

International Investigations

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A Primer on International Investigations

- Attorney-Client Privilege
- Laws Limiting Access to Employees
- Data Protection Laws
- Blocking Statutes

The Attorney-Client Privilege

- European Court of Justice – *Akzo Nobel Chemicals, Ltd.* (9-14-10):
 - Documents seized in a dawn raid in a European Commission competition investigation.
 - Akzo claimed legal professional privilege.
 - ECJ found no privilege for communications with an in-house lawyer:
 - “the exchange with the lawyer must be connected to ‘the client’s right of defence’ and ... the exchange must emanate from ‘independent lawyers’, that is to say, ‘lawyers who are not bound to the client by a relationship of employment.’”

Laws Limiting Access to Employees

- Works Councils

- Very active and very protective of workers' rights in certain countries (e.g., Germany).
- Employee may choose to have a representative present at an interview.
- Company may have to negotiate with the works council to obtain access to electronically stored documents.

Data Protection Laws

- EU Data Privacy Directive
 - Came into force in 1995.
 - Requires EU member states to pass their own internal laws on data protection.
 - Provides individuals with certain protections and rights related to personal data.
 - Personal data – any combination of information that can be used to identify an individual.
 - Rights include notice, choice, access, certain use restrictions, etc.
- Imposes obligations and restrictions on entities that handle personal data.
 - Prohibits transfers of personal data to any country without “adequate protections.”
 - Applies to *intra*-company transfers.
 - Advance consent, such as in an employee handbook, is not enough.

Data Protection Laws: Adequate Protections

- Transfer is allowable if the jurisdiction to which the personal data is being transferred has implemented legislation providing for the same level of protection as set forth by the Directive.
 - Argentina, Canada, Switzerland and a few others.
- In the absence of legislation, parties wishing to transfer personal data must adopt a specific mechanism to protect the personal data.
 - Consent
 - Safe Harbor
 - Model Contract
 - Binding Corporate Rules

Blocking Statutes

- Examples

- French Penal Code Law No. 80-538
 - Criminal penalties imposed on any French national or corporation that engages in discovery under a foreign judicial system without using the procedures of the Hague Evidence Convention – letters rogatory or letters of commission.
- Article 271 of the Swiss Penal Code
 - Gathering or taking evidence in Switzerland for use in a foreign proceeding - including the interrogation of witnesses (depositions) or the collecting of written witness statements on Swiss territory - qualifies as an action within the scope of Article 271. The same applies if a party is to produce documents in a foreign proceeding that are not in its possession or under its control and must be gathered in Switzerland from a third party.
- U.S. courts require the parent company to produce documents even if doing so conflicts with a blocking statute.

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