

CCBE OVERVIEW OF THE IMPLEMENTATION OF THE 2001 MONEY LAUNDERING DIRECTIVE

MARCH 2004

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IMPLEMENTATION OF THE EU MONEY LAUNDERING DIRECTIVE 2001/97/EC

Question 1

	Country	Has the Directive been implemented ?	Comment
1	AUSTRIA	Yes	The Directive entered into force as from 29/10/03. The RAO [Rechtsanwaltsordnung/Lawyers Code] has been amended in order to implement the Directive. Sections 8a - 8c and 9a have been newly introduced, para. 4 and 5 have been added to Section 9, para. 3 and 4 have been added to Section 12 and para. 2 has been added to Section 21b RAO. These amendments have been published in BGBl I 93/2003. A consolidated up-to-date version of the RAO can be found on the website of the Austrian Bar Association www.rechtsanwaelte.at [Gesetzestexte].
2	BELGIUM	Yes	The Second EU Directive has been implemented by the Law of 12 January 2004, amending the law of 11 January 1993 on the prevention of use of the financial system to the purpose of money laundering, the law of 22 March 1993 on the status and the role of the credit institutions, and the law of 6 April 1995 on the status of investment firms and their control, to financial intermediaries and investments advisers,
3	DENMARK	Yes	Implemented since 01/08/02. The relevant Act is the Consolidated Act No. 734 of 30 August 2002. This Act consolidates the Danish Act on measures to prevent money laundering and financing of terrorism, cf. Act no. 348 of 9 June 1993, as amended by Act no. 1056 of 23 December 1998, Act no. 295 of 2 May 2000, and Act no. 422 of 6 June 2002.
4	ESTONIA	No	The amendments should enter into force during the 1st half of 2004 after being passed by the Parliament.
5	FINLAND	Yes	The Second EU Directive has been implemented through the Act on Preventing and Clearing Money Laundering (enforcement in 1998, the latest amendments in June 2003).
6	FRANCE	Yes	The text was implemented on 11 February 2004.

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	Country	Has the Directive been implemented ?	Comment
7	GERMANY	Yes	Implemented since 15/08/02. The relevant Act is the Money Laundering Act in the version of the Act on the improvement of the Suppression of Money Laundering and Combating the Financing of Terrorism of 8 August 2002 (Federal Law Gazette I of 14 August 2002, p.3105ff).
8	GREECE	No	Discussions are currently taking place
9	HUNGARY	Yes	The Directive has been implemented by Law No. XV. of 2003 on the avoidance and prevention of money laundering (the "Law").
10	IRELAND	Yes	Implemented since 15/09/03. The directive was implemented by the Criminal Justice Act 1994 (Section 32) (Amendment) Regulations 2003.
11	ITALY	Yes	The Second EU Directive has been implemented. On February 3, 2003, the Italian Parliament approved Italian Law No. 14 (Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee. Legge Comunitaria 2002), establishing the future procedural steps to put into effect, through domestic legislation, certain regional directives passed by the European Union.
12	LATVIA	Yes	The Second EU Directive has been implemented by the Law on the Prevention of Money Laundering of Proceeds derived from Criminal Activity.
13	LITHUANIA	Yes	The Second EU Directive has been implemented by the Law on Amendment to the Law on the Prevention of Money Laundering of 28 March 2002.

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	Country	Has the Directive been implemented ?	Comment
14	LUXEMBOURG	No	A draft law was published by the Chambre Des Deputes on June 25, 2003. Draft Law dated June 25, 2003 relating to the fight against money laundering and the financing of terrorism (Chambre des Deputes – No. 5165).
15	NORWAY	Yes	Implemented (but not yet in force).
16	POLAND	No	Discussions are currently taking place.
17	SLOVAK REPUBLIC	Yes	The Second EU Directive has been implemented by Amendment No. 445/2002 Coll (The Amendment) of the Act No 367/2000 on Money Laundering. The amendment came into force on 1 st September 2002.
18	SLOVENIA	Yes	
19	SPAIN	Yes	Implemented since 03/07/03. The Money Laundering directive has been implemented in Spain by the Law 19/2003, of 4 July, “sobre régimen jurídico de los movimientos de capitales y de las transacciones económicas con el exterior y sobre determinadas medidas de prevención del blanqueo de capitales”. The law presents amendments to the previous Spanish legislation.
20	SWEDEN	No	A Memo is expected from the Government Offices with legislative proposals. It should have been sent out earlier, but negotiations (between the ministries of Justice and Finance) are going slow.

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	Country	Has the Directive been implemented ?	Comment
21	THE NETHERLANDS	Yes	Implemented since 01/06/03. The relevant Act is the Act of 16 December 1993 providing for identification of clients involved in financial services - (Establishing of Identity (Services) Act [Version effective as from: 01-09-2002]) Decree - Designating institutions and services under the Establishing of Identity (Services) Act and the disclosure of Unusual Transactions (Financial Services) Act.
22	UNITED KINGDOM	Yes	<p>Implemented since 24/02/03 (for some parts). Some of the provisions of the Directive were implemented in the UK by Part 7 of the Proceeds of Crime Act 2002 ("POCA") which was brought into force on 24 February 2003 which principally strengthened obligations to report money laundering to the authorities, and the ability of the authorities to give instructions to the reporting party not to execute the operation.</p> <p>In addition to POCA the UK government are issuing the Money Laundering Regulations 2003 ("MLR's") which will impose statutory anti-money laundering procedures on a variety of organisations, including lawyers undertaking legal work for their clients which falls within the activities listed in the Directive.</p>

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Question 2

	Country	Is Tipping-off permitted?	Comment
1	AUSTRIA	Yes	According to the legislation the lawyer is allowed to inform his client, that information has been transmitted to the competent authority, as long as this serves to prevent the client from undertaking forbidden acts and failures which could be connected with money laundering.
2	BELGIUM		
3	DENMARK	No	Tipping-off is not allowed under the Danish implementation law.
4	ESTONIA		
5	FINLAND	No	Lawyers are not allowed to inform their clients if information has been transmitted to the authorities.
6	FRANCE		(Information to follow)
7	GERMANY	No	Lawyers shall not disclose to their clients concerned nor to other third persons that information has been transmitted to the authorities in accordance with § 11 (5) Money Laundering Act or that a money laundering investigation is being carried out. It is not forbidden to give general legal advice including the regulations of § 11.
8	GREECE		

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	Country	Is Tipping-off permitted?	Comment
9	HUNGARY		Tipping-off has been fully implemented in Article 8§(4) of the Law.
10	IRELAND	Yes	The implementing legislation does not prohibit a solicitor from informing his client that he was ceasing to act for the client or, that he was ceasing to act for a client because he or she was unhappy with any transaction in which the client was involved.
11	ITALY		
12	LATVIA		
13	LITHUANIA		
14	LUXEMBOURG		
15	NORWAY	No	Although Article 8 (2) of the Directive does not make it an obligation to include lawyers in the rule of Article 6 (3), an obligation for non-disclosure applies to lawyers. The argument is that this is necessary for the investigation that will be carried out, but also in regards to the security of the person who has informed the authorities.
16	POLAND		
17	SLOVAK REPUBLIC		

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	Country	Is Tipping-off permitted?	Comment
18	SLOVENIA	No	Lawyers may not tip-off.
19	SPAIN		The Directive does not affect reporting obligations and the question of tipping-off does not therefore arise.
20	SWEDEN	No	It is expected that tipping-off will not be allowed
21	THE NETHERLANDS	No	Lawyers may not disclose to the client that information has been reported. Breach of this rule is a criminal offence.
22	UNITED KINGDOM	No	<p>Whilst Part 7 POCA, section 333, contains a criminal offence of "tipping-off", section 333(2)(c) and (d) provide that a person does not commit an offence if he is a professional legal adviser and the disclosure is to (or to a representative of) a client of the professional legal adviser in connection with the giving by an adviser of legal advice to the client, or to any person in connection with legal proceedings of contemplated legal proceedings.</p> <p>It is notable that POCA exceeds the Article 8(1) requirement in that the offence of tipping-off can be committed if the disclosure of any type is made, not just a disclosure that information has been transmitted to the authorities. The test is that the disclosure is likely to prejudice any investigation. The "tipper" does not have to have any intention of prejudicing the investigation for this offence to be committed.</p>

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Question 3

	Country	Is the Bar the Competent Reporting Authority?	Comment
1	AUSTRIA	No	If there is a reasonable suspicion in the cases of section 8a para.1 n.1 and 2 that the operation serves money laundering (section 165 Penal Code) or financing of terrorism (section 278d Penal Code) the lawyer shall inform immediately the Federal Minister of the Interior (Federal Office of Criminal Investigation) – (information of suspicion).
2	BELGIUM		
3	DENMARK	Yes	The bar is the reporting authority. The bar is not obliged to pass on information as it has the right to decide whether the information is valid or not.
4	ESTONIA		
5	FINLAND	No	The information shall be forwarded to the authorities responsible for combating money laundering (i.e. the Central Criminal Police)
6	FRANCE	Yes	(information to follow)
7	GERMANY	Yes	The Bundesrechtsanwaltskammer in Berlin (German Federal Bar Association) has been nominated as the body to which reports on possible money laundering cases may be addressed by German lawyers. The Bundesrechtsanwaltskammer is obliged to transmit the information including its own comment to the public prosecutor and to a special money laundering office of the German Federal Police (Bundeskriminalamt).

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	Country	Is the Bar the Competent Reporting Authority?	Comment
8	GREECE	Yes	Lawyers will provide information about their suspicions of money laundering committed by their clients to a specific committee of the Athens Bar. This committee will be composed of 5 people who are members of the Councils of the national Bars. The committee will check the collected disclosures. The Committee will then send any suspicions of money laundering to a specific committee established for the purpose of detecting and examining all the files suspected of money laundering which has been first accepted.
9	HUNGARY	Yes	The local bars have been formally nominated as reporting authority in Article 15§ of the Law. However, the role of the bar is only formal because the bar has to report immediately to the police every report received from any lawyer.
10	IRELAND	No	Lawyers will provide information about their suspicions of money laundering to the Garda Siochana and the Revenue Commissioners. Such reports may be made "in accordance with an internal reporting procedure established by an employer for the purpose of facilitating the operation of" the section.
11	ITALY		
12	LATVIA		
13	LITHUANIA		
14	LUXEMBOURG		

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	Country	Is the Bar the Competent Reporting Authority?	Comment
15	NORWAY	No	The government has not designated the Bar Association as the authority to be informed. A lawyer shall report directly to the authorities.
16	POLAND		
17	SLOVAK REPUBLIC		
18	SLOVENIA	No	The bar is not the nominating authority.
19	SPAIN	No	The Consejo General did not propose itself to be the competent authority in the sense of the Directive, because lawyers keep their duty of the professional secrecy (regulated by a constitutional law (Ley Orgánica)). As the matters raised under the Spanish regulations will be outside of the scope of the professional regulations and activities, the authority to be informed therefore could not be a professional authority. On the other hand, the President of the Bar is still there to solve any conflict related to the professional secrecy or others. In other words, if in practise any problem would arise in conjunction with the application of the professional secrecy, the Bars and the Consejo General will keep their duties as they are stated in the previous legislation and in the professional regulations.
20	SWEDEN	No	It is expected that the bar will not be the nominated authority.
21	THE NETHERLANDS	No	The bar is not the competent authority.

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	Country	Is the Bar the Competent Reporting Authority?	Comment
22	UNITED KINGDOM	No	The bar is not nominated as the competent authority

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Question 4

	Country	Under what circumstances is a lawyer under an obligation to report?
1	AUSTRIA	<p>According to Section 8a of the <u>Lawyer's Act (RAO)</u></p> <p>(1) The lawyer is obliged to examine especially careful all operations which could be apparently in connection with money laundering (section 165 Penal Code) or financing of terrorism (section 278d Penal Code) being involved</p> <ol style="list-style-type: none"> 1. on behalf of his party planning and executing as follows: <ol style="list-style-type: none"> a) purchase and sale of real estate or enterprises; b) administration of money, securities or other assets, opening or administration of bank accounts, saving accounts or accounts regarding securities; c) foundation, operation or administration of trust companies, companies or similar structures including the procurement of means being necessary for the foundation, operation or administration of companies; 2. financial transactions and operations concerning real estate on behalf of his party. <p>(2) The lawyer is obliged to establish proper control and communication proceedings within his office to prevent in cases under para.1 n.1 and 2 any execution of operations which could be in connection with money laundering (section 165 Penal Code) or financing of terrorism (section 278d Penal Code).</p> <p>Section 8c</p> <p>(1) If there is a reasonable suspicion in the cases of section 8a para.1 n.1 and 2 that the operation serves money laundering (section 165 Penal Code) or financing of terrorism (section 278d Penal Code) the lawyer shall inform immediately the Federal Minister of the Interior (Federal Office of Criminal Investigation) – (information of suspicion). But the lawyer is not obliged to inform about his suspicion concerning facts which came to his knowledge by a party or about a party within the scope of the legal advice or in the connection with the representation before a court, an authority being a lower instance to this court or an office of public prosecution save the party avails the legal advice recognisable for the lawyer obviously to the purpose of money laundering (section 165 Penal Code) or financing of terrorism (section 278d Penal Code). The lawyer may report an information of suspicion or an information to the Federal Minister of the Interior (Federal Office of Criminal Investigation) to the party so far as this is necessary to prevent the party from unauthorised acts and omissions which could be connected with money laundering.</p> <p>(Further and more detailed information on the implementing text in Austria can be obtained from the CCBE Secretariat).</p>

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	Country	Under what circumstances is a lawyer under an obligation to report?
2	BELGIUM	<p>Money laundering rules apply in the following cases:</p> <p>(1) when lawyers advise their clients on the preparation or execution of financial activities (2) when lawyers assist in real estate transactions in the name of or for the account of their client</p> <p>According to the Law assisting their client with the preparation or execution of financial transactions" means: (1) the sale or the purchase of immovable assets or companies; (2) the management of the client's money, securities or other assets; (3) the opening or the management of a bank account or a securities account; (4) the organisation of the contribution necessary for the establishment, the operation or the management of companies; (5) the establishment, operation or management of trusts, companies or similar structures. The identity of the client should be verified before any service to this client is provided and if identification is not possible, no services may be provided</p>
3	DENMARK	<p>As far as legal advice is concerned, there is an exemption for legal advice provided "before, during or after" a case has been taken to court. There were problems on how to interpret the "before" part in the event that a case does not go to Court, but the Danish government has stated that the exemption extends to all matters that could end up in Court, which is not too far away from the broad exemption contained in the Recital to the Directive. In addition to the requirements contained in the Directive, a lawyer in Denmark is also required to report when providing "business advice".</p> <p>(Further and more detailed information on the implementing text in Denmark can be obtained from the CCBE Secretariat).</p>
4	ESTONIA	
5	FINLAND	<p>Lawyers and other persons who professionally provide legal services are under the obligation to inform authorities when they have a reason to suspect that their client is involved in money laundering. The situations in which they are under an obligation to inform authorities are defined in the same way as contained in article 2a of the directive.</p>
6	FRANCE	(Information to follow)

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	Country	Under what circumstances is a lawyer under an obligation to report?
7	GERMANY	<p>If a lawyer suspects that a client engages in money laundering, there is no obligation to report that information under the following conditions: The information of the client or about the client must be obtained either in the context of judicial proceedings or in the course of ascertaining the legal position for this client. Contrary to this general provision in § 11 Money Laundering Act the lawyer has an obligation to inform in so far as the legal requirements are not fulfilled, for example if he offers only financial services to his client without any legal advice. There is another case that forces the lawyer to comply with an obligation to inform: The lawyer positively knows that his client is seeking legal advice for money laundering purposes. money laundering cases may be addressed by German lawyers.</p> <p>Problems for lawyers arise not only with the rules of the Money Laundering act. Separate from this new law the legislation has created a criminal offence of money laundering described in § 261 of the traditional German Penal Code. The new penal regulation was put in force in 1992. The statutory definition of this offence is extremely wide. It includes many activities of persons who assist in the business of money laundering without knowing exactly the facts. If anybody has contact with "infected money", he runs the risk to commit a crime. Money laundering is possible as a result not only of drug trafficking, but also of many other offences, even fiscal fraud. There is no exemption for any profession. Every lawyer runs the risk to be punished if he gets in contact with the money of his client who could be under suspicion of an earlier crime. The problem has been discussed for ten years. Now the highest criminal court in Germany (Bundesgerichtshof) sentenced two lawyers for violation of § 261 Criminal Code. The lawyers had accepted "infected" money as fees for defending their clients in a criminal case. The German Constitutional Court (Bundesverfassungsgericht) will soon pronounce a judgement on this pilot case.</p> <p>(Further and more detailed information on the implementing text of the Directive in Germany can be obtained from the CCBE Secretariat).</p>
8	GREECE	<p>The 2001 Directive on money laundering has not yet been implemented in Greece but it has reached a very advanced process and is almost at its end. The Legislative Committee has already tabled a bill before the Ministry of Economics, which will be soon tabled before the National Assembly to be voted on. Lawyers will provide information about their suspicions of money laundering committed by their clients to a specific committee of the Athens Bar.</p>

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	Country	Under what circumstances is a lawyer under an obligation to report?
9	HUNGARY	The Directive has been implemented by Law No. XV. of 2003 on the avoidance and prevention of money laundering (the "Law"). Advice given in connection with judicial proceedings is exempt but not in court of registration (company's registration) matters. The government reintroduced Article 6 (4), which was removed from the Directive "Information supplied to the authorities in accordance with paragraph 1 may be used only in connection with the combating of money laundering. However, Member States may provide that such information may also be used for other purposes." This has been reintroduced by Article 10§(2) of the Law.
10	IRELAND	The directive was implemented by the Criminal Justice Act 1994 (Section 32) (Amendment) Regulations 2003. The implementing provisions shall not apply to a person who carries on in the State the profession of accountant, auditor, solicitor or tax advisor insofar as he or she receives or obtains information from or relating to a client - (a) in the course of ascertaining the legal position for that client, (b) when performing the task of defending or representing that client in or concerning judicial proceedings, or (c) when advising that client in relation to instituting or avoiding judicial proceedings. Subparagraphs (b) and (c) apply in relation to information received or obtained before, in the course of or after the conclusion of proceedings referred to in that paragraph. Guidance Notes have been prepared for solicitors by the Law Society Of Ireland and have been circulated to all solicitors in Ireland. The guidelines cover issues like "what is a suspicious transaction", identification procedures, record-keeping procedures, procedures for staff training and awareness, and reporting procedures and obligations.
11	ITALY	
12	LATVIA	The Law has been implemented for financial institutions which includes : "legal... persons whose financial activity includes conducting, counselling and certifying financial transactions..."
13	LITHUANIA	The Law has been implemented for notaries and persons authorised to conduct notarial operations

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	Country	Under what circumstances is a lawyer under an obligation to report?
14	LUXEMBOURG	
15	NORWAY	<p>The EU Directive is now implemented, although it is not yet in force. The legislation has made an exemption from any legal obligation to report information obtained before, during or after judicial proceedings, or in the course of ascertaining the legal position for a client.</p> <p>In 2001, the ethical rules of the Norwegian Bar Association were amended. Rule 3.1.8. now states that a lawyer shall resign from an assignment if he or she suspects that the assignment encompasses a transaction involving the laundering of money and the client is not willing to refrain from implementing such a transaction. Furthermore, rule 3.1.1. states that when an advocate undertakes an assignment in connection with a financial transaction, the advocate shall investigate the identity of the client or the intermediary on behalf of whom the advocate is undertaking the assignment.</p>
16	POLAND	
17	SLOVAK REPUBLIC	
18	SLOVENIA	

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	Country	Under what circumstances is a lawyer under an obligation to report?
19	SPAIN	<p>Legal advice is included in the Directive on the following terms: “When they participate in the conception, making, or <u>assessment</u> of transactions on behalf of their clients related to the selling or acquisition of properties or commercial entities, the management of funds or values, the opening or management of bank accounts, the organisation of the contributions for the creation, the management of enterprises or the management of trusts and other societies or similar structures”.</p> <p>This paragraph needs nevertheless to be read in conjunction with the following article: “The auditors, accountants, tax advisers, notaries, lawyers and “procuradores” will not be subject to the obligations established in paragraph 4 (information to the authorities) regarding the information that they would <u>receive from one of their clients or that they would obtain when determining the legal position</u> or when they develop their mission of defending or representing the client <u>in administrative or judicial proceedings or in relation to them</u>, including the advice on the opening or the avoidance of a process, independently on whether they obtained this information before, during or after this proceedings”.</p> <p>Lawyers and “procuradores” will keep the duty of the professional secrecy in accordance with the existing regulation.</p>
20	SWEDEN	<p>A Memo is expected from the Government Offices with legislative proposals. It should have been sent out earlier, but negotiations (between the ministries of Justice and Finance) are going slow. The following is expected (a) The rendering of legal advice will be excluded</p>
21	THE NETHERLANDS	<p>Legal advice in relation to recital 17 was not taken into account by the Dutch legislator. Only art. 6.3 has been implemented. In other words, the position of legal advice is not as strong as recital 17 expresses. The Dutch Bar Association frequently pointed out to the ministries of Justice and Finance and to the Parliament the meaning and importance of recital 17, but without any result.</p> <p>(Further and more detailed information on the implementing text in The Netherlands can be obtained from the CCBE Secretariat).</p>

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	Country	Under what circumstances is a lawyer under an obligation to report?
22	UNITED KINGDOM	<p>Part 7 of POCA contains primary money laundering offences; section 327 concealing, section 328 arrangements, and section 329 acquisition, use, and possession. These offences apply to virtually anything done with dirty money or property, known in POCA as “criminal property”. The offences are committed if the activities are undertaken with “knowledge or suspicion” that the transaction involves money laundering.</p> <p>However, lawyers and others who fear that they may commit one of these primary money laundering offences by fulfilling their clients’ instructions will have a defence if they report the matter to the relevant UK authority, which is usually National Criminal Intelligence Service (“NCIS”), and receive “appropriate consent” which is official permission to continue with the operation. There is no exclusion for information which is subject to Legal Professional Privilege in relation to these offences.</p> <p>POCA also contains freestanding reporting obligations. The main of these is the section 330 failure to disclose offence which applies to the “regulated sector”. At present this offence applies to a limited number of lawyers who fall within the current “regulated sector” because they give advice about financial services. However, the implementation of the Directive through the implementation of the MLR’s will mean that lawyers conducting any of the activities listed in the Directive will fall within the “regulated sector”. However, there is an exemption in this offence from the reporting obligation if information is received in legally privileged circumstances, but this is applied in fairly narrow circumstances.</p> <p>There are also offences within sections 331 and 332 which apply to “nominated officers” (MLRO’s). There is no specific exclusion relating to legally privileged information which applies to these offences which is a cause for concern – but there is a defence if the nominated officer has a “reasonable excuse” not to disclose. The Law Society will argue that if information is privileged within the firm that provides the nominated officer with a “reasonable excuse”, but this has not been tested.</p> <p>In brief, for these purposes legal professional privilege falls within two main categories:</p> <p>(1) “Advice” privilege where the lawyer and client are communicating with a view to the lawyer providing legal advice. This would seem to accord with the reference in Recital 17 to ascertaining the legal position for the client.</p> <p>(2) The other category is known as “litigation privilege” and covers communications made if litigation is “reasonably in prospect” or after litigation has been commenced. This would seem to accord with the reference in Recital 17 about information received either before, during, or after, judicial proceedings. Communications cannot be subject to legal professional privilege if they are created with the intention of furthering a criminal purpose. It is irrelevant whether the intention is that of the lawyer, client, or any other third party.</p>