



## **France's New In-house Counsel Privilege: What Outside Lawyers Are Saying**

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Now that the Constitutional Council of France has upheld groundbreaking legislation enacted in January, legal professional privilege (LPP) is officially coming to in-house counsel in France. This marks a significant cultural shift in the French legal landscape.

Although some opposition and uncertainty remain, two Paris-based lawyers in private practice recently shared their perspectives on what this change means in practice.

Jean-Marc Albiol, founding partner of Ogletree Deakins's Paris office, describes the legislation as creating "highly regulated confidentiality for legal advice drafted by French in-house lawyers, without going as far as an equivalent of legal privilege as it is known in common law jurisdictions" such as the United Kingdom, Ireland, the United States, Australia, and Canada. In other words, while the reform represents meaningful progress, it stops short of adopting the broader common law model of privilege.

Importantly, the new protection is limited in scope. It applies only to civil, administrative, and commercial matters and does not extend to criminal or tax proceedings. Nor does it apply in investigations conducted by EU institutions. As a result, the privilege remains carefully circumscribed and subject to significant exceptions.

The legislation also imposes qualification requirements. In-house counsel must meet specific

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education and experience criteria to benefit from the confidentiality regime. In-house legal counsel who previously practiced in private firms will likely satisfy these standards, but others may need to review whether they meet the requisite degree requirements or the alternative years-of-service threshold. In addition, all in-house counsel covered by the regime will be subject to continuing legal education obligations.

“This is a significant step forward in securing internal exchanges in France — between legal departments and senior management, and undoubtedly between French external lawyers and corporate in-house counsel,” Jean-Marc explains. “But protection remains limited by its scope, its exceptions, and its essentially Franco-French reach.”

That territorial limitation raises practical concerns in cross-border matters. Lawyers must remain attentive to privilege rules not only in France but also in any jurisdiction where a dispute or investigation may arise. “The confidentiality attached to the opinions of in-house counsel in France does not necessarily apply abroad,” Jean-Marc notes.

In multi-jurisdictional litigation, the law of the forum — or the applicable rules governing evidence — may result in a lack of protection and create the risk of selective disclosure. Certain investigations by the European Commission and some competition authorities continue not to recognize corporate counsel privilege. Documents protected in France could therefore be seized and used at the European level.

To mitigate these risks, Jean-Marc recommends that litigation teams — particularly in international disputes — develop a clear “map” or log of the confidentiality status of key documents. At the outset, he shares, companies may wish to identify internal legal consultations with standardized headers, specify recipients and legal purpose, include appropriate confidentiality reservations, and ensure discussion threads distinguish (to the extent possible) legal advice from business guidance. Careful documentation and labeling can help preserve claims of privilege and reduce disputes later.

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Aude Dupuis, a senior attorney at Cleary Gottlieb in Paris, emphasizes the supportive role that outside counsel can play as companies implement the new regime. “Outside counsel will be able to help in-house counsel navigate the new rules, advise on implementation, and ensure that their consultations fully benefit from the legal privilege,” she explains.

External lawyers may also assist during search-and-seizure actions in administrative proceedings and in discovery processes in civil or commercial disputes. In such cases, outside counsel can help identify in-house legal consultations, request that they be placed under seal, and defend privilege claims if challenged by an administrative authority or opposing party.

Although some members of the French (outside counsel) bars have expressed reservations about extending privilege to in-house counsel, Aude believes the reform should strengthen collaboration rather than competition. “In-house and outside counsel should be seen as partners,” she says.

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Indeed, she anticipates that privilege protections may encourage deeper internal legal analysis, enabling in-house counsel to identify additional areas where external advice is needed.

With enhanced protection, in-house counsel may also be better positioned to bring their detailed knowledge of the company's operations and risk profile to discussions with outside lawyers. That combination — internal insight and external perspective — can improve the quality of legal advice and better serve the organization as a whole.

As Aude notes, it “is essential that those consultations be protected by legal privilege just as the consultations of outside counsel are, because they serve the same purpose: allowing businesses to identify their legal vulnerabilities. This protection is an essential condition for the implementation of an effective compliance policy.”

Further implementation steps remain. In the coming months, two joint orders from the Minister of Justice and the Minister of Economy are expected to clarify (i) the technical and ethical training requirements applicable to in-house lawyers and (ii) the degrees or qualifications required to qualify for the confidentiality regime. As these details are finalized, companies and counsel alike will need to adapt their practices to ensure a smooth transition into this new phase of the French legal landscape.

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[Amy Chai](#)



Associate General Counsel and Director, Advocacy Initiatives

Association of Corporate Counsel

Amy Chai serves as associate general counsel and director of advocacy initiatives at ACC. In this role, she

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oversees ACC's global advocacy efforts on issues of concern to the in-house legal profession, such as legal professional privilege and multi-jurisdictional practice. Prior to ACC, Chai held advocacy roles at the National Association of Home Builders and the US Chamber of Commerce.