Global Privilege and Professional Secrecy Guide - Luxembourg

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# 01 - Discovery

## What disclosure/discovery is required in litigation?

As a general rule, Luxembourg has the concept of "contradictory" (principe du contradictoire) under which parties shall disclose to opposing parties the documents and evidence upon which they wish to base their claim/defense during the proceedings. Parties are also not obliged to produce all of the documents in their possession, but may select those that are useful for the resolution of the case.

There is generally no disclosure/discovery in Luxembourg. Parties must provide the court with all documents supporting their claims, and all documents referred to in their submissions should be provided to the opposing parties.

A party may, before initiating an action, ask in summary proceedings to be provided with documents in the possession of another party, provided that there is no other way to obtain the documents and that said party can evidence that the documents are required to file an action on the merits against the same defendant(s).

When an action has been initiated, parties may also, during said proceedings, request the court to order the production of documents in the possession of the opposing party or of a third party. The judge has a discretionary power to grant or deny the request. The request will be denied if the judge considers that the documents are not relevant to the case or that the request is overly broad. The request will also be denied if the party in possession of the document successfully claims that the document is privileged or, more generally, confidential. The scope for production of documents is thus relatively limited.

# 02 - Type of privilege

## 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?

In general, attorneys registered with the Luxembourg Bar (avocats liste II and liste IV and avocats à la Cour) ("**Luxembourg Attorneys**") are subject to an obligation of absolute professional secrecy under the Luxembourg Bar Regulation (Règlement Intérieur de l'Ordre des Avocats de Luxembourg (RIO)).

Luxembourg Attorneys cannot disclose confidential client information or legal opinions provided to clients. Although there is no formal definition of confidential client information, experience has shown that it includes any and all information provided by a client in any form, whether written (electronic and physical documents, exhibits, letters, emails, photographs, etc.) or oral (telephone conversations, tapes, etc.). The duty to maintain confidentiality extends to any information that the lawyer has obtained from the client or third party as a result of being instructed on a matter, whether or not the information concerns the client and/or a third party.

Communications between a Luxembourg Attorney and their client — whether to advise or to defend — are covered by legal privilege. A breach of duty by a Luxembourg Attorney constitutes professional misconduct and a criminal offense.1 A Luxembourg Attorney may only disclose confidential client information when defending themselves against a charge alleged by the client. A client may also disclose information with no limitation. The client is entitled to waive the confidentiality covering a document and decide whether to disclose it. Based on such waiver, a lawyer is then entitled to disclose the document with express consent from the client.

Communications between Luxembourg Attorneys are privileged, and their contents may not be divulged to the courts unless such communications have been labeled as "official" or are to be considered official by their nature.

Under Luxembourg ethical rules, in-house counsel are not subject to the obligation of professional secrecy. Thus, in-house counsel are also not subject to legal privilege.

Communications between Luxembourg Attorneys and foreign lawyers are only privileged if they are specially marked as such and comply with the rules applicable to each of the jurisdictions concerned (see the Code of Conduct for European Lawyers as an example — article 5).

[1] See Luxembourg Criminal Code (article 458).

# 03 - Scope of privilege

## Is attorney-client communication only privileged as long as it remains in the lawyer's possession, or is a copy held by the client also protected?

Attorney-client communications are also privileged when a copy is held by the client. However, the obligation to preserve the confidentiality of the communications is only imposed on the lawyer, who is subject to the duty of professional secrecy. Consequently, the confidentiality of the communications is not imposed on the client who can disclose said communications in a court action.

## Are in-house lawyers treated in the same way as external lawyers for determining privilege?

Under Luxembourg law, there is a strict difference between the status of in-house counsel and Luxembourg Attorneys. In-house counsel are not admitted to the bar and, therefore, are not bound by the specific professional and ethical rules applicable to Luxembourg Attorneys. Luxembourg Attorneys are bound to remain independent from their clients, while in-house counsel are only bound by professional secrecy and confidentiality in light of the information they have received as a consequence of their position within their employer.

As only Luxembourg Attorneys are subject to a strict code of professional conduct, legal privilege does not extend to communications between in-house counsel and employees, officers, or directors of the company where such communications were created for the purpose of obtaining legal opinions on matters relating to the company's activities.

## Does privilege extend to internal communications between in-house lawyers?

Legal privilege does not extend to communications issued by in-house lawyers, who are not subject to the ethical rules applicable to Luxembourg Attorneys. As such, in-house lawyers do not benefit from any legal privilege concerning their own internal communications, since they are not legally subject to strict professional secrecy.

## Are foreign lawyers recognized for the purposes of privilege?

The position of foreign lawyers with regard to privilege depends on whether the foreign lawyer is an EU lawyer and whether the issue of confidentiality arises with regard to acts performed in Luxembourg or abroad.

**EU lawyers**

If the lawyer is admitted to a bar association within the EU, their communications with clients are governed by the professional and ethical rules applicable to their bar.

In relation to documents exchanged between a Luxembourg Attorney and a lawyer from a different European bar association, the rule is that these shall be privileged if the Luxembourg Attorney has sought the foreign lawyer's prior consent to be bound by the professional secrecy arising from the Luxembourg ethical rules.

**Non-EU lawyer working in Luxembourg as in-house counsel**

Privilege does not extend to communications (written or oral) between a company and its in-house counsel working in Luxembourg, even where the in-house counsel is admitted to a foreign bar association in a jurisdiction where privilege is extended to in-house counsel.

**Non-EU lawyer working abroad**

Luxembourg ethical rules do not address the application of privilege to communications (written or oral) between a lawyer admitted to a bar association outside the EU and a client located in Luxembourg.

## Does privilege extend to nonlegal professionals who may from time to time advise on legal issues relating to their field, e.g., accountants or tax consultants advising on tax law?

**Legal privilege rules for non-attorney tax advisers**

Generally, tax advisers who are not simultaneously Luxembourg Attorneys cannot invoke legal privilege, as only attorneys are subject to a strict code of professional conduct. Nevertheless, the professional secrecy provisions of article 458 of the Luxembourg Criminal Code restrict non-attorney tax advisers from voluntarily disclosing facts learned in the course of their professional activity. Any breach of their professional secrecy may lead to criminal sanctions.

In limited circumstances, when non-attorney tax advisers perform their duties in law firms that are supervised by the Luxembourg Bar, their advice may be protected by legal privilege. If a non-attorney tax adviser issues an opinion to a Luxembourg law firm client while being affiliated with the firm, the content of said opinion may be deemed as having been issued by the law firm and, hence, be covered by legal privilege. Note, tax advisers in law firms may be required to cooperate with public authorities, as legal privilege is only applicable to tax advisers that are also attorneys.

**Confidentiality obligations for tax advisers**

Luxembourg tax advisers may perform their duties in other environments as well. Tax advisers working in accountancy firms, such as the Big Four,1 that are supervised by the Institut des Réviseurs d'Entreprises (IRE) and the Commission de Surveillance du Secteur Financier (CSSF) in Luxembourg are subject to professional secrecy by law.2 According to these provisions, statutory auditors, approved statutory auditors, audit firms, approved audit firms and the persons working for them must maintain confidential the information entrusted to them in the course of their professional activity. Any breach of professional secrecy will lead to fines and/or imprisonment. However, the professional secrecy obligations of auditors and employees of audit firms are not absolute, as they are obliged to cooperate as fully as possible with any legal request made to them by public authorities.

Tax advisers performing their duties as independent professionals or working for professional accountants supervised by the Ordre des Experts-Comptables (OEC) are subject to confidentiality obligations. These tax advisers are obligated to refrain from disclosing confidential information without proper and specific authority or unless there is a legal or professional right or duty to disclose. Tax advisers who are not also attorneys may disclose confidential information where it is permitted by law and is authorized by the client or where disclosure is required by law, including for the following purposes:

The production of documents or other provision of evidence in the course of legal proceedings

Disclosure to the appropriate public authorities of infringements of the law that come to light

Pursuant to a professional duty or right to disclose, when not prohibited by law, such as

To comply with the quality review of a member body or professional body

To respond to an inquiry or investigation by a member body or regulatory body

To protect the professional interests of a professional accountant in legal proceedings

To comply with technical standards and ethics requirements

[1] Deloitte, Ernst & Young, KPMG, and PricewaterhouseCoopers.

[2] Article 28 of the law of 23 July 2016 concerning the audit profession.

# 04 - Sharing documents with third parties

## In what circumstances (if any) can a document be given to a third party without losing protection?

Confidentiality is generally lost whenever a privileged document or information is disclosed to a third party, save where it has been disclosed under a legal requirement and to a specific public authority. The most effective manner to protect confidentiality in such a case is to enter into a nondisclosure agreement (NDA) with the third party. However, such NDA shall not prevent confidential documents from being seized by public or criminal authorities when it is permitted by law.

It should be noted that Luxembourg Attorneys remain bound by confidentiality even when such confidentiality is lost by the client, i.e., if the document or information has already been disclosed to a third party.

Clients may disclose privileged communications without their Luxembourg Attorneys' prior authorization.

# 05 - Investigations

## Are there any differences in how privilege operates in civil, criminal, regulatory or investigatory situations?

Legal privilege protects documents in all civil, criminal, regulatory and investigatory situations, meaning that documents covered by privilege can be seized or disclosed only in certain limited circumstances, strictly controlled by a judge.

With respect to antitrust provisions, agents may gather all information required allowing the authority to ascertain certain infringements. The documentation and information may not be disclosed publicly but the decisions of the authority may refer to this information and documentation in order to be grounded.

Further, under the anti-money laundering legislation, Luxembourg Attorneys have an obligation to report in good faith on any relevant information to the competent Luxembourg authorities.

## Can notes of interviews with employees and other documents produced during investigations be covered by privilege?

All information obtained by lawyers defending or representing clients in court (including administrative courts or commissions) and in determining the legal status of clients (including advising clients in preparing or executing transactions) is subject to professional confidentiality.

However, the notes of interviews conducted by a Luxembourg Attorney acting as an investigator on behalf of a private company may not be privileged as if the Luxembourg Attorney had acted under a client relationship. The Luxembourg Bar has issued recommendations and considered that a Luxembourg Attorney acting as an investigator for their client may not defend the case because they would be considered as having a conflict of interest. However, the Luxembourg Attorney can neither communicate the results of their investigation to third parties nor any documents collected in the course of such investigation, unless expressly authorized by their client.

# 06 - Regulatory investigations

## Can governmental regulators require a privileged document to be provided to them?

A search directed against a Luxembourg Attorney and the seizure of privileged documents located in the law firm premises are only possible if these measures are likely to prove that the Luxembourg Attorney or a third party committed a criminal offense. In these cases, the search must be conducted by an investigating judge or public prosecutor, in the presence of the President of the Luxembourg Bar Association (Bâtonnier) who will ensure the protection of legal privilege.

Disclosure of privileged documents or information remains exceptional, and any seizure of privileged documents and information must be limited to the documents strictly necessary to establish the truth.

Documents prepared specifically for the defense of the prosecuted person cannot be seized.

# 07 - Artificial intelligence

## Does the law of privilege or professional secrecy protect inputs by lawyers into generative AI tools and the resulting outputs?

There are currently no official guidelines from the Luxembourg Bar regarding the use of generative AI tools by lawyers, particularly in relation to professional secrecy. However, the National Commission for Data Protection (CNPD) — Luxembourg's independent authority responsible for ensuring compliance with data protection laws — issued general recommendations in February 2025 that apply to lawyers. These include avoiding the input of personal or confidential data into online AI tools, especially those not compliant with European standards such as the General Data Protection Regulation (GDPR). The CNPD also advises against using non-European AI tools, encourages the use of GDPR-compliant systems and stresses the importance of staff awareness and data security.

In the absence of specific national rules, Luxembourg Attorneys must rely on the general principles of professional secrecy under Luxembourg law, apply the CNPD's recommendations as a minimum standard and draw on European and international guidance. Among these, the Union Internationale des Avocats (UIA) directives are particularly relevant. According to the UIA, lawyers must preserve confidentiality when using AI systems by reviewing the terms of use, choosing tools that do not retain or misuse input data, anonymizing identifiable information and avoiding the disclosure of sensitive content. Lawyers must also maintain transparent communication with clients about their use of AI, ensure that case strategy and execution remain under their own professional judgment, and must obtain client consent if their data is to be used for AI training.

Therefore, while professional secrecy is protected under Luxembourg law, this protection can be compromised if lawyers use insecure or noncompliant AI tools. In the current legal landscape, lawyers must adopt a cautious and compliant approach, guided by GDPR principles, CNPD recommendations and international best practices.

# 08 - Recent issues

## What (if any) recent issues have arisen in relation to privilege in the jurisdiction?

On 26 September 2024, the Court of Justice of the European Union (ECJ) ruled on the issue of attorney-client privilege.

The dispute was between F. SCS and the *Ordre des avocats du barreau de Luxembourg*, and the *Administration des Contributions Directes* (the Luxembourg Inland Revenue the **LTA**).

The LTA received a request for information, based on directive 2011/16, from the Spanish tax authorities. It issued an injunction requiring F. to provide all available documents and information concerning the services it provided to K., a company incorporated under Spanish law.

F. refused, as it was unable to provide any information concerning the client due to professional secrecy. The tax authorities fined F. for failing to comply with the injunction.

The Administrative Court of Luxembourg decided to stay proceedings and to refer a number of questions to the ECJ for a preliminary ruling.

**Preliminary questions**

The first question concerns the applicability of article 7 of the Charter of Fundamental Rights of the European Union ("**Charter**") to legal advice given by a lawyer in company law matters. Does a decision requiring a lawyer to provide all documentation and information relating to their relationship with their client, in connection with such a consultation, constitute an interference with the right to respect for communications between a lawyer and their client, guaranteed by the said article?

The second question concerns the compatibility of an injunction such as that addressed to F. with article 7 and article 52(1) of the Charter.

**The ECJ's position**

**As to the first question referred for a preliminary ruling**

The specific protection afforded to lawyers' professional secrecy by article 7 of the Charter and article 8(1) of the ECHR is justified by the fact that lawyers are entrusted with a fundamental task in a democratic society, namely the defense of litigants. This fundamental task includes the requirement that all persons subject to trial must have the possibility of speaking freely to their lawyer, whose very profession essentially encompasses the task of providing independent legal advice to all those who need it, and the lawyer's duty of loyalty to their client.

It follows that a lawyer's legal advice, whatever area of law it concerns, enjoys the enhanced protection guaranteed by section 7 of the Charter to communications between a lawyer and their client. Therefore, an injunction such as that at issue in the main proceedings constitutes an interference with the right to respect for communications between a lawyer and their client guaranteed by that article.

**As to the second question**

The enhanced protection of communications between a lawyer and their client is applicable irrespective of the area of law in which advice or representation is provided to the client.

Article 7 of the Charter guarantees the secrecy of legal advice given by a lawyer as to its existence and content. Persons who consult a lawyer can reasonably expect their communications to remain private and confidential and, apart from in exceptional situations, trust that their lawyer will not disclose to anyone, without their agreement, that they have consulted them. The rights enshrined in section 7 of the Charter must be considered in relation to their function in society. The Charter admits limitations to exercising these rights, provided that these limitations respect the essential content of the said rights.

Luxembourg law prohibits lawyers from refusing access to information entrusted to them in exercising their profession, insofar as it concerns facts of which they have become aware in the course of providing advice or representation in tax matters, and except in the case of questions to which the answer would expose their clients to the risk of criminal prosecution.

The consequence of such a prohibition is that none of the content of exchanges between a lawyer and their client in tax matters can be kept secret from the tax authorities. It renders the protection guaranteed by article 7 devoid of substance.

The injunction at issue concerns an entire file that does not relate to tax matters. It broadens the scope of the infringement of the substance of the right protected by section 7 of the Charter.

The ECJ ruled that such national legislation, and its application in the present case by means of the contested injunction, infringed the essential content of the right guaranteed by section 7 of the Charter, due to the extent of the breach of attorney-client privilege that the LTA authorized in respect of communications between the attorney and their client.

# 09 - Authors

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