

Cambridge University Press
978-1-107-03163-0 - Professional Secrecy of Lawyers in Europe
Compiled by The Bar of Brussels
Frontmatter
[More information](#)

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.

Cambridge University Press
978-1-107-03163-0 - Professional Secrecy of Lawyers in Europe
Compiled by The Bar of Brussels
Frontmatter
[More information](#)

Cambridge University Press
978-1-107-03163-0 - Professional Secrecy of Lawyers in Europe
Compiled by The Bar of Brussels
Frontmatter
[More information](#)

Professional Secrecy of Lawyers in Europe

Compiled by
THE BAR OF BRUSSELS



Cambridge University Press
978-1-107-03163-0 - Professional Secrecy of Lawyers in Europe
Compiled by The Bar of Brussels
Frontmatter
[More information](#)

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town,
Singapore, São Paulo, Delhi, Mexico City

Cambridge University Press
The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org

Information on this title: www.cambridge.org/9781107031630

© Cambridge University Press 2013

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2013

Printed and bound in the United Kingdom by the MPG Books Group

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

Professional secrecy of lawyers in Europe : the European Union, the European Economic Area and Switzerland / edited by the Bar of Brussels.

pages cm

Includes index.

ISBN 978-1-107-03163-0 (hardback)

I. Confidential communications – Lawyers – Europe. I. Barreau de Bruxelles, editor of compilation.

KJC3770.P76 2013

342.408'58 – dc23 2012050472

ISBN 978-1-107-03163-0 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Contents

	<i>Contributors</i>	ix
	<i>Preface</i>	xii
	JEAN-PIERRE BUYLE, DIRK VAN GERVEN <i>Presidents of the Brussels Bar (2010–12)</i>	
1	Professional secrecy in Europe DIRK VAN GERVEN <i>Past President of the Brussels Bar (Dutch-speaking section)</i>	1
2	The CCBE rules on professional secrecy GEORGES-ALBERT DAL <i>Past President of the CCBE</i>	24
3	Austria MICHAEL KUTSCHERA <i>Member of the Council of the Vienna Bar Partner, Binder Grösswang Rechtsanwälte GmbH</i>	29
4	Belgium DIRK VAN GERVEN <i>Past President of the Brussels Bar (Dutch-speaking section)</i>	51
5	Bulgaria KINA CHUTURKOVA, RAINA DIMITROVA <i>Partners, Boyanov & Co. MIHAIL VISHANIN Associate, Boyanov & Co.</i>	73
6	Cyprus ALEXANDROS TSADIRAS <i>A.C. Tsadiras & Associates European University Cyprus</i>	88
7	Czech Republic PETR ČÁP <i>Chairman of the Disciplinary Commission Czech Bar Association</i>	105

 Contents

8	Denmark	123
	LARS BO LANGSTED <i>Professor of Law, Aalborg University</i>	
9	Estonia	136
	KATRIN KOSE <i>Eesti Advokatuur</i>	
10	Finland	149
	PETRI TAIVALKOSKI <i>Partner, Roschier Attorneys Ltd</i>	
	JUHO VUORI <i>Associate, Roschier Attorneys Ltd</i>	
11	France	172
	SABINE DU GRANRUT <i>Former member of the Paris Order Council</i> <i>Former member of the National Bar Council</i>	
12	Germany	183
	CHRISTIAN DAHNS, JOHANNES KELLER <i>Bundesrechtsanwaltskammer</i>	
13	Greece	200
	ILIAS TOMPAIDIS, KONSTANTINOS VOULGARAKIS <i>AKTIUS (Apalagaki-Kostis-Tompaidis) Law Firm</i> <i>Members of the Bar of Thessaloniki</i>	
14	Hungary	222
	JÁNOS BÁNÁTI <i>President of the Hungarian Bar Association</i>	
15	Iceland	239
	ÓLAFUR ARINBJÖRN SIGURÐSSON, SINDRI GUÐJÓNSSON <i>Logos</i>	
16	Ireland	259
	LIAM KENNEDY, SARAH CONROY <i>A&L Goodbody</i>	
17	Italy	270
	ANTONELLA BRAMBILLA, ALBERTO CARPANI <i>Chiomenti Studio Legale, Milan</i>	

 Contents

18	Latvia	290
	EGILS RADZINS <i>Member of the Latvian Council of Sworn Advocates The Law Office of Sworn Advocates</i>	
19	Liechtenstein	310
	MARIO FRICK <i>President of the Liechtenstein Chamber of Lawyers</i>	
20	Lithuania	320
	AKVILÉ BOSAITĖ <i>Senior Associate at the Law Firm Raidla, Lejins & Norcouc</i>	
	KARINA KUIZINAITĖ <i>Associate at the Law Firm Raidla, Lejins & Norcouc</i>	
21	Luxembourg	332
	MARC THEWES <i>Avocat à la cour</i>	
22	Malta	344
	MAX GANADO, CHRISTINE BORG, THOMAS CUTTS-WATSON <i>Ganado & Associates, Advocates</i>	
23	The Netherlands	366
	FOKKE FERNHOUT <i>Associate Professor of Law, Maastricht University</i>	
24	Norway	392
	JOHN CHRISTIAN ELDEN <i>Advokatfirmaet Elden DA</i>	
25	Poland	412
	WOJCIECH MARCHWICKI <i>Member of the Professional Ethics Committee at the National Bar Council</i>	
	MAREK NIEDUŻAK <i>Member of the Professional Ethics Committee at the National Bar Council, assistant lecturer at the Department of Theory and Philosophy of Law at Kozminski School of Law</i>	
26	Portugal	441
	ANA CRISTINA DELGADO <i>Legal Adviser of the Legal Department Conselho Geral da Ordem dos Advogados Portugueses</i>	
27	Romania	460
	GABRIELA CACEREA, ANCA MIHAILESCU <i>Nestor Nestor Diculescu Kingston Petersen</i>	

 Contents

28	Slovakia	476
	JOZEF OLEJ <i>Vice-President of the Slovak Bar Association Docent at Pavol Jozef Šafárik University in Košice</i>	
29	Slovenia	494
	NATAŠA PIPAN NAHTIGAL, TJAŠA LAHOVNIK <i>Ovvetniki Šelih & partnerji, o.p., d.o.o.</i>	
30	Spain	524
	NIELSON SÁNCHEZ STEWART <i>Vice-President of the Disciplinary Board of the Consejo General de la Abogacía Española</i>	
31	Sweden	545
	HENRIK FIEBER <i>Partner, Roschier</i>	
	MINNA SJÖSTRAND <i>Associate, Roschier</i>	
32	Switzerland	563
	CLAUDIO BAZZANI, ROMAN RICHERS <i>Homburger AG</i>	
33	United Kingdom	584
	RONNIE FOX <i>Solicitor of the Senior Courts Principal, Fox</i>	
	SHIRA AUERBACH <i>J.D. Member of the New York Bar Solicitor of the Senior Courts</i>	
	SHIRLEY BLAIR <i>A&L Goodbody Associate</i>	
	KIRSTEEN MACDONALD <i>Burness Paull & Williamsons LLP Associate</i>	

Index 606

Contributors

Austria

MICHAEL KUTSCHERA
Member of the Council of the
Vienna Bar
Binder Grösswang Rechtsanwälte
GmbH

Belgium

GEORGES-ALBERT DAL
Past President of the CCBE
DIRK VAN GERVEN
Past President of the Brussels Bar
NautaDutilh

Bulgaria

KINA CHUTURKOVA
RAINA DIMITROVA
Partners
Boyanov & Co.
MIHAIL VISHANIN
Associate
Boyanov & Co.

Cyprus

ALEXANDROS TSADIRAS
A.C. Tsadiras & Associates
European University Cyprus

Czech Republic

PETR ČÁP
Chairman of the Disciplinary
Commission
Czech Bar Association

Denmark

LARS BO LANGSTED
Professor of Law
Aalborg University

Estonia

KATRIN KOSE
Eesti Advokatuur

Finland

PETRI TAIVALKOSKI
Partner
Roschier Attorneys Ltd
JUHO VUORI
Associate
Roschier Attorneys Ltd

France

SABINE DU GRANRUT
Former member of the Paris Order
Council
Former member of the National Bar
Council

List of contributors

Germany

CHRISTIAN DAHNS
 JOHANNES KELLER
 Bundesrechtsanwaltskammer

Greece

ILIAS TOMPAIDIS
 KONSTANTINOS VOULGARAKIS
 AKTIUS (Apalagaki-Kostis-Tompaïdis)
 Law Firm
 Members of the Bar of Thessaloniki

Hungary

JÁNOS BÁNÁTI
 President of the Hungarian Bar
 Association

Iceland

ÓLAFUR ARINBJÖRN SIGURÐSSON
 SINDRI GUÐJÓNSSON
 Logos

Ireland

LIAM KENNEDY
 SARAH CONROY
 A&L Goodbody

Italy

ANTONELLA BRAMBILLA
 ALBERTO CARPANI
 Chiomenti Studio Legale, Milan

Latvia

EGILS RADZINS
 Member of the Latvian Council of Sworn
 Advocates
 The Law Office of Sworn Advocates

Liechtenstein

MARIO FRICK
 President of the Liechtenstein Chamber
 of Lawyers

Lithuania

AKVILÉ BOSAITĖ
 Senior Associate
 Raidla, Lejins & Norcous
 KARINA KUIZINAITĖ
 Associate
 Raidla, Lejins & Norcous

Luxembourg

MARC THEWES
 Avocat à la cour

Malta

MAX GANADO
 CHRISTINE BORG
 THOMAS CUTTS-WATSON
 Ganado & Associates,
 Advocates

The Netherlands

FOKKE FERNHOUT
 Associate Professor of Law
 Maastricht University

Norway

JOHN CHRISTIAN ELDEN
 Advokatfirmaet Elden DA

Poland

WOJCIECH MARCHWICKI
 Member of the Professional Ethics
 Committee at the National Bar Council

 List of contributors

MAREK NIEDUŻAK

Member of the Professional Ethics
 Committee at the National Bar Council,
 assistant lecturer at the Department of
 Theory and Philosophy of Law at
 Kozminski School of Law

Portugal

ANA CRISTINA DELGADO

Legal Adviser of the Legal Department
 Conselho Geral da Ordem dos
 Advogados Portugueses

Romania

GABRIELA CACEREA

ANCA MIHAILESCU
 Nestor Nestor Diculescu Kingston
 Petersen

Slovakia

JOZEF OLEJ

Vice-President of the Slovak Bar
 Association
 Docent at Pavol Jozef Šafárik University
 in Košice

Slovenia

NATAŠA PIPAN NAHTIGAL

TJAŠA LAHOVNIK
 Odvetniki Šelih & partnerji,
 o.p., d.o.o.

Spain

NIELSON SÁNCHEZ STEWART

Vice-President of the Disciplinary Board
 of the Consejo General de la Abogacía
 Española

Sweden

HENRIK FIEBER

Roschier Partner

MINNA SJÖSTRAND

Roschier Associate

Switzerland

CLAUDIO BAZZANI

ROMAN RICHERS

Homburger AG

United Kingdom

RONNIE FOX

Solicitor of the Senior Courts
 Principal, Fox

SHIRA AUERBACH

J.D. Member of the New York Bar
 Solicitor of the Senior Courts

SHIRLEY BLAIR

A&L Goodbody Associate

KIRSTEEN MACDONALD

Burness Paull & Williamsons LLP
 Associate

Preface

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.

Cambridge University Press
978-1-107-03163-0 - Professional Secrecy of Lawyers in Europe
Compiled by The Bar of Brussels
Frontmatter
[More information](#)

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.

19 January 2013

JEAN-PIERRE BUYLE and DIRK VAN GERVEN
Presidents of the Brussels Bar (2010–12)