

**Unclassified****English - Or. English****2 October 2019****DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE****Working Party No. 3 on Co-operation and Enforcement****Summary of discussion of the roundtable on the treatment of legally privileged  
information in competition proceedings****Annex to the Summary Record of the 128th Meeting of Working Party 3 on Co-operation and  
Enforcement**

26 November 2018

This document is the summary of discussion of the roundtable on the treatment of legally privileged information in competition proceedings.

Documentation related to this discussion can be found at [www.oecd.org/daf/competition/treatment-of-legally-privileged-information-in-competition-proceedings.htm](http://www.oecd.org/daf/competition/treatment-of-legally-privileged-information-in-competition-proceedings.htm).

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**JT03452013**

## *Summary of discussion of the roundtable on the treatment of legally privileged information in competition proceedings*

By the Secretariat

On 26 November 2018, Working Party No.3 held a roundtable on the treatment of legally privileged information in competition proceedings chaired by Professor Frédéric Jenny.

**The Chair** noted that the purpose of the roundtable would be to take stock of jurisdictions' approach to legal privilege, i.e. the confidentiality of the client-attorney relationship and the right to protect certain lawyer-client communications from disclosure in law enforcement proceedings. The roundtable would also seek to assess if there are areas of convergence among Members.

The roundtable was structured around three topics: 1. the origins and the scope of legal privilege; 2. the implications of legal privilege for competition authorities' enforcement; and 3. whether there is convergence towards international standards.

The expert speakers in the panel were Renato Nazzini, professor at King's College London; Wouter Wils, hearing officer at the European Commission and visiting professor at King's College London, and Enrique González-Díaz, Partner at Cleary Gottlieb Steen & Hamilton in Brussels.

**Despina Pachnou** introduced the topic for the Secretariat. She noted that while almost all OECD Members recognise legal professional privilege in relation to communications between clients and their external legal counsel, only approximately half of OECD Members extend this privilege to information exchanged between companies and their in-house counsel. In some jurisdictions, legal privilege covers only material related to enforcement proceedings, including merger review. In some others, privilege extends to all communications and material related to requesting and giving general legal advice, including advice not linked to specific enforcement proceedings. Legal privilege allows opposing the disclosure of privileged information during an investigation, as well as, in some jurisdictions, retrieving information disclosed by mistake. When a competition case concerns more than one jurisdictions, different approaches to privilege by different jurisdictions may make it difficult for authorities to determine which information they can seek, seize and use, and for companies to determine which information they can seek to protect from disclosure. It would therefore be useful to agree to minimum international standards.

**The Chair** then invited the first speaker, Wouter Wils, to present his views on legal privilege.

### **1. The origins and the scope of legal privilege**

**Professor Wils** explained that his views were personal and not those of the European Commission. Professor Wils noted that, while the effectiveness of competition enforcement requires that authorities access all available information, still the right to protect certain client-attorney communications from compelled disclosure is acknowledged universally.

Professor Wils countered the argument that legal privilege may foster compliance through encouraging companies to seek and receive legal advice in the knowledge that this advice would be protected from disclosure. He noted that compliance would only increase if, first, companies asked for legal advice on future, not past, conduct and, second, followed such advice, and thus ultimately avoided infringing the law. Professor Wils noted that there is no empirical evidence supporting this argument, and referred to the *AM & S Europe Limited v Commission of the European Communities* case of 1982, where the Court of Justice of the European Union (“EU”) first recognised legal professional privilege. In that case, the company continued the infringement, despite arguably having been advised by its lawyers that its conduct was illegal. Therefore, the argument that legal privilege promotes compliance is not convincing.

**Professor Wils** noted that, rather, legal privilege is recognised because it is a fundamental right, based, in EU law, on the Charter of Fundamental Rights of the EU and the European Convention on Human Rights (“ECHR”). It is an emanation of the rights to privacy and fair trial, and an aspect of the rights of defence. In common law countries, the concept of legal professional privilege can be traced back to private civil litigation. In EU law, legal privilege was first developed and recognised by the Court of Justice in the context of competition law enforcement in particular, using a comparative law analysis. The Court of Justice looked at the laws of the EU Member States as well as the US; for this reason, the EU legal privilege standard draws on both common and civil law.

In EU law, legal privilege is recognised on two conditions:

1. Communications must be made for the purpose and in the interests of the company’s rights of defence. This is interpreted broadly to cover advice on possible or anticipated prosecution or litigation, and is not limited to advice related to specific on-going procedures only.
2. The lawyer must be an independent professional, not bound to the client by a relationship of employment, and licenced to practise law in the EU or European Economic Area (“EEA”). Thus, communications between a company and its in-house lawyers are not privileged. This was first ruled in the *AM & S* case and confirmed later, with detailed arguments, in the 2010 *Akzo Nobel Chemicals Ltd and Akros Chemicals Ltd v European Commission* decision.

In the *Akzo* case, the Court of Justice denied legal privilege to communications with in-house lawyers, even if they are registered members of the local bar association or law society, and subject to professional ethics rules. The parties argued that not recognising legal privilege in this case discriminated in favour of external advisors and against in-house lawyers. The Court of Justice ruled that in-house lawyers, as employees of a company, identify with their employer’s interests. As a result, the independence of their advice is compromised and therefore such advice should not be privileged. Professor Wils also stressed that there is no case law of the European Court of Human Rights recognising legal privilege to communications with in-house lawyers. Besides, clients can always seek the advice of external lawyers.

Professor Wils noted that, in the US, legal privilege extends to communications with in-house lawyers and that this does not seem to undermine the effectiveness of US antitrust enforcement. However, he stressed that US antitrust enforcement relies on summoning witnesses; provides for criminal sanctions for infringing individuals; and the enforcement agencies have access to broad investigative tools like wiretapping. These enforcement-related factors allow US enforcement to be less dependent on documentary evidence than

the European Commission, which relies heavily on documentary evidence and thus on the ability to seize documents in on-the-spot inspections and use them to prove the case. Extending legal privilege to communications with in-house lawyers in the EU would therefore undermine the effectiveness of enforcement in two ways:

1. It would reduce the number of documents that can be seized in inspections and which might contain useful information. According to Professor Wils, useful information is what is said to the lawyer, rather than the legal advice itself.
2. It would increase the number of legal privilege claims and disputes, thus complicate and slow down inspections, where time is of the essence.

Professor Wils stated that, in addition to the Court of Justice, the EU Parliament discussed twice extending legal privilege to communications with in-house lawyers, at the time of the adoption of Regulation 1/2003 and the reform of the EU merger control system in the early 2000s. On both occasions, it decided against it, reasoning that it would weaken the effectiveness of competition enforcement. Professor Wils argued that acknowledging legal privilege to advice by the in-house counsel in national investigations for infringements of EU competition law may undermine the effectiveness of such investigations, and the relevant Member State may be considered to be in breach of EU law.

**The Chair** thanked Professor Wils for his presentation and asked the US delegation to present their views on the comparison by Professor Wils between the EU and the US systems.

**The US** explained that, in their legal system, the attorney-client privilege has four key components. *First*, the person that is invoking the privilege must be a client of the attorney. This includes potential clients. Thus, attorney-client privilege may cover initial contacts, prior to establishing an attorney-client relationship. *Second*, the communication must be made to a licensed attorney, whether external or in-house counsel. Professional ethics and rules applicable to attorneys are thought to be sufficient to guarantee the in-house counsel's independence. All attorneys have an obligation to represent the law and provide accurate legal advice. *Third*, the communication must be intended to be confidential. Therefore, it should not be made in the presence of a third party, as, otherwise, it would be sufficient to have an attorney present in any business conversation and claim that the conversation is privileged. *Fourth*, the communication must be made for the purposes of seeking legal advice or representation. Business advice would not be privileged.

US delegates stated that extending legal privilege to in-house counsel in principle enables companies to be more compliant with competition law, as it allows seeking the in-house counsel's advice effectively and without fear that the communication may be disclosed.

**Professor Wils** clarified that the problems connected to claims of legal privilege in the EU arise mainly during inspections in cartel cases, when the in-house lawyers try to prohibit the investigation team to even take a look at a document that they allege may be privileged. In such cases, there is a risk of abusive invocation of privilege, which is lower in the US where individuals may be sanctioned for such obstruction practices.

**The US** clarified that their enforcement relies on both documentary and witness evidence. If documents alleged to contain privileged information are seized in dawn raids, they are assessed by a filter team, composed of agency staff who are not assigned to the investigation and are separated from the investigation team with a firewall. This team has the task of determining whether the information collected is privileged, and, if that were the case, they would immediately destroy, sequester or return the document to the parties.

**Japan** noted that legal privilege is not recognised in Japan as a right of the client. Still, the Japanese constitution recognises the right to a fair trial, and lawyer's professional secrecy obligations are stipulated in the attorney act and the code of civil procedure. The Japanese Fair Trade Commission ("JFTC") plans to issue an operational notice to respect legal privilege in cartel cases. The delegate stated that the absence of legal privilege has not caused problems in Japanese competition law enforcement. In addition, there are no precedents or concrete concerns about discovery of information in cross-border cases; documents disclosed to the JFTC on the basis of JFTC's penalty-backed orders have not been disclosed to foreign authorities. The delegate submitted that, since legal privilege is an aspect of the entire national legal framework, it may be difficult to attain international convergence on the appropriate legal privilege standards.

**Mexico's Institute of Federal Communications (IFT)**, which is in charge of the broadcasting and telecommunication sector, noted that there are no specific professional privilege rules in Mexico but there are judicial precedents and a constitutionally protected right to privacy. In practice, in IFT's competition law enforcement, legal professional privilege to advice by external counsel. If privileged documents are seized, they will not be used as evidence.

**Norway** presented a 2000 case of the Norwegian Supreme Court, which extended legal privilege information to foreign and licensed in-house lawyers. The Supreme Court exempted from disclosure, out of a 26-page corporate document, two pages entitled "litigation strategy" containing legal advice by the company's American in-house legal counsel. The deciding factor, according to the Supreme Court, was the role of the lawyer and the fact that the services rendered were genuinely legal.

**Hungary** presented a recent reform, which became effective on 1 January 2018. Before the reform, in-house counsels could only represent their companies in court and in procedures of other authorities if they were registered with the district court of the seat of their company. Following the reform, the registry of the in-house counsels was transferred from the district courts to the bar association. As a result, in-house counsels had to be registered with the bar association, and pass the bar exam; consequently, their only difference from external attorneys is that in-house counsel can only act for one company, their employer. Since the law of Hungary cannot discriminate between two types of equally qualified lawyers, legal privilege now covers both external legal advisors and in-house counsels, who are considered to be independent lawyers incorporated in a corporate structure.

**Professor Wils** noted that the extension of legal privilege to cover communications with in-house counsel in both Norway and Hungary took place as a result of a general change in the law or case law, and was not specifically connected to competition law enforcement. The EU concept of legal privilege was developed specifically in a competition case, and therefore struck a balance between the right to keep certain communications confidential and the effectiveness of competition enforcement, which was not considered in either Norway or Hungary.

**Enrique González-Díaz** then took the floor. He noted that legal privilege is recognised universally as a fundamental right, and argued that it would be worthwhile to question the premises of the exclusion of in-house legal privilege in EU law enforcement. The Court of Justice case law used as an argument the lack of independence of in-house lawyers and the potential for conflicts of interest. According to Mr González-Díaz, these arguments should not be determining factors, because granting legal privilege is not a licence to hide incriminating evidence and pre-existing documents that may incriminate a company are not privileged. He argued that preparatory documents drafted with the purpose of obtaining

legal advice well as the advice itself should be privileged, whether provided to and from an in-house lawyer or an outside lawyer. Ultimately, an advice is an opinion given by a lawyer, and wherefrom it is sourced (in-house or outside) as well as whether companies have in-house legal departments or not, should not have an impact on its treatment. Choosing between the in-house counsel and an external advisor should be an open choice for the client. Mr González-Díaz stressed that there is no empirical evidence that enforcement of competition law is weaker in countries extending privilege to in-house lawyers, and proposed to revisit the debate of extending legal privilege to communications with in-house counsel.

Mr González-Díaz argued that legal privilege claims do not necessarily obstruct on-the-spot inspections. Since documents are increasingly digital, inspections essentially consist of gathering digital documents that are processed later, at the premises of the European Commission. The burden is then on the company invoking legal privilege to give sufficient arguments to convince the Commission that a document is privileged. If there is a dispute, documents can be placed in sealed envelope and the claim will be assessed while the inspection continues.

**Poland** took the floor and clarified that it recognises legal professional privilege for all communications with a qualified lawyer, whether in-house lawyer or external. In their experience, legal privilege claims slow down inspections and make it difficult to collect evidence. When the Polish competition authority goes through electronic evidence at the undertaking's premises, counsels for the investigated company often try to prevent the investigating team from taking even a cursory look at documents or emails that have a lawyer on copy. In investigations claiming breach of EU law, the Polish competition authority tries to apply the *AM&S* standard of limiting privilege to client communications with external counsel. The investigated party often argues that there is no clear legal domestic basis for this. When the claim is brought before a court, this often applies the domestic rule instead of the EU case law, recognises that communications with in-house are privileged, and orders the documents to be returned to the undertakings.

**Austria** asked whether, if the scope of legal professional privilege is narrower in a Member State than under EU law, this narrow scope may breach the fundamental rights standards that the EU follows. **Professor Wils** noted that the EU fundamental rights standard apply directly and companies can invoke that the Member State is in breach. He however argued that EU Member States with the most effective enforcement are the ones where the privilege standard is that of EU law or an even narrower one, as it was historically the case in Germany and Austria.

**Professor Renato Nazzini** argued that general law reforms of legal privilege (as in the case of Norway and Hungary) were the right approach; otherwise a jurisdiction may end up with different legal privilege standards applying to competition, environmental, criminal etc. law. Legal privilege is a fundamental right that is based on the rule of law, and should apply in the same way, across enforcement areas. Every jurisdiction decides where to draw the line between the effectiveness of law enforcement and legal privilege, without denying the privilege altogether. In his opinion, if there is an effective remedy against potential excessive privilege claims that is quick and effective, such as a filter team or a court remedy, this would be sufficient to prevent abusive claims. There should be sanctions for abusive claims, like obstruction sanctions or debarment of the involved lawyer.

**The UK** stated that the conditions for recognising legal privilege in the UK are similar to those in the US. Privilege can be waived, either expressly or impliedly by disclosing the privileged information and therefore causing it to lose its confidentiality, which is one of

the conditions for privilege to stand. There can be limited or partial waivers; for example, disclosure to an insurer may be deemed consistent with the confidentiality of the information, and allow to invoke the privilege against everyone else. If information were disclosed by obvious mistake, English courts might exercise their equitable jurisdiction to constrain the use of that information. If the Competition and Markets Authority (“CMA”) receives information over which it is obvious that privilege should have been claimed, they would try to establish, with the party, if the material was disclosed in error. If the mistake were genuine, the CMA would return the material. In case of privilege disputes, the CMA uses the sealed envelope process: the disputed document is placed in an envelope and a senior officer assesses the legal privilege claim.

## 2. Implications of legal privilege for competition authorities’ enforcement

**Enrique González-Díaz** started the part of the roundtable on the implications of legal privilege for competition authorities’ enforcement, focusing on enforcement by the European Commission. He sketched out EU case law on three aspects of legal privilege:

1. Communications with in-house counsel are not privileged.
2. Internal communications relaying external counsel advice are privileged.
3. Preparatory documents drafted with the purpose of preparing a consultation to an external counsel, even if they are not communicated to the external counsel, are privileged.

Mr González-Díaz stressed that while case law seems to be clear on the treatment of legal advice provided in the EU, it is not clear on the approach to legal advice provided by either external or in-house counsel in other jurisdictions. In *AM&S*, the Court of Justice recognised the privileged nature of advice by lawyers who are members of a bar association in the EU; this privilege was extended to lawyers in the EEA, when the EEA agreement entered into force. Mr González-Díaz argued that there is no clear case law on the treatment of advice by in-house or external lawyers outside the EEA and provided to their clients in relation to domestic matters.

Mr González-Díaz noted that the European Commission increasingly sends requests for information for documents prepared outside the EU, for example the US. These may include documents prepared by in-house counsel that are privileged in the US and not privileged in the EU. The European Commission, for considerations of comity, will often not seek the disclosure of legal advice by external counsel in jurisdictions beyond the EEA. Mr González-Díaz argued that the same comity considerations should be extended to also impede asking for the disclosure of in-house legal advice provided in jurisdictions where this advice is privileged, for example the US. The reason is that, when an in-house lawyer provides advice in the regular course of business on domestic US law to a client, the client cannot anticipate that that advice may in the future be requested by a foreign jurisdiction in the context of enforcement (either merger or antitrust) proceedings, and used against them.

Finally, Mr González-Díaz noted that, under EU law, a communication between a business person seeking legal advice by the in-house counsel may not be privileged (first step of communication), while the communication whereby the in-house counsel relays this information to external counsel to seek their advice is privileged (second step of communication). Mr González-Díaz argued that the first communication should be also

covered by legal privilege, as a preparatory document for consulting the external counsel, i.e. as a first step in the process of communication. He also noted that the protection of business to in-house counsel communications is essential for competition law compliance and for the good operation of competition compliance programmes, since business people who have questions on corporate conduct for their in-house counsel would not ask them, if their communications were subject to disclosure.

**Spain** presented procedures to establish and respect legal privilege in investigations by the Spanish competition authority. Inspections of the premises of a company take place in the presence of the company's staff or lawyers, who will indicate which documents may be privileged. The company may also communicate to the investigation team the names of its external lawyers, so that exchanges with them may be excluded in electronic document searches. If there is a dispute about the privileged nature of a document, the document is sealed and sent for assessment to the authority's legal services. If the dispute is not resolved, the company can start a judicial process claiming privilege. The authority will not have access to the disputed document(s) until the court renders its decision. The authority's information requests do not ask for privileged or self-incriminating material. The requests are only for data and information, not legal assessments or statements about anticompetitive conduct.

**South Africa** stated that the Competition Commission involves, in its inspections, independent external IT forensic firms, which download data from computers, servers, mobile phones and other electronic storage devices. This information is kept off site by the IT forensic experts, who look for the documents that relevant to the investigation using key words provided by the Competition Commission. If the investigated company considers that, among the documents that have been found to be relevant to the investigation, there are documents that might be privileged, they provide the IT company with key words that would indicate privilege. As this whole process is costly and timely, the Competition Commission is considering moving it in-house.

**The European Commission** presented the Alcogroup case. In an investigation concerning the possible participation of Alcogroup in a cartel for the marketing of a product, the company asked that all documents labelled "legally privileged" to be set apart. The European Commission took the view that this demand was disproportionate, as 22,000 documents were marked "legally privileged". The search lasted four days, and the European Commission found it difficult to assess the nature of the documents in that period, during which the company's lawyers tried to stop the investigating team to take even a cursory look at the documents. The company sought interim measures, which were not granted. It also brought an application for the annulment of the inspection decision before the General Court, which was dismissed. The status of the in-house lawyer of the company (whether an employee of the company or an independent lawyer on secondment) was not easy to verify either, as the employment contract itself was privileged, and was put into a sealed envelope for assessment. The European Commission stressed that investigated companies have a duty to co-operate, so they have to identify privileged documents and give reasons for it, allowing the Commission a cursory glance at a document to assess it. In electronic searches, the European Commission uses keywords and works with company lawyers to exclude privileged documents from the keyword search upfront.

**The Latvian Competition Council** ("CC") developed internal procedures for legal professional privilege claims. The CC has separate and independent investigative and decision-making bodies. The internal rules make it clear if the investigative team may assess legal privilege during inspections on the spot, or whether the document should be

sent for assessment to staff of decision-making body who are independent from the investigation. If the investigation team agrees with representatives of the investigated party that a document is privileged, it will separate it and delete it from the investigation file. If it is difficult to identify legal privilege on the spot or there is need for additional explanations, then documents are sealed and brought to the CC's premises and the CC's independent staff will assess the legal privilege status.

**The Australian delegation** stated that they use information gateways to share confidential information, but that privileged documents are generally not shared. A number of arrangements make this explicit. For example, the US/Australia agreement on mutual antitrust enforcement assistance makes it clear that there is no requirement on either party to produce legally privileged documents, though Australia and the US may exchange other confidential information via information gateways.

### 3. Convergence and minimum international standards

**Professor Nazzini** started the third part of the roundtable on policy convergence and minimum international standards on legal privilege. He noted that, depending on the jurisdiction, the right of a client to consult his lawyers in confidence is deemed a fundamental right, or a human right, or a right of constitutional standing. It is a right grounded in public policy.

Professor Nazzini presented different approaches to the applicable law that will determine the scope of legal privilege. The European Commission applies the law of the forum, i.e. EU law; likewise, the CMA applies English law. The US uses a conflict of laws analysis. If the allegedly privileged communication takes place in the US, US law applies. If the communication is not connected to the US, judges look for and apply the law of the jurisdiction with the closest connection with the communication. Professor Nazzini argued that applying the law of the forum means that, first, there is legal certainty about the applicable law, and, second, all parties in the same proceedings are treated equally.

English law recognises a residual discretion of the courts to exceptionally recognise privilege to documents that are not privileged under the law of the court (English law), but are privileged under a foreign law, if to use those documents would be unfair. According to Professor Nazzini, purely domestic advice given abroad in circumstances when the party could legitimately expect that the document would be privileged would fall under this exception. The right to fair trial, which is the main legal basis for legal privilege under EU law and the ECHR, may be deemed to have been breached if, in such circumstances, evidence privileged in another legal order is used.

Professor Nazzini stressed that it is legitimate for jurisdictions to apply their own standards on privilege. Still, if the legal advisor is a lawyer in his own jurisdiction, and the client sought for a legitimate reason the advice of that lawyer and believed in good faith that their communications would be protected from disclosure, then arguably the privilege should be allowed to stand, as any other solution would be unfair. As a safeguard against abuses, there should be effective procedures to assess privilege, like a filter team composed of competition authority staff independent from the investigation, and ultimately a recourse before a judge. There could be sanctions for unmeritorious invocation of privilege to punish and deter abuses. To conclude, Professor's Nazzini's main proposals consisted in the application of the *lex fori* to determine the scope of legal privilege, with residual discretion to accept the privileged nature of information exchanged in another jurisdiction in cases

where not accepting it would be unfair, with independent review and judicial oversight to prevent abuses.

**BIAC** noted that legal privilege should cover communications with in-house counsel, who not only deal with antitrust matters, but are also consulted on day-to-day matters and transactions, and advise on compliance. Their role is crucial. In-house lawyers need to draft documents that set out sensitive risk assessments and ensure business compliance, and therefore, for their role to be effective, should be able to act fast without fear of disclosure of their analysis. Besides, many companies may not be able to afford the time or money to use external lawyers instead of in-house lawyers. Bar association rules guarantee the independence of in-house lawyers. In all events, misuse of legal privilege (for example, involving lawyers to impede the access of competition authorities to evidence and information) could, in theory, occur in connection with either external or in-house lawyers. As competition law is becoming more complicated, companies are increasingly investing in compliance programmes and in in-house legal departments. In this context, external lawyers cannot be the sole gatekeepers of legal advice.

BIAC stressed the need for policy convergence. Competition investigations may concern businesses with operations in several jurisdictions, which will receive legal advice where they operate. Different approaches to legal privilege among jurisdictions create challenges not only for businesses but also for the co-operation of competition authorities with each other. The OECD Recommendation concerning International Co-operation on Competition Investigations and Proceedings deals with legal privilege and recognition of other Adherents' jurisdiction; it would be useful to see how the Recommendation has been implemented.

**Professor Wils** stated that legal privilege is a fundamental right, which should be carefully delimited. The Court of Justice delimited this right in the EU legal order and took the position that in-house lawyer are economically dependent and psychologically identify with their employer, thus their advice is not privileged. Judicial checks and balances and filter teams can work. Still, in investigations by the European Commission, when the company objects to having legally privileged documents looked at, even in a cursory manner, by the investigating team or does not lodge a privilege claim with the Commission's hearing officer, the only forum is the Court of Justice. Seizing the Court would, first, load it with cumbersome legal privilege claims over what may be a large volume of documents and would delay investigations. He argued that comity is a basis for not seeking information privileged by another jurisdiction, even though it does not provide a strict legal basis.

**Enrique Gonzalez-Diaz** argued that there is no evidence that the risk of excessive or abusive legal privilege claims is higher when the communications involve in-house versus external lawyers. In a globalised economy, in a context of multijurisdictional investigations, there is need to give room for flexibility and deference to the legal choices of other jurisdictions, based on comity.

**Professor Nazzini** highlighted that, unlike comity that may mean different things, the right to a fair trial is a universally accepted principle based on which policy convergence should be sought, and privileged information exchanged in good faith in another jurisdiction protected.

**The US** stated that, when it co-operates with other agencies that apply a different privilege standard, it works with the parties, so that the parties themselves identify privileged documents before these are exchanged.

**The Chair** thanked the experts and the delegates for a very fruitful discussion.