



Confidentiality of lawyer-client communications: a must for protecting your rights

What is confidentiality of lawyer-client communications?

The confidentiality of communications between a client and their lawyer is protected by the principle of professional secrecy (also known as legal professional privilege). The principle exists in order to facilitate and ensure open and honest communication when a client is seeking legal advice. Therefore, this principle constitutes an important protection for everyone.

Why is this protection important?

Lawyers cannot provide legal advice and representation without a comprehensive understanding of their client's case or position. Confidentiality of lawyer-client communications allows clients to be open and transparent with their lawyers, and this enables the lawyer to provide accurate advice and representation in response to the client's situation. Without this confidentiality, clients may hesitate to disclose essential information, potentially hindering the lawyers' ability to assist them effectively.

Everyday examples

The principle of professional secrecy is a practical necessity in the daily life for all those needing the assistance of a lawyer. For example:



In divorce cases, it enables **parents and children** to freely tell their lawyers everything about their family relationships, their personal difficulties and challenges, and their fears and wishes.



It enables **employers and employees** in dispute with each other to tell their lawyers everything about their professional relationship and incidents which may have happened, allowing their lawyers to advise them, to identify what is relevant and what a court needs to know, and to secure fair and just remedies and outcomes in accordance with the law.



It enables **governments and public bodies** to discuss legal issues and challenges freely with their lawyers, allowing them to ensure they are acting lawfully and proportionately, and that they honour legal rights, while protecting the public interest and society.



For **businesses** of all types, it enables them to speak freely to their lawyers to find the right legal solutions to their everyday business problems, as well as to respond to incidents or threats which affect their viability and commercial position.



It allows those **accused of a crime** to openly share their account of events with their lawyer, thereby enabling their lawyer to determine if a crime has occurred. If a crime has taken place, this process ensures a fair resolution by presenting all pertinent factors in court to secure a just outcome.



It enables **human rights defenders** to confide freely and assuredly in their lawyers, and to seek and enforce the legal protections available to them.



What are the implications if this principle is not ensured or respected?

If the right to confidential communications with lawyers is not ensured, clients may lack the trust to fully disclose the information necessary for the lawyer to provide accurate legal advice and representation in response to the client's situation. In other words, **clients' right to legal advice and a fair trial would be severely undermined.**

Because of this policy imperative, all European countries have **national laws** to ensure the protection of the right and duty of lawyers to keep clients' matters confidential. For example, in some jurisdictions, evidence that was obtained by law enforcement authorities through a breach of professional secrecy may be deemed inadmissible in legal proceedings. Moreover, lawyers who breach professional secrecy may face disciplinary action resulting in penalties ranging from fines and reprimands to suspension or disbarment from practicing law, and in some jurisdictions lawyers could even face criminal charges.

At **European level**, this principle is also guaranteed under Article 7 and 47 of the **EU Charter of Fundamental Rights**, as well as Article 6 and 8 of the **European Convention on Human Rights** regarding the right to privacy and a fair trial. There is also abundant jurisprudence by both the Court of Justice of the EU and the European Court of Human Rights highlighting that the right of everyone to a fair trial is dependent upon the relationship of trust between the lawyer and the client, and without that certainty of confidentiality, there can be no trust.

What information is subject to lawyer-client confidentiality?

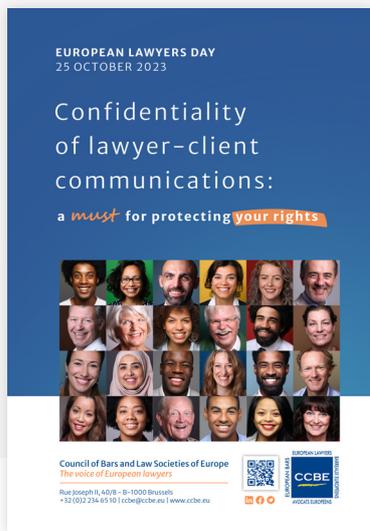
The specific scope of professional secrecy may vary by jurisdiction, but in general, the following types of information are typically covered:

- **Client communications:** any oral, written, or digital communications between a client and their lawyer made in confidence for the purpose of seeking legal advice or representation are generally protected by professional secrecy. This includes discussions, emails, letters, text messages, and other forms of communication.
- **Legal advice and strategy:** information related to legal advice and strategies provided by the lawyer to the client is typically protected. This includes discussions about legal rights, potential courses of action, and plans for addressing legal issues.
- **Consultations:** the initial consultations and discussions between a client and a lawyer, even before formal representation begins, are usually covered by professional secrecy as long as they are made with the expectation of confidentiality.
- **Documents:** documents created or shared within the context of legal representation, such as contracts, legal memos, briefs, and other written materials, are generally protected by professional secrecy.
- **Work product:** materials prepared by the lawyer in anticipation of litigation or legal proceedings, including case strategies, legal research, and analysis, are typically considered confidential.
- **Client identity:** the identity of a lawyer's client is generally protected and treated as confidential information.

On the other hand, it is generally understood that the scope of professional secrecy does not extend to situations where the lawyer is engaged with the client in the furtherance of a criminal activity.

As stated in the [CCBE Code of Conduct for European Lawyers](#): “The lawyer’s obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State”. Unfortunately, in practice such protection is not always ensured, particularly during the formulation of new legislation that may risk compromising the confidentiality of lawyer-client communications.

Hence, it is crucial that we maintain continuous vigilance and promote awareness of the significance of this right. ■



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RESOURCES

[CCBE Statement on professional secrecy/legal professional privilege \(2017\)](#)

[CCBE Recommendations on the protection of client confidentiality within the context of surveillance activities \(2016\)](#)

[CCBE Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers \(2019\)](#)

[European Court of Human Rights, Factsheet – Legal professional privilege \(2021\)](#)

EU AND INTERNATIONAL INSTRUMENTS

[EU Charter of Fundamental Rights \(CFR\) \(Articles 7 and 47\)](#)

[European Convention on Human Rights \(ECHR\) \(Articles 6 and 8\)](#)

[UN Basic Principles on the Role of Lawyers \(Principle 22\)](#)

[Council of Europe's Recommendation No. R\(2000\)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer \(Principle I, point 6\)](#)

CASE LAW

1. [C-694/20, *Ordre van Vlaamse Balies \(...\) v. Vlaamse Regering*, ECLI:EU:C:2022:963](#)

2. [C-155/79, *AM & S v. Commission*, ECLI:EU:C:1982:157 \(paras 16 and 18\)](#)

3. [ECtHR, *S. v. Switzerland* \(12629/87\), 1991 \(para 48\)](#)

“(…) If a lawyer were unable to confer with his client and receive confidential instructions from him without such surveillance, his assistance would lose much of its usefulness, whereas the Convention is intended to guarantee rights that are practical and effective (…).”

4. [ECtHR, *Michaud v. France*, judgment of 6 December 2012 \(paras 118–119\)](#)

5. [ECtHR, *Pruteanu v. Romania* \(30181/05\), 2015 \(para 49\) \[unofficial translation\]](#)

“The interception of conversations between a lawyer and his client unquestionably undermines professional secrecy, which is the basis of the relationship of trust between them.”

6. [ECtHR, *Niemietz v. Germany* \(13710/88\), 1992 \(para 37\)](#)

“(…) it has, in this connection, to be recalled that, where a lawyer is involved, an encroachment on professional secrecy may have repercussions on the proper administration of justice and hence on the rights guaranteed by Article 6 of the Convention.”

7. [ECtHR, *Kopp v. Switzerland* \(23224/94\), 1998, \(paras 73–74\)](#)

“Above all, in practice, it is, to say the least, astonishing that this task should be assigned to an official of the Post Office's legal department, who is a member of the executive, without supervision by an independent judge, especially in this sensitive area of the confidential relations between a lawyer and his clients, which directly concern the rights of the defence.”

8. [ECtHR, *Brito Ferrinho Bexiga Villa-Nova v. Portugal*, 2015](#)