZERLAND

1. Regulated Legal Professionals

In Switzerland, the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional titles Avocat/Rechtsanwalt/Avvocato.

2. Regulated Salaried Legal Professionals

Insofar as an Avocat/Rechtsanwalt/Avvocato must be a member of the Bar in order to carry on his professional activities pursuant to that title, the concept of a regulated salaried legal professional does not exist in Switzerland, neither is there any other competent authority which regulates the activities of persons who provide legal services to their employer. However, an Avocat/Rechtsanwalt/Avvocato may be employed by another Avocat/Rechtsanwalt/Avvocato or by a firm owned by an Avocat/Rechtsanwalt/Avvocato. In such a context, the Avocat/Rechtsanwalt/Avvocato under the definitions set forth before is a fully-fledged “regulated legal professional”.

3 Legal Basis for Professional Privilege.

Statutory Provisions

The duty to observe the professional secret is provided for in Switzerland under Article 321 of the Swiss Penal Code and under Article 13 of the Federal Law relating to the free circulation of Avocat of the 23rd June 2000.

A violation of the professional secret can expose an Avocat/Rechtsanwalt/Avvocato to criminal proceedings.

Professional Rules of Conduct

The duty to observe the professional secret is further provided under Article 15 of the guidelines of the FSA. A violation of these professional rules can be the subject of disciplinary proceedings under Article 17 of the guidelines of the FSA, as well as to criminal sanctions under Article 321 of the Swiss Penal Code (imprisonment or fine). Copies of the relevant provisions are referred to in paragraph 19 of Schedule 2 to this Report.

4. Production and Seizure of Documents and other Written Communications

Such materials which are in the possession of an Avocat/Rechtsanwalt/Avvocato are subject to professional privilege and accordingly such legal professional cannot be compelled to produce these

either in Court or criminal proceedings. The same position applies in relation to investigations or proceeding relating to competition matters.

5. **Non-Regulated Salaried Legal Professionals**

Legal professionals who are in employment regardless of their legal qualifications and whether such qualifications had been obtained in other jurisdictions are not covered by the laws of professional privilege in Switzerland. Accordingly the provisions at paragraphs 3 and 4 above have no application in regard to communications between non-regulated salaried professionals and their employers.

As in many other jurisdictions, a non-regulated salaried legal professional who provides legal services for his employer may well be subject to obligations of confidentiality pursuant to the terms of his employment contract. The provisions of such contracts are not equivalent to the obligations of an Avocat/Rechtsanwalt/Avvocato regarding professional secrecy.

However it should be noted that people who are bound to the banking secret are not included in the group to which Article 321 of the Swiss Penal Code applies.

It should be noted also that foreign lawyers who are registered with a Swiss Bar, when they bear the Swiss title of Avocat /Rechtsanwalt/Avvocato are subject to the same deontological rules as Swiss legal professionals or indeed legal professionals from Member States of the European Union who are registered with a Swiss Bar. They are bound to professional secrecy in the same way as for legal professionals registered with a Swiss Bar whatever their nationality.

On the other hand, foreign lawyers who are not so registered would not be subject to these rules save to the extent that as referred to above, a duty of confidentiality may be imposed upon them under the terms of their contract, or where they are employed by a Swiss law firm.

PART III

SOME CURRENT AND FUTURE ACCESSION STATES
TO THE EUROPEAN UNION

CROATIA

1. Regulated Legal Professionals

In Croatia, the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of “Odvjetnik” (hereinafter advocate). Insofar as the exercise of the professional secret in Croatia is protected by the Law of the Legal Profession, the Lawyers Code of Ethics, Penal Law, Penal Procedure law and Civil Procedure Law, applicable to an advocate only, it follows that those who are not entitled to pursue their activities under this professional title do not fall within the relevant statutory provisions.

2. Regulated Salaried Legal Professionals

Insofar as an advocate must be a member of the Bar to carry on his professional activities pursuant to that title, the concept of a regulated salaried legal professional does not exist in Croatia, neither is there any other competent authority which regulates the activities of persons who provide legal services to their employer. However, according to Article 29, item 2 of The Law on the Legal Profession, a law firm as a legal entity can employ an advocate as an employee. In such a context, he is a fully-fledged “regulated salaried legal professional”.

3. Legal Basis for Professional Privilege

Essentially the duty to observe the professional secret is provided for under Article 13 of the Law of the Legal Profession, Section II of the Lawyers Code of Ethics, Article 132 paragraph 1 of the Penal Law, Article 233 paragraph 2 and Article 234 paragraph 5 of the Penal Procedure Law and Article 237 paragraphs 1 and 3 of the Civil Procedure Law and the statute of the Croatian Bar. Copy of the relevant provisions is set out at paragraph 20 of Schedule 2.

4. Production and Seizure of Documents and other Written Communications

Generally speaking any requirement to produce documents or other written materials in court proceedings (including civil and criminal proceedings) would be subject to the obligations of an advocate to observe the professional secrecy.

5. Non-Regulated Salaried Legal Professionals

Legal professionals who are in employment regardless of their legal qualifications and whether such qualifications had been obtained in other jurisdictions are not covered by the laws of professional secrecy in Croatia and, accordingly, the provisions at paragraphs 3 and 4 above have no application in regard to communications between non-regulated salaried professionals and their employers. As in many other jurisdictions, a non-regulated salaried legal professional who provides legal services for his employer may well be subject to obligations of confidentiality pursuant to the terms of his

employment contract. The provisions of such contracts are not equivalent to the obligations of an advocate regarding professional secrecy.

It should be noted that whilst such persons cannot plead in criminal cases, they can represent employers (but not third parties) in civil and administrative cases.

Furthermore there is no competent authority which regulates such persons although they can be members of local societies of “jurist-consults in the Economy” on a voluntary basis. Such associations are not the equivalent of a Bar chamber or Law Society.

CYPRUS

1. Regulated Legal Professionals

In Cyprus, the duty to preserve professional privilege is imposed upon regulated legal professionals who are authorized to pursue their professional activities under the professional title of advocate (in Greek “Dikigoros”). Insofar as the exercise of professional privilege in Cyprus is protected by statutory provisions applicable to advocates only, it follows that those who are not entitled to pursue their activities under this professional title do not fall within the relevant statutory provisions.

2. Regulated Salaried Legal Professionals

Insofar as an advocate must be a member of the Bar and must have an annual licence in order to carry out his professional activities pursuant to that title (articles 2, 6, 6A, and 11 of the Advocates Law, CAP 2 as amended), the concept of a regulated salaried legal professional does not exist in Cyprus, and neither is there any other competent authority which regulates the activities of persons who provide legal services to their employer.

3. Legal Basis for Professional Privilege

The duty to preserve the professional privilege is provided for in Cyprus under the Advocates Rules of Ethics issued by the Cyprus Bar Association. Rule 13 provides, amongst others, that:

“Confidentiality is therefore a primary and fundamental right and duty of the advocate. It is of the essence of an advocate’s function that he should be told by his client things which the client would not tell to others, and that he should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. The advocate shall respect the confidentiality of all information that becomes known to him in the course of his professional activity. The obligation of confidentiality is not limited in time.”

An advocate shall require his associates and staff and anyone engaged by him in the course of providing professional services to observe the same obligation of confidentiality.

4. Production and Seizure of Documents and other Written Communications

In the discovery proceedings in civil cases, some classes of documents, although they must be disclosed in the affidavit of documents as “relating to matters in question in the action”, are nevertheless privileged from production and inspection. These may be conveniently summarized as: (1) documents protected by professional privilege; (2) documents tending to criminate or expose to forfeiture the party who would produce them; and (3) documents privileged on the ground of public policy.

Documents protected by professional privilege could be divided into two classes, namely (a) those that are privileged whether or not litigation was contemplated or pending, and (b) those that are only privileged if litigation was contemplated or pending when they were made or came into existence.

Furthermore, Section 26 of the Competition Law, Law 207/89, applies to privileged communications in the course of competition investigations and proceedings.

Under that Section, the Chairman and the members of the Competition Committee and the officers employed by the committee are obliged not to produce or disclose a privileged communication.

5. **Non-Regulated Salaried Legal Professionals**

Legal professionals who are in employment regardless of their legal qualifications and whether such qualifications had been obtained in other jurisdictions are not covered by the laws of professional privilege in Cyprus. Accordingly the provisions at paragraphs 3 and 4 above have no application in regard to communications between non-regulated salaried professionals and their employers.

It should be noted however that such persons who are in employment do of course owe duties of confidentiality to their employers. However, such duties would not be regarded as justifying the non disclosure of documents and written communications in legal proceedings.

CZECH REPUBLIC

1. Regulated Legal Professionals

In the Czech Republic, the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of Advokát. Insofar as the exercise of the professional secret in the Czech Republic is protected by statutory provisions applicable to an Advokát only, it follows that those who are not entitled to pursue their activities under this professional title do not fall within the relevant statutory provisions.

2. Regulated Salaried Legal Professionals

Insofar as an Advokát must be a member of the Bar in order to carry on his professional activities pursuant to that title, the concept of a regulated salaried legal professional does not exist in the Czech Republic and neither is there any other competent authority which regulates the activities of persons who provide legal services to their employer.

3. Legal Basis for Professional Privilege

The obligation to observe the professional secret is imposed on an Advokát is provided for in Articles 16, 17 and 21 of the Act No. 85/1996 Coll. on Advocacy as amended by Act No. 210/1999 Coll., 120/2001 Coll., 6/2002 Coll. and 228/2002 Coll.. A violation of the professional secret can expose the Advokát to criminal prosecution. A copy of the relevant section is set out at paragraph 22 of Schedule 2 hereto.

4. Production and Seizure of Documents and other Written Communications

No distinction is made regarding obligation to observe the professional secret in civil or criminal proceedings. An Advokát might be compelled to produce any materials even covered by professional secret in court proceedings (either in civil or criminal proceedings). There are no circumstances or procedures in existence for the moment which should be followed in that case.

5. Non-Regulated Salaried Legal Professionals

Legal professionals who are in employment regardless of their legal qualifications and whether such qualifications had been obtained in other jurisdictions are not covered by the laws of professional privilege in the Czech Republic. Accordingly the provisions at paragraphs 3 and 4 above have no application in regard to communications between non-regulated salaried professionals and their employers.

It should be noted however that a non-regulated salaried legal professional may render legal services to his/her employer in connection with virtually all matters. Rights of audience before the

courts are however restricted. There is no separate body representing the interests of non-regulated salaried legal professionals in the Czech Republic.

As a point of historical interest until the 1st July 1996, there were in the Czech Republic two separate professions of “advokát” and “commercial lawyers” who existed side by side. Commercial lawyers then held a similar position to that of an advokát. The major difference between the two professions was that commercial lawyers were prohibited from acting on behalf of clients in criminal proceedings. The two professions were merged under the Advocacy Act.

HUNGARY

1. Regulated Legal Professionals

In Hungary, the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of “ügyvéd”. Insofar as the exercise of the professional secret in Hungary is protected by statutory provisions applicable to an “ügyvéd” only. It follows that those who are not entitled to pursue their activities under this professional title do not fall within the relevant statutory provisions.

2. Regulated Salaried Legal Professionals

Insofar as an “ügyvéd” must be a member of the Bar in order to carry on his professional activities pursuant to that title, there is no other competent authority which regulates the activities of persons who provide legal services to their employer if he/she is not an “ügyvéd”. However, an “ügyvéd” may be employed by another “ügyvéd”.

3. Legal Basis for Professional Privilege

The duty to preserve the professional secret is provided for in Hungary under Section 8 of Act X.1 of 1998 on Attorneys, Section 170 (1) c) of the Civil Procedure Code, Section 66 (2) c) of the Criminal Procedure Code and Section 29 (3) (b) of the General Rules of Administrative Procedures. Extracts from the foregoing provisions are set out at paragraph 23 of Schedule 2 hereto.

4. Production and Seizure of Documents and other Written Communications

An "ügyvéd" can only disclose any document produced or collected in an engagement to his/her client and can do the same to any third person with the consent of the client. These documents can only be seized in a criminal procedure after obtaining a seizure order from the competent authority and in the presence of a Bar official.

5. Non-Regulated Salaried Legal Professionals

Legal professionals who are not employed by an "ügyvéd", regardless of their legal qualifications and whether such qualifications had been obtained in other jurisdictions are not covered by the laws of professional privilege in Hungary. Accordingly the provisions at paragraphs 3 and 4 above have no application in regard to communications between non-regulated salaried professionals and their employers.

It should be noted however that such persons who are in employment do of course owe duties of confidentiality to their employers. However, such duties would not be regarded as justifying the non-disclosure of documents and written communications in legal proceedings.

LITHUANIA

1. Regulated Legal Professionals

In Lithuania, the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of Advokatas (hereinafter “advocate”). An advocate is a member of a Bar and hence can be subject to the legal disciplinary authority of the Bar, and he/she cannot be in the employment of another person for whom he/she provides legal services for the benefit of that person.

2. Regulated Salaried Legal Professionals

Insofar as an advocate must be a member of the Bar in order to carry his/her professional activities pursuant to that title, the concept of a regulated salaried legal professional does not exist in Lithuania and neither is there any other competent authority which regulates the activities of persons who provide legal services to their employers.

3. Legal Basis for Professional Privilege

The obligation to observe the professional secret is provided for in Article 1.116 of the Civil Code, Articles 34 and 40 of the Law of the Republic of Lithuania on the Bar, Article 80 of the Criminal Procedure Code and Article 189 of the Civil Procedure Code. Extracts from these provisions are set out at paragraph 24 of Schedule 2 of this Report.

In summary, the professional privilege is a set of rules of substantive law which ensures the confidentiality of the communications between a client and an advocate and prevent disclosure of confidential information. The professional privilege encompasses the duty of an advocate not to disclose confidential information received in the course of the professional relationship without the consent of the client. Such information may occur during the communications made to an advocate whilst seeking to obtain representation or legal advice or after the representation. State institutions cannot force an advocate under legal compulsion to state the content of the communication. A breach of the legal profession of confidentiality by an advocate may lead to disciplinary, civil or criminal liability. Nonetheless the laws of Lithuania as well as jurisprudence do not provide a comprehensive concept of professional privilege with regard its extent and exemptions.

4. Production and Seizure of Documents and other Written Communications

The obligation to observe professional secrecy would apply both in civil and criminal cases in regard to the production and/or seizure of documents and other written materials in Lithuania.

5. **Non-Regulated Salaried Legal Professionals**

Legal Professionals, who are in employment regardless of their legal qualifications and whether such qualifications had been obtained in other jurisdictions, are not covered by the laws of professional privilege in Lithuania nor are there any competent authorities which regulate their activities.

However, such persons can be members of voluntary associations and can be subject to their own codes of conduct which would include some elements of professional secrecy namely the duty of discretion owed to their client.

As is common in many jurisdictions, any such persons would, under the terms of their employment contracts, be subject to obligations of confidentiality to their employers in their capacity as employees. Such obligations would not justify a non-regulated salaried legal professional from being entitled to refuse disclosures in court proceedings.

POLAND

General Observations

In Poland, the legal profession is split between those who practice as legal advisers (Radca prawny) and those who practise as advocates (Adwokat). Accordingly, this Report will deal in general terms with the status of both branches of the profession and the application of professional secrecy in each case.

Polish Legal Advisers

Polish legal advisers are subject to obligations of professional secrecy under the provisions of the Legal Advisers Act of July 6th 1982 and Lines of Ethics (Code of Ethics) of November 6th 1999 (as amended). Under Article 3 Paragraph 2 - 5 of the Legal Adviser's Act, a legal adviser engages in the profession with diligence stemming from legal knowledge on the rules of the ethics of legal advisers, as well as being obliged not to reveal any information which he/she acquired in the process of providing legal advice.

One of the main conditions relating to the exercise of the profession of legal advisers is to make a pledge which confirms the duty of preserving professional confidentiality (secrecy) as well as rules of the legal advisers' Code of Ethics (Articles 23 and 27 of the Legal Advisers Act). In the event of acting contrary to the adviser pledge or the rules of professional ethics, legal advisers (and an apprentice adviser as well) are subject to disciplinary liability.

According to the Polish Constitution and the Legal Adviser's Act (Article 40) membership of legal advisers and apprentice advisers in self-government is mandatory. All legal advisers and apprentice advisers are members of the self-government, but only some of them are members of the agencies of the self-government where there are elections every four years by secret ballot with an unrestricted number of candidates.

The agencies of the self-government are the National Assembly of Legal Advisers, the National Council of Legal Advisers, the High Auditing Committee, the High Disciplinary Court, the Assembly of the District Chamber of Legal Advisers, the Council of a District Chamber of Legal Advisers, the District Auditing Committee and the District Disciplinary Court. Such self-government agencies regulate the activities of a legal adviser.

No distinction is made between a person who is a legal adviser in private practice and a person who is a legal adviser and is employed by a company. However, a salaried legal adviser must also be a member of the self government. He is also subject to the same rules of professional secrecy as applies to a self-employed legal adviser.

There are other legal professionals who are in employment who are not members of such self-government and although they are entitled to provide legal services (excluding the right to plead), they are not subject to rules of professional secrecy.

Legal Basis

As indicated above, the obligation to observe professional secrecy is provided for in the Legal Adviser's Act and the law on the Advocate's profession. However this principle is confirmed in other Acts as, for example:

- the Code of Civil Proceedings (Article 261 paragraph 2) which allows a witness to refuse to testify, to make statements, when the Court requested if it would be in breach with a professional secrecy.
- the Code of Proceedings for Offences (Article 41 paragraph 4) which states that the court is not permitted to relieve a legal adviser and an advocate from the duty to keep professional secrecy.

However, Article 180 paragraph 2 of the Code of Criminal Procedure (Penal Procedure Code) enforced since 1st September 1998 provides that persons obliged to preserve secrets such as legal advisers, advocates, notaries public, journalists, may be examined as to the facts covered by these secrets only when it is necessary for the benefit of the administration of justice, and the facts cannot be established on the basis of other evidence.

These texts are applicable to both professions of legal advisers and advocates.

Production and Seizure of Documents and other Written Communications

Although there are no specific rules in place dealing with the production of documents in proceedings, it is understood that the general rules on observing the professional secret would apply in these circumstances.

Advocates

The duty to preserve the professional secret is imposed upon persons who are authorised to pursue their professional activity under the professional title of Adwokat (hereinafter "advocate") and who are members of the Bar. These obligations are imposed upon advocates by virtue of the Law on the Advocates profession of May 26th 1982, the Code of Professional Ethics of the Polish Bar Council of the 10th October 1998 and the texts mentioned above under the paragraph "Legal basis". Pursuant to Article 6 of the Law on the Advocate's Profession, an Advocate is under a duty to keep secret everything he has learned in the course of providing legal assistance or whilst conducting a case that may not be relieved from the duty. An advocate cannot be a member of the Bar if he/she is employed.

Furthermore under Article 266 Paragraph 1 of the Polish Penal Code, a person, who contrary to the law or his/her duty, discloses or takes a profit from the information which he/she received whilst performing his/her professional activity is subject to a fine or up to two years of imprisonment.

A copy of all provisions above mentioned is set out at paragraph 25 Schedule 2 hereto.

SLOVAK REPUBLIC

1. Regulated Legal Professionals

In the Slovak Republic, the duty to preserve the professional privilege is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of Advokát.

2. Regulated Salaried Legal Professionals

Insofar as an Advokát (hereinafter advocate) must be a member of the bar in order to carry out his/her professional activities pursuant to that title, the concept of a regulated salaried legal professional does not exist in Slovakia, and neither is there any other competent authority which regulates the activities of persons who provide legal services to their employer.

3. Legal basis for Professional privilege

The duty to preserve the professional privilege is provided for in the Slovak Republic under the Act on Advocacy N° 586/2003, Section 23 and paragraph 1 (which came into effect on 1st January 2004): “The advocate shall not reveal any information relating to the client’s representation and shall treat such information as strictly confidential”. A copy of this provision is set out at paragraph 26 Schedule 2 hereto.

It should be noted that a violation of professional privilege is not a criminal offence and is considered as being professional misconduct according to the above mentioned Act on Advocacy Section 56 (1) leading to possible disciplinary sanctions under Section 56 (2) such as: a) a written reprimand, b) a public reprimand, c) a fine d) a cessation of practice (from six months up to 3 years), e) disbarment of advocates, trainee advocates, European advocates, foreign advocates or international advocates.

4. Production and Seizure of Documents and other Written Communications

There are no differences as regards professional privilege between both civil and criminal proceedings. An advocate cannot be compelled to produce documents in court proceedings. The advocate can produce such materials only in case when he/she is released from the obligation of confidentiality by his/her client or a client’s successor. Act N° 99/1963 Coll. on Civil Proceedings as amended, Section 124 guarantees during evidence in civil proceedings the obligation of confidentiality accorded by the Act on Advocacy.

The only exception is the obligation of lawful disclosure that would prevent a crime (Section 23 (9) of the Act on Advocacy).

If a search is to be carried out at a regulated legal professional’s office, the procedure is regulated by the rules of Professional Conduct of Advocates (2002, Section 11 (3)) which provides that in that case, the advocate has to notify the authority, which conducts the search, of the advocate’s statutory

obligation of confidentiality, therefore of his limited obligation to provide any information, and the advocate has to request that a representative of the Slovak Bar Association or any other fellow advocate be present thereat as an impartial person.

5. **Non-Regulated Salaried Legal Professionals**

Legal professionals who are in employment have to acquire a university degree in law. They are employees according to the Slovak Labour Code (Act N°311/2001 as amended) and are subject to duties of confidentiality as set up under section 81, item f) of this code (a legal professional is obliged to treat any information and facts which he/she learnt in the course of his/her employment as confidential and which in the interest of his/her employer cannot be disclosed to any third parties.) They are not covered by the provisions relating to professional secrecy in the Advocacy Act as, according to the new Act 586/2003 on Advocacy, the Bar shall not admit anyone who is in employment or any other similar relation except for pedagogic, publication, literary, scientific activities and performs any other activities which are not in accordance with ethical principles of the advocate profession. Non-regulated legal professionals have the right to plead on behalf of their employers before the courts, except for the Constitutional Court and extraordinary remedy before the Supreme Court of the Slovak Republic (only advocates have the right of audience in these matters).

SLOVENIA

1. Regulated Legal Professionals

In Slovenia, the duty to preserve the professional secret is imposed upon regulated legal professionals who are authorised to pursue their professional activities under the professional title of Odvetnik (hereinafter “advocate”). Insofar as the exercise of the professional secret in Slovenia is protected by statutory provisions applicable to an advocate only, it follows that those who are not entitled to pursue their activities under this professional title do not fall within the relevant statutory provisions.

2. Regulated Salaried Legal Professionals

Insofar as an Advocate must be a member of the Bar to carry on his professional activities pursuant to that title, the concept of a regulated salaried legal professional does not exist in Slovenia, neither is there any other competent authority which regulates the activities of persons who provide legal services to their employer.

3. Legal Basis for Professional Privilege

Essentially the duty to observe the professional secret is provided for under Article 6 of the Law on the Legal Profession, decisions from the constitutional court and the statute of the Slovenian Bar. In the civil and criminal proceedings, the professional secret is strictly protected by the law (Law on civil and criminal procedure). Copy of the relevant provisions is set out at paragraph 27 of Schedule 2.

4. Production and Seizure of Documents and other Written Communications

Generally speaking any requirement to produce documents or other written materials in court proceedings (including civil and criminal proceedings) would be subject to the obligations of an advocate to observe the professional secrecy. Any seizure of the advocate’s documents must be performed under the court’s permission and in the presence of two witnesses.

5. Non-Regulated Salaried Legal Professionals

Legal professionals who are in employment regardless of their legal qualifications and whether such qualifications had been obtained in other jurisdictions are not covered by the laws of professional privilege in Slovenia and accordingly the provisions at paragraphs 3 and 4 above have no application in regard to communications between non-regulated salaried professionals and their employers. As in many other jurisdictions, a non-regulated salaried legal professional who provides legal services for his employer may well be subject to obligations of confidentiality pursuant to the terms of his employment contract. The provisions of such contracts are not equivalent to the obligations of an advocate regarding professional secrecy.

It should be noted that whilst such persons cannot plead in criminal cases, they can represent employers (but not third parties) in civil and administrative cases.

Furthermore there is no competent authority which regulates such persons although they can be members of local societies of “jurist-consults in the Economy” on a voluntary basis.

SCHEDULE I

LIST OF PROFESSIONAL TITLES

Within the European Union

Austria	Rechtsanwalt
Belgium	Avocat/Advocaat/Rechtsanwalt
Denmark	Advokat
Finland	Asianajaja/Advokat
France	Avocat
Germany	Rechtsanwalt
Greece	Dikigoros
Ireland	Barrister/Solicitor
Italy	Avvocato
Luxembourg	Avocat
Netherlands	Advocaat
Portugal	Advogado
Spain	Abogado/Avocat/Avogado/Abokatu

Sweden	Advokat
United Kingdom	Advocate/Barrister/Solicitor

Within the EEA

Iceland	Lögmaður (Advokat)
Liechtenstein	Rechtsanwalt
Norway	Advokat
Switzerland	Avocat/Rechtsanwalt/Avvocato

Within the current and future Accession States

Croatia	Odvjetnik
Cyprus	Dikigoros
Czech Republic	Advokát
Hungary	Ügyvéd
Lithuania	Advokatas
Poland	Adwokat/Radca prawny
Slovak Republic	Advokát
Slovenia	Odvetnik

SCHEDULE 2

EXTRACTS OF APPLICABLE STATUTORY PROVISIONS IN EACH JURISDICTION RELATING TO PROFESSIONAL PRIVILEGE

1 Austria

Section 152 Code of Criminal Procedure:

Para 1 (4): Verteidiger, Rechtsanwälte, Notare und Wirtschaftstreuhänder über das, was ihnen in dieser Eigenschaft bekannt geworden ist

Para 2: Den in Abs. 1 Z 4 und 5 erwähnten Personen stehen deren Hilfskräfte und jene Personen gleich, die zur Ausbildung an der berufsmäßigen Tätigkeit teilnehmen.

Para 3: Das Recht der in Abs. 1 Z 4 und 5 sowie in Abs. 2 erwähnten Personen, sich des Zeugnisses zu entschlagen, darf bei sonstiger Nichtigkeit nicht umgangen werden.

Section 321 Civil Code of Procedure:

Para 4: in Ansehung desjenigen, was dem Zeugen in seiner Eigenschaft als Rechtsanwalt von seiner Partei anvertraut wurde.

Section 49 Code of Administrative Procedure:

Para 2: Die zur berufsmäßigen Parteienvertretung befugten Personen können die Zeugenaussage auch darüber verweigern, was ihnen in ihrer Eigenschaft als Vertreter einer Partei von dieser anvertraut wurde.

Professional Rules of Conduct:

Section 9(2) Lawyers Code:

Der Rechtsanwalt ist zur Verschwiegenheit über die ihm anvertrauten Angelegenheiten und die ihm sonst in seiner beruflichen Eigenschaft bekanntgewordenen Tatsachen, deren Geheimhaltung im Interesse seiner Partei gelegen ist, verpflichtet. Er hat in gerichtlichen und sonstigen behördlichen Verfahren nach Maßgabe der verfahrensrechtlichen Vorschriften das Recht auf diese Verschwiegenheit.

2 Belgium

Article 458 Criminal Code:

« Toute personne qui, par état ou par profession, est dépositaire de secrets et a de ce fait connaissance d'une infraction prévue aux articles 372 à 377, 392 à 394, 396 à 405ter, 409, 423, 425 et 426, qui a été commise sur un mineur, peut, sans préjudice des obligations que lui impose l'article 422bis, en informer le procureur du Roi, à condition qu'elle ait examiné la victime ou recueilli les confidences de celle-ci, qu'il existe un danger grave et imminent pour l'intégrité

mentale ou physique de l'intéressé et qu'elle ne soit pas en mesure, elle-même ou avec l'aide de tiers, de protéger cette intégrité.»

3 Denmark

Article 170 Danish Code of Procedure:

“Mod dens ønske, som har krav på hemmeligholdelse, må vidneforklaring ikke afkræves præster i folkekirken eller andre trossamfund, læger, forsvarere og advokater om det, som er kommet til deres kundskab ved udøvelsen af deres virksomhed.

Stk. 2. Retten kan pålægge læger og advokater, bortset fra forsvarere i straffesager, at afgive vidneforklaring, når forklaringen anses for at være af afgørende betydning for sagens udfald, og sagens beskaffenhed og dens betydning for vedkommende part eller samfundet findes at berettige til, at forklaring afkræves. Sådant pålæg kan i borgerlige sager ikke udstrækkes til, hvad en advokat har erfaret i en retssag, som har været betroet ham til udførelse, eller hvori hans råd har været søgt.

Stk. 3. Retten kan bestemme, at forklaring ikke skal afgives om forhold, med hensyn til hvilke vidnet i medfør af lovgivningen har tavshedspligt, og hvis hemmeligholdelse har væsentlig betydning.

Stk. 4. Reglerne i stk. 1-3 gælder også for de pågældende personers medhjælpere.”

Article 170:

“Subsection 1: Clergymen, doctors, defence advocates and lawyers (forsvarere og advokater) may not be required to give evidence on matters which have come to their knowledge on the practise of their profession against the wish of the person who has the right to require that secrecy be maintained.

Subsection 2: The court may order doctors or lawyers, other than defence advocates in criminal cases, to give evidence when the evidence is considered decisive for the outcome of the case, and when the nature of the case and its importance to the party concerned or to the society is found to justify a requirement that evidence be given. In civil cases such an order cannot be extended to include what a lawyer may have learned from a lawsuit entrusted to his care or to the advice he may have given in such a lawsuit.

Subsection 3: The courts may determine the extent to which evidence shall not be given, having regard to that which, by virtue of the law, the witness has the obligation to keep secret and about which the maintenance of secrecy has essential importance.

Subsection 4: The provisions in subsection 1 through 3 apply as well to the assistants of the persons concerned.”

4 Finland

Paragraph 5c Act on Advocates:

“Asianajaja tai hänen apulaisensa ei saa luvattomasti ilmaista sellaista yksityisen tai perheen salaisuutta taikka liike- tai ammattisalaisuutta,

josta hän tehtävässään on saanut tiedon.”

Paragraph 23 (Chapter 17) Code of Judicial Procedure:

Todistaa ei saa:

virkamies idettävä;

kukaan alassa;

lääkäri uostu;

asiamies tai oikeudenkäyntiavustaja siitä, mitä päämies on hänelle asian ajamista varten uskonut, ellei päämies todistamiseen suostu.

Papin vaitiolovelvollisuudesta on erikseen säädetty.

Edellä 1 momentin 3 ja 4 kohdassa olevien säännösten estämättä voidaan muu niissä tarkoitettu henkilö paitsi syytetyn oikeudenkäyntiavustaja velvoittaa todistamaan asiassa, jossa virallinen syyttäjä ajaa syytettä rikoksesta, mistä saattaa seurata vankeutta kuusi vuotta tai ankarampi rangaistus, taikka sanotunlaisen rikoksen yrityksestä tai osallisuudesta siihen.

Mitä 1 momentin 1, 3 ja 4 kohdassa on sanottu, noudatettakoon, vaikkei todistaja enää ole siinä asemassa, jossa hän on saanut tiedon todistettavasta seikasta.”

5 France

Article 160 Decree 27th November 1991: “L’avocat, en toute matière, ne doit commettre aucune divulgation contrevenant au secret professionnel”.

Article 66-5 of Law of 31st December 1971 (modified by the law of 7th April 1997): « En toutes matières, que ce soit dans le domaine du conseil ou dans celui de la défense, les consultations adressées par un avocat à son client ou destinées à celui-ci, les correspondances échangées entre le client et son avocat, entre l’avocat et ses confrères, les notes d’entretien et plus généralement, toutes les pièces du dossier sont couvertes par le secret professionnel. »

Articles 226-13 Criminal Code: « La révélation d’une information à caractère secret par une personne qui en est dépositaire soit par état ou par profession, soit en raison d’une fonction ou d’une mission temporaire, est punie d’un an d’emprisonnement et de 15000 euros d’amende. »

Article 2 Regulatory Decision No. 1999-001:

« Article 2 : le secret professionnel

2.1 Principes

Le secret professionnel de l’avocat est d’ordre public. Il est général, absolu et illimité dans le temps.

L'avocat étant le confident nécessaire du client, ce secret est établi dans l'intérêt du public.

L'avocat ne peut en être relevé par son client, par quelque autorité que ce soit ou plus générale ment par qui que ce soit.

2.2 Etendue du secret professionnel

Le secret professionnel couvre en toutes matières, que ce soit dans le domaine du conseil ou dans celui de la défense :

- les consultations adressées par un avocat à son client ou destinées à celui-ci,
- les correspondances échangées entre le client et son avocat, entre l'avocat et ses confrères,
- les notes d'entretien et plus générale ment toutes les pièces du dossier,
- toutes les informations et confidences reçues par l'avocat dans l'exercice de la profession,
- le nom des clients et l'agenda de l'avocat,
- les règlements pécuniaires et tous maniements de fonds effectués en application de l'article 27 alinéa 2 de la loi du 31 décembre 1971,
- les informations demandées par les commissaires aux comptes ou tous tiers, (informations qui ne peuvent être communiquées par l'avocat qu'à son client).

2.3 Structure professionnelle, mode d'exercice et secret professionnel

L'avocat doit faire respecter le secret par les membres du personnel de son cabinet et par toute personne qui coopère avec lui dans son activité professionnelle. Il répond des violations du secret qui seraient ainsi commises.

Lorsque l'avocat exerce en groupe ou participe à une structure de mise en commun de moyens, le secret s'étend à tous les avocats qui exercent avec lui et à ceux avec lesquels il met en commun des moyens d'exercice de la profession.

(...)

2.5 Discipline

La violation du secret professionnel constitue un délit et un manquement à la règle déontologique. »

6 Germany

Article 203 Criminal Code:

«Verletzung von Privatgeheimnissen.

- (1) Wer unbefugt ein fremdes Geheimnis, namentlich ein zum persönlichen Lebensbereich gehörendes Geheimnis oder ein

Betriebs- oder Geschäftsgeheimnis, offenbart, das ihm als

Arzt, Zahnarzt, Tierarzt, Apotheker oder Angehörigen eines anderen Heilberufs, der für die Berufsausübung oder die Führung der Berufsbezeichnung eine staatlich geregelte Ausbildung erfordert,

Berufspsychologen mit staatlich anerkannter wissenschaftlicher Abschlußprüfung,

Rechtsanwalt, Patentanwalt, Notar, Verteidiger in einem gesetzlich geordneten Verfahren, Wirtschaftsprüfer, vereidigtem Buchprüfer, Steuerberater, Steuerbevollmächtigten oder Organ oder Mitglied eines Organs einer Rechtsanwalts-, Patentanwalts-, Wirtschaftsprüfungs-, Buchprüfungs- oder Steuerberatungsgesellschaft,

Ehe-, Familien-, Erziehungs- oder Jugendberater sowie Berater für Suchtfragen in einer Beratungsstelle, die von einer Behörde oder Körperschaft, Anstalt oder Stiftung des öffentlichen Rechts anerkannt ist,

Mitglied oder Beauftragten einer anerkannten Beratungsstelle nach den §§ 3 und 8 des Schwangerschaftskonfliktgesetzes

staatlich anerkanntem Sozialarbeiter oder staatlich anerkanntem Sozialpädagogen oder

Angehörigen eines Unternehmens der privaten Kranken-, Unfall- oder Lebensversicherung oder einer privatärztlichen Verrechnungsstelle

anverraut worden oder sonst bekanntgeworden ist, wird mit Freiheitsstrafe bis zu einem Jahr oder mit Geldstrafe bestraft.

- (2) Ebenso wird bestraft, wer unbefugt ein fremdes Geheimnis, namentlich ein zum persönlichen Lebensbereich gehörendes Geheimnis oder ein Betriebs- oder Geschäftsgeheimnis, offenbart, das ihm als Amtsträger, für den öffentlichen Dienst besonders Verpflichteten,

Person, die Aufgaben oder Befugnisse nach dem Personalvertretungsrecht wahrnimmt,

Mitglied eines für ein Gesetzgebungsorgan des Bundes oder eines Landes tätigen Untersuchungsausschusses, sonstigen Ausschusses oder Rates, das nicht selbst Mitglied des Gesetzgebungsorgans ist, oder als Hilfskraft eines solchen Ausschusses oder Rates,

öffentlich bestellten Sachverständigen, der auf die gewissenhafte Erfüllung seiner Obliegenheiten auf Grund eines Gesetzes förmlich verpflichtet worden ist, oder

Person, die auf die gewissenhafte Erfüllung ihrer Geheimhaltungspflicht bei der Durchführung wissenschaftlicher Forschungsvorhaben auf Grund eines

Gesetzes förmlich verpflichtet worden ist,

anvertraut worden oder sonst bekanntgeworden ist. Einem Geheimnis im Sinne des Satzes 1 stehen Einzelangaben über persönliche oder sachliche Verhältnisse eines anderen gleich, die für Aufgaben der öffentlichen Verwaltung erfaßt worden sind, Satz 1 ist jedoch nicht anzuwenden, soweit solche Einzelangaben anderen Behörden oder sonstigen Stellen für Aufgaben der öffentlichen Verwaltung bekanntgegeben werden und das Gesetz dies nicht untersagt.

- (3) Einem in Absatz 1 Nr 3 genannten Rechtsanwalt stehen andere Mitglieder einer Rechtsanwaltskammer gleich. Den in Absatz 1 und Satz 1 Genannten stehen ihre berufsmäßig tätigen Gehilfen und die Personen gleich, die bei ihnen zur Vorbereitung auf den Beruf tätig sind. Den in Absatz 1 und den in Satz 1 und 2 Genannten steht nach dem Tod des zur Wahrung des Geheimnisses Verpflichteten ferner gleich, wer das Geheimnis von dem Verstorbenen oder aus dessen Nachlaß erlangt hat.
- (4) Die Absätze 1 bis 3 sind auch anzuwenden, wenn der Täter das fremde Geheimnis nach dem Tod des Betroffenen unbefugt offenbart.
- (5) Handelt der Täter gegen Entgelt oder in der Absicht, sich oder einen anderen zu bereichern oder einen anderen zu schädigen, so ist die Strafe Freiheitsstrafe bis zu zwei Jahren oder Geldstrafe.»

Article 43A German Lawyers Act:

«Grundpflichten des Rechtsanwalts.

- (1) Der Rechtsanwalt darf keine Bindungen eingehen, die seine berufliche Unabhängigkeit gefährden.
- (2) Der Rechtsanwalt ist zur Verschwiegenheit verpflichtet. Diese Pflicht bezieht sich auf alles, was ihm in Ausübung seines Berufes bekanntgeworden ist. Dies gilt nicht für Tatsachen, die offenkundig sind oder ihrer Bedeutung nach keiner Geheimhaltung bedürfen.
- (3) Der Rechtsanwalt darf sich bei seiner Berufsausübung nicht unsachlich verhalten. Unsachlich ist insbesondere ein Verhalten, bei dem es sich um die bewußte Verbreitung von Unwahrheiten oder solche herabsetzenden Äußerungen

handelt, zu denen andere Beteiligte oder der Verfahrensverlauf keinen Anlaß gegeben haben.

- (4) Der Rechtsanwalt darf keine widerstrebenden Interessen vertreten.
- (5) Der Rechtsanwalt ist bei der Behandlung der ihm anvertrauten Vermögenswerte zu der erforderlichen Sorgfalt verpflichtet. Fremde Gelder sind unverzüglich an den Empfangsberechtigten weiterzuleiten oder auf ein Anderkonto einzuzahlen.
- (6) Der Rechtsanwalt ist verpflichtet, sich fortzubilden.»

Article 2 German Federal Bars Rules of Professional Practice:
«Verschwiegenheit.

- (1) Der Rechtsanwalt ist zur Verschwiegenheit berechtigt und verpflichtet.
- (2) Das Recht und die Pflicht zur Verschwiegenheit beziehen sich auf alles, was ihm in Ausübung seines Berufes bekannt geworden ist, und bestehen nach Beendigung des Mandats fort.
- (3) Die Pflicht zur Verschwiegenheit gilt nicht, soweit diese Berufsordnung oder andere Rechtsvorschriften Ausnahmen zulassen oder die Durchsetzung oder Abwehr von Ansprüchen aus dem Mandatsverhältnis oder die Verteidigung des Rechtsanwalts in eigener Sache die Offenbarung erfordern.
- (4) Der Rechtsanwalt hat seine Mitarbeiter und alle sonstigen Personen, die bei seiner beruflichen Tätigkeit mitwirken, zur Verschwiegenheit (§ 43a Abs. 2 Bundesrechtsanwaltsordnung ausdrücklich zu verpflichten und anzuhalten.»

7 Greece

Article 371 of the Penal Code (Act 1492/1950):

«Breach of professional confidence (secrecy)

- (1) Clergymen, lawyers and all defence counsel, notaries public, medical doctors, midwives, nurses, pharmacists and their assistants and any others, who, because of their profession or capacity, are entrusted with private matters of a confidential nature shall be punished by pecuniary penalty or imprisonment for not more than one (1) year if they disclose such matters

entrusted to them.»

Article 212 Code of Criminal Procedure: Professional secrecy of witness

- “1) The proceedings shall be annulled if any of the following are examined (as witness) in the preliminary inquiry or in the main proceedings:
- (a) Clergymen concerning what they have learned from confession,
 - (b) defence lawyers, technical advisors and notaries public concerning what their clients confided to them; defence lawyers and technical advisors may decide according to their conscience whether and to what extent they must depose all other matters which they have learned as a consequence of the exercise of their profession,
 - (c) medical doctors, pharmacists and their assistants as well as midwives, and
 - (d) public servants
- 2) The prohibition of para 1 in the cases (a), (b) and (c) shall remain in force, even if the persons mentioned therein have been released from the obligation to observe the professional secrecy by the party who had confided same to them.
- 3) All the above witnesses have the obligation to declare under oath to the person who conducts the examination that if they were to depose they would be violating the secrecies mentioned in paragraph 1. A false declaration shall be punishable with the penalties provided in the Penal Code in the case of perjury.”

Article 400 of the Code of Civil Procedure:

“The following persons cannot be examined, if they are summoned as witnesses: 1) clergymen, lawyers (δικηγόροι-dikigoros), notaries public, medical doctors, pharmacists, nurses, midwives and their assistants, as well as the litigants’ advisers in respect of facts confided to them or which they ascertained during the exercise of their profession for which they have a duty of secrecy, unless this (giving evidence) shall be permitted by the party who confided same to them or by the party concerned in the (professional) secrecy. 2) public servants.....3) persons who have an interest in the outcome of the proceedings.”

Article 49 Code for Lawyers (LD3026; 3026/1954):

«1. A lawyer (Δικηγόρος/Dikigoros) is obliged to keep inviolable

the required secrecy in favour of his principal (client). Anything else, which may come to his knowledge as a consequence of the practise of the legal function (profession), it is left to him, in good conscience, to decide as to whether and to what extent he should depose if he is called as a witness.

2. In any event, a lawyer cannot be examined as a witness in respect of a case in which he was involved as a Lawyer (Δικηγόρος) without the prior permission of the Executive Council of his Bar or in case of extreme urgency of the President of the Bar. This prohibition applies also to a Lawyer (Δικηγόρο) who renders his services on a fixed periodical retainer (i.e. a “Regulated In-house Legal Professional”) in respect of all the cases of the party to whom he renders his services.
3. Searches under article 253 et seq of the Code of Penal Procedure, at home or at the Office of a Lawyer (Δικηγόρο), as well as body searches and seizure of documents under article 261 et seq of the Code of Penal Procedure, which are in the hands of a lawyer are prohibited provided the Lawyer is the authorized lawyer of the accused or his defence counsel.”

Article 50 Code for Lawyers:

“A Lawyer (Δικηγόρος), who confirms before a Court or Judge empowered to take evidence that his deposition would offend the professional secrecy imposed on him, shall not be obliged to give evidence.”

8 Ireland

As in the United Kingdom, professional privilege is founded upon decisions of the Courts. A recent example of an Irish case is that of *Smurfit Paribas Bank Limited v. AAB Export Finance Limited* 1990 [1IR469] in which Finlay C J stated that a privilege may be “granted by the Courts in instances which had been identified as securing an objective which in the public interest in the proper conduct of the administration of justice can be said to outweigh the disadvantage arising from the restriction of disclosure of all the facts”

It would be impractical to go through all the relevant cases which have defined and re-defined the nature of professional privilege in Ireland but reference can be made to paragraph 15 of this Schedule in which some of the relevant cases in England and Wales have been highlighted.

9 Italy

Codice penale

622. Rivelazione di segreto professionale.

1. Chiunque, avendo notizia, per ragione del proprio stato o ufficio, o della propria professione o arte, di un segreto, lo rivela, senza giusta causa, ovvero lo impiega a proprio o altrui profitto, è punito, se dal fatto può derivare nocimento, con la reclusione fino a un anno o con la multa da euro 30 a euro 516.
2. La pena è aggravata se il fatto è commesso da amministratori, direttori generali, sindaci o liquidatori o se è commesso da chi svolge la revisione contabile della società.
3. Il delitto è punibile a querela della persona offesa.

Codice di procedura penale

103. Garanzie di libertà del difensore.

1. Le ispezioni e le perquisizioni negli uffici dei difensori sono consentite solo:
 - a) quando essi o altre persone che svolgono stabilmente attività nello stesso ufficio sono imputati, limitatamente ai fini dell'accertamento del reato loro attribuito;
 - b) per rilevare tracce o altri effetti materiali del reato o per ricercare cose o persone specificamente predeterminate.
2. Presso i difensori e gli investigatori privati autorizzati e incaricati in relazione al procedimento, nonché presso i consulenti tecnici non si può procedere a sequestro di carte o documenti relativi all'oggetto della difesa, salvo che costituiscano corpo del reato.
3. Nell'accingersi a eseguire una ispezione, una perquisizione o un sequestro nell'ufficio di un difensore, l'autorità giudiziaria a pena di nullità avvisa il consiglio dell'ordine forense del luogo perché il presidente o un consigliere da questo delegato possa assistere alle operazioni. Allo stesso, se interviene e ne fa richiesta, è consegnata copia del provvedimento.
4. Alle ispezioni, alle perquisizioni e ai sequestri negli uffici dei difensori procede personalmente il giudice ovvero, nel corso delle indagini preliminari, il pubblico ministero in forza di motivato decreto di autorizzazione del giudice.
5. Non è consentita l'intercettazione relativa a conversazioni o comunicazioni dei difensori, degli investigatori privati autorizzati e incaricati in relazione al procedimento, dei consulenti tecnici e loro ausiliari, né a quelle tra i medesimi e

le persone da loro assistite.

6. Sono vietati il sequestro e ogni forma di controllo della corrispondenza tra l'imputato e il proprio difensore in quanto riconoscibile dalle prescritte indicazioni, salvo che l'autorità giudiziaria abbia fondato motivo di ritenere che si tratti di corpo del reato.
7. Salvo quanto previsto dal comma 3 e dall'art. 271, i risultati delle ispezioni, perquisizioni, sequestri, intercettazioni di conversazioni o comunicazioni, eseguiti in violazione delle disposizioni precedenti non possono essere utilizzati.

200. Segreto professionale.

1. Non possono essere obbligati a deporre su quanto hanno conosciuto per ragione del proprio ministero, ufficio o professione, salvi i casi in cui hanno l'obbligo di riferirne all'autorità giudiziaria:
 - b) gli avvocati, gli investigatori privati autorizzati, i consulenti tecnici e i notai;
2. Il giudice, se ha motivo di dubitare che la dichiarazione resa da tali persone per esimersi dal deporre sia infondata, provvede agli accertamenti necessari. Se risulta infondata, ordina che il testimone deponga.

Dovere di esibizione e segreti.

1. Le persone indicate negli artt. 200 e 201 devono consegnare immediatamente all'autorità giudiziaria, che ne faccia richiesta, gli atti e i documenti, anche in originale se così è ordinato, e ogni altra cosa esistente presso di esse per ragioni del loro ufficio, incarico, ministero, professione o arte, salvo che dichiarino per iscritto che si tratti di segreto di Stato ovvero di segreto inerente al loro ufficio o professione.
2. Quando la dichiarazione concerne un segreto di ufficio o professionale, l'autorità giudiziaria, se ha motivo di dubitare della fondatezza di essa e ritiene di non potere procedere senza acquisire gli atti, i documenti o le cose indicati nel comma 1, provvede agli accertamenti necessari. Se la dichiarazione risulta infondata, l'autorità giudiziaria dispone il sequestro.

Codice di procedura civile

Ordine d'ispezione di persone e di cose.

1. Il giudice può ordinare alle parti e ai terzi di consentire sulla loro persona o sulle cose in loro possesso le ispezioni che appaiono indispensabili per conoscere i fatti della causa, purché ciò possa compiersi senza grave danno per la parte o per il terzo, e senza costringerli a violare uno dei segreti previsti negli artt. [200, 201 e 202] del codice di procedura penale.
2. Se la parte rifiuta di eseguire tale ordine senza giusto motivo, il giudice può da questo rifiuto desumere argomenti di prova a norma dell'art. 116, secondo comma.
3. Se rifiuta il terzo, il giudice lo condanna a una pena pecuniaria non superiore a lire diecimila [euro 5].

Ordine di esibizione alla parte o al terzo.

1. Negli stessi limiti entro i quali può essere ordinata a norma dell'art. 118 l'ispezione di cose in possesso di una parte o di un terzo, il giudice istruttore, su istanza di parte può ordinare all'altra parte o a un terzo di esibire in giudizio un documento o altra cosa di cui ritenga necessaria l'acquisizione al processo.
2. Nell'ordinare l'esibizione, il giudice dà i provvedimenti opportuni circa il tempo, il luogo e il modo dell'esibizione.
3. Se l'esibizione importa una spesa, questa deve essere in ogni caso anticipata dalla parte che ha proposta l'istanza di esibizione.

Facoltà d'astensione.

Si applicano all'audizione dei testimoni le disposizioni degli artt. [200, 201 e 202] del codice di procedura penale relative alla facoltà di astensione dei testimoni.

Reale Decreto Legge 27 novembre 1933, n. 1578

Articolo 13

Gli avvocati non possono essere obbligati a deporre nei giudizi di qualunque specie su ciò che a loro sia stato confidato o sia pervenuto a loro conoscenza per ragione del proprio ufficio, salvo quanto è disposto nell'art. [200, comma secondo], del codice di procedura penale.

Codice Deontologico Forense

Articolo 9 (Dovere di segretezza e riservatezza).

E' dovere, oltreché diritto, primario e fondamentale dell'avvocato mantenere il segreto sull'attività prestata e su tutte le informazioni che siano a lui fornite dalla parte assistita o di cui sia venuto a conoscenza in dipendenza del mandato.

1. L'avvocato è tenuto al dovere di segretezza e riservatezza anche nei confronti degli ex-clienti, sia per l'attività giudiziale che per l'attività stragiudiziale.
2. La segretezza deve essere rispettata anche nei confronti di colui che si rivolga all'avvocato per chiedere assistenza senza che il mandato sia accettato.
3. L'avvocato è tenuto a richiedere il rispetto del segreto professionale anche ai propri collaboratori e dipendenti e a tutte le persone che cooperano nello svolgimento dell'attività professionale.
4. (soppresso).
4. (ex-5.) Costituiscono eccezione alla regola generale i casi in cui la divulgazione di alcune informazioni relative alla parte assistita sia necessaria:
 - a) per lo svolgimento delle attività di difesa;
 - b) al fine di impedire la commissione da parte dello stesso assistito di un reato di particolare gravità;
 - c) al fine di allegare circostanze di fatto in una controversia tra avvocato e assistito;
 - d) in un procedimento concernente le modalità della difesa degli interessi dell'assistito.

In ogni caso la divulgazione dovrà essere limitata a quanto strettamente necessario per il fine tutelato.

10 Luxembourg

Article 458 Criminal Code: « Les médecins, chirurgiens, officiers de santé, pharmaciens, sages-femmes et toutes autres personnes dépositaires, par état ou par profession, des secrets qu'on leur confie, qui, hors le cas où ils sont appelés à rendre témoignage en justice et celui où la loi les oblige à faire connaître ces secrets, les auront révélés, seront punis d'un emprisonnement de huit jours à six mois et d'une amende de 500 euros à 5.000 euros. »

Article 35 Law in the Profession of Lawyer (as modified by the law of 10th August 1991):

« (1) L'avocat est soumis au secret professionnel conformément à l'article 458 du code pénal.

(2) Il doit respecter le secret de l'instruction en matière pénale en s'abstenant de communiquer des renseignements extraits du dossier ou de publier ou faire publier des documents, pièces ou lettres intéressant une information en cours.

(3) Le lieu de travail de l'avocat et le secret des communications, par quelque moyen que ce soit, entre l'avocat et son client, sont inviolables. Lorsqu'une mesure de procédure civile ou d'instruction criminelle est effectuée auprès ou à l'égard d'un avocat dans les cas prévus par la loi, il ne peut y être procédé qu'en présence du Bâtonnier ou de son représentant, ou ceux-ci dûment appelés.

Le Bâtonnier ou son représentant peut adresser aux autorités ayant ordonné ces mesures toutes observations concernant la sauvegarde du secret professionnel. Les actes de saisie et les procès verbaux de perquisition mentionnent à peine de nullité la présence du Bâtonnier ou de son représentant ou qu'ils ont été dûment appelés, ainsi que les observations que le cas échéant le Bâtonnier ou son représentant ont estimé devoir faire. »

11 The Netherlands

Article 272 Dutch Criminal Code:

“Hij die enig geheim waarvan hij weet of redelijkerwijs moet vermoeden dat hij uit hoofde van ambt, beroep of wettelijk voorschrift dan wel van vroeger ambt of beroep verplicht is het te bewaren, opzettelijk schendt, wordt gestraft met gevangenisstraf van ten hoogste een jaar of geldboete van de vierde categorie. (...)”

Article 218 Dutch Code of Criminal Procedure:

“Van het geven van getuigenis of van het beantwoorden van bepaalde vragen kunnen zich ook versootten zij die uit hoofde van hun stand, hun beroep of hun ambt tot geheimhouding verplicht zijn,

doch alleen omtrent hetgeen waarvan de wetenschap aan hen als zoodanig is toevertrouwd.”

Article 165 Paragraph 2b Dutch Code of Civil Procedure:

“zij die tot geheimhouding verplicht zijn uit hoofde van hun ambt, beroep of betrekking omtrent hetgeen hun in die hoedanigheid is toevertrouwd. (...)”

Article 51 Dutch Competition Law Code:

“Artikel 5:17 van de Algemene wet bestuursrecht is niet van toepassing op geschriften met betrekking tot de toepassing van mededingingsregels, gewisseld tussen een onderneming en een advocaat die is toegelaten tot de balie, die zich bij de onderneming bevinden, doch waarop, indien zij zich zouden bevinden bij die advocaat, artikel 5:20, tweede lid, van de Algemene wet bestuursrecht van toepassing zou zijn.

Article 46 Dutch Bar Act:

“De advocaten zijn aan tuchtrechtspraak onderworpen ter zake van enig handelen of nalaten in strijd met de zorg die zij als advocaat behoren te betrachten ten opzichte van degenen wier belangen zij als zodanig behartigen of behoren te behartigen, ter zake van inbreuken op de verordeningen van de Nederlandse orde en ter zake van enig handelen of nalaten dat een behoorlijk advocaat niet betaamt. Deze tuchtrechtspraak wordt uitgeoefend in eerste aanleg door de raden van discipline en in hoger beroep, tevens in hoogste ressort, door het hof van discipline.”

12 Portugal

Article 135 Code of Criminal Procedure:

1. Os ministros de religião ou confissão religiosa, os advogados, os médicos, os jornalistas, os membros de instituições de crédito e as demais pessoas a quem a lei permitir ou impuser que guardem segredo profissional podem escusar-se a depor sobre os factos abrangidos por aquele segredo.
2. Havendo dúvidas fundadas sobre a legitimidade da escusa, a autoridade judiciária perante a qual o incidente se tiver suscitado procede às averiguações necessárias. Se, após estas, concluir pela ilegitimidade da escusa, ordena, ou requer ao tribunal que ordene, a prestação do depoimento.
3. O tribunal imediatamente superior àquele onde o incidente se tiver suscitado, ou, no caso de o incidente se ter suscitado perante o Supremo Tribunal de Justiça, o plenário das secções criminais, pode decidir da prestação de testemunho com quebra do segredo profissional sempre que esta se mostre justificada face às normas e princípios aplicáveis da lei penal,

nomeadamente face ao princípio da prevalência do interesse preponderante. A intervenção é suscitada pelo juiz, oficiosamente ou a requerimento.

4. O disposto no número anterior não se aplica ao segredo religioso.
5. Nos casos previstos nos n.ºs 2 e 3, a decisão da autoridade judiciária ou do tribunal é tomada ouvido o organismo representativo da profissão relacionada com o segredo profissional em causa, nos termos e com os efeitos previstos na legislação que a esse organismo seja aplicável.”

- “1. The ministers of religion or religious confession, lawyers, physicians, journalists, members of credit institutions and other people to whom the law allows or imposes on professional secrecy may be excused from testifying in facts covered by the mentioned secrecy.
2. Should there be any well grounded doubts on the excuse legitimacy, the legal authority before which the incident has arisen should proceed with the required investigations. If, after these, the legal incapacity of the excuse is decided for, the mentioned authority should order, or require that the Court orders the suitable giving of evidence.
3. The court immediately superior to that one before which the incident has arisen, or in the event the incident has arisen before the Supreme Court, the plenary of criminal chambers may decide in favour of the giving of evidence with breach of professional secrecy, whenever it is proved this is justified before the applicable procedures and principles of the criminal law, namely before the principle of the prevailing interests preponderance.
4. The dispositions of the previous number do not apply to religious secrecy.
5. In the cases foreseen in nos. 2 and 3 the decision of the legal authority or the Court is made after hearing the body which represents the profession concerning the professional secrecy in question, under the terms and with the effects foreseen in the legislation applicable to that body.”

Professional Rules of Conduct [extract from law of 80/2001]:

ARTIGO 81º do Estatuto da Ordem dos Advogados (Portuguese Bar Association By-Laws)

“(Do segredo profissional)

1. O advogado é obrigado a segredo profissional no que respeita:

- a. A factos referentes a assuntos profissionais que lhe tenham sido revelados pelo cliente ou por sua ordem ou conhecimento no exercício da profissão;
 - b. A factos que, por virtude de cargo desempenhado na Ordem dos Advogados, qualquer colega, obrigado quanto aos mesmos factos ao segredo profissional, lhe tenha comunicado;
 - c. A factos comunicados por co-autor, co-réu ou co-interessado do cliente ou pelo respectivo representante;
 - d. A factos de que a parte contrária do cliente ou respectivos representantes lhe tenham dado conhecimento durante negociações para acordo amigável e que sejam relativos à pendência.
2. A obrigação do segredo profissional existe quer o serviço solicitado ou cometido ao advogado envolva ou não representação judicial ou extrajudicial, quer deva ou não ser remunerado, quer o advogado haja ou não chegado a aceitar e a desempenhar a representação ou serviço, o mesmo acontecendo para todos os advogados que directa ou indirectamente, tenham qualquer intervenção no serviço.
3. O segredo profissional abrange ainda documentos ou outras coisas que se relacionem, directa ou indirectamente, com os factos sujeitos a sigilo.
4. Cessa a obrigação de segredo profissional em tudo quanto seja absolutamente necessário para a defesa da dignidade, direitos e interesses legítimos do próprio advogado ou do cliente ou seus representantes, mediante prévia autorização do presidente do conselho distrital respectivo, com recurso para o presidente da Ordem dos Advogados.
 5. Não podem fazer prova em juízo as declarações feitas pelo advogado com violação de segredo profissional.
 6. Sem prejuízo do disposto no n.º 4 o advogado pode manter o segredo profissional.”

ARTIGO 59º do EOA

(Imposições de selos, arrolamentos e buscas em escritórios de advogados)

- “1. A imposição de selos, arrolamentos, buscas e diligências semelhantes no escritório de advogados ou em qualquer outro local onde faça arquivo só podem ser decretados e presididos pelo juiz competente.
2. Com a necessária antecedência, o juiz deve convocar para assistir à diligência o advogado a ela sujeito, bem como o presidente do conselho distrital, o presidente da delegação ou delegado da Ordem dos Advogados, conforme os casos, os quais podem delegar em outro advogado.

3. Na falta de comparência do advogado representante da Ordem dos Advogados ou havendo urgência incompatível com os trâmites no número anterior, o juiz deve nomear qualquer advogado que possa comparecer imediatamente, de preferência de entre os que hajam feito parte dos órgãos da Ordem dos Advogados ou, quando não seja possível, o que for indicado pelo advogado a quem o escritório ou arquivo pertencer.
4. À diligência são admitidos também, quando se apresentem ou o juiz os convoque, os familiares ou empregados do advogado interessado.
5. Até à comparência do advogado que represente a Ordem dos Advogados podem ser tomadas as providências indispensáveis para que se não inutilizem ou desencaminhem quaisquer papéis ou objectos.
6. O auto de diligência fará expressa menção das pessoas presentes, bem como de quaisquer ocorrências que tenham lugar no seu decurso.”

ARTIGO 60º do EOA

(Apreensão de documentos)

- “1. Não pode ser apreendida a correspondência que respeite ao exercício da profissão.
2. A proibição estende-se à correspondência trocada entre o advogado e aquele que lhe tenha cometido ou pretendido cometer mandato e lhe haja solicitado parecer, embora ainda não dado ou já recusado.
3. Compreendem-se na correspondência as instruções e informações escritas sobre o assunto da nomeação ou mandato ou do parecer solicitado.
4. Exceptua-se o caso de a correspondência respeitar a tacto criminoso relativamente ao qual o advogado seja arguido.”

ARTIGO 90º do EOA

(Jurisdição disciplinar)

1. Os advogados estão sujeitos à jurisdição disciplinar exclusiva dos órgãos da Ordem dos Advogados, nos termos previstos neste Estatuto e nos respectivos regulamentos.
2. O pedido de cancelamento ou suspensão da inscrição não faz cessar a responsabilidade disciplinar por infracções anteriormente praticadas.
3. Durante o tempo de suspensão da inscrição o advogado continua sujeito à jurisdição disciplinar da Ordem dos

Advogados, mas não assim após o cancelamento.

4. A responsabilidade disciplinar de advogado punido com a pena de expulsão não cessa relativamente a outras infracções cometidas antes da aplicação definitiva daquela pena.

ARTIGO 91º do EOA

(Infracção disciplinar)

“Comete infracção disciplinar o advogado ou advogado estagiário que, por acção ou omissão, violar culposamente algum dos deveres consagrados no presente Estatuto, nas demais disposições legais aplicáveis ou nos regulamentos internos.”

ARTIGO 172º do EOA

(Exercício da advocacia por estrangeiros)

1. Os estrangeiros diplomados por qualquer faculdade de Direito de Portugal podem inscrever-se na Ordem dos Advogados, nos mesmos termos dos portugueses, se o seu país conceder igual regalia a estes últimos.
2. Os advogados brasileiros diplomados por qualquer faculdade de Direito do Brasil ou de Portugal podem inscrever-se na Ordem dos Advogados em regime de reciprocidade.”

Artigo 120º do Código de Trabalho (Portuguese Labour Code)

(Deveres do empregador)

Sem prejuízo de outras obrigações, o empregador deve:

Respeitar e tratar com urbanidade e probidade o trabalhador;

Pagar pontualmente a retribuição, que deve ser justa e adequada ao trabalho;

Proporcionar boas condições de trabalho, tanto do ponto de vista físico como moral;

Contribuir para a elevação do nível de produtividade do trabalhador, nomeadamente proporcionando-lhe formação profissional;

Respeitar a autonomia técnica do trabalhador que exerça actividades cuja regulamentação profissional a exija; (*The employer has the duty to respect the technical autonomy and the professional rules and the code of conduct of employed Advogados.*)

Possibilitar o exercício de cargos em organizações representativas dos trabalhadores;

Prevenir riscos e doenças profissionais, tendo em conta a protecção

da segurança e saúde do trabalhador, devendo indemnizá-lo dos prejuízos resultantes de acidentes de trabalho;

Adoptar, no que se refere à higiene, segurança e saúde no trabalho, as medidas que decorram, para a empresa, estabelecimento ou actividade, da aplicação das prescrições legais e convencionais vigentes;

Fornecer ao trabalhador a informação e a formação adequadas à prevenção de riscos de acidente e doença;

Manter permanentemente actualizado o registo do pessoal em cada um dos seus estabelecimentos, com indicação dos nomes, datas de nascimento e admissão, modalidades dos contratos, categorias, promoções, retribuições, datas de início e termo das férias e faltas que impliquem perda da retribuição ou diminuição dos dias de férias.

13 Spain

Article 20 and 24 Spanish Constitution:

Artículo 20.1:

“Se reconocen y protegen los derechos:

- d) A comunicar o recibir libremente información veraz por cualquier medio de difusión. La ley regulará el derecho a la cláusula de conciencia y al secreto profesional en el ejercicio de estas libertades.

Artículo 24.2:

Asimismo, todos tienen derecho al Juez ordinario predeterminado por la ley, a la defensa y a la asistencia al letrado, a ser informados de la acusación formulada contra ellos, a un proceso público sin dilaciones indebidas y con todas las garantías, a utilizar los medios de prueba pertinentes para su defensa, a no declarar contra sí mismos, a no confesarse culpables y a la presunción de inocencia. La ley regulará los casos en que, por razón de parentesco o de secreto profesional, no se estará obligado a declarar sobre hechos presuntamente delictivos.”

Article 199 of the Penal Code:

- “1. El que revelare secretos ajenos, de los que tenga conocimiento por razón de su oficio o sus relaciones laborales, será castigado con la pena de prisión de uno a tres años y multa de seis a doce meses.
2. El profesional que, con incumplimiento de su obligación de sigilo o reserva, divulgue los secretos de otra persona, será castigado con la pena de prisión de uno a cuatro años, multa de

doce a veinticuatro meses e inhabilitación especial para dicha profesión por tiempo de dos a seis años.”

Article 437.2 Judicial Power Law (Ley Orgánica del Poder Judicial):

- “1. En su actuación ante los Juzgados y Tribunales, los Abogados son libres e independientes, se sujetarán al principio de buena fe, gozarán de los derechos inherentes a la dignidad de su función y serán amparados por aquéllos en su libertad de expresión y defensa.
2. Los Abogados deberán guardar secreto de todos los hechos o noticias de que conozcan por razón de cualquiera de las modalidades de su actuación profesional, no pudiendo ser obligados a declarar sobre los mismos.”

Professional Rules of Conduct (extract from Estatuto General de la Abogacía, Real Decreto 658/2001):

Artículo 1.2. “En el ejercicio profesional, el Abogado queda sometido a la normativa legal y estatutaria, al fiel cumplimiento de las normas y usos de la deontología profesional de la Abogacía y al consiguiente régimen disciplinario colegial.”

Artículo 21. “Los Abogados tienen la siguientes prohibiciones, cuya infracción se sancionará disciplinariamente: (...) b) Compartir locales o servicios con profesionales incompatibles, si ello afectare a la salvaguarda del secreto profesional.”

Artículo 25. 2. “Se considerará contraria a las normas deontológicas de la Abogacía la publicidad que suponga: a) Revelar directa o indirectamente hechos, datos o situaciones amparados por el secreto profesional.”

Artículo 28. 6. “(...) se extenderán a todos los miembros del despacho colectivo el deber de secreto profesional, las incompatibilidades que afecten a cualquiera de sus integrantes y las situaciones de prohibición de actuar en defensa de intereses contrapuestos con los patrocinados por cualquiera de ellos.”

Artículo 32

- “1. De conformidad con lo establecido por el artículo 437.2 de la Ley Orgánica del Poder Judicial, los Abogados deberán guardar secreto de todos los hechos o noticias que conozcan por razón de cualquiera de las modalidades de su actuación

profesional, no pudiendo ser obligados a declarar sobre los mismos.

2. En el caso de que el Decano de un Colegio, o quien estatutariamente le sustituya, fuere requerido en virtud de norma legal o avisado por la autoridad judicial, o en su caso gubernativa, competente para la práctica de un registro en el despacho profesional de un abogado, deberá personarse en dicho despacho y asistir a las diligencias que en el mismo se practiquen velando por la salva guarda del secreto profesional.”

14 Sweden

Chapter 8 (Section 4, paragraph 1) of the Code of Judicial Procedure:

“En advokat skall i sin verksamhet redbart och nitiskt utföra de uppdrag som anförtrotts honom och iaktta god advokatsed. En advokat är skyldig att förtiga vad han får kännedom om i sin yrkesutövning när god advokatsed kräver detta.”

“An advocate shall in his practice honestly and diligently perform the assignments entrusted to him, and shall always observe good advocate mores. An advocate is bound to keep confidential what he learns in the exercise of his profession, when good advocate mores so require.”

Chapter 36 (Section 5, paragraph 2) of the Code of Judicial Procedure:

“Advokater, läkare, tandläkare, barnmorskor, sjuksköterskor, psykologer, psykoterapeuter, familjerådgivare enligt socialtjänstlagen (2001:453) och deras biträden får höras som vittnen om något som i denna deras yrkesutövning anförtrotts dem eller som de i samband därmed erfarit, endast om det är medgivet i lag eller den, till vars förmån tystnadsplikten gäller, samtycker till det. Den som till följd av 9 kap. 4 § sekretesslagen inte får lämna uppgifter som avses där får höras som vittne om dem endast om det är medgivet i lag eller den till vars förmån sekretessen gäller samtycker till det.”

“Advocates, physicians, dentists, midwives, trained nurses, psychologists, psychotherapists, family counsel officers under the Social Services Act (2001:453) and their counsel may not testify concerning matters entrusted to, or found out by, them in their professional capacity unless the examination is authorized by law or is consented to by the person for whose benefit the duty of secrecy is imposed. Persons who pursuant to the Secrecy Act, Chapter 9, Section 4, may not provide the information therein referred to, may

be heard as a witness concerning that information only if authorized by law or the person for whose benefit the duty of secrecy is imposed consents thereto.”

Professional Rules of Conduct:

Section 19 of Code of Conduct for Members of the Swedish Bar Association:

“Advokat skall iaktta diskretion om sina klienters angelägenheter och får inte, med mindre laglig skyldighet att lämna upplysning föreligger, utan vederbörligt samtycke yppa något, som i hans verksamhet förtrotts honom eller som han i samband med sådant förtroende erfarit. Advokat är skyldig att ålägga sin personal samma diskretions- och tystnadsplikt.”

“A Member must treat his clients' affairs with confidentiality and may not without permission reveal anything confided to him in his practice or which he has learnt in that connection unless under a statutory duty to do so. A Member must impose the same duty of confidentiality on his staff.”

15 United Kingdom

The following case law underpins the recognition by the English Courts of professional privilege as a substantive common law right. R v Derby Magistrates Court Ex R.B [1996; R v Sec. of State Home Dept. Exp.Daly [2001] and Morgan Grenfell & Co. Limited [2001] These decisions recognise that legal professional privilege is a substantive right founded on public policy and not merely a rule of evidence determining which documents are admissible or not in court proceedings. The courts have regarded the client's right to communicate confidentially with his legal adviser under the seal of legal professional privilege as a necessary corollary of the fundamental right of access to legal advice.

In R v Derby Magistrates Court, Lord Taylor said “the principle is that a man must be able to consult his lawyer in confidence since otherwise he might hold back half the truth. The client must be sure what he tells his lawyers in confidence, will never be revealed without his consent. LPP is thus more than an ordinary rule of evidence, limited in application to the facts of a particular case. It is a fundamental condition on which the administration of justice as a whole rests”.

In Morgan Grenfell Lord Hoffman said “there are many situations in both civil and criminal law in which liability depends upon the state of mind in which something was done. Apart from the exceptional case in which it appears that the client obtained legal advice for the purpose of enabling himself better to commit a crime, this is not

thought as a sufficient reason for overriding LPP. The court must infer the purpose from the facts”

There are of course many further cases which have defined and re-defined the nature of LPP as is applied in the particular circumstances of the case.

16 Iceland

Section 22.1 of the Law on Lawyers 77/1998: “Lögmaður ber þagnarskyldu um hvaðeina sem honum er trúað fyrir í starfi sínu. Starfsmaður lögmanns er einnig bundinn þagnarskyldu um slík trúnaðarmál sem hann kann að komast að vegna starfa sinna.”

Section 17 of the Bar Association’s Code of Conduct: “Lögmaður skal aldrei án endanlegs dómsúrskurðar, sem beint er að honum sjálfum, eða skýlauss lagaboðs láta óviðkomandi aðilum í té gögn og upplýsingar, sem lögmaður hefur fengið í starfi um skjólstæðing sinn eða fyrrverandi skjólstæðing.

Sama gildir um fulltrúa lögmanns og annað starfslið svo og félaga lögmanns að lögmannsskrifstofu og starfslið hans.

Trúnaðarskyldan helst þótt verki sé lokið.”

17 Liechtenstein

Section 321 Paragraph 3 Civil Procedure Act 10th December 1912 (as amended):

«1) Die Aussage darf von einem Zeugen verweigert werden:

1. über Fragen, deren Beantwortung dem Zeugen, seinem Ehegatten oder einer Person, mit welcher der Zeuge in gerader Linie oder in der Seitenlinie bis zum zweiten Grade verwandt oder verschwägert oder mit welcher er durch Adoption verbunden ist, ferner seinen Pflegeeltern und Pflegekindern sowie seinem Vormunde oder Mündel zur Schande gereichen oder die Gefahr strafgerichtlicher Verfolgung zuziehen würde;
2. über Fragen, deren Beantwortung dem Zeugen oder einer der in Ziff. 1 bezeichneten Personen einen unmittelbaren vermögensrechtlichen Nachteil zuziehen würde;
3. in bezug auf Tatsachen, über welche der Zeuge nicht würde aussagen können, ohne eine ihm obliegende, staatlich anerkannte Pflicht zur Verschwiegenheit zu verletzen, insofern er hievon nicht gültig befreit wurde;
4. in Ansehung desjenigen, was dem Zeugen in seiner Eigenschaft als Rechtsanwalt von seiner Partei anvertraut wurde;
5. über Fragen, welche der Zeuge nicht würde beantworten können, ohne ein Kunst- oder Geschäftsgeheimnis zu

offenbaren.

- 2) Die Aussage kann in den unter Ziff. 1 und 2 angegebenen Fällen mit Rücksicht auf die daselbst bezeichneten Angehörigen auch dann verweigert werden, wenn das eheliche Verhältnis, welches die Angehörigkeit begründet, nicht mehr besteht.»

Section 107 Paragraph 1 Sub paragraph 3 Criminal Procedure Act 18th October 1988 (as amended):

- “(1) Von der Verbindlichkeit zur Ablegung eines Zeugnisses sind befreit: (...)
3. Rechtsanwälte, Rechtsagenten, Wirtschaftsprüfer sowie Patentanwälte über das, was ihnen in dieser Eigenschaft von ihrem Vollmachtgeber anvertraut worden ist.”

- “(1) The following are exempt from the obligation to give evidence: (...)
3. Lawyers, legal agents, chartered accountants as well as patent attorneys with regard to matters, which have been confided to them in this capacity by the principal.”

Article 15 Lawyers Act dated 9th December 1992 (as amended):

- «1) Der Rechtsanwalt ist zur Verschwiegenheit über die ihm anvertrauten Angelegenheiten und die ihm sonst in seiner beruflichen Eigenschaft bekannt gewordenen Tatsachen, deren Geheimhaltung im Interesse seiner Partei gelegen ist, verpflichtet. Er hat in gerichtlichen und sonstigen behördlichen Verfahren nach Massgabe der verfahrensrechtlichen Vorschriften das Recht auf diese Verschwiegenheit.
- 2) Das Recht des Rechtsanwalts auf Verschwiegenheit darf durch gerichtliche oder sonstige behördliche Massnahmen, insbesondere durch Vernehmung von Hilfskräften des Rechtsanwalts oder dadurch, dass die Herausgabe von Schriftstücken, Bild-, Ton- oder Datenträgern aufgetragen wird oder diese beschlagnahmt werden, nicht umgangen werden; besondere Regelungen zur Abgrenzung dieses Verbotes bleiben unberührt.»

Section 26 Code of Conduct of May 5th 1994 (as amended):

- «1. Der Rechtsanwalt ist zur Verschwiegenheit über die ihm anvertrauten Angelegenheiten und die ihm sonst in seiner beruflichen Eigenschaft bekannt gewordenen Tatsachen, deren Geheimhaltung im Interesse seiner Partei gelegen ist, verpflichtet. Diese Verschwiegenheitsverpflichtung überträgt sich auch auf alle Mitarbeiter in der Kanzlei des

Rechtsanwaltes.

2. Die Verschwiegenheitsverpflichtung gemäss Absatz 1 besteht auch nach Beendigung des Mandates weiter. Wenn der Rechtsanwalt es im Interesse des Mandanten für nötig hält, kann er sich auch dann auf seine Schweigepflicht berufen, wenn ihn sein Mandant davon ausdrücklich entbunden hat.
3. Der Rechtsanwalt sorgt durch geeignete Massnahmen auch dafür, dass im Falle seines Todes die Interessen der Mandanten und das Berufsgeheimnis gewahrt bleiben.»

18 Norway

Section 144 of the Penal Code:

§ 144. “Prester i statskirken, prester eller forstandere i registrerte trossamfunn, advokater, forsvarere i straffesaker, meklingsmenn i ekteskapsaker, leger, psykologer, apotekere, jordmødre og sykepleiere samt disses betjenter eller hjelpere, som rettsstridig åpenbarer hemmeligheter, som er dem eller deres foresatte betrodd i stillings medfør, straffes med bøter eller med fengsel inntil 6 måneder.

Offentlig Paatale finder alene Sted efter fornærmedes Begjæring, eller hvor det kræves af almene Hensyn.

Endret ved lover 8 jan 1960 nr. 1 § 13, 5 nov 1964, 18 juni 1965 nr. 5, 13 juni 1969 nr. 25, 9 mars 1973 nr. 13.”

§ 144: “Clergymen of the Church of Norway, priests or pastors in registered religious communities, lawyers, defence counsel in criminal cases, conciliators in matrimonial cases, medical practitioners, psychologists, chemists, midwives and nurses, as well as their subordinates or assistants, who unlawfully reveal secrets confided to them or their superiors in the course of duty, shall be liable to fines or imprisonment for a term not exceeding six months.

A public prosecution will only be instituted when requested by the aggrieved person or required in the public interest.”

§ 29: “When it is so required in the public interest, any person who is found guilty of a criminal act may be sentenced to:

1. Loss of any public office that the offender has by the criminal act shown himself to be unfit for or unworthy of.
2. Loss for a specific period not exceeding five years or forever of the right to hold office or to carry out any activity or occupation that the offender has by the criminal act shown himself to be unfit for or might conceivably misuse, or for which a high degree of public confidence is required. Any person thus deprived of the right to carry on any activity may not conduct such activity on behalf of another person either.

He may be ordered to surrender any document or other object that has served as evidence of the said right.”

Section 119 of the Criminal Proceedings Act:

§ 119. “Uten samtykke av den som har krav på hemmelighold, må retten ikke ta imot forklaring av prester i statskirken, prester eller forstandere i registrerte trossamfunn, advokater, forsvarere i straffesaker, meklingsmenn i ekteskapsaker, leger, psykologer, apotekere, jordmødre eller sykepleiere om noe som er betrodd dem i deres stilling.

Det samme gjelder underordnede og medhjelpere som i stillings medfør er kommet til kunnskap om det som er betrodd de nevnte personer.

Forbudet faller bort når forklaringen trengs for å forebygge at noen uskyldig blir straffet.

Dersom ikke den som har krav på hemmelighold samtykker i at avhøringen foregår offentlig, skal forklaringen bare meddeles retten og partene i møte for stengte dører og under pålegg om taushetsplikt.

Endret ved lov 14 juni 1985 nr. 71.”

Section 205 of the Civil Proceedings Act:

§ 205. “Uten samtykke av den som har krav på hemmelighold, må retten ikke ta imot forklaring av prester i statskirken, prester eller forstandere i registrerte trossamfunn, advokater, forsvarere i straffesaker, meklingsmenn i ekteskapsaker, leger, psykologer, apotekere, jordmødre eller sykepleiere om noe som er betrodd dem i deres stilling.

Det samme gjelder underordnede og medhjelpere som i stillings medfør er kommet til kunnskap om det som er betrodd de nevnte personer.

Dersom ikke den som har krav på hemmelighold samtykker i at avhøringen foregår offentlig, skal forklaringen bare meddeles retten og partene i møte for stengte dører og under pålegg om taushetsplikt.

Endret ved lover 8 jan 1960 nr. 1, 5 nov 1964, 4 des 1964 nr. 2, 18 juni 1965 nr. 5, 13 juni 1969 nr. 25, 14 juni 1985 nr. 71.”

19 Switzerland Article 321 Swiss Penal Code:

“Les ecclésiastiques, avocats, défenseurs en justice, notaires, contrôleurs astreints au secret professionnel en vertu du Code des obligations, médecins, dentistes, pharmaciens, sages-femmes, ainsi que leurs auxiliaires, qui auront révélé un secret à eux confié en vertu de leur profession ou dont ils avaient eu connaissance dans l'exercice de celle-ci, seront, sur plainte, punis de l'emprisonnement ou de l'amende.

- 1) Seront punis de la même peine les étudiants qui auront révélé un secret dont ils avaient eu connaissance à l'occasion de leurs études. La révélation demeure punissable alors même que le détenteur du secret n'exerce plus sa profession ou qu'il a achevé ses études.
- 2) La révélation ne sera pas punissable si elle a été faite avec le consentement de l'intéressé ou si, sur la proposition du détenteur du secret, l'autorité supérieure ou l'autorité de surveillance l'a autorisé par écrit.
- 3) Demeurent réservées les dispositions de la législation fédérale et cantonale statuant sur une obligation de renseigner une autorité ou de témoigner en justice.”

Article 13 Federal Law of 23 June 2000 relating to the free circulation of Avocat:

« L'avocat est soumis au secret professionnel pour toutes les affaires qui lui sont confiées par ses clients dans l'exercice de sa profession ; cette obligation n'est pas limitée dans le temps et est applicable à l'égard des tiers. Le fait d'être délié du secret professionnel n'oblige pas l'avocat à divulguer des faits qui lui ont été confiés.

Il veille à ce que ses auxiliaires respectent le secret professionnel. »

Article 15 of the guidelines of the FSA:

« L'avocat est lié au secret professionnel, à l'égard de quiconque et sans limite de temps, pour toutes les affaires qui lui sont confiées dans l'exercice de sa profession.

Même s'il en a été délié, il ne peut être obligé de révéler un secret, s'il l'estime nécessaire à la sauvegarde de l'intérêt du client.

Il impose le respect du secret professionnel à ses collaborateurs, employés et autres auxiliaires. »

Article 17 of the guidelines of the FSA:

« En cas de violation de la présente loi, l'autorité de surveillance peut prononcer les mesures disciplinaires suivantes :

- a. l'avertissement;
- b. le blâme;
- c. une amende de 20 000 francs au plus;
- d. l'interdiction temporaire de pratiquer pour une durée maximale de deux ans;
- e. l'interdiction définitive de pratiquer.

L'amende peut être cumulée avec une interdiction de pratiquer.

Si nécessaire, l'autorité de surveillance peut retirer provisoirement l'autorisation de pratiquer. »

20 Croatia

Article 13 Law on the legal profession. Protection of confidences and secrets.

“Odvjetnička tajna

Članak 13.

- (1) Odvjetnik je dužan, sukladno zakonu, čuvati kao odvjetničku tajnu sve što mu je stranka povjerila ili što je u zastupanju stranke na drugi način saznao.
- (2) Odvjetničku tajnu dužne su čuvati i druge osobe koje rade ili su radile u odvjetničkom uredu.”

Section II Lawyers' Code of Ethics. Section II: The lawyers' confidentiality (paragraphs 26 to 34):

“II. ODVJETNIČKA TAJNA

26. Odvjetnik je dužan čuvati kao tajnu sve ono što je prigodom pružanja pravne pomoći, osobito prigodom zastupanja ili obrane, saznao kao povjerljivo od svoje stranke ili na drugi način. Sam mora savjesno ocijeniti što stranka želi da bude sačuvano kao odvjetnička tajna.
27. Odvjetnik je dužan voditi računa o tome da odvjetničku tajnu čuvaju i druge osobe koje rade u njegovu uredu.
28. Odvjetnička su tajna svi spisi, tonski, računalni, slikovni i slični zapisi te depoziti stranaka koji se nalaze u odvjetničkom uredu.
29. Ono što je odvjetnik povjerljivo saznao u pružanju pravne pomoći pravnoj osobi ili kojem javnom tijelu, ne smije ni u kojem slučaju ili postupku uporabiti na njihovu štetu. Takvu spoznaju odvjetnik ne smije iskoristiti ni na štetu jednog ili više zainteresiranih članova te pravne osobe ili tijela, osim u pružanju pravne pomoći toj pravnoj osobi ili tijelu protiv tih

članova.

30. Odvjetničku tajnu odvjetnik je dužan čuvati pod prijetnjom disciplinske odgovornosti za vrijeme pružanja pravne pomoći, ali i nakon toga sve dok bi njezino otkrivanje moglo naškoditi stranci.
31. Radi čuvanja odvjetničke tajne odvjetnik ne smije davati nikakve obavijesti o predmetima koji su mu povjereni kao odvjetniku, pa i nakon prestanka zastupanja stranke.
32. Pravila o obvezi čuvanja odvjetničke tajne na odgovarajući se način primjenjuju i na druge odvjetnike te zaposlenike u odvjetničkom uredu.
33. Odvjetnik je dužan u ugovoru o radu (zaposlenju) sa svojim zaposlenicima povredu odvjetničke tajne izričito predvidjeti kao razlog prestanka radnog odnosa (teške povrede radne dužnosti).
34. Iznošenje odvjetničke tajne dopušteno je samo u slučaju ako to stranka odvjetniku na nedvojbenu način dopusti, ako je to nužno radi obrane odvjetnika ili ako je to potrebno zbog opravdanja njegove odluke o napuštanju obrane.”

Article 132 paragraph 1 Penal Law. Unauthorized Disclosure of Professional secret:

Neovlasšteno otkrivanje profesionalne tajne.

- (1) Odvjetnik, branitelj, javni bilježnik, doctor medicine, doctor stomatologije, primalja ili drugi zdravstveni djelatnik, psiholog, djetaltnik skrbništva, vjerski ispovjednik ili druga osoba koja neovlasšteno otkrije tajnu koju je saznala u obavljanju svoga znanja, kaznit će se novčanom kaznom do 150 dnevnih obroka (dnevnic) ili kaznom zatvora do šest mjeseci (...)
- (3) kazneni postupak za kazneno djelo iz stavka 1. ovog članka pokreće se povodom prijedloga.

Article 233 par. 2 and Article 234 par. 5 Penal Procedure Law.
Witness examination :

§ 233. 2. Ispitivanje svjedoka .

Ne može se ispitati kao svjedok:

- (2) branitelj okrivljenika o onome što mu je kao okrivljenik kao svom branitelju povjerio, osim ako to sam okrivljenik ne zahtijeva.

§ 234.5. Oslobodeni su obveze svjedočenja:

- (5) odvjetnici, javni bilježnici, porezni savjetnici, liječnici, zubari, ljekarnici, primalje i socijalni radnici o onome što su u obavljanju svoga zanimanja saznali od okrivljenika.

Article 237 par. 1 and 3 Civil Procedure Law:

Svjedok može uskratiti svjedočenje:

- (1) o onome što mu je stranka kao svom punomoćniku povjerila;
- (3) o činjenicama što ih je svjedok saznao kao odvjetnik, liječnik ili u obavljanju kakva drugog poziva ili kakve druge djelatnosti ako postoji obveza da se kao tajna čuva ono što se saznalo u obavljanju tog poziva ili djelatnosti.

21 Cyprus

13.

- (1) Το επαγγελματικό απόρρητο του δικηγόρου αναγνωρίζει ^{Επαγγελματικ} θεμελιώδες και πρωταρχικό δικαίωμα και υποχρέωση ^{ό απόρρητο} τ ^{Επαγγελματικ} πρέπει να τηρείται προστάσιας του Δικαστηρίου και οποιασδήποτε κρατικής ή δημόσιας αρχής.
- (2) Ο δικηγόρος είναι θεματοφύλακας των εμπιστευτικών πληροφοριών και στοιχείων που του εμπιστεύεται ο πελάτης του. Η διασφάλιση του απορρήτου αποτελεί απαραίτητη προϋπόθεση για τη δημιουργία Εμπιστοσύνης από τον ΠΕΛΑΤΗ στο δικηγόρο.
- (3) Ο δικηγόρος οφείλει να σέβεται, χωρίς χρονικό περιορισμό, το απόρρητο κάθε εμπιστευτικής πληροφορίας ή στοιχείου του οποίου έλαβε γνώση μέσα στο πλαίσιο της επαγγελματικής δραστηριότητας του.
- (4) Ο δικηγόρος φροντίζει για την τήρηση του επαγγελματικού απορρήτου από τα μέλη του προσωπικού του και από κάθε άτομο που συνεργάζεται μαζί του στα πλαίσια της επαγγελματικής δραστηριότητας ΤΟΥ. Νοείται ότι όταν οι δικηγόροι ασκούν δικηγορία υπό μορφή δικηγορικού οίκου (ομάδας / ένωσης / συνεταιρισμού) οι Κανονισμοί περί επαγγελματικού απορρήτου εφαρμόζονται στο σύνολο της ομάδας και σε όλα τα μέλη της.
- (5) Σε περίπτωση που δικηγόρος θα είναι μάρτυρας σε υπόθεση, οφείλει να μην εμφανιστεί πλέον και ως δικηγόρος, ως μάρτυρας δε οφείλει να εμφανιστεί στο Δικαστήριο με πλήρη

ανεξαρτησία γνώμης και δύναται να αρνηθεί να απαντήσει σε οποιαδήποτε ερώτηση η οποία δυνατόν να κατατείνει να τον οδηγήσει σε αποκάλυψη ή παραβίαση του επαγγελματικού απορρήτου.

- (6) Το καθήκον της τηρήσεως του επαγγελματικού απορρήτου περιλαμβάνει προστασίαν εμπιστευθέντων απορρήτων από τρίτα πρόσωπα λόγω του επαγγέλματος του, επίσης δε των εμπιστευθέντων απορρήτων συνεπεία συνομιλιών οι οποίες ήσαν αναγκαίες για να επιτευχθεί συμφωνία η οποία κατόπιν δεν επραγματοποιήθει. Το απόρρητον περιλαμβάνει επίσης τα εμπιστευθέντα από άλλον συνάδελφον του. Ο δικηγόρος δεν δύναται να αποδεχθεί άλλην υπόθεση χωρίς τη συγκατάθεση του πελάτη του όταν η υπόθεση αυτή θίγει ζήτημα αναφορικώς προς το οποίον ο πελάτης του προέβει σε αποκαλύψεις στο δικηγόρο κατά τη διάρκεια παροχής επαγγελματικών υπηρεσιών από τον ίδιο. Νοείται ότι ο δικηγόρος δεν αποκλείεται από του να αποδεχθεί υπόθεση, εκτός εάν εντίμως και ευλόγως πιστεύει ότι θα ευρίσκετο σε αμηχανίαν κατά την εκτέλεση των καθηκόντων του λόγω της επιδειχθείσης εμπιστοσύνης από άλλον πελάτη προς τον οποίον είχε προηγουμένως παράσχει συμβουλή σε σχέση προς το αυτό ζήτημα.
- (7) Εάν ο πελάτης ήθελε διατυπώσει κατηγορίαν κατά του δικηγόρου του, ή ο δικηγόρος αντιμετωπίζει ποινική ή πειθαρχική υπόθεση, τότε αυτός δικαιούται όπως αποκαλύψει οποιεσδήποτε εμπιστευθείσες πληροφορίες αναφορικά με την κατηγορία ή την υπόθεση, έστω και εάν αποκαλύπτονται με αυτόν τον τρόπο εμπιστευθέντα σε αυτόν από τον πελάτη του.

22 Czech Republic

Act No. 85/1996 Coll., on Advocacy as amended by Act No. 210/1999 Coll., 120/2001 Coll., 6/2002 Coll. and 228/2002 Coll. (the amendments introduced by the Act No 228/2002 Coll. for transposition of the directives 77/249/EEC, 89/48/EEC and 98/5/EC entered into force upon accession of the Czech Republic to the EU) provides in the head three Rights and Obligations of Advocates, in Articles 16 and 17 all lawyers professional privileges in relation to clients.

HLAVA TŘETÍ

Práva a povinnosti advokátů

§ 16

- “(1) Advokát je povinen chránit a prosazovat práva a oprávněné zájmy klienta a řídit se jeho pokyny. Pokyny klienta však není vázán, jsou-li v rozporu se zákonem nebo stanovským předpisem; o tom je advokát povinen klienta přiměřeně poučit.

- (2) Při výkonu advokacie je advokát povinen jednat čestně a svědomitě; je povinen využívat důsledně všechny zákonné prostředky a v jejich rámci uplatnit v zájmu klienta vše, co podle svého přesvědčení pokládá za prospěšné.”

§ 17

“Advokát postupuje při výkonu advokacie tak, aby nesnižoval důstojnost advokátního stavu; za tím účelem je zejména povinen dodržovat pravidla profesionální etiky a pravidla soutěže. Pravidla profesionální etiky a pravidla soutěže stanoví stavovský předpis.”

§ 21

- (1) Advokát je povinen zachovávat mlčenlivost o všech skutečnostech, o nichž se dozvěděl v souvislosti s poskytováním právních služeb.
- (2) Povinnosti mlčenlivosti může advokáta zprostit pouze klient a po jeho smrti či zániku právní nástupce; i poté je však advokát povinen zachovávat mlčenlivost, je-li z okolností případu zřejmé, že jej klient nebo jeho právní nástupce této povinnosti zprostil pod nátlakem nebo v tísní.
- (3) Advokát nemá povinnost mlčenlivosti ve vztahu k osobě, kterou pověřuje provedením jednotlivých úkonů právních služeb, pokud je tato osoba povinna sama tuto povinnost zachovávat.
- (4) Povinností mlčenlivosti není advokát vázán v rozsahu nezbytném pro řízení před soudem nebo jiným orgánem, je-li předmětem řízení spor mezi ním a klientem nebo jeho právním nástupcem; povinností mlčenlivosti není advokát vázán též v řízení podle § 55, v řízení o žalobě nebo o opravném prostředku proti rozhodnutí Komory (§ 55a), jakož i v řízení ve věcech uvedených v § 55b, a to v rozsahu nezbytném pro ochranu jeho práv nebo právem chráněných zájmů jako advokáta.
- (5) Povinností mlčenlivosti advokáta nejsou dotčeny povinnosti stanovené zvláštními předpisy o správě daní a poplatků;⁹⁾ i v tomto případě je však advokát povinen zachovávat mlčenlivost o povaze věci, ve které právní služby poskytl nebo poskytuje.
- (6) Povinností mlčenlivosti se advokát nemůže dovolávat v kárném řízení, jakož i vůči advokátovi, který byl pověřen předsedou kontrolní rady provedením přípravných úkonů k prověření, zda došlo ke kárnému provinění (§ 33 odst. 3).
- (7) Povinností mlčenlivosti není dotčena zákonem uložená povinnost překazít spáchání trestného činu.¹⁰⁾
- (8) Povinnost mlčenlivosti trvá i po vyškrtnutí ze seznamu

⁹⁾ Zákon ČNR č. 337/1992 Sb., o správě daní a poplatků, ve znění pozdějších předpisů.

¹⁰⁾ § 167 zákona č. 140/1961 Sb., trestní zákon, ve znění pozdějších předpisů.

advokátů.

- (9) Povinnost mlčenlivosti v rozsahu stanoveném v odstavcích 1 až 8 se vztahuje obdobně i na
 - a) zaměstnance advokáta nebo společnosti, jakož i na jiné osoby, které se s advokátem nebo ve společnosti podílejí na poskytování právních služeb,
 - b) členy orgánů Komory a její zaměstnance, jakož i na všechny osoby, které se účastní kárného řízení, včetně advokátů pověřených předsedou kontrolní rady provedením přípravných úkonů k prověření, zda došlo ke kárnému provinění (§ 33 odst. 3).
- (10) Členové orgánů Komory, její zaměstnanci a advokáti pověřeni předsedou kontrolní rady provedením přípravných úkonů k prověření, zda došlo ke kárnému provinění, nejsou vázáni povinností mlčenlivosti podle odstavce 9 v rozsahu nezbytném pro řízení před soudem ve věcech uvedených v odstavci 4 části věty za středníkem. Členové orgánů Komory a její zaměstnanci nejsou dále vázáni povinností mlčenlivosti v rozsahu nezbytném ke splnění informační povinnosti podle § 10 odst. 2 až 4, § 35d a § 35r odst. 1, 2 a 4.

Code of Ethics Article 6/4 provides details to those basic principles.

ETICKÁ PRAVIDLA

Povinnosti advokáta ke klientovi

Čl. 6

Základní pravidla

“(4) Advokát nesmí použít na újmu klienta ani ve svůj vlastní prospěch nebo ve prospěch třetích osob informací, které od klienta nebo o klientovi získal v souvislosti s poskytováním právní služby.”

23 Hungary

Act XI of 1998 Section 8 on Attorneys at Law:

«1998. évi XI. törvény az ügyvédekről

8. § (1) Az ügyvédet titoktartási kötelezettség terheli minden olyan tényt és adatot illetően, amelyről a hivatásának ellátása során szerzett tudomást. E kötelezettség független az ügyvédi megbízási jogviszony fennállásától, és az ügyvédi működés megszűnése után is fennmarad.
- (2) A titoktartási kötelezettség kiterjed az ügyvéd által készített és a birtokában levő egyéb iratra is, ha ez a titoktartás körébe tartozó tényt, adatot tartalmaz. Az ügyvédnél folytatott hatósági vizsgálat során az ügyvéd nem tárhatja fel a megbízójára vonatkozó iratokat és adatokat, de a hatóság eljárását nem akadályozhatja.

- (3) A megbízó, a jogutódja és a törvényes képviselője a titoktartási kötelezettség alól felmentést adhat. Az olyan tényről és adatról, amelyről mint védő szerzett tudomást, az ügyvéd és az alkalmazott ügyvéd felmentés esetén sem hallgatható ki tanúként.
- (4) A titoktartási kötelezettség az ügyvédi irodákra és alkalmazottaikra, az ügyvédi szervekre, ezek tisztségviselőire és alkalmazottaira megfelelően irányadó.»

Section 8.

- (1) An attorney is bound by confidentiality with regard to every fact and datum about which he gains knowledge in the course of carrying out his professional duties. This obligation is independent of the existence of the agency relation and continues to obtain after he has ceased to function as an attorney in the given matter.
- (2) Confidentiality pertains to all of the documents prepared by an attorney and all other documents in his possession that contain any fact or datum subject to confidentiality. An attorney may not disclose any document or fact pertaining to his client in the course of an official inquiry conducted at the attorney's office, but he may not obstruct the proceeding of the authority.
- (3) A client, its legal successor or its legal representative may release an attorney from the obligation to maintain confidentiality. Neither an attorney nor an assistant attorney may, if so released, be questioned as a witness about any fact or datum about which he gained knowledge as a defense counsel.
- (4) Confidentiality shall apply mutatis mutandis to law firms and their employees as well as legal bodies and their officers and employees.

Act III of 1952 on the Civil Procedure Code Section 170 paragraph (1).c):

“1952. évi III. törvény a polgári perrendtartásról

170. § (1) A tanúvallomást megtagadhatja:

- c) az ügyvéd, az orvos és más olyan személy, aki hivatásánál fogva titoktartásra köteles, ha a tanúvallomással titoktartási köteleességét sértené meg, kivéve ha az érdekelt e köteleesség alól felmentette;»

Section 170 (1) c):

“The evidence can be denied by
an attorney, a doctor or any other person, who is obliged to keep

secret, if he/she would break his/her obligation keeping secret by giving evidence, unless the concerned person have exempted him/her from keeping his/her secret

Act XIX of 1998 Section 66 paragraph (2) c) of the Criminal Procedure Code:

«1998. évi XIX. törvény a büntetőeljárásról

66. § (2) Az igazolási kérelmet érdemi vizsgálat nélkül el kell utasítani, ha

c) határidő elmulasztása esetén az igazolást kérő az elmulasztott cselekményt - a kérelem előterjesztésével együtt - nem pótolta, holott az lehetséges volt.»

Section 66 (2) c)

The certification request should be rejected if in case of default of deadline, the one who is asking for certification has not made up for the actions what he/she had missed although it had been possible.

Act IV of 1957 Section 29 paragraph (3).b) General Rules of Administrative Procedures:

«1957. évi IV. törvény az államigazgatási eljárás általános szabályairól

29. § (3) Tanúként nem hallgatható meg

b) államtitoknak, szolgálati titoknak vagy hivatásbeli titoknak minősülő tényről az, aki a titoktartás alól - az arra jogosított szervtől vagy személytől - nem kapott felmentést.»

Section 29 (3) b)

The one cannot be heard as a witness who is in possession of state secret, official secret or professional secret and have not been exempted by the authorised person or institution.

24 Lithuania

Article 1.116 of the Civil Code:

“Information is regarded as professional secret if persons of certain professions are obliged by law or a contract to protect it (e.g. advocates, doctors, auditors, etc.). The information is received by virtue of exercising their duty charged with by laws or contracts.”

Articles 34 and 40 of the Law of the Republic of Lithuania on the Bar:

Article 34: “The advocate shall [...] secure confidentiality of information trusted to him/her during his/her practice”.

Article 40: “The advocate may not be a witness or provides explanations regarding circumstances which he/she has acquired when carrying out his/her duties. During the performance of his/her professional duties it shall not be allowed to detain the advocate to carry out his personal inspection or personal search, except for the cases the advocate commits a crime or a criminal case has been brought against him/her. Nobody may arrest, confiscate or inspect documents, correspondence or other data storage media which the advocate has acquired when carrying out his professional duties or wherein other practice data are present, except for the cases when criminal proceedings have been initiated against the advocate. Search, seizure of documents, correspondence or other data storage media as prescribed in part 3 of this Article in the advocate’s office according to part 2 of this Article, confiscation or inspection may be carried out if the criminal proceedings have been instituted against the advocate”.

Article 80 of the Criminal Procedure Code and Article 189 of the Civil Procedure Code stipulate that an advocate **may not be a witness** or provides explanations regarding circumstances which he/she has acquired when carrying out his/her duties.

25 Poland

Legal Advisers

- a) Article 3 (paragraphs 2 – 5), Articles 23 and 27 of the Legal Adviser’s Act

“ USTAWA Z DNIA 6 LIPCA 1982 r. O RADCACH PRAWNYCH (Dz.U. z 2002 r., Nr 123 poz. 1059 z późn. zm.)

Art. 3. 2. Radca prawny wykonuje zawód ze starannością wynikającą z wiedzy prawniczej oraz zasad etyki radcy prawnego.

3.3. Radca prawny jest obowiązany zachować w tajemnicy wszystko, o czym dowiedział się w związku z udzieleniem pomocy prawnej.

3.4. Obowiązek zachowania tajemnicy zawodowej nie może być ograniczony w czasie.

3.5. Radca prawny nie może być zwolniony z obowiązku zachowania tajemnicy zawodowej co do faktów, o których dowiedział się udzielając pomocy prawnej lub prowadząc sprawę.

Art. 23. Prawo wykonywania zawodu radcy prawnego powstaje z chwilą dokonania wpisu na listę radców prawnych i złożenia ślubowania

Art. 27. 1. Rota ślubowania składanego przez radcę prawnego ma następujące brzmienie: "Ślubuję uroczyście w wykonywaniu zawodu radcy prawnego przyczyniać się do ochrony i umacniania porządku prawnego Rzeczypospolitej Polskiej, obowiązki zawodowe wypełniać sumiennie i zgodnie z przepisami prawa, zachować tajemnicę zawodową, postępować godnie i uczciwie, kierując się zasadami etyki radcy prawnego i sprawiedliwości."

Art. 3. Para. 2. A legal adviser engages in the profession with diligence stemming from legal knowledge and the rules of the ethics of legal advisers.

Para. 3. A legal adviser is obliged not to reveal any information which he/she acquired in the process of providing legal service.

Para. 4. Confidentiality of information cannot be restricted to any period of time.

Para. 5. A legal adviser cannot be freed from keeping confidential the information he/she acquired in the process of providing legal service or representing the client's case.

Art.23. A legal adviser acquires the right to engage in the profession upon entry in the roll of legal advisers and making the pledge.

Art. 27. 1. The form of the pledge made by a legal adviser reads as follows: „I solemnly pledge that in engaging in the profession of a legal adviser I shall be contributing to the protection and strengthening of legal order of the Republic of Poland, I shall be discharging my professional obligations conscientiously and in accordance with the provisions of law, I pledge to preserve professional confidentiality, to proceed with peace and integrity, being guided by the rules of professional ethics of a legal adviser and social justice."

b) LINE of ETHICS (Code of Ethics) of NOVEMBER 6th 1999

ZASADY ETYKI RADCY PRAWNEGO uchwalone przez VI Krajowy Zjazd Radców Prawnychw dniu 6 listopada 1999 r.

Tytuł 5 - Tajemnica zawodowa

Art. 17

1. Radca prawny zobowiązany jest do zachowania w tajemnicy wszystkiego, o czym dowiedział się przy okazji, albo w związku z wykonywaniem zawodu.
2. Obowiązek zachowania tajemnicy, o której mowa w ust. 1, obejmuje wszystkie uzyskane przez radcę prawnego informacje, w szczególności dokumenty, notatki, akta, materiały utrwalone metodą elektroniczną, albo innymi środkami technicznymi.
3. Obowiązek zachowania tajemnicy zawodowej obejmuje nie tylko zakaz ujawniania informacji uzyskanych przy okazji, albo w związku z wykonywaniem zawodu, lecz także skorzystania z nich w interesie własnym bądź osoby trzeciej.

Art. 18

1. Radca prawny współpracujący przy wykonywaniu zawodu z innymi osobami obowiązany jest wymagać od tych osób zachowania tajemnicy na zasadach obowiązujących jego samego i wyraźnie je do tego zobowiązać.
2. Radca prawny obowiązany jest zabezpieczyć przed niepowołanym ujawnieniem, najlepiej jak to możliwe, materiały, o których mowa w art. 17 ust. 2; wykorzystanie środków przekazu nie gwarantujących zachowania poufności w przekazaniu informacji objętych tajemnicą zawodową wymaga uprzedniego powiadomienia o tym klienta.
3. Radca prawny nie może zgłaszać dowodu z przesłuchania innego radcy prawnego albo adwokata w charakterze świadka na okoliczności znane mu w związku z wykonywaniem przez niego zawodu - radcy prawnego albo adwokata.

Art. 19

Obowiązek zachowania tajemnicy zawodowej jest nieograniczony w czasie i trwa także po ustaniu stosunku prawnego, na podstawie którego radca prawny wykonywał czynności zawodowe.

Art. 20

Radca prawny nie może wykonywać czynności zawodowych na rzecz jakiegokolwiek podmiotu, o ile groziłoby to naruszeniem obowiązku zachowania tajemnicy zawodowej.

Art. 21

Radca prawny obowiązany jest żądać asysty przedstawiciela samorządu radcowskiego w przypadku, gdyby w lokalu, w którym wykonuje zawód albo w jego mieszkaniu prywatnym, miało być

prowadzone lub byłoby prowadzone przeszukanie.

Art. 22

Radca prawny obowiązany jest zachować w tajemnicy, także wobec sądu i innych organów orzekających w sprawie, przebieg i treść pertraktacji ugodowych, chyba że strony, których pertraktacje dotyczyły, wyrażą zgodę na ich ujawnienie.

Title 5- Professional secret

Article 17.

1. A legal adviser is obliged to keep everything he has learnt in relation to or while executing the profession in secret.
2. A duty to keep secret as it is set forth in the point 1 hereabove applies to all information a legal adviser has acquired, in particular documents, notes, files, materials recorded electronically or through employment of other technical means.
3. A duty to keep professional secret does not consists only in an interdiction of disclosing information gained on the occasion of profession exercise or in relation to it but also in using such information in the interest of a legal adviser himself or a third party.

Article 18.

1. A legal adviser, who co-operates with other persons while executing the profession, is obliged to require these persons to keep secret upon the same rules as are enforced on him, and definitely cause them to make such a commitment.
2. A legal adviser is obliged to protect the materials set forth in the art. 17, point 2 against unauthorized disclosure in the possibly best way; employment of media for transmission that don't guarantee preservation of secret in regard to a provision of information covered by professional secret clause requires prior notifying a client about it.
3. A legal adviser may not present the evidence from a hearing of another legal adviser or an advocate as a witness for circumstances known to him in relation to exercise of the profession by him- as a legal adviser or an advocate.

Article 19. A duty to keep professional secret continues for an indefinite period of time, and it does not last even after legal relationship, on the grounds of which a legal adviser used to perform professional activities, expires.

Article 20. A legal adviser may not perform professional activities in favor of any entity if a duty to keep professional secret would be endangered.

Article 21. A legal adviser is obliged to require assistance of a representative of legal advisers' self-government if a search was to be done in the premises where he exercises his profession or in his private home.

Article 22. A legal adviser is obliged to keep the course of a case and the content of reconciliation negotiations in secret even towards a court or other bodies adjudicating on a case, unless parties concerned by such negotiations agree to disclose such information.

- c) Article 261 (paragraph 2) Code of Civil Proceedings allows a witness to refuse testifying (making statements) when the court requests if it would be in a breach with a professional secrecy.
- d) Article 41 (paragraph 4) Code of Proceedings for Offences states that the court is not permitted to relieve **a legal adviser and an advocate** from the duty to keep professional secrecy.
- e) Article 180 (paragraph 2) Code of Criminal Procedure in force since 1st September 1998, provides that persons obliged to preserve secrets such as **legal advisors, advocates**, notary public, journalists may be examined as to the facts covered by these secrets, only when it is necessary for the benefit of the administration of justice, and the facts cannot be established on the basis of other evidence. The court shall decide on examination or permission for examination. This order shall be subject to interlocutory appeal.

Advocates

- a) THE LAW ON THE ADVOCATES' PROFESSION of MAY 26th 1982

(Journal of Acts, 2002.No 123 item 1058 as amended)

USTAWA Z DNIA 26 MAJA 1982 R. PRAWO O ADWOKATURZE. (DZ.U. z 2002.Nr 123.poz. 1058 z późn. zm.):
Art. 6. 1. Adwokat obowiązany jest zachować w tajemnicy wszystko, o czym dowiedział się w związku z udzielaniem pomocy prawnej.

- 2. Obowiązek zachowania tajemnicy zawodowej nie może być

ograniczony w czasie.

3. Adwokata nie można zwolnić od obowiązku zachowania tajemnicy zawodowej co do faktów, o których dowiedział się udzielając pomocy prawnej lub prowadząc sprawę.

Art. 6.

1. An advocate is obliged to maintain the confidentiality of everything he learnt in the course of providing legal assistance.
 2. The duty to keep professional secrets cannot be limited in time.
 3. An advocate may not be relieved from the duty to keep professional secrets with regard to facts which came to his/her knowledge whilst providing legal assistance or whilst conducting a case.
- b) RESOLUTION NO. 2/XVIII/98 OF THE POLISH BAR ASSOCIATION DATED THE 10 OCTOBER, 1998

ZBIÓR ZASAD ETYKI ADWOKACKIEJ I GODNOŚCI ZAWODU UCHWALONY PRZEZ NACZELNĄ RADĘ ADWOKACKĄ W DNIU 10 PAŹDZIERNIKA

1998 R. (UCHWAŁA NR 2/XVIII/98):

§ 19

1. Adwokat zobowiązany jest zachować w tajemnicy oraz zabezpieczyć przed ujawnieniem lub niepożądanym wykorzystaniem wszystko, o czym dowiedział się w związku z wykonywaniem obowiązków zawodowych.
2. Znajdujące się w aktach adwokackich materiały objęte są tajemnicą adwokacką.
3. Tajemnicą objęte są wszystkie wiadomości, notatki i dokumenty dotyczące sprawy uzyskane od klienta oraz innych osób, niezależnie od miejsca, w którym się znajdują.
4. Adwokat zobowiąże swoich współpracowników i personel oraz wszelkie osoby zatrudnione przez niego podczas wykonywania działalności zawodowej do przestrzegania obowiązku zachowania tajemnicy zawodowej.
5. Adwokat posługujący się w pracy zawodowej komputerem lub innymi środkami elektronicznego utrwalania danych obowiązany jest stosować oprogramowanie zabezpieczające dane przed ich niepowołanym ujawnieniem.
6. Przekazywanie informacji objętych tajemnicą zawodową za pomocą elektronicznych i podobnych środków przekazu, wymaga zachowania szczególnej ostrożności i uprzedzenia

klienta o ryzyku związanym z zachowaniem poufności przy wykorzystaniu tych środków.

7. Obowiązek zachowania tajemnicy zawodowej jest nie ograniczony w czasie.
8. Adwokatowi nie wolno zgłaszać dowodu z zeznań świadka będącego adwokatem lub radcą prawnym w celu ujawnienia przez niego wiadomości uzyskanych w związku z wykonywaniem zawodu.

§19

1. An advocate is obliged to keep all information secret which has been acquired whilst performing his professional duties and to secure such information against disclosure or illegal use.
 2. Materials and information which are in an advocate's files are confidential.
 3. All information, notes and documentation relating to the case, which were obtained from the client or other persons remain confidential no matter where they are kept.
 4. An advocate must ensure that his colleagues and other staff employed by him during the execution of his professional duties shall observe the confidentiality of his/her professional secrets.
 5. An advocate who uses a computer or other electronic equipment used for storing data shall use software and other measures to prevent the data from being disclosed.
 6. The transmission of confidential information by electronic means requires particular care and also requires that the client is informed of the risk of disclosure while using such means.
 7. The duty to maintain professional secrets is not limited in time.
 8. An advocate is not permitted to provide the court with evidence in the form of testimony of a witness who is either an advocate or legal adviser for the purpose of disclosing information obtained whilst executing his/her professional duties.
- c) Article 266 (paragraph 1) Penal Code: “A person, who contrary to the law or his/her duty, discloses or takes a profit from the information which he/she received during performing his professional activity, may be punished for a fine or up to two years of imprisonment.”

- (1) The advocate shall not reveal any information relating to the client's representation and shall treat such information as strictly confidential.
- (2) An advocate can be released from the obligation of confidentiality by his/her client or after death of his/her client (being an individual) or dissolution of his/her client (being a legal entity) by his/her successor.
- (3) An advocate has to keep confidentiality also even in the case he/she has been released from this obligation by the client or the successor, if he/she considers that such release from this obligation would be detrimental to the client.
- (4) An advocate is not under any obligation of confidentiality in relation to a person authorised by an advocate to carry out particular acts of legal services, if this person is obliged to keep confidentiality according to separate laws or legal regulations.
- (5) An advocate is not obliged to keep confidentiality in proceedings before courts of law or before any other authority, if the matter of controversy involves the dispute between the advocate and his/her client or the client's successor.
- (6) An advocate cannot claim obligation of confidentiality in disciplinary proceedings pursuant to this Act. Details will be specified in Disciplinary Rules of the Slovak Bar Association.
- (7) The obligation of confidentiality shall survive the cease of practice of advocacy and disbarment.
- (8) The obligation of confidentiality accordingly also applies to:
employees of an advocate, of a public limited company, a limited partnership or a private company with limited liability,
other persons who assist in providing legal services,
Bar Association's bodies and its employees.
- (9) The obligation of confidentiality shall not apply to any cases of lawful disclosure that would prevent a crime.
- (10) The obligation to keep confidentiality as governed and regulated in accordance with Act 241/2001 Coll. on Protection of Classified Information as amended shall not be prejudiced or affected hereby.

Rules of Professional Conduct of Advocates (2002), Section 11 (3):

The advocate in whose flat or law firm a search is conducted, is obliged to notify the authority which conducts the search of the advocate's statutory obligation of confidentiality, therefore of his limited obligation to provide any information, and request that a representative of the Slovak Bar Association or any other fellow advocate be present thereat as an impartial person.

27 Slovenia

Article 6 Law on the Legal Profession (JO No. 18/93, 24/96): “The advocate must protect like a secret all he learns from the client. This obligation also applies to the people working in his office.”

Article 77b Statute of the Slovenian Bar (JO 15/94, 10/95, 55/96, 4/00):

“An advocate who infringes his professional secrecy commits a great violation of professional duty. A sanction which could be applied: penalty, last reminder before exclusion, loss of licence.”

The Article 236 Code of criminal procedure allows a witness to refuse testifying when the court requests it if it would be in a breach with the professional secrecy.

Article 231 Code of civil procedure:

An advocate is obliged to treat any information and facts which he learnt in the course of any part of the criminal procedure as strictly confidential. He cannot be called in evidence.