



Brussels, Belgium – 9 December 2024

## **Constitutional Court of Belgium puts Legal Professional Privilege for In-house Lawyers back on Table of European Court of Justice**

On 7 November 2024 the Constitutional Court of Belgium handed down a judgment following the appeal for the annulment of the Belgian law on whistleblowers and referred questions regarding the status of in-house counsel's legal professional privilege to the Court of Justice of the European Union (CJEU).

This challenged law represents the transposition of the Whistleblower Directive in Belgium (Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law). The European Company Lawyers Association (ECLA) intervened as a third party in support of the Institut des juristes d'entreprise/Instituut voor bedrijfsjuristen (IJE/IBJ).

ECLA and IJE/IBJ considered that the confidentiality of the opinions of in-house lawyers, which existed for 25 years in Belgium, should be acknowledged by the lawmaker in Belgium when transposing the whistleblower directive. In that respect ECLA specifically welcomes the protection through the exemption from liability, including criminal liability, the European directive provides for whistleblower. However, ECLA considers that on this point Belgium has unfoundedly overridden the in-house lawyers' obligation of confidentiality when transposing this directive, which requires the maintenance of the professional obligation of confidentiality also for in-house lawyers. Belgium's position in this respect is detrimental to the effectiveness of compliance systems within companies.

In its judgment, the Constitutional Court decided to ask preliminary questions to the Court of Justice of the European Union (CJEU), as proposed by ECLA in its submission to the court. The CJEU will thus examine the question of whether the directive on whistleblowers, which the Belgian law on whistleblowers transposes, imposes or allows the exclusion of protection, in addition to professional secrecy of lawyers, other forms of confidentiality, such as that of in-house lawyers.

If the Court of Justice of the EU concludes that the Whistleblower Directive does not allow an exception for the benefit of our confidentiality and only protects the professional secrecy of lawyers, the Constitutional Court will ask the CJEU whether this is compatible in particular with the principle of non-discrimination.

ECLA welcomes the Constitutional Court's decision, which highlights the importance of the confidentiality of in-house lawyers to European judges. It is the first time since the well-known

Akzo Nobel decision, that such a significant case involving the question of confidentiality for company lawyers and in-house counsel is going to be reviewed by the CJEU.

The proceedings are expected to take place throughout the year 2025.

Our colleagues Marc Mosse and David Zygas from the law firm August Debouzy have supported ECLA's submission.

We will keep you updated on any further developments.

### About ECLA

The European Company Lawyers Association (ECLA) was founded in 1983 and is the umbrella organization of 21 different national associations of in-house counsel working in companies and organizations. For more than 41 years, ECLA has been committed to the profession of company lawyers throughout Europe and accounts for approximately 70,000 professionals in its network and represents the more than 160,000 company lawyers across Europe.