

CEP Magazine – May 2021 Legal privilege post-Brexit

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Legal privilege is an important issue for lawyers representing clients in investigations, opposite regulators, and in litigation. Following Brexit, lawyers operating in both the United Kingdom (UK) and European Union (EU) member states need to consider more carefully than ever the different rules of privilege when structuring investigations and advising on issues that involve EU law.

The application of English law to legal privilege is an important issue that is regularly debated in court, where it has been confirmed that privilege extends to communications with in-house and private practice foreign lawyers without regard to their national regulation or rules on legal privilege. The fact that in-house lawyers are not independent but paid employees of the recipient of their legal advice is irrelevant under English law. Other privilege disputes have reaffirmed that the scope of legal advice privilege only applies to communications created for the main purpose of obtaining or giving legal advice.

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