

New French In-House Privilege Reshapes Arbitration Strategy

By **Samaa Haridi and Agnès Bizard** (March 26, 2026, 2:07 PM GMT)

On Feb. 18, the French Constitutional Council ushered in a new era for in-house counsel in France by granting them certain aspects of legal privilege, a professional cornerstone that had been out of their purview for decades.[1]

Anchored in a reform of the 1971 law governing judicial and legal professions, the new framework provides in-house counsel a limited — but potentially effective — form of protection for qualifying legal advice.

Whereas external lawyers benefit from full professional privilege, meaning all legal advice and communications across emails, notes and exchanges with clients remain inherently privileged, in-house counsel do not. It follows that, until now, legal advice provided by in-house lawyers was not protected by privilege. This left employers and corporate counsel open to having potentially sensitive legal advice available for public consumption and scrutiny.

The new law safeguards written legal consultations that satisfy a series of cumulative, formal conditions relating to content, author, recipient and labeling. Within those confines, internal legal analyses can no longer be compelled in civil, commercial or administrative proceedings, including in response to requests from foreign authorities.

For French companies, particularly those engaged in cross-border disputes and international arbitration, the reform is far from cosmetic. It directly alters the evidentiary balance in document production exercises where, until now, internal legal advice was routinely exposed to disclosure.

At the same time, carveouts, notably in criminal and tax matters and in relation to European Union institutions — and the prospect of criminal sanctions for abusive designations — underline that the new protection is neither absolute nor risk-free.

Its full implications will depend on how courts and arbitral tribunals interpret key concepts such as "legal consultation," "authorized recipients" and the mechanisms for challenging privilege, each of which is likely to come under scrutiny in high-stakes disputes.

Communications Covered

It was welcome news for the French in-house community when on Jan. 14, the Senate gave the green



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light to amend the 1971 law governing certain judicial and legal professions. A new bill, through Article 58-1, establishes a structure for in-house lawyers to benefit from certain protections under legal privilege.

The law protects legal consultations, that is, "personalized intellectual work providing advice or opinions based on the application of a rule of law."^[2] An important caveat follows from that definition: The new regime does not create a personal privilege attached to the status of in-house counsel per se. Instead, privilege is document-based, attaching only to consultations that meet a set of cumulative statutory conditions relating to their content, author, recipients and formal identification.

For advice to be covered by the privilege, the following cumulative conditions must be met:

- The corporate counsel who drafted the advice must hold a master's degree in law, that is, a five-year postgraduate degree, or equivalent.
- The lawyers must have completed training on ethical rules. This provision is at this point somewhat unclear; content will be determined at a later date by ministerial order.
- The documents must bear the mention "Confidential — legal consultation — in-house counsel" and identify the author. Legal consultations must be classified separately within the company's documentation system.
- Regarding the recipient, the communication must be addressed exclusively to senior management or the governing bodies of the company, its parent entity, or its controlled subsidiaries.

Scope of Protection

What the Regime Covers — and What it Does Not

Where the statutory conditions are met, protected consultations may not be compelled for production in civil, commercial or administrative proceedings, including requests emanating from foreign authorities.

The privilege is also expressly not opposable to the company itself. The firm remains free, at its discretion, to waive the protection and disclose the relevant documents where it considers it appropriate to do so.

The regime, however, is not absolute. Privilege does not apply in criminal or tax matters and cannot be asserted against European Union institutions when exercising their investigative or control powers.

Moreover, the fraudulent designation of a document as privileged is subject to criminal sanctions, up to one-year's imprisonment and €15,000 (\$17,400) in fines. This serves as an important deterrent and signals that the new privilege regime cannot be invoked lightly or strategically without risk. In practice, in-house counsel and companies must therefore exercise caution when claiming protection, as abusive or improper reliance on privilege may give rise to sanctions.

Untested Boundaries

The conditions governing privilege reflect the legislator's intent to confine protection to consultations

prepared by legally qualified professionals operating within a defined framework. However, the precise scope of this framework is yet to be tested.

The definition of protected legal consultation, i.e., "advice or opinions based on the application of a rule of law," appears to confine protection to documents reflecting a legal analysis strictly speaking, rather than to any communication emanating from a legal department.

It is nonetheless likely to give rise to complex questions in its practical application and interpretation and is expected to play a role in arbitration proceedings. In practice, many internal documents prepared by in-house legal teams operate at the intersection of law, strategy and business judgment. Risk matrices, compliance assessments or contract reviews may incorporate legal reasoning, legal risk evaluation or regulatory considerations without expressly identifying or articulating a specific rule of law on which the analysis is based.

The categories of authorized recipients could also raise questions. In particular, the law provides, among the authorized recipients, "any entity providing opinions to the management, administrative or supervisory bodies of the company employing the in-house counsel," whose scope is arguably unclear.

On its face, this formulation could encompass a broad range of actors, including external consultants, auditors and financial advisers, provided that they offer some form of opinion or recommendation to the company's governing bodies.

The limitation of authorized recipients also seems to exclude legal consultations disseminated beyond the company's management sphere, even where such communications may retain a legal dimension.

Challenges to Invoking the Privilege

The law provides mechanisms to challenge privilege where conditions are not met or where a document was intended to facilitate fraud or the violation of third-party rights. In domestic proceedings, jurisdiction over such challenges lies with the state courts.

In the arbitral context, however, the transposition of these mechanisms may give rise to some complex issues. In particular, questions arise as to whether arbitral tribunals may themselves assess whether a document is privileged or was intended to facilitate fraud, and whether such an assessment falls within the scope of their jurisdiction.

Restrained involvement from French courts on those issues would be consistent with France's long-standing pro-arbitration stance, and they reinforce the practice whereby arbitral tribunals have jurisdiction to rule on privilege objections arising during the proceedings, rather than alongside or in competition with state courts.

On the other hand, a party dissatisfied with the tribunal's determination as to the applicability of privilege to a central document may seize upon this as a ground for challenging the award in set-aside proceedings. For instance, a party whose request for document production has been denied on the grounds of privilege could seek to have the award set aside on the basis of a breach of the adversarial principle. However, it appears that the practice of the Paris Court of Appeal is largely to defer to arbitral tribunals on this matter.

Challenges based on a violation of international public policy could also be contemplated where

documents treated as privileged were found to relate to matters of fraud or corruption.

OECD alignment

By introducing this regime, France moves closer to the position adopted in most Organization for Economic Cooperation and Development jurisdictions, where advice prepared by in-house counsel benefits from some form of privilege.

The French model, however, remains distinct in both its structure and its underlying logic. The reform does not grant French in-house counsel the same legal privilege as their U.S. or U.K. counterparts. Unlike common law privilege, which is typically attached to the client-lawyer relationship, the French approach protects only specific documents that satisfy the set of cumulative and formalized conditions.

What is clear, however, is that France is no longer an outlier. The reform reshapes expectations around document production and confirms that internal legal advice does not fall, by default, within the scope of disclosure in international arbitration.

In line with the objectives expressly articulated by the French legislator, the reform may also contribute to reassure international companies to establish or maintain their legal department's operations in France. By offering a defined framework for the protection of in-house counsel consultations, it reduces the need to rely on external counsel arrangements solely to secure privilege over internal legal advice.

Ultimately, the French reform aligns national practice more closely with international standards when it comes to in-house lawyers, but without fully converging with common-law privilege. Its impact will in large part depend on how courts and arbitral tribunals operate it in practice.

Strategic Considerations

From a strategic perspective, the reform invites both anticipation, adaptation and legal creativity.

French companies should review their internal document management practices, ensuring that qualifying legal consultations are properly identified, addressed and archived. They should also identify who would qualify as the authorized recipients of legal consultations within the company, its parents or subsidiaries.

For counsel, the regime offers a new procedural lever — one that can be deployed defensively or offensively depending on the case.

Under the International Bar Association Rules on the Taking of Evidence and similar frameworks, parties frequently seek the production of internal legal analyses to establish knowledge, intent or risk awareness.^[3] French parties may now legitimately resist such requests where they target qualifying in-house counsel consultations.

This may significantly narrow the scope of discoverable documents and alter the evidentiary balance in disputes involving French respondents. Conversely, the reform underscores the importance of tailoring document requests to avoid categories likely to be shielded, and of focusing on factual materials, operational documents or communications with external advisers.

At the same time, arbitral tribunals retain discretion to assess the relevance and necessity of requested

documents. Privilege claims will therefore form part of a broader balancing exercise between evidentiary needs and of preservation of the privilege.

On a different note, the statute does not expressly state whether confidentiality applies to consultations drafted prior to its entry into force. In ongoing arbitrations, parties may seek to invoke protection over preexisting documents that meet the substantive criteria, while opposing parties may argue for strict prospective application.

Looking Ahead

The introduction of privilege for in-house counsel consultations marks a structural evolution in French arbitration practice. While limited in scope, the regime affects core procedural phases — including document production — and introduces new strategic considerations for parties and counsel alike.

Several aspects of the regime remain uncertain and will likely be clarified through practice. These include its application to complex corporate groups, where consultations may circulate across borders, as well as its temporal scope.

For arbitration practitioners, the key takeaway is clear: This reform must be factored into procedural strategy from the outset. As practice develops, those who understand its contours and limitations will be best positioned to navigate and leverage this new evidentiary landscape.

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[1] <https://www.conseil-constitutionnel.fr/decision/2026/2026900DC.htm>.

[2] <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000053568123>.

[3] <https://www.ibanet.org/MediaHandler?id=def0807b-9fec-43ef-b624-f2cb2af7cf7b>.