Professional Secrecy of Lawyers in Europe

This book examines the lawyer’s duty of professional secrecy (also known as the attorney–client privilege) in the twenty-seven Member States of the European Union, the three Member States of the European Economic Area, and Switzerland. Those working on transactions or litigations which involve several countries can use this book to find out to what extent any information shared with or any advice received from a lawyer is protected in each of these countries. The preparation of this book has been co-ordinated by Dirk Van Gerven.

Dirk Van Gerven is a partner in the Brussels office of NautaDutilh (a leading Benelux law firm) and a member of the Brussels and New York Bars. He has extensive experience in all areas of corporate and financial law. He served as President of the Dutch-speaking section of the Brussels Bar from 2010 to 2012 and has published widely in the fields of corporate and financial law and professional ethics. He has also been a member of the supervisory board of Belgium’s Financial Services and Markets Authority (previously the Banking, Finance and Insurance Commission) since 2003, presiding over it since 2011.
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Compiled by

THE BAR OF BRUSSELS
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Every lawyer is bound by a duty of professional secrecy. However, professional secrecy is not only a duty but also a right, to ensure that everyone receives the best legal advice and, consequently, the best defence, be it before or outside a court of law. In order to ensure the best advice or defence, however, the client must be able to speak freely to his or her lawyer, which will only be possible if the lawyer can, under no circumstances, disclose the information received from the client to the authorities or to other parties to the proceedings. If the lawyer can be forced to do so, the information could be used against the client. This fear often makes people reluctant to seek legal advice, and we all know that the worst defence is one mounted without the advice and assistance of a lawyer.

The duty of professional secrecy ensures the confidentiality of discussions between a lawyer and his or her client so that no third party can gain access to the information exchanged. Lawyers are not entitled to disclose information provided by their clients and should never be forced to do so. The information exchanged is privileged. In general, the authorities and the courts should not be able to access information protected by the attorney–client privilege and should refuse to take privileged information into account if it is disclosed in violation of the professional secrecy rules. This is essential to ensure that everyone enjoys the same rights, is bound by the same obligations and is able to defend himself or herself adequately.

This book examines how professional secrecy is applied in the various countries of the European Union, the European Economic Area (Iceland, Liechtenstein and Norway) and Switzerland. In most (civil law) European countries, the term professional secrecy is used. In common law countries, however, this concept is known as the attorney–client privilege or legal professional privilege. In general, these terms refer to the same concept.

The first chapter of this book discusses the concept of professional secrecy in Europe and the main differences throughout Europe. It also examines relevant case law of the European Court of Human Rights and the Court of Justice of the European Union.

Lawyers and law associations are obliged to work together to make the world a better place by ensuring that everyone can exercise his or her rights, including the right to assistance in understanding and defining rights and obligations.
Preface

Legal assistance will only be effective, however, if the client can speak freely to his or her lawyer. This means that the lawyer cannot disclose (or be obliged to disclose) information provided by the client. Since people are travelling more than ever before and engaging in international relations, they should be able to obtain legal advice (and benefit from professional secrecy) anywhere in the world. Hence a proper understanding of how professional secrecy works in other countries is necessary.

It is hoped that this book will help to establish a common definition of professional secrecy which can be accepted by all countries and international institutions. Such a definition is indeed necessary in an increasingly globalised world where people cross borders with increasing frequency and can be virtually present in several countries simultaneously, through electronic means. Adapting the concept of professional secrecy to meet the realities of this new world while safeguarding the rights of citizens is one of the major challenges facing the legal profession.

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