



The Power of “No”

Law Department Management



In-house counsel are expected to enable the business by removing obstacles to commercial success. These expectations are hammered into lawyers who are new to the in-house role. They are urged not to be the “department of no” and to work with the business to bring ideas to market.

Therefore, when the legal department requests further relevant documentation, or isn't immediately on board, business counterparts don't see it as a positive development. But these requests are endeavors to push the business forward. The role of the legal department is not only to help ensure that the value is created but also to ensure that the value stays within the company.

In this light, not pursuing a certain business strategy, or pursuing it in a different way, can bring more profit and save more money than implementation of the original concept. Dropping or reshaping a business idea may avoid product quality claims, court fees, or reputational damage, such as employees or investors leaving the company.

Not pursuing a certain business strategy, or pursuing it in a different way, can bring more profit and save more money than implementation of the original concept.

Due to changing laws and regulations and their interpretation, as well as a position that touches various business units, in-house counsel can provide unique insights.

A good in-house counsel will approach an inquiry with a critical eye while also implying a willingness to assist in its execution; that is, pursuing optimization. Employing a practical approach to legal as a service, proper risk assessment, and targeted handling of the factual situation can create a certain level of economic flexibility.

Nevertheless, legal counsel are not legislators and have no superpowers that allow them to invert

rules of play, transform an invalid agreement into a valid one, make a project eligible for permits from all thinkable authorities, or turn-back intellectual property violation with a single stroke of a pen.

Furthermore, high compliance standards (internal and external), accountability to and handling of expectations of a growing group of various stakeholders (shareholders, investors, employees, suppliers, customers, state, etc.), and rising complexity of regulatory requirements create a challenging environment for businesses.

In this context, moving forward with ideas that are not legally forbidden in a very particular situation may be harmful for the company in the future, as they may be not “right” in the long run. So, “no” or “not that way” from the legal department can be very valuable input.

Here are eight steps that can help the business see it that way.

1. Explain why

Without providing a broader context, explaining pros and cons of the given feedback, expected consequences and probable (financial) impact on the business, a simple and laconic “no” has very limited value.

Getting feedback from the legal department should be less about a strict “yes” or “no” decision (which at the end is taken by the business) but more about a dialog and a joint pursuit of the optimal solution.

2. Suggest alternative solutions

Just saying “no” to some ideas is relatively simple, even if not always easy. More challenging is identifying alternatives to achieve the business goal.

Involving the business in finding an alternative not only increases understanding and acceptance of the suggested approach, but often enables finding the best solution.

3. Keep the “no” as small as possible

If there is one aspect of the business concept that is concerning, it does not mean that the whole issue is problematic. Only highlight the problematic part and do not question the whole business idea if not necessary.

4. Keep it simple

Clear communication is a key. [Communication style](#) and selection of highlighted aspects should be adapted to the audience. It makes a difference whether the feedback is directed to research and development or to the sales colleagues, CFO, or HR trainee. Using [plain language](#) with as little legalese as possible is helpful too.

The communication channel is also important. In some cases, a simple email is sufficient, in others it is better to pick up the phone or to organize a call with additional participants.

5. Focus on practical aspects

Legal theory is often only interesting to lawyers. It is seldom beneficial and not confusing to share the details of the legal framework.

For a better understanding, legal findings can be translated into the business set up. Don't limit yourself to providing only legal argumentation, and don't be afraid to provide examples of business solutions for brainstorming within the group or refer to similar cases.

When speaking about risk, business colleagues will be grateful for diversification (e.g., small, middle, high). Naming all problematic issues as "risky" blurs the feedback. Providing more details on probability of the materialization of the risk helps to take a conscious aimed business decision.

6. Be patient

Giving feedback that does not necessarily meet the original expectations of the requesting business unit may require some patience. Try to conduct the conversations more than one time, repeat explanations, and clarify the issue from different angles. Invested time is worth the effort.

7. Learn your lessons

Follow up on cases and try to understand why something worked: Was it just a good luck? Did a new compliance mechanism reduce risks? Or are there other reasons that something succeeded or failed?

8. Be human

Last but not least: Be human. Do not be afraid to admit that you do not know something or you were wrong. It helps to build trust and respect and allows others to see as you as a human and not an omniscient legal machine.

Do not be offended when the colleagues do not follow your advice. And do not be that lawyer that says "I told you so!" when the darkest of your darkest predictions materialize. In the long run, being a good friend when needed and not the in-house inquisitor helps to elevate the value of your feedback in the future as a real and true business enabler.

[Malgorzata Anna Hartwig](#)



Legal Counsel EMEA

Legal Center of Excellence of ADM (Archer Daniels Midland)

Dr. Malgorzata Anna Hartwig, LL.M. is legal counsel EMEA at Legal Center of Excellence of ADM (Archer Daniels Midland). She is German and Polish qualified attorney-at-law and based in Hamburg, Germany.