NORTON ROSE FULBRIGHT

Competition Takeaway
Making competition law easy

Number 4

The new in-house privilege rules in France: outstanding questions and practical tips

Summary prepared by Marta Giner Asins, Arnaud Sanz and Elise Ribeyrol

Paris competition team

February 2026



Introduction

New French in-house legal privilege marks key progress but requires caution

On 14 January 2026, France's Senate adopted without any amendments legislation that creates new in-house legal privilege rules – marking a significant milestone for legal departments and in-house counsel. This development promises to reshape how legal teams manage confidentiality within their organisations.

The new privilege rules are not specific to competition law but may have a significant impact on competition law procedures, given that the French Competition Authority (**FCA**) relies on in-house communications to build its case (see the *Doctolib* decision).

However, it is important to note that the new provisions are not yet effective, even if they have been approved by the Constitutional Council (subject to minor interpretation clarifications). In addition, confidentiality under the new privilege rules is subject to strict conditions requiring careful implementation. Full application also depends on forthcoming decrees, which will determine the final standards; unfortunately, it is not uncommon for French laws to remain inactive without implementing decrees, a trend seen more frequently in recent years.

Enforcement by regulatory authorities adds complexity, especially considering existing limitations with external counsel privilege in competition law cases, signalling potential challenges ahead.

Given these uncertainties and the evolving nature of the regulations, in-house counsel are advised to exercise caution and conduct detailed reviews of the legislative provisions. Staying informed and proactive is essential to navigate these changes effectively and safeguard the confidentiality of legal communications.

This alert provides an overview of the critical issues you need to understand to adapt to this new legal framework.



Competition Takeaway

Making competition law easy for your teams

Our "Competition Takeaway" series aims to provide you with presentations on applicable competition rules, in a user-friendly format.

Our goal is to summarise the latest trends in competition law and extract the practical takeaways to be considered in your company's day-to-day business.

Don't hesitate to send us any comments or request specific subjects of your interest.

The Paris NRF competition team

When will the law enter into force ?

14 January 2026

Adoption of the law by France's Senate, without any amendment.

25 February 2026

Publication of the law at the Official Journal

[Unknown]

Additional texts are required for effective implementation (the first two below in particular):

- order setting in-house lawyers ethical rules framework and training;
- decree on the composition and functioning of the commission for ethical rules;
- order on the list of degrees equivalent to French master's degree in law.

February 2027 at latest

The law will enter into force on a **date to be set by decree** (not yet published) of the Council of State, **no later than** the **first day of the 12th month following its publication**.

The question remains as to its applicability if implementation texts have not been adopted by then.

CONSTITUTIONAL COUNCIL REVIEW

23 January 2026

Referral to the Constitutional Council by 60 Members of Parliament, which suspended the time limit for promulgation.

Consequence: the law has not yet been promulgated.

Members of Parliament notably argued that:

- the law unduly restricts regulatory investigations by granting overly broad confidentiality;
- the law improperly mirrors legal professional privilege despite in-house counsel lacking independence;
- vague definitions and unclear EU authority exclusions undermine legal clarity.

18 February 2026

The **Constitutional Council has issued its ruling**

The law is deemed constitutional subject to the following three **minor interpretation indications**:

- administrative authorities may challenge confidentiality before a judge (see slide 5) not only during inspections, but also within the frame of other investigative measures such as questionnaires;
- confidentiality cannot prevent an administrative authority from exercising specific prerogatives conferred upon it by an organic law (i.e. which is superior in rank to the "ordinary" law enacting the new privilege);
- in civil or commercial proceedings, the president of the court may lift confidentiality where the consultation is intended to facilitate or encourage fraud against the law or the rights of a third party.

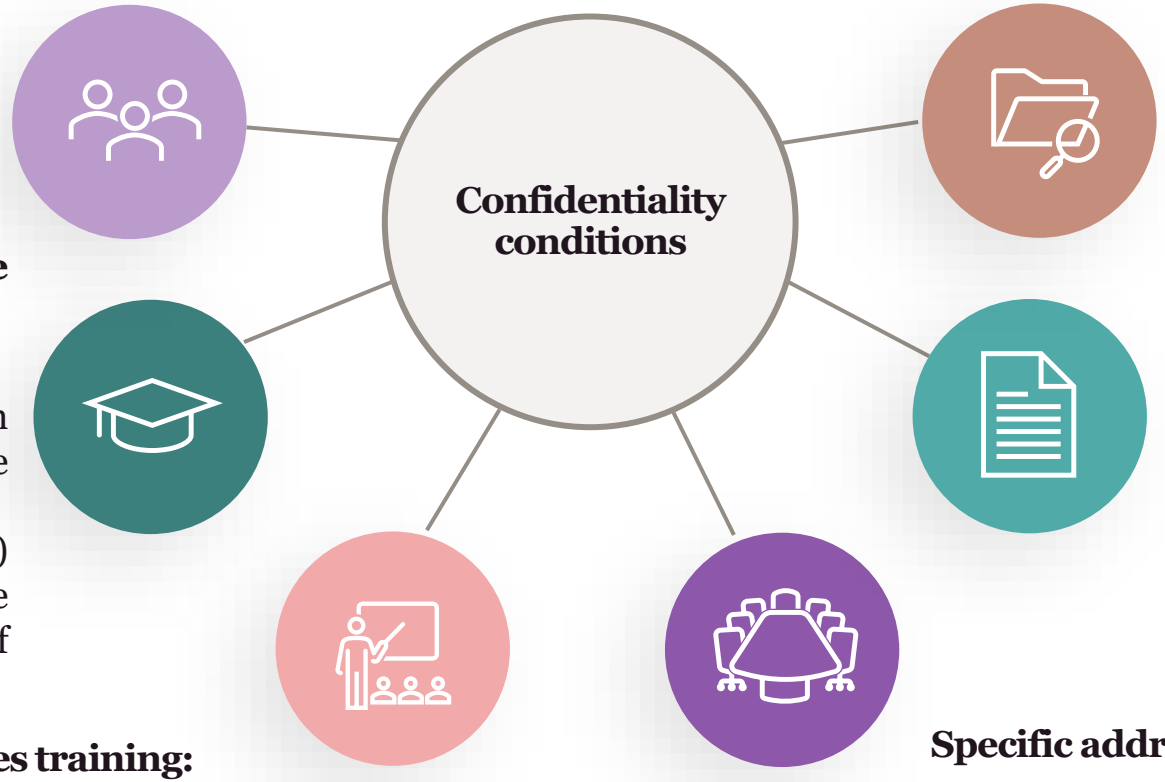
Confidentiality subject to strict conditions

A consultation drafted by:

- in-house counsel; or
- at counsel's request and under their supervision, by a team member acting under their control.

In-house lawyer must have specific qualification:

- hold a Master's degree in law; or
- an equivalent French or foreign qualification (list remains to be defined); or
- hold a Bachelor degree (*maîtrise*) or first year of Master's programme (or equivalent) + 8 years of experience as in-house counsel.



Ethical rules training:

- in-house legal advice is protected only if the in-house counsel has completed specific training – currently not available;
- the detailed framework will be set out by an implementation decree.

Labelling, identification and storage:

- the advice must be labelled "*confidentiel – consultation juridique – juriste d'entreprise*";
- the author must be clearly identified;
- the advice must be filed separately within the company's records.

Definition of legal opinion:

- a "personalised intellectual service" consisting of providing an opinion or advice based on the application of a rule of law;
- successive versions of the opinion are also covered.

Specific addressees:

- in-house legal advice is protected only if it is addressed to management, administrative or supervisory bodies of the employing company, its group or any of its subsidiaries.

Key points to keep in mind



Limited scope

- Confidentiality protects advice from seizure or disclosure only in civil, commercial or administrative proceedings, including competition authority proceedings.
- It does not apply in criminal or tax proceedings.
- Territorial scope not defined by the law: only in-house counsel based in France?



Not enforceable at the EU level

- Confidentiality of in-house legal consultations is not relevant to European Union authorities.
- For example, the European Commission applies a different privilege regime for in-house counsel and external counsel.
- Not applicable to competition investigations carried out by the EU Commission.



Specific protection procedure

- During proceedings, requests for information by the administration, or dawn raids, in-house confidentiality must be put forward by the targeted company.
- In dawn raids, if confidentiality is alleged, a document may be seized only by a duly appointed judicial officer and kept in a closed seal at its office.



Subsequent challenge before the court

- Further to seizure or disclosure refusal, the administration may challenge the confidentiality of the document
- If no challenge is made within 15 days of seizure, the company may request the return of the seized document.
- In civil or commercial proceedings, the Court can waive the confidentiality where the conditions are not met or if the consultation aims to facilitate or encourage fraud to the law or third-party rights.



Ex-post assessment: potential evolution

- Three years after the entry into force of the new provisions, the Government will present an assessment to the Parliament and, in particular, underline the “consequences of the confidentiality”.
- Given that adoption of these new privilege rules has been controversial, future evolutions cannot be excluded.

Confidentiality of In-House Counsel Legal Advice

Reminder: external lawyer privilege is already limited in practice in competition investigations

External lawyer privilege is already under strain during competition dawn raids, as a result of the inspection methods used by the French Competition Authority and very strict case law. It will be important to keep an eye out for the way in which the new in-house legal privilege rules are implemented during administrative procedures and in particular competition investigations: the French Competition Authority may decide to follow a similar approach for in-house privilege. In particular, the compulsory filing system may facilitate for inspectors to read in-house privileged documents, even if they do not seize them.

	COVERED BY LEGAL PRIVILEGE	NOT COVERED BY LEGAL PRIVILEGE
Materials	• Consultations, meeting notes, emails…	
Persons involved	• Exchanges between external lawyer and their client • Internal exchanges reporting external lawyer's advice • Exchanges between external lawyers (except if labelled "*Official*")	• Internal exchanges going beyond mere reporting of external lawyer's advice • Exchanges with third parties' external lawyers
Contents	• Only advice and exchanges related to exercise of defence rights are covered (i.e. connected with legal proceedings)	• Advice and exchanges not connected with any legal proceedings • Documents voluntarily handed over by the company to the competition authority

External lawyer privilege currently subject to burdensome procedure (temporary seal)

1. Identification
Inform inspectors of legally privileged items, and check if they consult or seize them

2. Temporary closed seal
Ask inspectors to quarantine privileged items in temporary closed seal

3. Copy
Copy or request a copy of those items from the inspectors

4. Review and justify
Within +/- 2 weeks after dawn raid, review copied items and justify legal privilege claim

5. Final closed seal
In the lawyers' presence, inspectors open the seal, review justifications, delete privileged items and close the final seal

Conclusion – practical tips

- Watch out for the adoption of the implementation texts – the new regime cannot be relied upon until all are in place. We will issue updates of this Takeaway as the situation evolves.
- Early implementation may not be advisable – for example, labelling and storing confidential in-house advice. As long as the provisions are not fully in force, this offers no protection and makes such documents easy to target during dawn raids.
- Quiet preparation is preferable: identify and map legal team members, management and governance bodies meeting the statutory eligibility conditions. Map and reflect, but do not deploy new processes.
- Keep in-house legal writing lean and factual; limit circulation to recipients who strictly need-to-know; avoid mixing legal conclusions with broad business commentary.

Phase	Trigger	Practical recommendations
Phase 1: Post-promulgation	Constitutional Council upholds the law + Presidential promulgation (within 15 days)	• Interim recommended position : no labelling, no dedicated storage. • Monitor for publication of implementing decree and orders. • Train on and apply existing temporary-seal procedure only. • Draft internal templates, training plans and filing protocols-but do not deploy. • Update dawn raid procedures to protect in-house privileged documents.
Phase 2: Implementing texts published	Decree setting entry-into-force date + Order on ethics training framework + Decree on ethics commission + Order on degree equivalencies	• Confirm qualification equivalencies against published list. • Enrol eligible in-house counsel in the mandatory ethics training. • Prepare IT systems for separate filing and labelling. • Still do not deploy until training is completed and entry-into-force date arrives.
Phase 3: Entry into force	Date set by decree (no later than the first day of the 12th month following promulgation, i.e. March 2027 at latest)	• Activate labelling ("confidentiel – consultation juridique – juriste d'entreprise"), author identification, and separate filing. • Train teams on new dawn raid procedure to assert in-house privilege where conditions are met.

Any questions ? Contact us



Marta Giner Asins
Partner
Competition Law, Paris
marta.ginerasins@nortonrosefulbright.com
+33 6 21 07 30 30





nortonrosefulbright.com

Norton Rose Fulbright provides a full scope of legal services to the world's preeminent corporations and financial institutions. The global law firm has more than 3,000 lawyers advising clients across more than 50 locations worldwide, including Houston, New York, London, Toronto, Mexico City, Hong Kong, Sydney and Johannesburg, covering the United States, Europe, Canada, Latin America, Asia, Australia, Africa and the Middle East. With its global business principles of quality, unity and integrity, Norton Rose Fulbright is recognized for its client service in key industries, including financial institutions; energy, infrastructure and resources; technology; transport; life sciences and healthcare; and consumer markets. For more information, visit nortonrosefulbright.com.

The purpose of this communication is to provide information as to developments in the law. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.