

# INFORMATIVE NOTE

PROFESSIONAL LEGAL  
SECURITY AND COMPETITION LAW

PLMJ

AMPEREIRA, SÁRAGGA LEAL, OLIVEIRA MARTINS, JÚDICE E ASSOCIADOS  
SOCIEDADE DE ADVOGADOS, RL

## LEGAL PRIVILEGE PROTECTION OF INTERNAL COMMUNICATIONS SENT BY IN-HOUSE LAWYERS SECURED BY LISBON'S COMMERCE TRIBUNAL

Confidentiality and legal privilege protection of internal communications produced by in-house lawyers was secured by Lisbon's Commerce Tribunal, in a recent decision ruled within the scope of administrative offence proceedings started by the Portuguese Competition Authority. Following an appeal sponsored by PMLJ, Lisbon's Commerce Tribunal considered that the correspondence and documents containing written information or instructions produced by an in-house lawyer who is currently a member of the Portuguese Bar Association, cannot be seized, as this would be invalid.

In fact, adding to the ruling of the 16 January which had already recognized that the documents which are in the in-house lawyer's office - or, if the in-house lawyer does not have his own office, his desk and other places over which he has exclusive authority -, are automatically protected by the rules of the legal privilege, the Commerce Tribunal has now explicitly recognized that the documents produced by the in-house lawyers benefit from identical legal protection, as they are equally covered by the legal privilege of lawyers, irrespective of where in the company they are based.

The difference lies in that the former benefit from automatic protection, resulting from their geographic location, whilst the contents of the latter need to be superficially analysed in order to determine if they have the nature of correspondence of the in-house lawyer and/or written information or instructions produced by the in-house lawyer. Only in these cases they are under the legal privilege protection and cannot be seized.

The Commerce Tribunal thus rejected the arguments of the Portuguese Competition Authority according to which the legal department of a company cannot be considered as a lawyer's office, for the purpose of applying the rules of legal privilege and related legal protection and that the documents seized in other areas of the company do not benefit from such protection, as they are not even in an area reserved to the lawyer.

Therefore, the Tribunal ruled as null and void the seizure of the documents produced by the in-house lawyer, even if seized in a place that is not reserved to the lawyer, by considering it an infringement of Article 71(1) and (3) of the Portuguese Bar Association's Statute and of the Article 180(2) of the Portuguese Code of Criminal Procedure, and ordered that they should be returned to the lawyer in question.

This ruling, which complements the sentence of the 16 January, ultimately establishes the same protection to in-house and external lawyers in which concerns the rules of legal privilege and its legal protection: the in-house lawyer does not lose his quality of lawyer, as his duties, rights and obligations do not change and the company is his client.

Lisbon, 25th of July 2008

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