

The Attorney-Client Privilege In Europe

- In the United States, federal and state courts provide strong protections for attorney-client communications and materials that are considered to be attorney work product. Those protections generally apply regardless of (1) whether the lawyer is in private practice or an in-house legal position, or (2) the bar to which the lawyer is admitted.
- In Europe, the rules are narrower and less uniform. Although all twenty 27 EU member states recognize some form of attorney-client privilege (generally known as the “legal professional privilege”) the application and scope of the privilege varies among the member states. For example:

	Protection for communications with/ materials generated by <u>in-house</u> lawyers?	Protection for communications/ materials generated by <u>foreign</u> lawyers?
England	Yes.	Yes.
Spain	Yes.	Yes.
Poland	Yes, if in the lawyer’s possession.	No.
France	No.	Yes, for all EU member state lawyers.
Italy	No.	Yes, for all EU member state lawyers.
Germany	No.	No.

- There are several important considerations to keep in mind when working with European counterparts, including:
 - Some countries classify lawyers differently. Understand what type of lawyer your European in-house colleague is, and whether he or she is within the scope of the privilege in the country at issue.
 - Consider involving local (European) outside legal counsel early to bolster the application of the privilege.
 - When involving European outside counsel, consider creating a document confirming that counsel’s role is to provide legal advice. That document should be one that can be produced to the government and courts (i.e., it should not contain confidential or sensitive information).
 - It may be preferable for European outside counsel (rather than in-house counsel or company employees) to (1) draft factual or legal analysis memoranda, (2) create interview notes/summaries, and (3) maintain at their offices such documents.
 - Involving U.S. outside counsel early may be worthwhile to increase the likelihood of the application of the privilege and work product protection if there are potential civil or criminal liability concerns in the U.S.