

THE PROFESSIONAL SECRET, CONFIDENTIALITY AND LEGAL PROFESSIONAL PRIVILEGE IN EUROPE

(An update on the Report by D.A.O. Edward, QC)

The present paper intends to present an update to the Edward's report from 1976, in the light of the answers from the member delegations of the CCBE questionnaire on professional secrecy¹, including current member States of the European Union, the EEA and the CCBE Observer members. Moreover, the development and trends in the last 25 years will be looked at.

1. How is legal profession protected by professional secrecy?

This section will be divided in three different groups: those countries already dealt with in the Edward's report (only new data will be included, for the rest please refer to the original report); the other EU countries not yet dealt with in the Edward's report, EEA countries and candidate countries:

a) Countries dealt with in Edward's report:

As stated in the Edward Report, in common law systems, that is, UK and IRELAND, legal professional privilege and confidentiality are common law principles stated by the Courts in its decisions as a fundamental feature of the administration of justice and the rule of law. Privilege attaches to communications where these contain confidential information supplied by a client to his legal adviser, or advice supplied by the legal adviser to the client. It exists for the benefit of the client and can be waived by the client if he chooses.

The importance of legal professional privilege has been recently emphasised in the UK by a series of decisions from the House of Lords². These decisions, which have in turn been influenced by decisions from other Commonwealth jurisdictions, notably New Zealand, recognise that legal professional privilege is a substantive right founded on public policy, and not merely a rule of evidence determining which documents are admissible or inadmissible in court proceedings. The courts have regarded the client's right to communicate confidentially with his or her legal adviser under the seal of legal professional privilege, as a necessary corollary of the fundamental right of access to legal advice.

In *General Mediterranean Holdings v. Patel*³, an issue was raised as to the extent to which legal professional privilege was overridden by the new disclosure provision in the Civil Procedure Rules (applicable to England and Wales). It was decided that it can only be derogated by a specific provision in primary legislation. This was an important restatement in the context of civil proceedings.

¹ No information has been provided from Portugal. Concerning Observer members, information has only been provided by Poland, Hungary and Slovenia.

² *R. v Derby Magistrates Court, Ex p. B.* [1996] 1 AC 487; *R v Secretary of State for Home Department, Ex p. Daly* [2001] 3 AER 433; [2001] 2 WLR 1622; *Special Commissioner and Another, Ex p. Morgan Grenfell and Co Ltd* [2002] 2 WLR 1299; [2001]3 AER 1.

³ *General Mediterranean Holdings v. Patel* [2000] 1 WLR 272 QBD.

In contrast to the recent attitude of the courts, there have been a number of statutory inroads into the operation of legal privilege. Whilst in most instances it has not been directly attacked by statute, the consequences are that legal professional privilege has been weakened in practical terms⁴. It is open to Parliament, if it considers it necessary, to make provision that legal professional privilege does not apply in specific instances – for instance when disclosure is required by a government department or agency. However, for any such derogation to be effective it must be enacted in clear and unambiguous terms. The only current specific statutory abrogation is in the Children Act 1989. In the *Morgan Grenfell* case the House of Lords again emphasised that a statutory provision will not be construed as restricting legal professional privilege unless it does so expressly or by necessary implication. There is also the Human Rights Act 1998 to be borne in mind since the European Court of Human Rights has said that legal professional secrecy is a fundamental human right which can be invaded only in exceptional circumstances⁵.

Practical problems can arise in relation to legal professional secrecy, particularly in criminal proceedings. In situations where it is reasonably practicable for the police to inspect material on the premises the provisions of section 19(6) of the Police and Criminal Evidence Act 1986 will apply, i.e. the officer will *not* have power to seize privileged material if he has reasonable grounds for believing it to be subject to legal professional privilege⁶.

In the continental Member States, the professional secrecy rule has different origins, sometimes the constitution, sometimes the criminal law as well as statutes.

FRANCE has a new rule in the Criminal Code concerning professional secrecy which does no longer mention a specific profession: Article 226-13 of the French Criminal Code: *“The disclosure of secret information by a person entrusted with such a secret, either because of his position or profession, or because of a temporary function or mission, is punished by one year’s imprisonment and a fine of € 15,000”*. Professional secrecy is also protected in France by law from 31 December 1971, modified by the law from 7 April 1997⁸ and by decree from 27 November 1991⁹.

⁴ For example, whilst the seizure provisions in the Criminal Justice and Police Act 2001 do not explicitly attack legal professional privilege, the practical effect is that privileged material could be seized. This is a real risk where a computer is seized as there could be copies of e-mails or correspondence on the hard drive which are privileged. Therefore, whilst privileged documents could not be used in evidence, there are no real protections against the possibility of such documents being viewed and their contents being used to help formulate arguments against the client.

⁵ See *Foxley v. United Kingdom* (2001) 31 EHRR 25 p 647, para 44.

⁶ *Regina v. Chesterfield Justices & Another ex parte Bramley* (2000) 2WLR 409.

⁷ *“La révélation d’une information à caractère secret par une personne qui en est dépositaire soit par état ou par profession, soit en raison d’une fonction ou d’une mission temporaire, est punie d’un an d’emprisonnement et de 15000 euros d’amende”*.

⁸ Article 66-5 of the law on the reform of certain legal and judicial professions, states: *“ En toutes matières, que ce soit dans le domaine du conseil ou dans celui de la défense, les consultations adressées par un avocat à son client ou destinées à celui-ci, les correspondances échangées entre le client et son avocat, entre l’avocat et ses confrères, les notes d’entretien et, plus généralement, toutes les pièces du dossier sont couvertes par le secret professionnel.”*

⁹ Article 160 of the decree governing the lawyer’s profession provides: *“l’avocat, en toute matière, ne doit commettre aucune divulgation contrevenant au secret professionnel”*.

In BELGIUM, it is still the same article 458 of the Criminal Code who provides the legal basis for the protection of professional secrecy.

In LUXEMBOURG, professional secrecy is protected as well by article 458 of the Criminal Code and by article 35 of the law on the profession of lawyer modified on 10 August 1991.

In ITALY, Article 622 of the Criminal Code protects the legal profession. Italian lawyers are protected against the obligation of giving evidence by the Italian Code of Criminal Procedure on its Article 200 concerning criminal cases and by the Italian Code of Civil Procedure in civil cases.

In THE NETHERLANDS, the lawyer is obliged to confidentiality on the basis of Article 272 of the Dutch Criminal Code and the Dutch Code of Criminal Procedure as stated in the Edwards's Report. Professional secrecy has been recently established as well by the Dutch Supreme Court of Justice in its case law¹⁰.

Professional secrecy in GERMANY is no longer solely based on the provisions of the Criminal Code, but also on the law regulating the legal profession: §43 a II of the *Bundesrechtsanwaltsordnung* – BRAO, German Lawyers Act: *"The lawyer is bound by professional secrecy obligations. This duty refers to information that the lawyer became aware of in the course of the exercise of his profession. This does not apply to facts which are public or do not require secrecy according to their significance"*¹¹.

In DENMARK, it is still Section 170 of the Administrative of Justice Act (Code of Procedure) the main rule on professional secrecy. Court practise will be relevant when dealing with a case where a breach of confidentiality has been alleged since the protection of professional secrecy is limited in as far as the courts may order a disclosure¹².

b) Other EU countries (not dealt with in the Edwards report) and EEA countries:

In AUSTRIA, professional secrecy is established in the following statutory provisions:

- According to Section 9 para 2 RAO [Rechtsanwaltsordnung/Lawyers Code] the lawyer is bound by professional secrecy in matters, which have been confided to him and which have otherwise become known to him in his capacity as a lawyer, whose confidentiality is in the interest of his party. He is entitled to claim legal professional privilege in legal and other official proceedings. Section 9 para 3 RAO provides that the right of the lawyer according to para 2 second sentence may not be circumvented by any legal and other official measures, in particular by hearing of the back staff of the lawyer or by imposing

¹⁰ Some examples are: HR 1-3-1985 NJ 1985, 173; HR 29-03-1994 NJ 1994, 537; HR 30-11-1999, ELRO AA3805, JOL 1999, 270; HR 12-02-2002, LJN number AD4402, case number 03236/00B; HR 18-06-2002, LJN number AD5297, case number 03253/00B.

¹¹ *"Der Rechtsanwalt ist zur Verschwiegenheit verpflichtet. Diese Pflicht bezieht sich auf alles, was ihm in Ausübung seines Berufes bekanntgeworden ist. Dies gilt nicht für Tatsachen, die offenkundig sind oder ihrer Bedeutung nach keiner Geheimhaltung bedürfen"*

¹² A recent important decision from the Danish Supreme Court, UFR 2002 page 1531, acquitted the lawyer accused by the Law Society of breach of confidentiality as the Court found there had been such a substantial interest for the Danish society that it was permissible.

the delivery of documents, pictures, recorded speech or data carriers or their confiscation; however specific rules on the scope of this interdiction remain unaffected.

- According to Section 321 para 1 subpara 4 ZPO [Zivilprozeßordnung/Code of Civil Procedure] and Section 49 para 2 AVG [Allgemeines Verwaltungsgesetz/Code of Administrative Procedure], a lawyer is entitled to refuse to give evidence in matters, which have been confided to him in his capacity as a lawyer by his client.
- As well, section 152 para 1 subpara 4 StPO [Strafprozeßordnung/Code of Criminal Procedure] rules that a lawyer is entitled to refuse to give evidence in matters, which became known to him in his capacity as a lawyer. This applies also to the back stuff of a lawyer and to trainee lawyers (Section 152 para 2 StPO). This right of the lawyer, his back stuff and trainee lawyers may not be circumvented, otherwise this could lead to voidness of the judgement (Section 152 para 3 StPO).

Moreover, according to permanent case law, the duty to preserve the professional secret goes beyond a client's mandate¹³. The duty continues to be vis-à-vis the heirs of the deceased client¹⁴. And the duty to preserve the professional secrecy extends to the lawyers employees and assistants¹⁵. A lawyer can only be released from his obligation by the client. This, however, does not excuse the lawyer from verifying conscientiously, if the client would have to fear disadvantages or damages, through the disclosure, in which case the duty to secrecy prevails¹⁶.

Furthermore the lawyers release from his obligation of secrecy has to be understood in the respective prevailing context: if he was released from his obligation of secrecy in context with a fee proceeding, he is not allowed to use the information from other proceedings, which is not linked to the previous release¹⁷.

The lawyers obligation of secrecy is a vital element of the exercise of the legal profession. Without the obligation to keep confided facts secret vis-à-vis third parties, the practice of the legal profession as well as the correspondent right to refuse to give evidence vis-à-vis everybody (especially vis-à-vis law enforcement agencies) in these matters, which have been confided to him, is unthinkable. Therefore every breach of this principle has to be interpreted restrictively and examined with particular diligence¹⁸.

With regard to LIECHTENSTEIN, the legal profession is protected and bound by professional secrecy and entitled to claim legal professional privilege. Professional secrecy is based on statutory provisions (Article 15 of the Lawyers Act dated December 9, 1992 as amended; Section 107 paragraph 1.3 of the Criminal Procedure Act dated October 18, 1988 as amended, Section 321 paragraph 3 of the Civil Procedure Act dated December 10, 1912 as

¹³ OBDK [Oberste Berufungs- und Disziplinarkommission für Rechtsanwälte und Rechtsanwaltsanwärter] 14.10.1991, Bkd 92/89.

¹⁴ OBDK 29.11.1988, Bkd 34/88.

¹⁵ OBDK 2.5.1988, Bkd 115/87

¹⁶ OBDK 14.10.1991, Bkd 92/89

¹⁷ OBDK 3.6.1991, Bkd 71/90.

¹⁸ OBDK 24.1.2000, 11 Bkd 4/99

amended) and the Code of Conduct (Section 26 of the Code of Conduct dated May 5, 1994 as amended).

In SPAIN, the Constitution of 1978 provides in Article 20.1 d): *"...The law shall regulate the right to the clause of conscience and professional secrecy in the exercise of these freedoms"* and in Article 24.2: *"The law shall specify the cases in which, for reasons of family relationship or professional secrecy, it shall not be compulsory to make statements regarding allegedly criminal offences"*.¹⁹ Other provisions reflecting the obligation of professional secrecy are Article 199 of the Spanish Criminal Code or Article 437.2 of Law 6/1985. It has also been referred in Court decisions²⁰.

The legal profession is protected in GREECE in article 371 of the Criminal Code where the breaking of the professional secrecy lawyer's duty, is penalized. Lawyers cannot give evidence as witnesses at any Court for information or facts that have come to their knowledge while acting as lawyers in the case.

In SWEDEN, the Code of Judicial Procedure, Chapter 8, Sect. 4, paragraph 2, contains the obligation of a lawyer to conceal something that he/she becomes aware of in the exercise of the profession when professional ethics so requires. According to Chapter 36, Sect. 5, paragraph 2, a lawyer may not be questioned as a witness in a court procedure regarding anything which has been confided to him/her in the exercise of the profession or which he/she has learnt in connection thereto. According to Chapter 20, Section 3 of the Criminal Code, legal measures can be taken against a lawyer who has breached the professional secrecy.

In FINLAND, the Finnish Act on Advocates 1995, paragraph § 5c, states: *"An advocate or his assistant shall not, without due permission, disclose the secrets of an individual or family or business or professional secrets which have come to his knowledge in the course of his professional activity. Breach of the obligation of confidentiality provided for under paragraph 1 above shall be punishable in accordance with chapter 38, section 1 or 2, of the Penal Code, unless the law otherwise provides for more severe punishment for the act"*. Chapter 30 of the Criminal Code protects professional secrecy and was enacted prior this Act on Advocates.

With regard to NORWAY, professional secrecy for lawyers and other professions is stated in article 144 of the Criminal Code: secrets that are confided to an advocate may not be revealed. The penalties for breach of confidence are fines or prison up to six months. The Criminal Procedure Code § 119 and the Civil Procedure Code § 205 state that the Court may not without the client's consent, receive the testimony of advocates, among others, about anything which has been confided to them in their professional capacity. This also restricts the right to seizure documents concerning which an advocate may refuse to testify as a witness.

In ICELAND, professional secrecy is protected by statute: Law on Lawyers 77/1998, sec. 22.

¹⁹ *"... La ley regulará el derecho a la cláusula de conciencia y al secreto profesional en el ejercicio de estas libertades"*, and Article 24.2: *"La ley regulará los casos en que, por razón de parentesco o de secreto profesional, no se estará obligado a declarar sobre hechos presuntamente delictivos"*.

²⁰ Judgments of the Supreme Court of 12 April 1993 and 18 October 1993 and Judgment from the Constitutional Court TC 110/1984 of 26 November (RA 575/1983. BOE 305, 21 December)

c) Candidate countries:

In POLAND the legal profession is divided into Advocates and Legal Advisers. Polish Advocates are protected by professional secrecy through Article 6 of the law on the Advocate's Profession²¹, which states that *"an advocate is under a duty to keep secret everything he has learnt in the course of providing legal assistance and may not be relieved from the duty to keep professional secrets with regard to facts which came to his/her knowledge whilst providing legal assistance or whilst conducting a case"*.

Polish legal advisers are protected as well by professional secrecy provisions contained in articles 3.3 - 3.5 of the Legal Advisers Act of July 6th 1982, which provides: *"3. A legal adviser is obliged not to reveal any information which he/she acquired in the process of providing legal service. 4. Confidentiality of information cannot be restricted to any period of time. 5. A legal adviser cannot be freed from keeping confidential the information he/she acquired in the process of providing legal service or representing the client's case."*

Concerning SLOVENIA, Article 6 of the law on the legal profession²² disposes that the lawyer must protect, like a secret, all he learns from the client. This obligation also applies to the people working in his office. The Constitutional Court has as well, stated the importance of professional secrecy, without which, the rights of the citizens cannot be protected by the legal profession²³.

In the case of HUNGARY, the legal profession is protected by professional secrecy according to section 8 of Act XI of 1998 on Attorneys. Other provisions which contain professional secrecy rules are: section 170§ (1) c) of Act III of 1952 on the Civil Procedure Code, section 65§ (1) a) and section 66§ (2) c) of Act I of 1973 on the Criminal Procedure Code and section 29§ (3) b) of Act IV of 1957 on the General rules of administration procedures.

It results from all this stated above that, all European countries studied have got provisions in order to ensure the protection of professional secrecy. Professional secrecy is largely protected by law. Finally, it should be noted that professional secrecy is also reflected in the different national codes of conduct for lawyers²⁴. However, the scope of the protection may differ from country to country, and may be subject to limits. Next section of this paper will deal with the limits of professional secrecy.

²¹ Law on the Advocate's Profession of 26 May 1982 as amended on 22 May 1997.

²² Official Journal of the Republic of Slovenia JO No. 18/93, 24/96.

²³ Decisions from the Slovenian Constitutional Court No. U-I-37/98 JO No. 48/2000; No. U-I-77/93 JO No. 43/95.

²⁴ Spanish code of conduct article 1.1 and 5; Italian code of conduct article 9; Dutch code of conduct (1992) article 6, para. 1; German federal Bar's "Rules of Professional Practice" (*Berufsordnung*); Greek code of conduct article 32.2; Danish code of good conduct section 2.3; Swedish code of conduct for lawyers; Polish code of professional ethics (resolution no 2/XVIII/98 of the Polish Bar Council 10 October 1998); Polish lines of ethics for the legal advisers of November 6th 1999; Slovenian code of conduct of the lawyers.

2. Is professional secrecy limited or unlimited?

In most of the Member States, the protection of the professional secrecy is limited. Only ICELAND, SPAIN, LIECHTENSTEIN²⁵ and AUSTRIA²⁶ have stated that the protection of the professional secrecy is unlimited.

In the UK, the absolute ban on the disclosure of communications can, in very restricted circumstances, be broken as the Edward's Report explains. The Courts insist on its case law that legal professional privilege is not applicable where the communication is made for the purpose of the client obtaining advice regarding the committing of a crime, and the lawyer is directly concerned in carrying out the criminal or illegal act²⁷. It may also be expressly overridden by specific limiting statutory provisions, for example in cases involving money laundering, and in the field of Revenue law²⁸.

The protection of professional secrecy in IRELAND is also being subjected to more detailed definition in the context of Court challenges, as well as by Statute developments²⁹.

As the Edward's Report says, professional secrecy cannot always be waived by the client in continental Europe or civil law countries (FRANCE, BELGIUM, LUXEMBOURG), meaning that the lawyer is unable to disclose the clients' secrets, although it can be in common law jurisdictions (UK and IRELAND).

Nevertheless, in FRANCE, the protection in criminal matters is not unlimited. The French Courts have confirmed the existing case law. Lawyers may reveal a secret when this is strictly necessary to protect the *'dépositaire du secret'* against an unjustified accusation³⁰. There is not professional secrecy when the lawyer uses it for illegal purposes³¹ (as in the UK). Finally, it also appears that, the Criminal Chamber of the Appeal Court insists in excluding professional secrecy in matters of legal counselling (since in-house counsels are

²⁵ Safe for certain limitations in criminal law aspects.

²⁶ The protection of the professional secrecy is basically unlimited in Austria. There are, however, minor limitations established by court practice.

²⁷ *Micosta SA v Shetland Islands Council* 1983 SLT 483

²⁸ But see *R v Special Commissioner & Another, ex parte Morgan Grenfell & Co Ltd* (House of Lords, 16 May 2002), which decided that it could not be impliedly overridden by statute.

²⁹ *Smurfit Paribas v AAB Export Finance Limited* (1990 ILRM 588) *Miley-v-Flood* 2001 21R 50; Criminal Justice Act, 1994; S.I. No. 324 of 1994 Criminal Justice Act, 1994 (Commencement) Order, 1994; S.I. No. 55 of 1995, Criminal Justice Act, 1994 (Commencement) Order, 1995; S.I. No. 105 of 1995, Criminal Justice Act, 1994 (Section 32) (10b) Regulations, 1995; EU Directive on Money laundering 2001/97/EC (Amends 91/308/EEC); *"Collection and enforcement of Stamp Duty"* – Revenue Commissioners Statement of Practice SP – SD 1/91.

³⁰ Chambre criminelle de la Cour de cassation 29 mai 1989 (Bull. crim. n°218) : *"l'obligation au secret professionnel d'un avocat ne saurait lui interdire, pour se justifier de l'accusation dont il est l'objet et qui résulte d'une correspondance échangée entre eux, de produire d'autres pièces de cette même correspondance utile à ses intérêts"*.

³¹ Chambre criminelle de la Cour de cassation 12 mars 1992: *"la saisie des correspondances échangés entre un avocat et son client ne peut à titre exceptionnel être ordonnée ou maintenue qu'à la condition que les documents saisis soient de nature à établir la preuve de la participation de l'avocat à l'infraction"*.

not registered within the Bar in France)³², considering that professional secrecy must be reserved for the exercise of defence rights.

In BELGIUM, the impossibility for the client to waive professional secrecy has been consecrated by the case law, but it admits that professional secrecy may be overridden in certain cases in favour of the right of defence³³. This consists of an application of the theory of the conflict of values (e.g. life or health danger).

In LUXEMBOURG, the protection of professional secrecy is unlimited under reservation of article 35.3 of the law on the profession of lawyer, modified in 10 August 1991³⁴.

The protection in ITALY is essentially unlimited. Italian lawyers must observe professional rules unless there is a statutory duty to give information³⁵.

In THE NETHERLANDS, the protection is not unlimited. The Supreme Court ruled on 1 March 1985 that *"... privilege must be based on a principle of law generally applicable in the Netherlands, which means that in the case of confidants, society's interest in the truth coming to light must make way for society's interest in everyone being able to turn to confidants freely for help and advice and without fear of disclosure"*³⁶. However, existing and new legislation, plus case law, provide a further explanation specifying the scope of the duty and privilege of professional secrecy:

- The Dutch Special Investigative Powers Act and Preliminary Inquiry (Amended) Act of 1 February 2000 provides special investigation methods. This may lead to obtaining information governed by privilege. In those cases the information must be destroyed as quickly as possible pursuant to article 126 aa paragraph 2 of the Dutch Code of Criminal Procedure³⁷.

³² Chambre criminelle de la Cour de cassation 30 juin 1999

³³ Cass. 5 fév. 1985, *Pas.*, I, 670; Cass. 23 décembre 1998, *J.L.M.B.*, 1999, p. 61.

³⁴ Article 35.3 : *«Le lieu de travail de l'avocat et le secret des communications, par quelque moyen que ce soit, entre l'avocat et son client, sont inviolables. Lorsqu'une mesure de procédure civile ou d'instruction criminelle est effectuée auprès ou à l'égard d'un avocat dans le cas prévu par la loi, il ne peut y être procédé qu'en présence du Bâtonnier ou de son représentant, ou ceux-ci dûment appelés. Le Bâtonnier ou son représentant peut adresser aux autorités ayant ordonné ces mesures toutes observations concernant la sauvegarde du secret professionnel. Les actes de saisie et les procès-verbaux de perquisition mentionnent à peine de nullité la présence du Bâtonnier ou de son représentant ou qu'ils ont été dûment appelés, ainsi que les observations que le cas échéant le Bâtonnier ou son représentant ont estimé devoir faire.»*

³⁵ Last paragraph of Article 9 of the Italian Code of Conduct for lawyers from 1999 provides: *"There are exceptions from this general rule in those cases where the disclosure of information concerning lawyer's client becomes necessary: a) for effectively carrying out his representation of his client; b) for preventing his client from committing any particularly serious crime [reato di particolare gravità]; c) for providing facts in a controversy between a lawyer and his client; d) in proceedings concerning the way in which the client's interests have been represented. In any case such disclosure must be limited to those facts strictly necessary to achieve the limited purpose set out above"*.

³⁶ Dutch Supreme Court 01-04-1985, *NJ* 1985, 173.

³⁷ Ruling of 19 December 2001, LJN number AD7315, by which the Dutch Bar Association instigated interim injunction proceedings against the Dutch State for not deleting tapped telephone conversations between lawyers and clients. The judge ruled that the State must indicate how and in accordance with which procedure compliance with the clauses of article 126aa of the Dutch Code of Criminal Procedure

- The Disclosure of Unusual Financial Services Transactions Act of 1 February 1994, amended December 2001 in line with EU Directive 2001/97/EU of 4 December 2001, states that unusual transactions must be reported to the judicial bodies.
- The draft legislation and draft decree concerning requisition of telecommunication data enables the traffic data pertaining to communications with lawyers to be a topic of investigation. Measures to safeguard privilege are still being discussed.
- The proposal for an European Convention on Mutual Assistance in Criminal Matters enables large-scale tapping of telephone conversations, and this may include tapping conversations with privileged persons.
- The new law of procedure of 1 January 2002 (Code of Civil Procedure) provides in article 111 that all parties must truthfully put forward the full facts that are relevant to the judgement. These requirements could be at odds with the Rules of Conduct 12 and 13, which state that correspondence between lawyers may not be quoted in court.

In AUSTRIA, the protection of the professional secrecy is basically unlimited, however, minor limitations have been introduced by court practice: E.g., for a lawyer, who is accused of a crime, professional secrecy is within very strict limits not binding while he is defending himself at court³⁸. Furthermore the protection of the professional secrecy can be limited, if a lawyer is accused of a financial crime. However, if lawyer and client have not committed the criminal offence in cooperation, evidence, which was made for the information of the lawyer, cannot be used against the client, despite of the confiscation³⁹.

The protection of the professional secrecy in GREECE is principally unlimited. In some exceptional cases for certain very serious reasons, the Council of the Athens Bar Association can permit to a lawyer to be examined as witness in Court. All those exceptions are mentioned in article 32,2 of the Code of Conduct and article 49,2 of the Lawyers' Code.

Lawyers are in SWEDEN obliged to observe confidentiality unless there is statutory duty to give information. A Swedish lawyer may not be questioned as a witness in a court procedure regarding anything he has learnt in the exercise of his profession but exceptions from this rule are prescribed regarding certain particularly serious crimes, but do not apply if the lawyer is acting as a defence attorney⁴⁰. Rules regarding search and seizure, and different obligations to report to different authorities, normally contain equivalent limitations.

and the Decree concerning keeping and destroying unused material is ensured. As a result of this ruling, the College of Prosecutors issued an instruction concerning the actions required to comply with the clauses of article 126 aa of the Dutch Code of Criminal Procedure. The question, whether the act has sufficient safeguards for the protection of the duty of confidentiality and the lawyer's privilege, was cause for starting a complaint procedure at the European Court of Human Rights in accordance with article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (source Evaluation Phase I Dutch Special Investigative Powers Act, Dutch Scientific Research and Documentation Centre 2002).

³⁸ OBDK 24.1.2000, 11 Bkd 4/99

³⁹ VwGH [Verwaltungsgerichtshof] 25.6.1997, 96/15/0225.

⁴⁰ Chapter 36, Section 5, paragraph 2 of the Code of Judicial Procedure.

The protection in FINLAND is also limited since the fiscal authority may, whilst examining the grounds for an advocate's personal taxation or that of a law firm, inspect the professional diary of the lawyer or law firm and all documents relevant to the book-keeping⁴¹. As well, according to the EU Directive on money laundering already transposed in Finland, there are some statutory limitations to the protection.

In NORWAY, the important limitation in the secrecy is that privileged information must have been confided by the client. That means that information obtained from other sources is not privileged.

In accordance with the relevant articles of the laws for Advocates and for Legal Advisers in POLAND the protection of professional secrecy is unlimited, and it is explicitly stated that advocates/legal advisers cannot be relieved from their duty to keep everything secret. However, article 180 § 2 of the Code of Criminal Procedure, in force since 1 September 1998, provides that persons obliged to preserve secrets such as legal advisers, advocates, physicians or journalists, may be examined as to the facts covered by these secrets, only when it is necessary for the benefit of the administration of justice, and the facts cannot be established on the basis of other evidence. The court shall decide on examination or permission for examination. This order of the court shall be subjected to interlocutory appeal.

Lawyers from SLOVENIA have seen their right and duty to professional secrecy limited as from last year when the Slovenian Parliament adopted the Law on the prevention of the use of the financial system to purposes of money laundering⁴². There is not judicial decision on the subject yet.

Concerning HUNGARY, the protection is unlimited in the case of the defence lawyer with regard to the facts and data that the lawyer becomes aware of in his/her position of defence lawyer. In this case, even the client cannot release him/her from the obligation of professional secrecy. In any other case, the protection is limited, the lawyer is not bound by professional secrecy if the client releases him/her from this duty⁴³.

⁴¹ Supreme Court of Administration, 1995

⁴² JO No. 59/2002.

⁴³ Section 8 of Act XI of 1998 on Attorneys; section 170§ (1) c) of Act III of 1952 on the Civil Procedure Code; section 66§ (2) c) of Act I of 1973 on the Criminal Procedure Code and section 29§ (3) b) of Act IV of 1957 on the General rules of administration procedures.

3. Development of the professional secrecy:

It seems generally admitted in most of the jurisdictions consulted that over the last 25 years there has been a trend towards the greater limitations in the protection of professional secrecy. This trend is mainly caused by tougher statutory developments in order to overcome corruption, drugs and terrorism.

In particular, there has been a development of legislation increasing the means of coercion or the investigation methods mainly in economic, tax and financial matters such as money laundering or revenue enquiries, investigations by the competition authorities. This statutory intrusion is motivated by the search of a total transparency in the economic and financial transactions and the suspicion that lawyers may be involved in illegal matters or permit themselves to be used for illegal purposes.

The most clear and most significant example of this statutory development would be the European Directive on money laundering⁴⁴ which should be implemented in the member States by 15th June 2003⁴⁵. Under the Directive, lawyers may have the obligation to breach confidentiality in an attempt to make investigations more efficient. This is clearly done at the cost of confidentiality.

This trend is, however, counteracted by other trends towards increasing the scope of protection of professional secrecy.

In countries such as SPAIN, an extension of the protection of professional secrecy has occurred as a consequence of the consolidation of the State of Law and its development.

FINLAND considers as well that there has been an extension in the protection of professional secrecy since it joined the Council of Europe's Convention on Human Rights.

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⁴⁴ Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EC on prevention of the use of the financial system for the purpose of money laundering, OJ L344, p. 76-81 of 28 December 2001.

⁴⁵ The Directive on money laundering has been already implemented into national law in Denmark and Germany. Work is at an advanced stage in The Netherlands. Belgium has already a draft implementing law. Ireland has initiated the implementation process.

ANNEX:
TABLE ANSWERS TO THE QUESTIONNAIRE

ANSWERS TO QUESTIONNAIRE ON PROFESSIONAL SECRECY

Title /Question	AUSTRIA	BELGIUM	SPAIN	LUXEMBOURG
I. PROFESSIONAL SECRECY IN YOUR COUNTRY				
1.1 Is the legal profession protected by professional secrecy?	Yes	Yes	Yes	Yes
1.2 What is the professional secrecy based upon?	- Statute - Court practice	- Statute - Other basis: professional rules	- Statute - Court practice - Other basis	Statute
1.3 Specific statutory provisions:	- Section 9 para 2 and 3 RAO; - Section 152 para 1 subpara 4 StPO; - Section 321 para 1 subpara 4 ZPO; - Section 49 para 2 AVG; - Case law, e.g.: <i>OBDK 14.10.1991, Bkd 92/89, OBDK 29.11.1988, Bkd 34/88, OBDK 2.5.1988, Bkd 115/87;</i>	Article 458 of the Criminal Code	- Spanish Constitution § 20 and 24, - Penal Code § 199, - Judicial Power Law § 437.2, - Legal profession General Statute § 1.2, 21, 25, 28, and 32, - Code of conduct § 1.1 and 5, - Case Law, e.g.: judgement TC 110/1984, of 26 November.	- Art. 458 of Criminal Code - Art 35 of the law on the profession of lawyer, modified 10 August 1991
II. LIMITATIONS OF THE PROFESSIONAL SECRECY				
2.1 Is professional secrecy limited or unlimited?	Basically unlimited. There are, however, minor limitations.	Limited	Unlimited	Unlimited under reservation of Art 35(3) of the law of 10 august 1991
2.2 If limited, by which means?	Court practice	Article 458 Criminal Code		Statute
2.3 Specific statutory provisions:	Case law, e.g.: - <i>OBDK 24.1.2000, 11 Bkd 4/99, VwGH 25.6.1997, 96/15/0225.</i>	Article 458 authorises to witness in Court but deontology doesn't. The conflict of interests theory constitutes the exception		Article 35(3) of the law 10 August 1991
III. DEVELOPMENT OVER THE LAST 25 YEARS				
3.1 How would you characterise the development over the last 25 years?	No trend towards greater limitations in the protection of professional secrecy discernible.	The Belgian jurisdictions have been always very watchful for the respect of the professional secrecy	A trend towards increasing the scope of protection, thanks to the legal and court development, except for the current trend on the money laundering Directive.	A trend towards the extension. The law of 10 August 1991 has detailed the previous practice. However, the Bâtonnier exercises control.
3.2 If there is a trend, what are its causes?	However the Money Laundering Directive includes certain limitations. The Directive has not been yet implemented in Austria.	The transposition law of the Directive on money laundering is being drafted	The Spanish Constitution and its development, as well as the development and consolidation of the State of law.	Trying to put an end to organised crime

ANSWERS TO QUESTIONNAIRE ON PROFESSIONAL SECRECY

Title /Question	FRANCE	NETHERLANDS
I. PROFESSIONAL SECRECY IN YOUR COUNTRY		
1.1 Is the legal profession protected by professional secrecy?	Yes	Yes
1.2 What is the professional secrecy based upon?	Statute	Statute and Professional regulation
1.3 Specific statutory provisions:	<ul style="list-style-type: none"> - Article 160 of decree 27 November 1991 - Article 66-5 of law from 31 December 1971, modified by law 7 April 1997 	<ul style="list-style-type: none"> - Article 272 Dutch Criminal Code - Code of conduct (1992) 6, para. 1 - Art. 165 para 2b Dutch Code of civil procedure - Art. 218 Dutch code of criminal procedure - Article 53a Dutch State Taxes act - Article 15/3b Dutch Administrative code - Decisions appeals Act (tax matters) - Case law
II. LIMITATIONS OF THE PROFESSIONAL SECRECY		
2.1 Is professional secrecy limited or unlimited?	Limited	Limited
2.2 If limited, by which means?	Court practise:	Legislation and Court practice
2.3 Specific statutory provisions:	<ul style="list-style-type: none"> - Criminal chamber of the Appeal Court 29/5/89: the obligation to professional secrecy of a lawyer cannot prevent him, in order to justify himself of a charge made against him as a result of an exchange of correspondence, to produce other parts of this same correspondence useful to its interests. - Criminal chamber of the Appeal Court 12/3/92: the seizure of the correspondences exchanged between a lawyer and his client can in exceptional circumstances be ordered or maintained only if the seized documents are likely to establish the proof of the participation of lawyer in the infringement. - Criminal chamber of the Appeal Court 30/6/99: professional secrecy does not apply in matters of legal counseling, considering that professional secrecy must be reserved to the exercise of defence rights. 	<ul style="list-style-type: none"> - Article 98.1 Code of Criminal Procedure: a privileged person's letters and other documents falling under the scope of his duty of confidentiality cannot be confiscated, unless the person granted permission. – Article 98.2: 'unless it concerns other letters or documents that are the subject of an offence or served to commit an offence.' - Special Investigative Powers Act and Preliminary Inquiry (Amended) Act: extend investigation methods, these powers can be applied to non-suspect lawyers. - Disclosure of Unusual (Financial Services) Transactions Act: unusual transactions must be reported to judicial bodies. - Draft legislation and draft decree concerning requisition of telecommunication data: the proposed text is formulated in such a manner that the traffic data pertaining to communications with lawyers can be a topic of investigation. Measures to safeguard privilege are still being discussed. - European Convention on Mutual Assistance in Criminal Matters. The proposal enables large-scale tapping of telephone conversations, and this may include tapping conversations with privileged persons. - New law of procedure as of 1/1/02 - the summons must state the defence and grounds used by the defendant (article 21 of the Code of Civil Procedure). Pursuant to article 111 of the Code of Civil Procedure all parties must truthfully put forward the full facts that are relevant to the judgement. - Supreme Court, 1 March 1985, NJ 1985, 173: Privilege must be based on a principle of law generally applicable in the Netherlands, which means that in the case of confidants, society's interest in the truth coming to light must make way for society's interest in everyone being able to turn to confidants freely for help and advice and without fear of disclosure'
III DEVELOPMENT OVER THE LAST 25 YEARS		
3.1 How would you characterise the development over the last 25 years?	There is a weakening of professional secrecy, in particular in the relations with the administrations (tax, border). The criminal chamber of the appeal Court (Cour de cassation) refuses to admit professional secrecy in legal counselling matters.	A trend towards greater limitations in the procedural position of privileged persons.
3.2 If there is a trend, what are its causes?	The search for an increased transparency, in particular in economic and tax matters, has pushed the legislator to weaken professional secrecy during the last years.	Increased regulation in areas of means of coercion and investigation methods. Attention must be paid to the position of the lawyer who acts in another capacity (mediator, or trustee)

ANSWERS TO QUESTIONNAIRE ON PROFESSIONAL SECRECY

Title /Question	GERMANY ⁴⁶	GREECE	SWEDEN
I. PROFESSIONAL SECRECY IN YOUR COUNTRY			
1.1 Is the legal profession protected by professional secrecy?	Yes	Yes	Yes
1.2 What is the professional secrecy based upon?	Statute	- Statute, - Code of conduct	- Statute - Other basis
1.3 Specific statutory provisions:	- Article 203 of the Criminal Code - Article 43 a of the German Lawyers Act (Bundesrechtsanwaltsordnung – BRAO) - Article 2 of the German Federal Bar’s “Rules of Professional Practice” (Berufsordnung)	- Article 32 of the code of conduct - Article 49 of lawyers’ code - Article 371 of Greek criminal code	- Chapter 8, Sect. 4, para. 2 of the code judicial procedure - Code of conduct for lawyers - Chapter 20, Sect. 3 of penal code - Bar Association’s Disciplinary Committee, also determines what constitutes professional ethics and may impose disciplinary sanctions. - Chapter 36, Sect. 5, para. 2 of the Code of Judicial Procedure
II. LIMITATIONS OF THE PROFESSIONAL SECRECY			
2.1 Is professional secrecy limited or unlimited?		Unlimited in principle	Limited
2.2 If limited, by which means?			By Statute:
2.3 Specific statutory provisions:	See Edward’s Report	In exceptional cases, for very serious reasons, the Council of the Athens Bar Association can allow a lawyer to be witness in Court. The Council estimates every time the importance of the reason and provides the permission. All those exceptions are mentioned in: - Article 32,2 of code of conduct, - Article 49,2 of lawyers’ code	- Chapter 8, Sect. 4, para. 2 of the Code of Judicial Procedure: a lawyer is obliged to conceal something that he becomes aware of in the exercise of his profession when professional ethics so requires. - Code of Conduct for Lawyers: a lawyer shall observe confidentiality with respect to his client's affairs and may not without permission, unless there is a statutory duty to give information, reveal anything which has been confided to him as legal adviser or which he has learnt in connection with such confidence. - Chapter 36, Sect. 5, para. 2 of the Code of Judicial Procedure: a lawyer may not be questioned as a witness in a court procedure regarding anything which has been confided to him in his exercise of his profession or which he has learnt in connection thereto. Exemptions from this rule are prescribed regarding certain particularly serious crimes, but does not apply if the lawyer was acting as a defence attorney. Rules regarding search and seizure and different obligations to report certain circumstances to different authorities normally contains equivalent limitations.
III. DEVELOPMENT OVER THE LAST 25 YEARS			
3.1 How would you characterise the development over the last 25 years?		Trend towards greater limitations in the protection.	There might be a discernible trend
3.2 If there is a trend, what are its causes?	-	Because of limitations in cases of money laundering, drug / arm trafficking and terrorism.	Last year the Supreme Administrative Court discussed lawyers professional secrecy in some cases concerning tax authority’s order to hand over client-invoices. The Court settled that not all information about a client’s identity must be considered to be confided to his lawyer as stated in Chap 36, Sect. 5, para. 2 of the Code of Judicial Procedure. The Court meant that information about a client’s identity is protected if the circumstances are such that the client, by an objective appraisal of the situation, can be considered to have a legitimate interest that the information is not handed over. The Swedish Bar Association is, however, of the opinion that a client’s name normally is protected information and that a lawyer should not reveal such information, unless ordered to do so.

⁴⁶ Germany did not answer to the questionnaire but updated directly the information contained in the Edward’s Report

ANSWERS TO QUESTIONNAIRE ON PROFESSIONAL SECRECY

Title /Question	LIECHTENSTEIN	ITALY	ICELAND	FINLAND
I. PROFESSIONAL SECRECY IN YOUR COUNTRY				
<i>1.1 Is the legal profession protected by professional secrecy?</i>	Yes	Yes	Yes	Yes
<i>1.2 What is the professional secrecy based upon?</i>	<ul style="list-style-type: none"> - Statute - Code of Conduct 	<ul style="list-style-type: none"> - Statute - Court practice - Other: Italian code of conduct for lawyers 	<ul style="list-style-type: none"> - Statute, - Icelandic Bar Association's code of conduct 	Statute
<i>1.3 Specific statutory provisions:</i>	<ul style="list-style-type: none"> - Art. 15 of the lawyers Act dated December 9, 1992 as amended - Sec. 107 para. 1 sub-para. 3 of the Criminal Procedure Act dated October 18, 1988 as amended - Sec. 321 para. 3 of the Civil Procedure Act dated December 10, 1912 as amended - Sec. 26 of the Code of Conduct dated May 5, 1994 as amended 	<ul style="list-style-type: none"> - Art. 622 of the Criminal Code - Art. 200 of the Code of Criminal Procedure - Art 249 of the Code of Civil Procedure - Art. 9 of the Code of Conduct - Decision Nr 3513 of the Italian Supreme Court (corte di cassazione): during a searching of a lawyer's domicile, police cannot seize documents concerned with professional secrecy 	<ul style="list-style-type: none"> - Law on lawyers 77/1998 section 22, - The Icelandic Bar Association's Code of Conduct, section 17 	<ul style="list-style-type: none"> - Criminal Code chapter 30 - Act on Advocates, paragraph § 5c, enacted 1995, prior to that in the Criminal Code.
II. LIMITATIONS OF THE PROFESSIONAL SECRECY				
<i>2.1 Is professional secrecy limited or unlimited?</i>	Unlimited (safe for certain limitations in criminal law aspects)	Essentially unlimited.	Unlimited	Somewhat limited
<i>2.2 If limited, by which means?</i>		Code of Conduct		By Statute and Court practice
<i>2.3 Specific statutory provisions:</i>		Article 9 of the Code of conduct for lawyers (in force in its last version of 1999): A lawyer has to observe professional secrecy unless there is a statutory duty to give information		<ul style="list-style-type: none"> - Money laundering in anticipation (according to the EU directive) - The fiscal authority may, whilst examining the grounds for an advocate's personal taxation or that of a law firm, inspect the professional diary of the lawyer and documents relevant to the book-keeping (Supreme court of administration 1995)
III. DEVELOPMENT OVER THE LAST 25 YEARS				
<i>3.1 How would you characterise the development over the last 25 years?</i>	There has been a no 'local' discernible trend.	No discernible trend	No discernible trend	A trend towards increasing the scope of protection of professional secret
<i>3.2 If there is a trend, what are its causes?</i>	Changes occurred mainly in the course of the implementation of the international rules (EU Money Laundering Directive, etc)			Since Finland joined the Council of Europe, the Convention on human Rights has had a general effect.

ANSWERS TO QUESTIONNAIRE ON PROFESSIONAL SECRECY

Title /Question	DENMARK	NORWAY	IRELAND -SOLICITORS
I. PROFESSIONAL SECRECY IN YOUR COUNTRY			
1.1 Is the legal profession protected by professional secrecy?	Yes	Yes	- LPP: the solicitor cannot be compelled to disclose privileged communications, those which contain legal advice - Confidentiality: A solicitor has a professional duty to keep confidential all matters of the solicitor/client relationship The supervision of the conduct of solicitors is ultimately a matter for the High Court.
1.2 What is the professional secrecy based upon?	- Statute, - Decisions from the disciplinary board, where questions of a breach of code of conduct have been involved, - Court practice will be relevant when dealing with a case where a breach of confidentiality has been alleged (recent important decision from Supreme Court, UfR 2002 p. 1531)	Statute	- Statute (exemptions to disclosure) - Court practice - Common law
1.3 Specific statutory provisions:	- Code of good conduct section 2.3, - section 72 of the Constitution, - Administration of Justice Act, section 170, (Code of procedure) - UfR 2002 page 153.: the Law Society alleged there had been a breach of confidentiality but Supreme Court acquitted the lawyer as the court found there had been such a substantial interest for the Danish society that it was permissible.	- Criminal Code § 144 - Criminal Procedure Code § 119 - Civil Procedure Code § 205	- Smurfit Paribas v AAB Export Finance Ltd - Criminal Justice Act, 1994. - S.I. No 324 of 1994 Criminal Justice Act, 1994 - S.I. No. 55 of 1995. Criminal Justice Act, 1994 - S.I. No 105 of 1995. Criminal Justice Act 1994 - EU Directive on Money laundering - Collection and enforcement of Stamp Duty
II. LIMITATIONS OF THE PROFESSIONAL SECRECY			
2.1 Is professional secrecy limited or unlimited?	Limited	Limited	Limited. In the context of court challenges to privilege the concept is being subjected to more detailed definition which tends to limit the concept.
2.2 If limited, by which means?	Limited in as far as the courts may order a disclosure		- Statute - Court Practice
2.3 Specific statutory provisions:	Court decisions	Privileged information must have been confided by the client. That means that information obtained from other sources is not privileged.	See 1.3.
III. DEVELOPMENT OVER THE LAST 25 YEARS			
3.1 How would you characterise the development over the last 25 years?	Trend towards greater limitations in the protection.	Trend to limit the protection,.	A trend towards greater limitations in the protection of professional secrecy.
3.2 If there is a trend, what are its causes?	Directive on Money Laundering: lawyers may be under obligation to breach confidentiality. Criminal transactions become more sophisticated, society more exposed and vulnerable, trend to increase the actions to make investigations more efficient even if it's at the cost of confidentiality	e.g.: discussion on money-laundering laws.	Tough legislation to overcome corruption, drugs and terrorism. A too wide interpretation of privilege should not be allowed to hinder the effectiveness of such legislation.

ANSWERS TO QUESTIONNAIRE ON PROFESSIONAL SECRECY

Title /Question	ENGLAND & WALES	NORTHERN IRELAND ⁴⁷ - BARRISTERS	SCOTLAND - ADVOCATES
I. PROFESSIONAL SECRECY IN YOUR COUNTRY			
<i>1.1 Is the legal profession protected by professional secrecy?</i>	Confidentiality is a duty by which the profession is bound, whereas Legal Professional Privilege (LPP) is a right of the client.	Clients benefit of an absolute ban on the disclosure in any way of communications with their lawyers made for the purpose of giving or getting legal advice.	Yes, the principle is legal privilege or confidentiality. The position of Scotland remains broadly as stated in the Edward Report.
<i>1.2 What is the professional secrecy based upon?</i>	LPP is recognised by the English courts as a substantive common law right	Court Practice	Based mainly upon common law principles stated by court decisions over hundreds of years
<i>1.3 Specific statutory provisions:</i>	<ul style="list-style-type: none"> - R v Derby Magistrates Court, Ex p. B. [1996] - R v Sec. of State Home Dpt, Ex p. Daly [2001] - Morgan Grenfell and Co Ltd [2002] - General Mediterranean Holdings v Patel 2000 - Foxley v United Kingdom (2001) - R v Chesterfield Justices, Ex p. Bramley 2000 - Hilton v Barker Booth & Eastwood [2002] 	House of Lords in R v Derby Magistrates' Court x. p. B. [1996] I A. C. 487	<ul style="list-style-type: none"> - Leslie v Grant (1760) 5 Brown's Supp. 874 - McCowan v Wright (1852) 15D. 229 <p>(See footnote 70 at para. 31 of the Report)</p>
II. LIMITATIONS OF THE PROFESSIONAL SECRECY			
<i>2.1 Is professional secrecy limited or unlimited?</i>	There are limitations	Essentially unlimited. In very restricted circumstances, the ban on the disclosure of communications can be broken.	Limited to information given by a for the purpose of seeking advice, and advice given by the lawyer, and not any other communications. It may also attach the communications between lawyers. It can be waived by the client.
<i>2.2 If limited, by which means?</i>	Court Practice		<ul style="list-style-type: none"> - Statute - Case law
<i>2.3 Specific statutory provisions:</i>	<ul style="list-style-type: none"> - Limitations of LPP: Parry-Jones v Law Society 1969 and Morgan Grenfell - Limits of confidentiality: not applicable when client uses lawyer to facilitate the commission of a crime, who may reveal to prevent. 		<ul style="list-style-type: none"> - Micosta SA v Shetland Islands Council 1983: not applicable where communication is made to obtain advice for committing of a crime <p>Morgan Grenfell & Co Ltd: may be overridden by specific limiting statutory provisions</p>
III. DEVELOPMENT OVER THE LAST 25 YEARS			
<i>3.1 How would you characterise the development over the last 25 years?</i>	A trend towards increasing the scope of LPP.	No discernible trend	<ul style="list-style-type: none"> - <u>Greater limitations</u>: statutory intrusion (money laundering, Revenue inquiries) motivated by suspicion that solicitors are involved
<i>3.2 If there is a trend, what are its causes?</i>	However, this has to some extent been counteracted by statutory developments.		<ul style="list-style-type: none"> - <u>Increasing protection</u>: proposals to extend protection to other professions (tax advisers)

⁴⁷ For Northern Irish Solicitors the situation remains as stated in the Edward's Report.

ANSWERS TO QUESTIONNAIRE ON PROFESSIONAL SECRECY

Title /Question	SLOVENIA	POLAND – ADVOCATES	POLAND – LEGAL ADVISERS	HUNGARY
I. PROFESSIONAL SECRECY IN YOUR COUNTRY				
1.1 Is the legal profession protected by professional secrecy?	Yes	Yes	Yes	Yes
1.2 What is the professional secrecy based upon?	<ul style="list-style-type: none"> - Statute - Case Law - Other 	<ul style="list-style-type: none"> - Statute: Law on the Advocate's Profession of 26 May 1982 as amended on 2 May 1997 - Others: Code of Professional Ethics (Resolution No 2/XVIII/98 of the Polish Bar Council 10 October 1998) 	<ul style="list-style-type: none"> - Statute: Art.3.3-5 of the Legal Advisers Act of July 6th 1982 - Others: Art. 17-22 of the Lines of Ethics of November 6th 1999 	Statute
1.3 Specific statutory provisions:	<ul style="list-style-type: none"> - Article 6 of the law on the legal profession (JO No. 18/93, 24/96): the lawyer must protect like a secret all he learns from the client. This obligation also applies to the people working in his office. - Decisions from the Constitutional Court: No. U-I-37/98 (JO 48/2000) No. U-I-77/93 (JO 43/95) - Statute of the Slovenian Bar (JO 15/94, 10/95, 55/96, 4/00) - Code of conduct of the Slovenian lawyers 	<ul style="list-style-type: none"> - Art. 6 Law on Advocate's Profession: an advocate is under a duty to keep secret everything he has learnt in the course of providing legal assistance or whilst conducting a case and may not be relieved from this duty. - Para. 19 of the Code of Professional Ethics. an advocate is obliged to keep secret all information acquired whilst performing his professional duties and to secure it against disclosure or illegal use. 	<ul style="list-style-type: none"> - Legal Adviser Act: a legal adviser is obliged not to reveal any information which he acquired in the process of providing legal service. This cannot be limited in time. They cannot be freed from keeping the secret. - Lines of Ethics: A legal adviser is obliged to keep everything he has learnt in relation to or while executing the profession in secret. Applies to all kind of information. 	<ul style="list-style-type: none"> - Section 8 of Act XI of 1998 on Attorneys; - Section 170§ (1) c) of Act III of 1952 on the Civil Procedure Code; - Section 65§ (1) a) and Section 66§ (2) c) of Act I of 1973 on the Criminal Procedure Code; - Section 29§ (3) b) of Act IV of 1957 on the General Rules of Administration Procedures
II. LIMITATIONS OF THE PROFESSIONAL SECRECY				
2.1 Is professional secrecy limited or unlimited?	Limited.	Unlimited according to Art. 6 of the Law on the Advocate's Profession	Limited	<ul style="list-style-type: none"> - <u>Unlimited</u> for defence lawyers. Even the client cannot release him/her from this duty. - <u>Limited</u>: any other case
2.2 If limited, by which means?	By law		By Statute: Art; 180 § 2 of the Code of Criminal Procedure (September 1998)	Statute
2.3 Specific statutory provisions:	The Slovenian Parliament adopted the "law on the prevention of the use of the financial system for the purpose of money laundering" (JO No. 59/2002). There is no judicial decision yet.		Lawyers may be examined only when it is necessary for the administration of justice and the facts cannot be established on the basis of other evidence. The court shall decide on examination or permission for examination. This order shall be subject to interlocutory appeal.	<ul style="list-style-type: none"> - Section 8 of Act XI of 1998 on Attorneys - Section 170§ (1) c) Civil Procedure Code; - Section 66§ (2) c) Criminal Procedure Code - Section 29§ (3) b) General Rules of Administration Procedures
III. DEVELOPMENT OVER THE LAST 25 YEARS				
3.1 How would you characterise the development over the last 25 years?	Trend towards greater limitations in the protection like in the EU	A trend towards greater limitations in the protection of professional secrecy.	A trend towards increasing the scope of protection of professional secrecy	No discernible trend
3.2 If there is a trend, what are its causes?	<ul style="list-style-type: none"> - The global situation concerning international crime - Directive 2001/97/EC 	<ul style="list-style-type: none"> - The Supreme Court since the beginning of 1990s trying to limit the protection. - Art. 180 § 2 Code of Criminal Procedure (in force since 1 September 1998) 	<ul style="list-style-type: none"> - Protection of the clients' interests - Dignity of the profession 	Hungarian lawyers preserved professional secrecy even before the political change. New rules on money laundering show a trend towards weakening this principle.