

**Association of Corporate Counsel, Europe  
(ACC Europe)**

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**TRANSLATION**

**PUBLIC CONSULTATION ON THE BILL PROPOSAL OF AN  
ORGANIC LAW ON THE RIGHT OF DEFENSE**

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ACC (Association of Corporate Counsel)<sup>1</sup> is a global association of in-house lawyers that currently has more than 42,000 members who work providing legal assistance to more than 10,000 organizations in 85 countries and which aims to protect and promote the professional interests of the lawyer who develops his professional practice within a company, association or other organizations of the private sector. ACC Europe is the European section of ACC, and has more than 2,300 members who carry out their professional activity in 29 European countries, including Spain.

We have learned that on March 12, 2017, the Ministry of Justice has submitted to public consultation its initiative to draft a bill proposal of an Organic Law on the Right of Defense (the "**Bill**"). Such Bill aims to integrate the rights and obligations of citizens (clients) and lawyers in one only legal text, and provide them with legal protection.

The main interest of ACC Europe in relation to the Bill is mainly to maintain the current status of the in-house lawyer, in accordance with the provisions of article 27.4 of the General Statute of Spanish Lawyers, approved by Royal Decree 658 / 2001, of June 22, under which within the modalities of the exercise of the legal profession, it is included the exercise "*of a lawyer employed by other under the*

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<sup>1</sup> More information on ACC in the link: [www.acc.com](http://www.acc.com)

*regime of labor law, through a written labor contract and in which the freedom and independence shall be respected for the exercise of the profession, and it must be stated if such exercise is in an exclusive regime ".*

In this sense, the article 40 of the new General Statute of Spanish Lawyers (approved in the plenary session celebrated in the CGAE on June 12, 2013 and pending approval by the Ministry of Justice) states that "*the profession of Lawyer may also be exercised on behalf of another as an in-house lawyer under a written labor contract in which the freedom and independence for the exercise of the profession must be respected and expressed if such exercise is in exclusive regime ".*

This explicit recognition of the possible exercise of the profession of lawyer as an in-house lawyer implies the full application to the in-house lawyer of the same body of rights and obligations as to any other lawyer, regardless of the form of exercise of their professional activity: either individually (as the head of a law firm or in a professional collaboration regime), in a labor contract relationship (special or common), collectively, or in a multiprofessional collaboration regime.

The form of exercise of the profession should not affect the rights and obligations that assist the client that requires the legal assistance of the lawyer, and in correspondence should not affect the rights and obligations that correspond to the lawyer himself.

In particular, there cannot be any distinctions and inequalities between the rights and obligations of the admitted practicing lawyers. **That is, the admitted practicing lawyer must have the same rights and obligations regardless the labor modality under which the admitted lawyer provides its services** (self-employed, integrated into the firm as a member or as a workforce, etc.). In this respect, in particular, the admitted lawyer who exercises his functions as an in-house lawyer must have the same rights and obligations as the rest of the admitted lawyers who exercise those same functions in a law firm.

Within this catalogue of rights and obligations, **it is important to protect and guarantee the right of the citizen (client) to the confidentiality of the communications exchanged with his lawyer, regardless the labor modality under which the admitted lawyer provides its services** (autonomous, integrated in office as a partner or as a workforce, etc.) to the client.

At this regard, the right to the confidentiality of the communications between client-lawyer must guarantee, at least, the following:

- a. The confidentiality of the communications must be extended to any form of communication made between the client and his lawyer in which the lawyer is

providing legal assistance (i) on a court procedure; (ii) on preventive and / or pre-litigious legal advice, or (iii) any investigation or administrative procedure.

- b. This confidentiality should be extended not only to documents prepared directly by the lawyer for such purposes, but also to all the materials that could be prepared for such purposes by third parties (experts, investigators, etc.) following specific instructions of the lawyer.
- c. Any limitation to the client's right to confidentiality of communications with his lawyer must be expressly provided in the Law<sup>2</sup>.
- d. The intervention of such communications must be authorized by a Judge. An administrative authority is not entitled to intervene in those communications without previously having a mandatory judicial authorization.

The purpose of the Bill is "*to contemplate the rights and obligations of the lawyer, both with respect to the court, and with respect to the citizen - client - who demands his legal assistance*". Therefore, and in order to provide legal security to the protection already provided for in the General Statute of Spanish Lawyers, we believe it is a good opportunity to recognize, protect and guarantee specifically in the Bill: (i) the equalization in the rights and obligations of the admitted lawyer no matter the labor modality under which the admitted lawyer provides its legal services, and (ii) the protection of the confidentiality of communications between the citizen (client) and lawyer.

Quedamos a su disposición para aclarar cualquier extremo que entiendan conveniente sobre la opinión remitida en relación con esta consulta pública sobre el Anteproyecto de Ley Orgánica del Derecho de Defensa.

We remain at your entire disposal to clarify any point that you deem appropriate about the opinion submitted in relation to this public consultation on the bill proposal of an Organic Law on the Right of Defence.

Yours sincerely,

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<sup>2</sup> As an example: the prevention of money-laundering.



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