

LUXEMBOURG

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1. DEFINITION – PRESENTATION

What attorney-client privilege is and what it is not.

All communications between attorneys and their clients are privileged and protected as such, by law as well as by professional rules. The protection extends to every type of communication between the attorney and the client (letters, email, telephone conversations etc.)

2. SOURCES

From which sources is the legal privilege derived?

Relevant statutes

Art. 458 of the Criminal Code

Art. 35 of the law of 10 August 1991 on the legal profession, as amended.

Relevant Case Law

n.a.

3. SCOPE/LIMITS

3.1. General observations

Can the attorney-client privilege be waived? If Yes, how?

Is the privilege limited? Which documents/information are involved?

3.2. Between lawyers

Is the correspondence between lawyers protected?

As a matter of principle, every communication between Luxembourg lawyers is privileged, and its contents may not be divulged to the Courts, unless the correspondence is specifically marked to be official. Communications between Luxembourg lawyers and foreign lawyers are only privileged if specially marked as such.

There is no difference between civil and criminal matters, save that a lawyer may communicate freely with his client if the latter is in jail, without any possibility for the judicial authorities to listen in or to open the correspondence between the lawyer and his client.

In criminal cases, the juge d'instruction may, in exceptional circumstances, forbid a detainee to communicate with his attorney.

3.3. Third parties

The protection is designed such as to protect the client. The question whether the client may waive his right to protection, is subject to discussion. Most authors believe that the privilege cannot be legally waived.

In case a lawyer is requested to testify in court about privileged matters, he has the discretionary right to remain silent.

4. IN-HOUSE LAWYERS

Which regulations regarding legal privilege apply to in-house lawyers?

This protection does not extend to in-house counsel, since in Luxembourg, a lawyer registered with the Bar must work independently and is not allowed to work as an employee for a company.

Further, there is no such specific duty of confidentiality for in-house counsels, employees, officers or directors of companies, save for the case where such a duty is provided for by contract and the very special case of credit institutions and professional institutions of the financial sector, for which the law provides a general duty of confidentiality, aiming at the protection of the clients.

5. PROSPECTIVE

Does professional secrecy tends to be more or less protected?

Professional secrecy is recognized to be of paramount importance for the protection of civil rights. The legal profession has been protected for over 200 years, what is not the case with other professionals who are sometimes assisting clients in legal matters.