Global Attorney-Client Privilege Guide - Italy

02 - Type of privilege

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# Does the jurisdiction recognize the concept of privilege or another form of protection from disclosure of legal communications and documents prepared by or for lawyers?

The concept of privilege in Italy may be assessed from two different perspectives:

Legal professional secrecy, which requires Italian lawyers to keep confidential all documents and information provided to them by clients, former clients and persons who have consulted lawyers without signing any engagement letters. Such legal professional secrecy also protects the confidentiality of documents and information exchanged between lawyers in the context of their professional activities.

Legal privilege under legislative decree 216/2017 which, under a reasonable interpretation of Italian law and court precedents, provides that communications between Italian lawyers and their clients are protected against inspections if (i) a valid power-of-attorney has been granted to the lawyers under article 391-nonies of the Italian Code of Criminal Procedure, to carry out the so-called defensive investigations, and (ii) such communications are marked as "correspondence for reason of justice" and indicate the client's and lawyer's full names, the lawyer's professional qualification, the signature of the sender, and the details of the proceedings/case number to which the communications refer.

With that in mind, it is worth noting that the Italian provisions on legal professional secrecy are contained in the Criminal Code, the Code of Criminal Procedure and the Professional Code of Conduct.

Under the Criminal Code, divulging a professional secret without justification or using it for the profit of oneself or a third party and thereby causing damage, is an offense that is punishable by up to one-year imprisonment or a fine of up to EUR 516. Under this provision, there is no criminal liability if the professional divulges the secret information for a "justified reason." This concept is quite wide and must be analyzed on a case by case basis, balancing the opposing interests of one party in not disclosing the secret information and of the other in obtaining the disclosure in order to achieve a result that would be impossible to reach by other means.

Similarly, the Italian Code of Criminal Procedure provides that Italian lawyers must keep confidential all documents and information provided to them in the context of their professional activities. In particular, documents exchanged between lawyers in the context of their professional activities are protected by professional secrecy ("**segreto professionale**").

In the course of investigations carried out by judicial or regulatory authorities in the lawyer's office, a lawyer can refuse to hand over documents or any other object in their office provided to them by a client on the basis of professional secrecy. In such cases, a judge has the authority to verify whether there are any grounds to oppose the professional secrecy claim. A judge should cautiously investigate the matter prior to authorizing the seizure of the alleged confidential documents. Such investigation should be aimed at assessing whether the requirements of segreto professionale exist, that is, whether the lawyer involved has obtained or drafted a certain document for the purpose of carrying out their professional responsibilities or for unrelated purposes. There would be no segreto professionale if the documents were obtained or drafted for unrelated purposes. Where professional secrecy does not apply, lawyers must hand over any documents received from or drafted for their client in their original form, if so required.

The disclosure of documents protected by segreto professionale amounts to a criminal offense by the lawyer, and damages may be sought against the lawyer, unless there was legitimate justification for the disclosure (e.g., in extreme cases such as the actual danger of physical harm to a third party).

The duty of segreto professionale is also codified in the Professional Code of Conduct, which requires lawyers to maintain absolute secrecy regarding their services and information provided by the client or which has become known to them in the course of providing legal assistance. This duty extends to former clients and to persons who have consulted the lawyer without formally retaining them.

The legal privilege ensures the confidentiality of information given to the attorney in the context of their judicial or extra-judicial activity, for the purpose of obtaining legal advice. Italian courts usually do not recognize privilege in communications containing business advice.

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