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Confidentiality of Legal Advice Provided by In-House Counsel: Scope and Limits

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The Constitutional Council has just upheld, on 18 February 2026[1], the law "on the confidentiality of legal advice provided by in-house counsel," which had been adopted on 14 January 2026[2] by a large majority in the Senate in the same terms as the bill passed by the National Assembly. The text may now be promulgated and enter into force on a date set by decree of the Conseil d'État, and no later than the first day of the twelfth month following its promulgation.

The adoption into French law of confidentiality for legal advice provided by in-house counsel is the culmination of a long process[3]. Although the confidentiality of such advice is the rule in most OECD countries and has been recommended in France by numerous reports[4], it encountered strong opposition in our country, which delayed its adoption.

The Constitutional Council's decision justified the reform and responded in a precise and reasoned manner to the concerns that the text had raised, mainly on the part of certain administrative authorities and part of the legal profession[5].

The Constitutional Council's decision begins by noting "that it follows from the preparatory works that, in adopting these provisions, the legislature intended to enable the governing bodies of companies to benefit from internal legal advice likely to foster their compliance with the legal rules binding upon them" and that "in so doing, it pursued an objective of general interest"[6].

The Constitutional Council's recognition that an objective of general interest is being pursued confirms the new and essential role played by in-house counsel: they are the guardians of compliance and observance of the law within their companies. This paradigm shift is due primarily to the rise of compliance in positive law[7].

Confidentiality will enable legal counsel to better prevent infringements within their companies, reduce the number of infringements, and strengthen the effectiveness of the duty of vigilance, competition law, securities law, data law, anti-corruption measures, and more generally all compliance obligations that have developed in recent years, without their warnings, aimed at ensuring compliance with the law, being used as evidence of an infringement in the event of an inspection and thereby preventing them from fulfilling the mission now entrusted to them.

The Council then lists all the safeguards with which the law surrounds the implementation of confidentiality:

"it is limited to certain precisely defined legal advice";

"fraudulent use of the confidentia-

[1] Constitutional Council, decision n° 2026-900 DC of 18 February 2026..
[2] Bill on the confidentiality of legal advice provided by in-house counsel, adopted in identical terms by the National Assembly and the Senate, No. 40, Senate, ordinary session 2025–2026, 14 January 2026. Louis Vogel was rapporteur for the law before the Senate.
[3] The confidentiality of legal advice provided by in-house counsel had initially been adopted in 2023 following an amendment by President Hervé Marseille to the framework and programming law of the Ministry of Justice, before being declared unconstitutional by the Constitutional Council on procedural grounds (Constitutional Council, 16 Nov. 2023, No. 2023-855 DC). Two bills were then adopted respectively by the Senate on 14 January 2024 and by the National Assembly on 30 April 2024. This latter bill was adopted without amendment by the Senate on 14 January 2026.
[4] See, for example: Henri Nallet, Report on Multidisciplinary Networks and the Legal Professions, 1999; Marc Guillaume, Report on the Rapprochement Between the Professions of Lawyer and In-House Counsel, 2006; J.-M. Darrois, Report on the Legal Professions, March 2009; Michel Prada, Report on Certain Factors for Strengthening the Legal Competitiveness of the Paris Market, mission entrusted by the Minister for the Economy, Industry and Employment and by the Minister of Justice, March 2011; Raphaël Gauvain, Restoring the Sovereignty of France and Europe and Protecting Our Companies from Laws and Measures with Extraterritorial Reach, report submitted to the Prime Minister, 26 June 2019; Report of the Working Group on Economic and Commercial Justice chaired by Jean-Denis Combrexelle, prepared in the context of the General Estates of Justice, April 2022.
[5] See, for example: National Bar Council, Resolution of 30 May 2015; Resolution of 4 July 2023; Resolution of 2 February 2024; Conference of Bar Presidents, "Current Developments in the Profession, Confidentiality of Legal Advice Provided by In-House Counsel: the Fight Continues," Jan. 2024; and Opinion Piece by the Conference of Bar Presidents against legal privilege, "The 'legal privilege' of in-house counsel: a safe for large companies, a lock on transparency," Jan. 2026.
[6] Constitutional Council, decision n° 2026-900 DC of 18 February 2026, cited above, para. 12.
[7] On this new role, see in particular: J.-J. Lemonnier and B. Balian, The Strategic and Institutional Challenges of the Chief Compliance Officer, JCP Ed. E, 2026, Practice Notes, 165.

lity designation is criminally sanctioned";

it "is not enforceable in criminal or tax proceedings";

"the law creates no immunity in punitive matters, does not alter the legal obligations to which companies are subject and whose observance administrative authorities may be responsible for ensuring, and does not prevent those authorities, in the exercise of their duties, from accessing any other document originating from the company that would reveal a breach of a rule of law, in particular decisions of its governing bodies and contracts entered into by the company";

a procedure for reviewing confidentiality is available before the JLD (juge des libertés et de la détention — liberties and detention judge) in the context of an inspection operation, "either to challenge that confidentiality, or to seek its lifting where the legal advice is intended to facilitate or encourage the commission of breaches punishable by a sanction"[8].

The Constitutional Council's decision rejects the various complaints raised by the LFI group, which had referred the matter to it alleging the unconstitutionality of the text and arguing that it excessively limited the supervisory powers of certain administrative authorities, thereby undermining the objectives of safeguarding economic public order, the proper administration of justice, and the identification of offenders.

The Council also rejects the complaint alleging disregard of the constitutional objective of accessibility and intelligibility of the law, as well as any unjustified difference in treatment between in-house counsel and regulated legal professions, in breach of the principle of equality before the law. The Council rightly observes that the concept of legal advice is very clearly defined, as is the supervisory power of the European authorities against whom confidentiality cannot be asserted, and dismisses the existence of any unjustified difference in treatment between in-house counsel and regulated legal professions.

The Council did, however, issue two interpretative reservations in order to ensure the consistency of the adopted provisions and to meet constitutional requirements.

With regard to administrative proceedings, the Constitutional Council drew inspiration from the mechanism contained in the bill adopted by the Senate, which provided for an identical mechanism for lifting confidentiality both in the event of search-and-seizure operations and in the event of a request for information by an administrative authority. By means of a first interpretative reservation, the Council specified that the confidentiality review mechanism must allow the administrative authority to refer the matter to the JLD if it considers that confidentiality is being wrongly asserted against it, both in the case of a search-and-seizure operation and in the exercise of its power to request disclosure.

It added that the exercise of confidentiality cannot obstruct the exercise of powers conferred upon an administrative authority by an organic law.

With regard to civil or commercial proceedings, the Council considers that confidentiality may be lifted not only where the conditions laid down by law are not met, as the text expressly provides, but also, as in the case of administrative proceedings, where there has been facilitation or encouragement of an offence.

The confidentiality of legal advice provided by in-house counsel is therefore clearly recognized as necessary and legitimate. It is useful to set out the conditions for its benefit (I) and its procedural regime (II), so that companies can prepare for its implementation as soon as the text enters into force.

I. Conditions for Benefiting from Confidentiality

A. Substantive Conditions

1. Conditions Relating to the Author of the Advice

The benefit of protection is subject to conditions relating to the status of the author of the legal advice, as set out in new Article 58-1 of Law No. 71-1130 of 31 December 1971 reforming certain judicial and legal professions.

"Legal advice drafted by an in-house counsel or, at his or her request and under his or her supervision, by a member of his or her team under his or her authority, shall be confidential, provided that the following conditions are met:

1° The in-house counsel or the member of his or her team under his or her authority holds a Master's degree in law or an equivalent French or foreign qualification;

2° The in-house counsel can show that he or she has completed training in ethical rules, established by a reference framework defined by a joint order of the Minister of Justice and the Minister for the Economy, issued on the proposal of a commission whose composition and operating procedures are laid down by decree. The cost of such training shall be borne by the employer."

An equivalence is provided for "persons holding a maîtrise in law, students who have completed the first year of second-cycle studies leading to the national Master's degree in law, or holders of one of the titles or diplomas recognized as equivalent by joint order of the Minister of Justice and the Minister responsible for universities, who, on the date of entry into force of this law, can show at least eight years of professional practice within the legal department of one or more companies or public administrations, and who shall, for the purposes of Article 58-1 of Law No. 71-1130 of 31 December 1971 reforming certain judicial and legal

[8] Constitutional Council, decision n° 2026-900 DC of 18 February 2026, cited above, and press release.

professions, be deemed to hold a Master's degree in law."

The text grants the benefit of confidentiality to legal advice prepared by the company's head of legal and by members of his or her team, provided that they satisfy both legal and ethical training requirements. During the parliamentary debates, the extension of confidentiality to legal advice drafted by members of the legal team under the authority of the head of legal was challenged[9]. That challenge was, however, unfounded and was rightly rejected. Limiting confidentiality solely to advice drafted by the company's legal director would be ill-suited to the organization of companies whose legal departments may include dozens of lawyers, all of whom may be called upon to draft legal advice. Moreover, the same training requirements apply to the in-house counsel and to members of his or her team.

2. Conditions Relating to the Recipient of the Advice

The benefit of protection is also subject to conditions relating to the recipient of the legal advice, as set out in Article 58-1 of Law No. 71-1130 of 31 December 1971 reforming certain judicial and legal professions.

"Art. 58-1. – I. – 3° Such legal advice shall be intended exclusively for:

a) the legal representative, his or her delegate, or any other governing, administrative, or supervisory body of the company employing the in-house counsel;

b) any entity providing opinions to the governing, administrative, or supervisory bodies of the company employing the in-house counsel;

c) the governing, administrative, or supervisory bodies of the company which, where applicable, controls, within the meaning of Article L. 233-3 of the French Commercial Code, the company employing the in-house counsel;

d) the governing, administrative, or supervisory bodies of subsidiaries controlled, within the meaning of the same Article L. 233-3, by the company employing the in-house counsel."

This limitation to company officers and to a restricted circle of recipients will have to be taken into account. In-house lawyers frequently send legal advice together with recommendations to operational staff who may fall outside the circle of executives recognized by law. Delegations of authority will therefore need to be drafted where appropriate to take account of specific situations.

3. The Concept of Legal Advice

The concept of protected legal advice was the subject of major debate[10].

The bill adopted by the National Assembly had opted to include a definition of legal advice based on case law and administrative doctrine:

"Art. 58-1. – I. – 3° bis (new) Such legal advice consists of a personalized intellectual service intended to provide an opinion or advice based on the application of a rule of law;"

During the parliamentary debates, it was proposed to remove the word "intellectual" from the description of the service and to incorporate this amended definition into Article 54 of the Law of 31 December 1971 relating to the scope of all legal professionals authorized to carry out legal advisory activities.

The Senate rejected this amendment, maintaining the definition traditionally recognized by case law. The current definition of legal advice as a personalized intellectual service stems from settled case law of the Court of Cassation[11] and the lower courts[12]. According to that case law, it must be distinguished from documentary legal information, which consists in informing a person about the state of the law or case law with respect to a given issue.

It would have been both legally unfounded and factually inappropriate to remove the intellectual nature of the protected service.

Legally unfounded, because advice drafted by artificial intelligence is merely documentary legal information, the free dissemination of which is enshrined in Article 66-1 of the 1971 Law (which provides that "This chapter shall not preclude the dissemination, in legal matters, of documentary information and data"). How could information generated without any human intellectual input, and guaranteeing neither completeness nor proper interpretation of legal norms, according to the CNB's own statements[13], be regarded as legal advice?

Factually inappropriate, because it would completely destabilize legal publishing: to consider that machine-generated answers produced by AI constitute legal advice would amount to declaring ipso facto unlawful all artificial intelligence tools delivering machine-generated answers developed by legal publishers such as Dalloz, LexisNexis, Doctrine, and all other publishers, since this would then amount to the unlawful practice of law. In reality, the amendment would have led to prohibiting all AI activity by legal publishers, who have invested tens of millions of euros in creating AI tools associated with their docu-

[9] Amendment to the bill on the confidentiality of legal advice provided by in-house counsel, tabled by Ms de la Gontrie, Messrs Bourgi and Chaillou, Ms Harribey, Messrs Kanner and Kerrouche, Mses Linkenheld and Narassiguin, Mr Roiron, and members of the Socialist, Ecologist and Republican group, 12 Jan. 2026.

[10] See, for example: National Bar Council, Report on the Definition of Legal Advice, Commission on the Practice of Law, General Assembly of 12 December 2025; Resolution of the National Bar Council concerning the definition of legal advice, General Assembly, 12 December 2025.

[11] Court of Cassation, 15 Nov. 2010, n° 09-66.319, Alma; First Civil Chamber, 19 June 2013, n° 12-20.832; First Civil Chamber, 25 Jan. 2017, n° 15-26.353.

[12] Paris Commercial Court, Chamber 1-6, 22 Jan. 2026, Case n° 2024015495.

[13] National Bar Council, Report on the Definition of Legal Advice, Commission on the Practice of Law, General Assembly of 12 Dec. 2025.

mentary databases.

4. Advice Excluded Because It Encourages or Participates in an Offence

As part of the procedure for challenging and reviewing the seizure of legal advice that has taken place in the context of administrative proceedings, the liberties and detention judge may be seized by the administrative authority in order:

"Art. 58-1. – IV. B. 2° To order the lifting of confidentiality of certain legal advice whose purpose was to facilitate or encourage the commission of breaches punishable by a sanction under the relevant administrative procedure."

The law adopted by Parliament did not provide for the same exception in civil or commercial proceedings. This omission was the subject of an interpretative reservation by the Constitutional Council: "the challenged provisions must be interpreted as allowing the president of the court to order, in that context, the lifting of the confidentiality of legal advice when its purpose is to facilitate or encourage the commission of a fraud against the law or the rights of a third party."

The Council considers that "in so doing, the Constitutional Council aligns the powers of the president of the court in civil or commercial matters with those conferred, in the context of administrative proceedings, on the liberties and detention judge."

It is likely that the practical application of this interpretative reservation will give rise to difficulties, notably because of the uncertainties surrounding the characterization and proof of the intent required in cases of fraud.

B. Formal Conditions

1. Traceability Requirements

The benefit of protection is subject to strict formal requirements and in particular requires the affixing of the wording:

"confidential – legal advice – in-house counsel"

as well as identification of the author and a specific filing system in the company's records and, where applicable, in those of the recipient group company.

The affixing, in breach of the provisions relating to confidentiality, of the wording "confidential – legal advice – in-house counsel" is punishable by the penalties provided for in Article 72 of the Law of 31 December 1971, namely a fine of EUR 15,000 and one year's imprisonment, in the same way as the unauthorized giving of legal advice or the drafting for others of private instruments in legal matters.

"Art. 58-1. – I. – 4° Such legal advice shall bear the wording 'confidential – legal advice – in-house counsel' and shall, as such, be subject to identification of the author and to a specific filing in the company's records and, where applicable, in the records of the group company that is the recipient of such legal advice."

2. Successive Versions

"Art. 58-1. – I. – 4° in fine: Successive versions of legal advice drafted under the conditions laid down in this I shall enjoy the same confidentiality."

II. Applicable Procedural Regime

A. Enforceability of Confidentiality

1. Scope of Application

"Art. 58-1. – III – Subject to the supervisory power of the authorities of the European Union and to IV, legal advice protected by confidentiality under this article may not, in the context of civil, commercial or administrative proceedings or disputes, be seized or be subject to an obligation of disclosure to a third party, including to a French or foreign administrative authority. In the same context, it may not be relied upon against the company employing the in-house counsel or against the companies of the group to which it belongs.

Confidentiality is not enforceable in criminal or tax proceedings."

The scope of application covers civil, commercial and administrative proceedings and disputes, with the exception of inspections by European Union authorities and criminal or tax proceedings.

The exclusion of inspections by European authorities is explained by respect for the autonomy of European procedures as compared with national procedures and for the powers conferred on those authorities.

The exclusion of criminal and tax proceedings results from a political compromise.

2. Excluded Proceedings

a) Inspections by European Union Authorities

Contrary to what some have argued, the unenforceability of confidentiality for in-house counsel is limited to proceedings before European authorities. Confidentiality will therefore apply to proceedings before French administrative authorities when they apply French law and European law simultaneously, as is often the case, for example, in competition matters. There is no inconsistency here with European law, since confidentiality of advice provided by in-house counsel applies in national proceedings by virtue of the principle of procedural autonomy of the Member States. The confidentiality recognized by various Member States of the European Union for legal advice provided by in-house counsel in proceedings before national authorities applying both national and European law has never been called into question by the Court of Justice and has moreover been held consistent with European law by the Brussels Court of Appeal[14] and by the Belgian Court of Cassation[15].

[14] Brussels Court of Appeal, 18th Chamber, 5 March 2013, Case n° C011/MR13.
[15] Belgian Court of Cassation, 22 Jan. 2015, Case C.13.0532.F, Auditorat près le Conseil de la concurrence and Belgian Competition Authority v. Belgacom.

The Constitutional Council's decision states that "by reserving the supervisory power of the authorities of the European Union, the legislature intended to exclude the possibility for a company to assert the confidentiality of legal advice only in review procedures carried out directly by the European Commission or by another authority of the European Union pursuant to the investigatory powers available to them or, where they have delegated their powers to a national authority, by the services of that authority." This final clarification adds to the text of the law. It is likely that it refers to the assistance provided by French administrative authorities to European authorities when they conduct an investigation in France, so that the company may not assert confidentiality against French investigators acting in support of European investigators. It cannot under any circumstances concern the enforceability of confidentiality against French administrative authorities when they apply European law in parallel with French law in the context of national administrative proceedings.

b) Criminal or Tax Proceedings

Confidentiality is not enforceable in criminal or tax proceedings.

It would have been more logical to apply it to those proceedings as well, but a different decision was made, at least initially. Certain administrative authorities argued that compliance rules could give rise not only to administrative proceedings but also to criminal proceedings, and that this would create a difference in legal regime that might encourage reliance on the criminal route.

That risk nevertheless appears limited. First, legal advice represents only an infinitesimal fraction of the documents seized during inspections and seizures carried out by administrative authorities. The fact that its regime differs in criminal and administrative proceedings therefore has a very limited scope of application. Furthermore, where there is an ordinary administrative-law regime, the criminal route is generally a false good idea for the administrative authority. The criminalization of competition law, which has sometimes been sought by the French Competition Authority, leads to intractable procedural and substantive difficulties that should deter those authorities from circumventing the administrative procedure through criminal proceedings, all the more so where the purpose is to seize documents negligible in number compared with the mass of documents seized during the administrative investigation.

B. The Review Procedure and Possible Release

1. Invocation of Confidentiality

"The company employing the in-house counsel may waive the confidentiality of the documents.

Art. 58-1. – IV. – A. – Where, in the course of the execution of an investigative measure ordered in the context of a civil or commercial dispute or of an inspection operation conducted in the context of administrative proceedings, the confidentiality of legal advice is alleged, such advice may only be taken by a commissaire de justice designated for that purpose by judicial decision or mandated by the administrative authority.

The taking of the legal advice shall take place in the presence, on the one hand, of a representative of the company and, on the other hand, of the applicant for the measure or of the administrative authority. The legal advice so taken shall immediately be placed under sealed cover by the commissaire de justice, who shall draw up an official record of these operations. The seal and the official record shall be kept at the office of the commissaire de justice."

The law implies that the company must come forward in the course of an investigative measure ordered in the context of a civil or commercial dispute or an inspection operation conducted by an administrative authority and invoke the confidentiality of the legal advice. It will therefore be necessary to be proactive and assert confidentiality.

2. Review of Confidentiality

a) Review in the Context of a Civil or Commercial Dispute

"B. – In the event of a civil or commercial dispute, the president of the court which ordered the investigative measure may be seized in summary proceedings by writ of summons, within fifteen days from the implementation of that measure, for the purpose of challenging the alleged confidentiality of certain legal advice."

In the case of civil or commercial disputes, the law expressly provided only for review aimed at challenging the alleged confidentiality of certain legal advice, whereas in the context of administrative inspections and seizures it also provided for the possibility of "ordering the lifting of confidentiality of certain legal advice whose purpose was to facilitate or encourage the commission of breaches punishable by a sanction under the relevant administrative procedure."

One of the interpretative reservations formulated by the Constitutional Council in its decision of 18 February 2026 considers that "the challenged provisions must be interpreted as allowing the president of the court to order, in that context, the lifting of the confidentiality of legal advice when its purpose is to facilitate or encourage the commission of a fraud against the law or the rights of a third party."

b) Review in the Context of Administrative Proceedings

The law expressly provided for a review of confidentiality before the JLD at the initiative of the relevant administrative authority only in the event of an inspection and seizure operation.

"In the case of an inspection operation conducted in the context of administrative proceedings, the li-

berties and detention judge may be seized by writ of summons, within fifteen days from the inspection operation, by the administrative authority that conducted the operation for the purpose:

1° of challenging the alleged confidentiality of certain legal advice;

2° of ordering the lifting of confidentiality of certain legal advice whose purpose was to facilitate or encourage the commission of breaches punishable by a sanction under the relevant administrative procedure."

One of the interpretative reservations formulated by the Constitutional Council consisted in extending the possibility of referral to the JLD from full-scale investigations to ordinary investigations, by holding that "these provisions must also be interpreted as allowing the administrative authority, when exercising a right of communication provided by law, to seize the liberties and detention judge under the same conditions in order to challenge confidentiality or obtain its lifting."

c) Common Core of Review Procedures

"C. – Upon receiving notification of the writ of summons, the commissaire de justice shall without delay transmit to the registry of the court seized all legal advice placed under seal, together with a copy of the official record of his or her operations.

The judge shall open the seal in the presence, on the one hand, of a representative of the company and, on the other hand, of the applicant or the administrative authority.

D. – After hearing the applicant or the administrative authority and the representative of the company, the judge shall rule on the challenge and, where applicable, on the request to lift confidentiality of that legal advice.

The judge may adapt the reasoning of the decision and the manner of its publication to the needs of protecting confidentiality.

If the applications are granted, the legal advice shall be produced in the pending proceedings. Otherwise, it shall be returned without delay to the company.

E. – In the absence of any challenge or request to lift the alleged confidentiality of the legal advice within the fifteen-day period provided for in B of this IV, the company shall have a further period of fifteen days to request the return of the seal from the commissaire de justice. Upon expiry of this fifteen-day period, the commissaire de justice shall destroy the seal if the company has not requested its return. The commissaire de justice shall draw up, as the case may be, an official record of return or destruction.

V. – The company employing the in-house counsel or, where applicable, the group company that is the recipient of the legal advice must be assisted or represented by a lawyer in the judicial proceedings referred to in IV.

VI. – The order of the liberties and detention judge may be appealed before the First President of the Court of Appeal or his or her delegate. The appeal may be brought by the administrative authority, by the company employing the in-house counsel or, where applicable, by the group company that is the recipient of the legal advice.

The First President of the Court of Appeal or his or her delegate shall rule within three months.

VII. – (Deleted)

VIII. – The conditions for application of this article, in particular the conditions under which the company ensures the integrity of the documents until the decision of the judicial authority, shall be defined by decree in the Conseil d'État."

Even though administrative proceedings on the one hand and civil or commercial proceedings on the other fall within the jurisdiction of different judges, the organization of the first-instance review procedure follows an identical general pattern:

transmission to the court registry by the commissaire de justice of the legal advice placed under seal and of his or her official record;

adversarial opening of the seal by the judge;

adversarial discussion before the judge prior to the ruling.

It is likely that these guiding principles will be further specified either in the forthcoming decree or in practice.

In this respect, useful inspiration could be drawn from practices before commercial courts in matters relating to Article 145 or from comparative-law examples.

It is important, for example, that during the adversarial examination before the judge, the administrative authority should not be represented by a case officer in charge of the investigation, but by an official of the authority who is not in charge of the investigation, as is for example the case before the Belgian Competition Authority, in order to avoid the situation in which acquaintance with confidential legal advice would allow that authority to obtain access to information that could be used against the company in the course of the investigation.

Certain procedural arrangements were criticized during the parliamentary debates. The destruction of the seal by the commissaire de justice in the absence of a challenge or request to lift confidentiality after a period of fifteen days was criticized as contributing to a risk of loss of documents. This hypothetical risk was dismissed during the parliamentary debates, first because of the digitalization of companies, which results in the seizure of a copy of computer files retained by the company, and secondly because the company is granted a fifteen-day period to request recovery of the documents, a period longer, for example, than the time-limit for challenging inspection and seizure operations in full-scale competition investigations.

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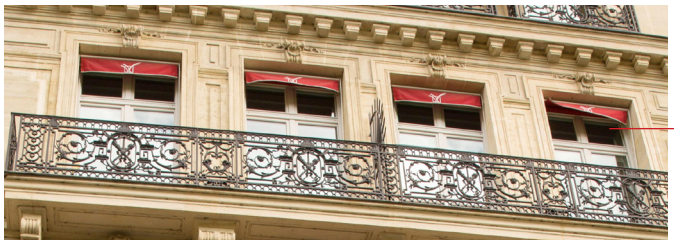
The confidentiality of legal advice enshrined by Parliament and by the Constitutional Council constitutes progress not only for in-house counsel but also for the law itself, compliance with which will be better ensured thanks to it.

In-house counsel, who number more than 20,000 in France, do not yet have in our country the role and status that ought to be theirs, unlike the status they enjoy in common-law countries. In-house counsel should be accorded a far more important place. This would lead to earlier consideration of legal issues and would improve the effectiveness and legal certainty of companies. In every company, the legal director should automatically be a member of the executive committee, report directly to the Chairman or Chief Executive Officer, and enjoy genuine autonomy. Recognition of the confidentiality of his or her legal advice will help strengthen that person's status and legitimacy within the company.

The reform should also help to fully restore the confidentiality of lawyer-client advice, which is no longer truly recognized in positive law in our country. The case law of the Criminal Chamber has significantly restricted lawyer-client confidentiality by limiting it to the exercise of defence rights[16], that is, after the opening of judicial proceedings or proceedings aimed at the imposition of a sanction[17]. Yet one of the main arguments invoked in favor of such a restriction lies in the need to protect the general interest and ensure the proper conduct of investigations. Since the Constitutional Council states in its decision that the confidentiality of legal advice is likely to foster companies' compliance with the legal rules binding upon them and is consistent with an objective of general interest, the same reasoning should apply mutatis mutandis to legal advice given by lawyers, who play the same role and should therefore be protected accordingly, as the Commercial Chamber of the Court of Cassation recently reaffirmed[18].

[16] Most recently, Criminal Chamber, 13 Jan. 2026, n° 24-82.390.
[17] Criminal Chamber, 30 Sept. 2025, n° 24-85.225; 11 March 2025, No. 23-86.260.
[18] Commercial Chamber, 8 Oct. 2025, n° 24-16.995, published in the Bulletin.



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