

ACC ADVOCACY

Leadership Excellence Council Advocacy Bootcamp

April 11, 2024

Today's Agenda

- Advocacy at ACC
- ACC Advocacy Issues
- Advocating for In-House Counsel

Advocacy at ACC – Policy

- ACC members have valuable insight to share with regulators, the courts and other stakeholders on a variety of issues that affect in-house counsel practice.
- From its inception, ACC recognized the importance of advocacy by, and for, its membership. Advocacy may occur in courts, before legislative bodies and regulatory agencies, and in media and professional journals.
- ACC's advocacy activities focus on issues that directly affect the practice of law by its members in their capacity as in-house counsel.

Guiding Principles

The 2 U's:

1. Is the issue **unique** to in-house counsel **or** do in-house counsel have a **unique** perspective on an issue?
2. Are ACC's members in **universal** agreement on the issue?

ACC's Advocacy Issues

- Attorney-client/Legal Professional Privilege
- Multi-jurisdictional Practice
- Gatekeeper Liability

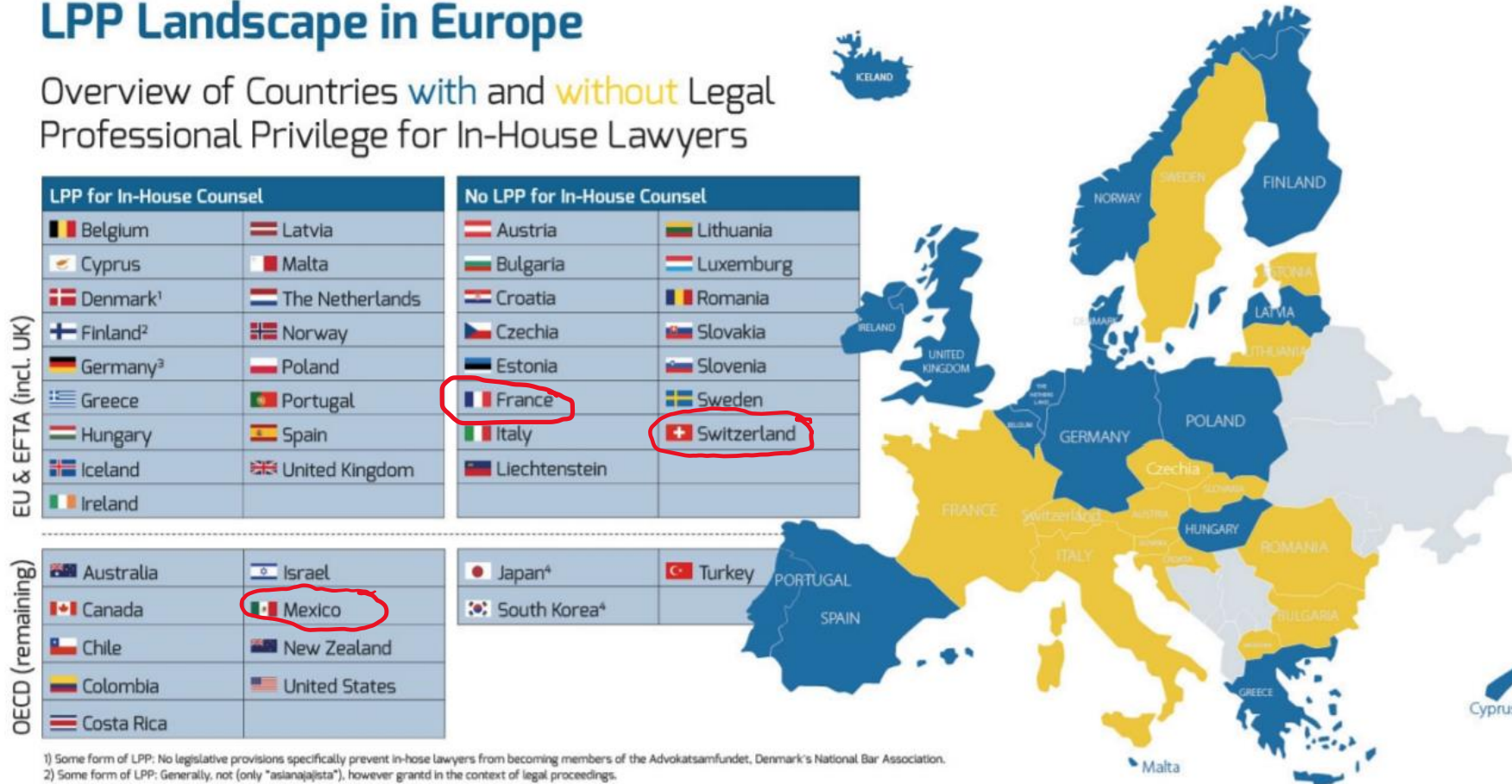
- Seat at the Table
- DEI

Attorney-Client Privilege

- Also “Legal Professional Privilege”
- Not extended to in-house counsel in all jurisdictions
- Even where all in-house counsel have attorney-client privilege, attempts to limit the scope abound

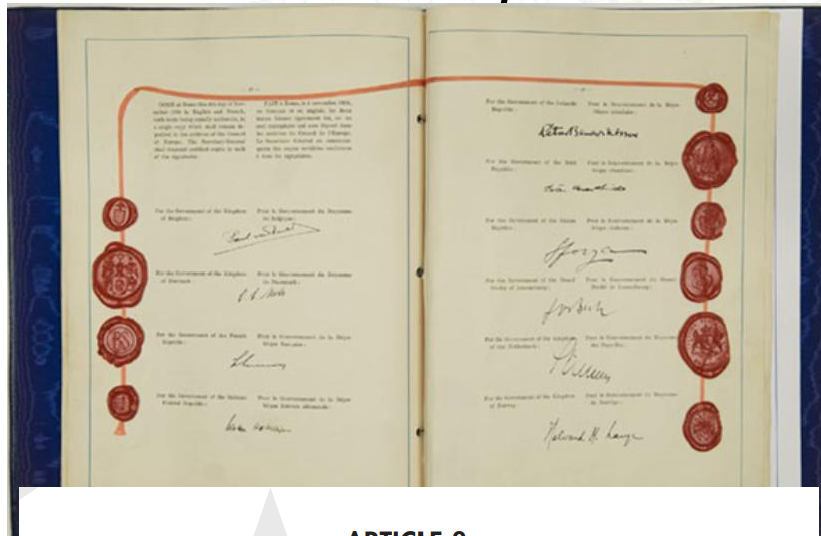
LPP Landscape in Europe

Overview of Countries **with** and **without** Legal Professional Privilege for In-House Lawyers



1) Some form of LPP: No legislative provisions specifically prevent in-house lawyers from becoming members of the Advokatsamfundet, Denmark's National Bar Association.
 2) Some form of LPP: Generally, not (only "aslanajalista"), however granted in the context of legal proceedings.
 3) Some form of LPP: Granted only in civil law.
 4) No LPP for lawyers at all in this country.

Akiolis Group v France: Is privilege a human right?



ARTICLE 8


Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his **correspondence**.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Written comments of the Association of Corporate Counsel on the case AKIOLIS GROUP vs. France, Application no. 22585/22

1 February 2024

ACC filed a brief in *Akiolis Group vs. France* on 2 February 2024. Issue: Whether the seize of binders labeled “Privileged and Confidential/Attorney-client communication” violates Article 8 of the European Convention on Human Rights.

A  example of how government enforcement can conflict with attorney-client privilege

259. Amazon is one of the world's largest and most well-resourced companies. It has extensive legal resources including in-house and outside counsel with expertise in the FTC Act, ROSCA, and the company's other consumer protection obligations. Amazon embedded in-house counsel within the Prime Organization, and key decisionmakers Defendants Lindsay, Ghani, and Grandinetti routinely conferred with such in-house counsel, including in-house attorney Praju Tuladhar, regarding obligations under the FTC Act, ROSCA, and other consumer protection laws and regulations.

260. Accordingly, Amazon and Defendants Lindsay, Ghani, and Grandinetti, have actual knowledge or knowledge fairly implied on the basis of objective circumstances that their actions are unfair or deceptive and are prohibited by ROSCA.

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

FEDERAL TRADE COMMISSION, Plaintiff, v. AMAZON.COM, INC., a corporation; NEIL LINDSAY, individually and as an officer of AMAZON.COM, INC.; RUSSELL GRANDINETTI, individually and as an officer of AMAZON.COM, INC.; and JAMIL GHANI, individually and as an officer of AMAZON.COM, INC., Defendants.	Civil Action No. 2:23-cv-0932-JHC AMENDED COMPLAINT FOR PERMANENT INJUNCTION, CIVIL PENALTIES, MONETARY RELIEF, AND OTHER EQUITABLE RELIEF
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ACC's Amicus Brief

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMAZON.COM, INC., *et al.*,

Defendants.

No. 2:23-cv-0932-JHC

BRIEF OF *AMICUS CURIAE*
ASSOCIATION OF CORPORATE
COUNSEL, IN SUPPORT OF
DEFENDANT AMAZON.COM, INC.'S
MOTION TO DISMISS



INTRODUCTION AND STATEMENT OF INTEREST 1

ARGUMENT 2

 I. The Amended Complaint wrongly attempts to impose penalties based on Defendants' mere act of conferring with counsel. 2

 a. Conferring with a lawyer is a constitutionally protected right and cannot serve as a basis for enhanced liability. 3

 b. **Basing liability on consultations with counsel would undermine attorney-client privilege.** 4

 II. The Amended Complaint's attempt to base liability on attorney-client interactions comes in the context of broader hostility to the attorney-client relationship in the investigation and prosecution of this case. 6

CONCLUSION 8

Multi-jurisdictional Practice

- U.S.: state-by-state licensing and ABA Model Rule 5.5
- Europe: single market/cross-border differences in LPP



Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

(2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

Multi-jurisdictional Practice Rules



Advocacy

Right to Practice Rules in the USA

A state-by-state guide for in-house counsel working in
a state where they are not licensed.



The State Bar of California

Gatekeeper Liability

- In-house counsel who act ethically in representing or defending their clients should not be held liable for their actions simply because they are attorneys.
- Sarbanes Oxley origins
- Watching: Anti-money laundering laws that require lawyers to report (Australia)

Seat at the Table

Empowered CLOs that have a “seat” at both the executive and boardroom tables are in the best possible position to guide organizations in their compliance with legal and ethical obligations.

Corporate Governance Best Practice

- CLO directly reports to the CEO
- Consistent presence in the boardroom and engage in strategy discussions

Seat at the Table – What's Next

Carl Liggio Memorial Call for Papers

- Partnership with the John L. Weinberg Center for Corporate Governance at the University of Delaware
- Goal: Encourage academic scholarship on management reporting structures and their impact on organizations, with a focus on the chief legal officer/general counsel
- Winning paper received \$20,000 and presented at the Weinberg Center's Annual Symposium on Corporate Governance in March

Independent or Informed? How Combining the Roles of Corporate Secretary and Chief Legal Officer Impacts Legal Risk

Jagadison K Aier, Costello College of Business at George Mason University

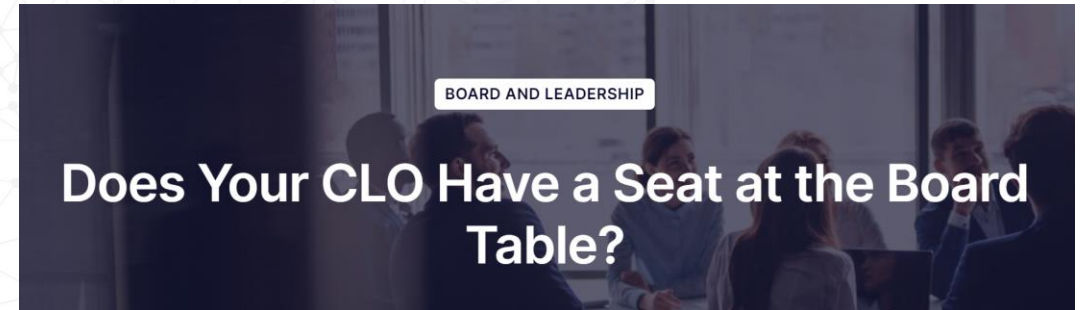
Justin Hopkins, Darden Graduate School of Business at the University of Virginia

Syrena Shirley, Columbia University

Seat at the Table – What’s Next

Nasdaq Center for Board Excellence

- Co-authored blog post July 2023 – Nasdaq CBE’s highest viewed
- 2024 Blog Series “The New Dynamic Duo: Boards and CLOs”
 - Four blog posts, one webinar
 - Themes: risk oversight, privilege trends, internal investigations, secret to effective collaboration



Diversity, Equity & Inclusion

- Best practices
- ACC Foundation: tools for members to use for DEI programs and goals

ACC Foundation
Association of Corporate Counsel

The ACC Foundation DEI Maturity Assessment

ACC Foundation **ETHISPHERE**
Association of Corporate Counsel GOOD SMART BUSINESS PROFIT.

Powered by ETHISPHERE

Advocacy at ACC - Actions

- Amicus briefs
- Regulatory comment letters
- Meetings with regulators, legislators, and other government officials
- Education, outreach, and content development

Advocacy at ACC - Process

- ACC global Board of Directors & ACC Advocacy Committee
 - Board of Directors approves ACC advocacy issue focus and activities
 - ACC Advocacy Committee is empowered to make these decisions on behalf of the Board
- Approval Process
 - Advocacy matters raised by staff, members, chapters, networks
 - ACC staff presentation to Advocacy Committee at or in between meetings
 - Advocacy Committee makes determination on how to proceed

ACC Advocacy Statistics 2023-24

- 5 Amicus briefs January 2023 - March 2024
 - U.S., Europe, and Mexico
 - Legal professional privilege
- Three comment letters
 - U.S. and Europe
 - Legal professional privilege & multi-jurisdictional practice rules
- Meeting with Officials/Advocacy Partners
 - Europe, Australia, U.S.
 - Legal professional privilege

ACC Advocacy Statistics 2023-2024

- Webinars and publications
 - Amicus briefs/cases (3)
 - *ACC Docket* articles (2)
 - ACC Resource Library materials (2)
- ACC Chapter/Network Advocacy Calls (bimonthly)
 - Advocacy 101
 - Recent events
 - Discussions

ACC Advocacy Needs You!

- How you can advocate for in-house counsel
- Finding your advocacy sweet spot
- Elements of an advocacy message

Finding Your Advocacy Sweet Spot

- Your experience & expertise
- Geographical location
- Your Network
- Common issue(s)
- Unlikely bedfellows

Elements of an Effective Advocacy Message

- Credible knowledge = personal/specific examples and stories
- Allies = build and maintain relationships
- Opportunities = media, speaking engagements, etc.

Target Audiences

- Audiences
 - Government
 - Regulators, legislators
 - Judges & juries
 - Organization Management
 - CEOs, C-Suite, Management
 - Board of directors
 - Shareholders



Tailor the Message



- Know the audience
- Find the win/Solve the problem
- Make a commitment, however small
- Follow-up

Your Turn!

- Two Groups with Two Teams
- Group 1 Topic: Attorney-Client Privilege
- Group 2 Topic: Seat at the Table

Task: Design a short advocacy pitch that presents your position, addresses the audience's concerns, and provides a commitment for next steps.

- Group 1 Scenario: You are meeting with a government regulator to urge them to recognize legal professional privilege for in-house counsel. The regulator worries that in-house counsel will use privilege to hide wrongdoing by the company. They also worry that their ability to investigate allegations (antitrust/competition, e.g.) will be hampered.
- Group 2 Scenario: You are on the board of directors for a company where the general counsel reports to the CFO. You are urging the CEO and the board to reorganize the management structure so that the general counsel will be a CLO that reports to the CEO and has a direct relationship with the board. The CEO is concerned about having too many direct reports. The CEO also worries about whether the CLO can preserve legal privilege if she is part of the C-suite and business strategy.

Takeaways

- What are the wins/solutions for the regulator and the CEO?
- How did you tailor the message to these wins?
- What commitment did you make?

Advocacy Contact Information

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www.acc.com/advocacy