

No Privilege for In-House Counsel Communications in Europe's High Court

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Akzo Nobel Chemicals and Akcros Chemicals v. Commission, Case C-550/07 P (2010)

Brief Summary

The European Union's high court, the Court of Justice, held that a corporate client's communications with its in-house lawyers were not privileged because such lawyers are not independent from their clients.

Complete Summary

The Court of Justice addressed the issue of whether the legal professional privilege (LPP)—Europe's version of the attorney-client privilege—applied to communications with in-house counsel. The LPP protects lawyer-client communications which involve an attorney who is independent from the client. The independence requirement is designed to ensure that the lawyer's role in collaborating in the administration of justice is not overridden by the attorney's role in advancing the client's interests.

The Court held that independence under the LPP requires the absence of an employment relationship between lawyer and client. The Court noted that, "an in-house lawyer is less able to deal effectively with any conflicts between his professional obligations and the aims of his client."

This holding was not precluded, the Court noted, by the principle of equal treatment, which prohibits comparable situations from being treated differently and different situations from being treated in the same way. The Court held that, despite being subject to the same ethical rules as outside counsel, in-house lawyers are in a different situation based on, *inter alia*, their financial dependence on their employers.

Significance of Opinion

This holding may encourage corporations that do business in Europe to utilize outside counsel when seeking candid legal advice. Notably, this decision applies to European Union courts, but not to the courts of the Union's member states. The member states do not have uniform LPP rules, and some states treat communications with in-house lawyers as privileged.

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