

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 3 on Co-operation and Enforcement**

**Treatment of legally privileged information in competition proceedings – Note by  
Latvia**

**26 November 2018**

This document reproduces a written contribution from Latvia submitted for Item 2 of the 128<sup>th</sup> Working Party 3 meeting on 26 November 2018.

More documents 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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## Latvia

1. According national legislation sworn advocates (attorneys) information exchanged with clients is protected and can't be gathered and used by public bodies during investigation. As well such information can't be disclosed to third party. The legal privilege is limited to special category of external lawyers – advocates that have special qualification, status and belong to the court system officials according to **Advocacy Law (AL)**.<sup>1</sup>

2. **According to AL Article 6.** Advocates shall be independent and shall be subject only to the Law in their professional activities. State authorities and local government institutions, courts, prosecutors and pre-trial investigation institutions shall guarantee the independence of advocates. It is prohibited to: 1) interfere in the professional activities of advocates, exert influence or bring pressure upon them; 2) request information and explanations from advocates, as well as interrogate them as witnesses regarding the facts which have become known to them in providing legal assistance; 3) control postal and telegraph correspondence and the documents, which advocates have received or prepared in providing legal assistance, to examine or confiscate them, as well as to execute a search in order to find and confiscate such correspondence and documents; 4) control, also by applying the procedural measures referred to in Clause 3 of this Section, the information systems and means of communication, including electronic means of communication, used by advocates in providing legal assistance, to remove information from them and to interfere with the operation thereof; 5) request information from clients regarding the fact of assistance provided by advocates and the contents thereof; 6) subject advocates to any sanctions or threats in relation to the provision of legal assistance to clients in accordance with the Law.

3. The exception in **AL** is *“an unlawful action of an advocate in the interests of a client, as well as an action for the promotion of an unlawful offence of a client shall not be recognized as a provision of legal assistance”*. That means also that such information can't be recognized as legal professional privilege (LPP) in the case if advocate acting unlawfully or promoting such action. Standard to prove the illegality of advice was not yet tested in practice but theoretically that could include information exchange through advocate as intermediary, as well as advices to client how to participate in the cartel or not to terminate participation, how to force participate other competitors in the cartel.

### 1. Practical implementation in competition enforcement proceedings.

4. At 2010 CC started to revise and in 2011 CC introduced internal procedure to align its inspection procedure with AL that sets higher or different procedural standards for legal LPP information than in case of confidential information (commercial secrets). The later procedure how to handle confidential information CC already had in the Competition law, Commercial law, also in internal regulations from starting and this procedure was improved time by time. Confidentiality obligation for CC officials involved still apply during identification and separation of LPP. But procedure to provide confidentiality was not itself enough to handle LPP according to standards set in AL.

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<sup>1</sup> <https://likumi.lv/ta/en/en/id/59283-advocacy-law-of-the-republic-of-latvia>

5. Investigations and also inspections are handled by Executive directorate (Directorate) of CC that is separate and independent in investigation matters body inside the structure of CC. Officials of Directorate have the powers to decide on status of LPP (to accept or not) and separate it from other paper and electronic information gathered on the spot. If there is impossible to identify LPP on the spot due to the amount of evidences or there is need for additional explanations from the party requesting LPP status, then evidences gathered during the inspection are sealed and brought to authority's premises. In these cases, identification and separation of LPP is done by representative of CC units subordinated to Council (decision making body) and independent from the Directorate. According to internal rules other officials and employees of CC don't participate in the separation process and are not allowed to give any directions regarding the separation of LPP to designated official of CC.

6. According to procedure elaborated by CC to respect the rights of parties and for due handling of the LPP undertakings and its representatives during the inspection has the rights to indicate that the information have LPP status. After inspection Party of the proceedings may submit the detailed list of documents in term set by Directorate in order not to delay the investigation. Party is obliged to include such detailed information - file name, creation time, size, location, addressee, author and purpose, justification if needed. Till the end of separation process evidences are sealed and not used by investigators. Designated independent official of CC and party requesting LPP status both are participating in separation. After separation investigators of Executive directorate receive electronic evidences without LPP.

7. The separation process of LPP in premises of CC may involve 2 stages. At first stage after CC receive detailed list which documents contain LPP, designated official of CC together with party of the proceeding check the documents (without analyzing content) and documents that does not create any doubts about the LPP status are excluded and deleted from the copy provided to investigators. For documents that at the first stage are not identified as LPP, party of the proceeding is requested to provide additional explanation on the spot or in a written form.

8. LPP status is waived if party requesting LPP does not submit detailed list of identified LPP in term set by Directorate or the explanation for the delay, then it is considered by CC that information gathered during inspection doesn't contain such information. During the evaluation and separation procedure at the premises of CC LPP status will be waived if indicated information does not meet AL criteria (e.g., the communication is with external attorney which is not advocate).

9. Number of requests when CC was demanded to handle, evaluate and recognize certain information (e-mails etc.) as legal privilege was not often – overall 5 requests for last 5 years. But procedure encounters time and resources to separate LPP. Mostly requests for LPP from the parties wasn't regarding competition law enforcement but advices given by advocates in other legal matters.