

ARTICLE

NOTE ON THE LAW ON THE CONFIDENTIALITY OF IN-HOUSE COUNSEL LEGAL ADVICE

Dispute Resolution European Law Public Law and Public Procurement Law | 20/02/26 | Marc Mossé

Introduction

The Act relating to the confidentiality of legal advice issued by in-house counsel, definitively adopted on 14 January 2026, was upheld by the French Constitutional Council (*the Council*) in its decision of 18 February 2026 (Decision No. 2026-900 DC).

The Council noted that the legislator pursued an objective of general interest: enabling corporate governing bodies to benefit from internal legal advice fostering compliance with applicable legal obligations. It held that the mechanism complies with the Constitution in light of the safeguards provided.

French law is therefore strengthened by an important protection for French companies in civil, commercial and administrative proceedings, including in the context of the extraterritorial application of foreign laws by certain States.

Set out below is a brief overview of the Act, including the interpretative reservations expressed by the Council.

The statutory framework

The law amends the Act of 31 December 1971 reforming certain judicial and legal professions by inserting a new Article 58-1. This provision recognizes, subject to certain conditions and safeguards, the confidential nature of legal advice prepared by in-house counsel.

Confidentiality applies to all draft and final versions of a legal opinion, provided that the following **5 cumulative criteria** are met:

- the in-house counsel must hold a **Master's degree in law** (five years of higher education) or an equivalent qualification (or, failing that, a four-year law degree or a Master 1 in law for those who have practised for at least eight years within a legal department of a company or an administration);
- the in-house counsel must have **completed training on ethical rules** (the reference framework for these rules will be defined by ministerial order on the proposal of a commission whose composition will be specified by decree);
- the legal opinions must be intended **exclusively for the management** or the administrative or supervisory bodies of **the employing company**, its group or one of its subsidiaries;
- they must relate to the **provision of an opinion or advice** based on the application of a rule of law;
- they must bear the **wording "confidential – legal opinion – in-house counsel"**. The author must be identified, and the opinion must be filed separately within the company's records.


Limits to confidentiality. Confidentiality is expressly excluded in the context of **tax and criminal proceedings**, in which the company remains obliged to disclose all legal opinions requested by judicial or tax authorities. Confidentiality is also not enforceable against **European Union authorities** when exercising their investigative and supervisory powers.

Enforceability and challenge of confidentiality. The confidential nature of legal opinions is, however, enforceable in **civil, commercial and administrative proceedings or disputes**. In this context, opinions qualifying as confidential may neither be seized, nor be subject to a disclosure obligation to a third party – including French or foreign administrative authorities – nor be used against the company. The company nevertheless retains the right to voluntarily waive confidentiality.

In these matters, confidentiality may be challenged and set aside by a judge^[1], including, where appropriate, on the grounds that its purpose was to facilitate or encourage the commission of a fraud against the law or against the rights of a third party. The matter must be brought before the judge within 15 days following:

- a search operation or the exercise of a right of communication in the context of an administrative investigation (for example, by the French Competition Authority or the French Financial Markets Authority); or
- an investigative measure ordered in civil or commercial proceedings.

Procedure for lifting confidentiality. When a challenge is raised, the legal opinions whose confidentiality is claimed by the company are placed under the custody of a **judicial officer**, appointed by the judge or mandated by the



competent administrative authority. **The disputed documents are sealed in closed envelopes** pending the judge's decision, in order to ensure their integrity.

If confidentiality is lifted, the legal opinions are added to the case file of the ongoing proceedings. Otherwise, they are returned to the company without delay.

In the absence of any challenge, the company has a period of 15 days to request the return of the sealed documents from the judicial officer, failing which the latter will proceed with their destruction.

In any judicial proceedings relating to the challenge of confidentiality, the company is required to **be represented by a lawyer**.

Entry into force. The text will be promulgated in the coming days. The date of its entry into force will be specified by a decree issued by the *Conseil d'État* (France's Supreme Administrative Court), no later than the first day of the twelfth month following its promulgation.

[1] The judge who ordered the investigative measure in civil and commercial disputes, and the "*juge des libertés et de la détention*" in administrative disputes.
