

## Romania fine tunes procedure on treating allegedly privileged communication during dawn raids



### KINSTELLAR

**The Romanian Parliament has amended Competition Law no. 21/1996 (the “Competition Law”) through Law No. 111/2025 approving Government Emergency Ordinance No. 99/2024, amending and supplementing certain legislative acts in the field of competition (“Law 111/2025”). Effective 26 June 2025, the Romanian Competition Council (the “RCC”) has received refined procedural guidance for handling communications claimed to be protected by legal professional privilege (“LPP”) during dawn raids.**

Law 111/2025 amends, among others, Art. 38 paras. (9) and (11) of the Competition Law, replacing the July 2024 version, itself introduced to fix a highly questionable earlier formulation which had controversially allowed RCC inspectors to read the content of certain documents potentially covered by LPP in certain cases.

#### Background

The revised Art. 38 paras. (9) and (11) of the Competition Law replaces the version introduced in July 2024, which itself corrected a highly controversial provision in force since December 2023. The earlier version had controversially allowed RCC inspectors to read the content of documents claimed to be privileged under certain conditions, drawing sharp criticism for its potential to undermine LPP.

#### What’s new

- Under Law 111/2025, dawn raided companies invoking LPP and RCC inspectors now have further instructions as to how to proceed in such circumstances. Specifically, inspectors are now explicitly entitled to briefly examine extrinsic elements of such communication (general appearance of the document, its title, date, author, recipient, subject line) to assess whether the LPP claim appears plausible or not. Such limited review of the alleged privileged communication is meant to enable the inspectors to check whether the grounds raised by the undertaking are consistent with the nature and context of the communication, without infringing upon its confidentiality;
- Following such prima facie assessment, if the inspectors conclude that the respective correspondence is not privileged, they are allowed to seal and collect the document, with the final decision on whether LPP applies or not vesting with the authority’s President;
- If the President of the RCC issues a decision rejecting the privileged character of a communication, the undertaking concerned may file a request with the administrative courts to suspend the execution of this decision within 15 days from its communication. Law 111/2025 further clarifies that the RCC is entitled to unseal and

examine such documents if the 15-day period expires without the undertaking submitting a request for suspension, or when the courts definitively reject such request.

These revised rules aim to strike a pragmatic balance: it arguably makes sense to allow inspectors to briefly assess a document's nature and extrinsic elements to determine if LPP may apply. On the other hand, even a limited review of a protected communication may itself constitute a breach of LPP, especially under Article 7 of the EU Charter of Fundamental Rights.

While the Court of Justice of the EU had initially upheld a relatively narrow scope of LPP in competition cases, it has more recently acknowledged in Case C-694/20—*Orde van Vlaamse Balies*—that protection covers not only defence rights but also legal advice more broadly.

In this context, the newly introduced changes, while procedurally clearer than before, still reflect a more restrictive stance compared to the evolving EU standard, particularly considering the overall approach under the Competition Law generally recognising as privileged only client-attorney correspondence relating to the object of the RCC proceedings or with respect to exercising the company's right of defence.

### **What companies should do next**

While Law 111/2025 introduces a more structured process for assessing LPP during dawn raids, its effectiveness and necessary safeguards to ensure LPP will largely depend on how these changes will be implemented in practice.

To ensure compliance going forward and protect their rights during high-pressure situations such as RCC dawn raids, companies should:

- clearly label potentially privileged documents and ensure they are readily identifiable during inspections;
- update internal dawn raid protocols to reflect the new procedural steps and timelines; and
- ensure immediate access to legal counsel during dawn raids, especially where LPP could be invoked.

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