



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-550/07 P
Akzo Nobel Chemicals Ltd and Akros Chemicals Ltd v
European Commission

Advocate General Juliane Kokott takes the view that, in cartel investigations by the European Commission, legal professional privilege does not apply to communications with in-house lawyers

Internal communications with in-house lawyers, even if they are enrolled as members of a Bar or Law Society, do not enjoy the fundamental protection afforded at European Union level to communications between an independent lawyer and his client

Advocate General Kokott considers that the protection of communications between a lawyer and his client (legal professional privilege) under EU law applies solely to communications between a client and an independent lawyer. Legal professional privilege is intended not only to secure the client's rights of defence but is also based on the lawyer's specific role as an 'organ of the administration of justice', who has to provide legal assistance to his client in full independence and in the overriding interests of justice. A salaried in-house lawyer, notwithstanding any membership of a Bar of Law Society, does not enjoy the same degree of independence from his employer as a lawyer working in an external law firm does in relation to his client. Consequently, equal treatment of both professional groups in regard to legal professional privilege is not required as a matter of law. There is a structural risk that an enrolled in-house lawyer will encounter a conflict of interests between his professional obligations and the aims and wishes of his company, on which he is more economically dependent and with which, as a rule, he identifies more strongly than an external lawyer.

In the legal systems of the 27 Member States there is no identifiable general trend towards extending legal professional privilege to in-house lawyers who are admitted to a Bar or Law Society. Only in a few Member States, such as the United Kingdom, Ireland and the Netherlands, does legal professional privilege apply also to communications with in-house lawyers of that kind. That does not by itself justify a reappraisal of the legal situation at European Union level. The most recent development of EU legislation, in particular the modernisation of competition law brought about by Regulation No 1/2003¹, does not give any cause to reach a different view. Advocate General Kokott therefore concludes that the case-law of the Court of Justice from the 1980s² should continue to apply in EU law.

The dispute over legal professional privilege is at the centre of a legal action between Akzo Nobel Chemicals and Akros Chemicals, on the one hand, and the European Commission, on the other, relating to an investigation into a cartel on the plastic additives market. During a search at the premises of Akzo and Akros in the United Kingdom in February 2003, the Commission copied and placed on its file, inter alia, two emails exchanged between the general manager of Akros and a member of Akzo's in-house legal department, who was admitted as a lawyer to the Netherlands Bar. The Court of First Instance (now the General Court) dismissed an action brought by those two undertakings against the Commission's decision to do so³. The Court of Justice must now decide

¹ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

² Case 155/79 *AM & S v Commission* [1982] ECR 1575.

³ Joined Cases [T-125/03](#) & [T-253/03](#) *Akzo Nobel Chemicals Ltd and Akros Chemicals Ltd v Commission* (see also Press Release [62/07](#))

on the appeal lodged by Akzo and Akros against that judgment. In her Opinion delivered today, Advocate General Kokott proposes that the Court should dismiss the appeal.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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