

September 2007



UPDATE

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EU Court Decision: No Attorney Client Privilege for In-House Counsel

On September 17, 2007, the European Union's second-highest court dismissed a Dutch chemical company's complaint seeking to keep communications between company executives and in-house lawyers confidential. The Court of First Instance held that communications with in-house counsel were not protected by the attorney client privilege, known as the legal professional privilege in the EU. The European Commission conducted a search at the company's offices in Manchester, Britain in February of 2003 in connection with a price-fixing investigation and seized documents that became the subject of dispute before the Court. Two of those disputed documents were emails exchanged between the general manager and the company's coordinator for competition law, who was a member of the legal department but also a member of the Netherlands Bar.

The Court of First Instance noted that the Court of Justice, the EU's highest court, has held that communications between a lawyer and his or her client are protected as confidential "only to the extent that the lawyer is independent, that is to say, not bound to his client by a relationship of employment." Case 155/79 *AM & S v. Commission* [1982]. The Court of First Instance concluded that based on this precedent, communications between a lawyer employed by the company and a manager of a related company were not covered by the attorney client privilege.

Under EU law, this case highlights the risk to multinational companies of losing the attorney client privilege when using in-house counsel on important or sensitive legal matters. In contrast, the Court of First Instance confirmed that communications relating to legal advice between the company and outside, independent counsel would be covered by the attorney client privilege.

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