Vilnius University Press

Contents lists available at Vilnius University Press

Teisė
2025, Vol. 136, pp. 161–171

ISSN 1392-1274 eISSN 2424-6050
DOI: https://doi.org/10.15388/Teise.2025.136.11

Independence of the Lawyer in the Anti-Money Laundering Regulation: Reporting Obligation as a Challenge to Constitutional Rights

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Independence of the Lawyer in the Anti-Money Laundering Regulation: Reporting Obligation as a Challenge to Constitutional Rights

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The profession of a lawyer serves as a bridge between the state's judicial system and the public's right to a fair trial. This article is devoted to an analysis of the interaction of the principle of independence of bar with the obligation to report suspicious transactions, as provided for in *Anti-Money Laundering* (AML) regulation, resulting in the fundamental rights being affected. The article raises the following research question: *Does the introduction of such a control mechanism not contradict the constitutional principles of the autonomy of the bar, professional secrecy and independence on the one hand and the fundamental rights of the client, on the other hand?*

The following main conclusions can be drawn:

1. EU law and case law of the ECHR allows to apply AML/CFT requirements towards lawyers only upon condition that their defence functions are not violated.
2. Latvian regulatory framework does not always differentiate clearly enough between activities of a lawyer related to the defence of a client and those in which the lawyer may be subject to AML monitoring mechanisms.
3. An excessively broad interpretation of the reporting duty of lawyers undermines the individual's trust in the legal profession and may contribute to restrictions of the right to a fair trial.

Keywords: Lawyer, Independence of the legal profession, AML, prevention of money laundering, rule of law, fundamental rights of a person to defence and a fair trial.

Teisininko nepriklausomumas Kovos su pinigų plovimu reglamente: pranešimo pareiga kaip konstitucinių teisių iššūkis

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Teisininko profesija yra vienas iš svarbiausių teismų sistemos elementų, tarnaujantis kaip tiltas tarp valstybės teismų sistemos ir visuomenės teisės į teisingą teismą.

Received: 09/07/2025. **Accepted:** 22/10/2025

Šis straipsnis skiriamas advokatūros nepriklausomumo principo ir pareigos pranešti apie įtartinus sandorius, numatytos Kovos su pinigų plovimu (KPP) reglamente, sąveikos analizei, dėl kurios gali būti paveiktos pagrindinės kliento teisės – teisė į advokatą, gynybą ir teisingą teismą. Straipsnyje keliamas toks tyrimo klausimas: ar tokio kontrolės mechanizmo įdiegimas neprieštarauja konstituciniams advokatūros autonomijos, profesinės paslapties ir nepriklausomumo principams, ir pagrindinėms kliento teisėms.

Straipsnyje siūlomi galimi sprendimai, įskaitant poreikį suderinti valstybės interesą užkirsti kelią finansiniams nusikaltimams su žmogaus teisių apsauga, taip pat pabrėžiama ypatingo teisinės profesijos vaidmens svarba teisinės valstybės sistemoje.

Galima padaryti šias pagrindines išvadas:

1. ES teisė ir EŽTT praktika leidžia taikyti kovos su pinigų plovimu ir teroristų finansavimu reikalavimus advokatams tik su sąlyga, kad nepažeidžiamos jų gynybos funkcijos. Todėl labai svarbu tiksliai apibrėžti šias ribas ir Latvijos teisinėje sistemoje.
2. Latvijos reguliavimo sistema ne visada pakankamai aiškiai atskiria advokato veiklą, susijusią su kliento gynyba, nuo tos, kurioje advokatui gali būti taikomi kovos su pinigų plovimu stebėsenos mechanizmai.
3. Pernelyg platus advokatų ataskaitų teikimo pareigos aiškinimas mažina asmens pasitikėjimą teisine profesija ir gali prisidėti prie teisės į teisingą teismą apribojimų.

Pagrindiniai žodžiai: teisininkas; teisinės profesijos nepriklausomumas; pinigų plovimo prevencija; teisinės valstybės principas, pagrindinės asmens teisės į gynybą ir teisingą teismą.

Introduction

Over the past decade, the so-called *gatekeeper* model has become increasingly institutionalised within the *Anti-Money Laundering* (AML) regulatory frameworks of both the European Union and the Republic of Latvia. This regulatory shift entails an expansion of reporting obligations concerning suspicious transactions to a broader spectrum of professional service providers, notably, including lawyers. Such a transformation significantly alters the traditional role of the lawyer – from that of a client's representative and defender to an agent of oversight and even accuser, bearing duties that may conflict with the fundamental principles of legal ethics and confidentiality. In certain contexts, the lawyer is required to act pre-emptively, even in the absence of formal criminal proceedings, thereby assuming quasi-investigative functions that may position them in opposition to their own clients.

This evolving regulatory paradigm raises substantive constitutional and human rights concerns. In particular, it challenges the principle of the independence of the legal profession, as well as the effective protection of the client's fundamental rights, including the right to legal assistance, the right to defence, and the right to a fair trial – all of which are enshrined in both national constitutional law and international human rights instruments. The introduction of public oversight mechanisms into a profession traditionally defined by its autonomy and fiduciary loyalty has provoked a re-evaluation of the limits of permissible state intervention in the administration of justice.

Within the AML framework, lawyers are now placed under a positive obligation to assess client activities and, wherever suspicion arises, to report those activities to competent authorities. This obligation is imposed irrespective of the existence of any formal criminal suspicion or investigative procedure, thereby introducing a latent tension between the lawyer's duty of professional secrecy and their statutory duty to report. This tension gives rise to critical doctrinal questions concerning legal certainty, the principle of proportionality, and the scope of constitutional protections afforded to both lawyers and their clients.

The aim of this article is to critically examine the impact of AML-related reporting obligations on the independence of the legal profession and on the effective enjoyment of the client's rights. Particular attention is given to the normative tensions arising between supranational AML obligations – as derived from the EU AML Directives – and domestic constitutional safeguards. The theoretical framework

addresses the role of the legal profession within a rule-of-law state and the core principles underlying the AML regulation, while the legal analysis focuses on the Latvian legal context. It explores how constitutional norms, national jurisprudence, and international human rights standards converge or conflict in the regulation of lawyers' reporting duties.

In a democratic society founded on the rule of law, the legal profession performs an essential and irreplaceable function, ensuring the practical implementation of the right to defence and the protection of individual interests, not only in criminal proceedings but also in broader legal contexts. The lawyer, as an independent legal actor, serves as a critical intermediary between the state and the individual, facilitating access to justice and safeguarding the right to a fair trial and legal assistance. This role is inextricably linked to the core principles of independence, client loyalty, and professional secrecy – these are values firmly embedded in the national constitutional orders as well as international legal instruments, notably, Articles 6 and 8 of the European Convention on Human Rights (ECHR)[1].

The AML regulatory framework is designed to prevent the infiltration of illicit financial flows into the lawful economy and to strengthen the resilience of legal and financial systems. However, the extension of AML monitoring mechanisms to legal professionals introduces a structural conflict between regulatory obligations and the foundational principles of legal ethics. In particular, the imposition of duties that may compel a lawyer to disclose confidential information acquired in the course of professional engagement directly challenges the principle of legal privilege.

The relevant EU legal instruments – most notably, Directive (EU) 2015/849[2] (the Fourth AML Directive), as amended by Directive (EU) 2018/843 (the Fifth AML Directive), and elements of Regulation (EU) No. 269/2014[3] and Regulation (EU) No. 833/2014[4] – mandate that legal professionals engaged in certain financial or property-related transactions undertake client due diligence, perform risk assessments, and report suspicious activity to competent authorities. These obligations risk eroding the trust inherent in the lawyer–client relationship and raise critical concerns regarding the legal profession's autonomy and its ability to perform its constitutional function.

In the Latvian constitutional framework, the right to a fair trial, legal assistance, and the protection of defence rights are safeguarded under Article 92 of the Satversme[5] (the Constitution of the Republic of Latvia). These rights form part of the constitutional identity of the legal system and cannot be overridden by subordinate legal acts or administrative policy instruments. The legislature bears a positive obligation to adhere to the principle of proportionality, ensuring that any restriction on fundamental rights is necessary, suitable, and proportionate to the legitimate aim pursued.

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[1] European Convention of Human Rights (ECHR) [online]. https://www.echr.coe.int/european-convention-on-human-rights

[2] Document 02015L0849-20241230

Consolidated text: Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance) [online]. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02015L0849-20241230

[3] Document 02014R0269-20250316, Consolidated text: Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [online]. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0269-20250316

[4] Document 02014R0833-20250225, Consolidated text: Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [online]. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0833-20250225

[5] Constitution of the Republic of Latvia [online]. https://likumi.lv/ta/id/57980

Accordingly, the application of AML reporting obligations to legal professionals must be evaluated through the lens of constitutional scrutiny. Any encroachment on the confidentiality of legal communications or the independence of lawyers must be justified by compelling state interests and accompanied by adequate procedural and substantive safeguards.

The independence of the legal profession is a precondition for the effective realization of rights guaranteed by Article 92 of the Latvian Constitution. This provision not only affirms the right to a fair trial but also implies access to competent legal representation. Pursuant to Article 2 of the Advocacy Law of the Republic of Latvia[6], Advocacy is established as an autonomous and self-regulating institution, functionally independent of the administrative structures of the state.

The Constitutional Court of Latvia has consistently affirmed the principle that the effective exercise of professional legal duties necessitates institutional and personal independence, as well as immunity from unwarranted external interference. In its judgment in Case No. 2013 04-01[7], the Court recognised the state's positive obligation to ensure an environment in which lawyers can operate freely and without coercion, as any compromise to such independence jeopardizes the integrity of the entire legal protection system.

The obligation to report suspicious transactions, as imposed by EU AML directives, has far-reaching implications for several core rights of the client – most notably, the right to defence, the confidentiality of legal counsel (Articles 6 and 8 ECHR), and the privilege against self-incrimination. In its landmark decision in *Michaud v. France* (2012)[8], the European Court of Human Rights (ECHR) acknowledged that subjecting lawyers to AML reporting duties does not, *per se*, violate the ECHR, provided that appropriate safeguards are in place. The Court underlined that legal professional privilege remains a cornerstone of the right to a fair trial and must not be undermined unless absolutely necessary.

However, this conditional legitimacy of AML obligations requires that national transposition measures clearly delineate the boundaries of professional secrecy, ensure robust procedural protections, and preserve the principle of proportionality. In the Latvian context, it remains an open question whether the currently existing legislative and institutional frameworks sufficiently comply with these standards and whether the balance between the public interest and individual rights is adequately maintained in practice.

1. Sanctions and the Legal Profession: Regulatory Tensions and the Role of the Latvian Council of Sworn Advocates in Latvia

Recent regulatory developments in Latvia have significantly expanded the obligations of the legal profession concerning the enforcement of international and national sanctions. Pursuant to Article 13(4.4) of the Law on International and National Sanctions[9], the Latvian Council of Sworn Advocates (Council) has been designated as the competent authority overseeing the implementation of sanction-related restrictions by lawyers. In fulfilment of this mandate, the Council has adopted an *Internal*

[6] Advocacy Law of the Republic of Latvia [online]. https://likumi.lv/ta/id/59283

[7] Judgment of the Constitutional Court of the Republic of Latvia, 7 February 2014, Case No. 2013-04-01 (point 19.4), and, for comparison, Judgment of the Constitutional Court of the Republic of Latvia, 14 June 2018, Case No. 2017-23-01 (point 12).

[8] Judgement of European Court of Human Rights, Case *Michaud v. France*, 6 December 2012 [online]. https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-115377%22]}

[9] Law on International and National Sanctions of the Republic of Latvia [online]. https://likumi.lv/ta/id/280278

Control System (ICS) Instruction entitled "*Prevention of Money Laundering and Financing of Terrorism and Proliferation, and Compliance with International and National Sanctions*"[10], which sets forth procedures for ensuring legal professionals' adherence to sanctions law.

The ICS Instruction defines a framework to prevent lawyers from being involved in money laundering, terrorism financing, or the circumvention of sanctions. Article 2(2) of the Law on International and National Sanctions establishes that all persons, without exception, are subject to the obligation to comply with the sanctions. Unlike the Anti-Money Laundering (AML) regulatory regime, sanctions law does not distinguish between legal representation and transactional activities. Therefore, sanctions apply to legal services, including those rendered in judicial proceedings.

To quote verbatim, "Sanctions cannot be viewed solely at the binary level of whether a person is or is not a sanctioned subject. Legal compliance with sanctions (i.e., whether a person is formally sanctioned or not) must go hand in hand with assessing the level of sanctions risk, based on relevant risk factors such as industry, geography, and ownership structure transparency. A client who is not formally designated as a sanctions target may still possess risk indicators that complicate cooperation.

For example, there may have been a sham divestment in another jurisdiction, creating a circumvention risk – such as when an oligarch sells shares in a Russian company to its management while retaining *de facto* control. In such a case, the Latvian subsidiary of the Russian company cannot be considered free of sanctions exposure"[11].

In addition to targeted sanctions, lawyers must be vigilant of sectoral sanctions, which may prohibit the provision of legal services where such services constitute assistance in circumventing sanctions. Legal assistance is therefore impermissible where it directly facilitates a prohibited transaction or violates the spirit of sanctions law, even if the client is not formally designated.

The ICS Instruction (para. 5.6) specifies that legal aid must not be provided where there is a reasonable suspicion of sanctions evasion or violation. However, legal aid to a sanctioned individual may be rendered to safeguard their constitutional rights, provided that a responsible official issues a specific authorisation to do so. The competent authority for granting such permission, however, is not the Council, and ambiguity remains concerning the applicable procedures and the number of institutions from which consent must be obtained, especially in urgent cases. Unfortunately, there is still uncertainty in Latvia regarding how many and what kind of institutional permits are required, especially considering the urgency in situations requiring legal assistance. The Cabinet of Ministers has identified this problem and plans to address it by designating the FIU as the single competent authority"[12].

With reference to comparative perspective and critique of the Latvian approach towards the issue at stake, to quote verbatim, "Unlike jurisdictions such as the United States or the United Kingdom, Latvia imposes a disproportionately strict regime on lawyers. In common law jurisdictions, general

[10] New version of the Internal Control System Guidelines for Sworn Advocates of the Collegium of Sworn Advocates of Latvia "*Prevention of Money Laundering and Terrorism and Proliferation Financing and Compliance with International and National Sanctions*" with amendments approved by Decision No. 52 of the Council of Sworn Advocates of Latvia on 11 February 2025 (published on the website on 12 February 2025) [online]. https://www.advokatura.lv/en/issues-on-aml-tpfc-and-law-on-sanctions/instruction-on-the-prevention-of-money-laundering-and-terrorism-and-proliferation-financing-and-the-law-on-sanctions

[11] PASTARS E.; EŅĢELIS, R. (2023). Noziedzīgi iegūtu līdzekļu novēršana un sankciju ievērošana. *Jurista Vārds*, 14.11.2023, Nr. 46/47 (1312/1313), 92-102.

[12] PASTARS E.; EŅĢELIS, R. (2023). Noziedzīgi iegūtu līdzekļu novēršana un sankciju ievērošana. *Jurista Vārds*, 14.11.2023, Nr. 46/47 (1312/1313), 92-102.

licences often allow lawyers to provide limited assistance to sanctioned individuals (e.g., advising on applicable sanctions or representing them in proceedings), subject to thresholds. In Latvia, no such general exemption exists, requiring lawyers to seek special authorisation, which may be incompatible with the urgency or scope of the client's request. (For example, a brief consultation for a sanctioned person regarding new sanctions. Procedural deadlines may also not be met while awaiting two separate permits from the Latvian Council of Sworn Advocates and the Bank of Latvia"[13].

Article 13(4.4) of the Law on International and National Sanctions currently empowers the Council to supervise sanctions implementation and develop compliance guidelines but does not clearly authorise it to issue general licenses or interpret EU sanctions exceptions. This gap hinders uniform practice and clarity. A proposed amendment to include a third function – granting specific authorisations to lawyers – would complete the supervisory cycle from regulatory interpretation to licensing.

In relation to the aforementioned article, there is a prevailing opinion among lawyers that "this provision is not sufficiently precise, and its wording raises the question – does the law even grant the Latvian Council of Sworn Advocates the right to issue a general permit or approval to lawyers? So far, only the Bank of Latvia (formerly the Financial and Capital Market Commission – FCMC) has issued a general approval, which clarifies the permissible exceptions already established in the EU sanctions regulations"[14].

In the author's view, Section 13, Paragraph 4.⁴, Subparagraph 2 of the Law on International and National Sanctions and Sanctions of the European Union should be interpreted in such a way that the Council has the right to specify and clarify the exceptions provided for in EU sanctions regulations by issuing a general approval. For the sake of uniform practice and in the interest of a coherent national sanctions compliance framework, it would probably be desirable for such an approval to be discussed in advance among the competent institutions.

In the author's view, the wording of Section 13, Paragraph 4.⁴ of the Law on International and National Sanctions of the European Union should be supplemented with a third part and expressed as follows:

> "(4⁴) The, Latvian Council of Sworn Advocates as the competent authority:
> 1. supervises the implementation of restrictions imposed by international and national sanctions in the activities of sworn advocates;
> 2. develops a procedure that sets out the measures to be taken by a sworn advocate to ensure compliance with the requirements of this Law;
> 3. issues a special permit (license), specifying and clarifying the exceptions provided for in EU sanctions regulations."

Another critical challenge concerns the lawyer's reporting duties under both the Criminal Law[15] (Article 315) and the Law on International and National Sanctions (Article 17). These provisions risk transforming the lawyer from a client's advocate into a potential informant, contrary to the fundamental purpose of legal defence. While the ICS Instruction (para. 4.3) preserves immunity for information

[13] PASTARS E.; EŅĢELIS, R. (2023). Noziedzīgi iegūtu līdzekļu novēršana un sankciju ievērošana. *Jurista Vārds*, 14.11.2023, Nr. 46/47 (1312/1313), 92–102.

[14] PASTARS E.; EŅĢELIS, R. (2023). Noziedzīgi iegūtu līdzekļu novēršana un sankciju ievērošana. *Jurista Vārds*, 14.11.2023, Nr. 46/47 (1312/1313), 92–102.

PASTARS E.; EŅĢELIS, R. (2023). Noziedzīgi iegūtu līdzekļu novēršana un sankciju ievērošana. *Jurista Vārds*, 14.11.2023, Nr. 46/47 (1312/1313), 92–102.

[15] Criminal Law [online]. https://likumi.lv/ta/id/88966

obtained in the course of legal representation, the reporting obligation persists where legal assistance is suspected to serve illicit aims.

The reporting obligation remains in effect even in litigation-related cases if there are reasonable suspicions that the purpose of obtaining legal assistance is money laundering, terrorist financing, or proliferation financing (ML/TF/PF). In such cases, according to the ICS Instruction, the provision of legal assistance must be discontinued, a decision must be made on the early termination of the client relationship, and the lawyer must refrain from executing the transaction. The challenge lies in the fact that, by establishing this reporting obligation in the regulatory framework, the immunity of the lawyer is limited – or even effectively revoked.

Lawyer immunity is fundamentally subordinate to the interests of society. It is in the name of public interest that the legal profession is granted special rights and responsibilities, enabling lawyers to represent their clients' interests effectively and comprehensively. The only legitimate justification for limiting a lawyer's immunity can be derived from the overriding needs of the public interest. As it has been noted in legal scholarship, "since the principle of confidentiality serves the interests of society as a whole, it may also be restricted in those very interests"[16].

This raises a critical issue: *What are the outer boundaries of the principle of confidentiality, beyond which, a breach would unduly compromise the client's right to legal assistance?* This question is particularly relevant in light of Section 315 of the Latvian Criminal Law, which imposes a duty to report when it is *known with certainty* that a crime is being prepared. A close reading of the provision suggests that the reporting obligation applies only to crimes that are still in preparation (i.e., not yet completed, as completed crimes are subject to the immunity clause in Section 122 of the Criminal Procedure Law) or crimes that have been committed but whose consequences have not yet materialised (i.e., no causal link has yet been established).

The key concern here is the evidentiary threshold implied by the phrase "known with certainty". To quote I. Ņesterova, "Legal theory generally holds that the truth established in criminal proceedings is always conditional rather than absolute. Moreover, since the subjective role of the evaluator cannot be excluded in the process of understanding the truth, the concept of truth in criminal cases – although based on objective criteria – is inherently subjective. This suggests that the legal standard of 'known with certainty' set out in Section 315 of the Criminal Law may in fact be unattainable.

From the perspective of subjectivity, it must be recognised that even when a lawyer becomes aware of a potential or completed criminal offence, their belief may not be grounded in objectively verifiable facts. The absence of provable evidence or a factual foundation is precisely what allows the lawyer to form a belief that a criminal act has been or will be committed, and that its consequences have not yet occurred. Should reporting in such a scenario be based merely on the lawyer's subjective suspicion, this could amount to a breach of the duty of confidentiality and, by extension, an infringement of legal professional privilege"[17].

With regard to the reporting obligation enshrined in Article 17 of the Law on International and National Sanctions of the Republic of Latvia, concerning breaches or attempted breaches of international or national sanctions, or in cases of suspected circumvention or attempted circumvention

[16] ŅESTEROVA, I. (2009). Advokāta profesionālais noslēpums un pienākums ziņot par likumpārkāpumu. *Jurista vārds*, 6. janvāris, Nr. 1 (544) [online]. http://www.juristavards.lv/doc/185566-advokata-profesionalais-noslepums-un-pienakums-zinot-par-likumparkapumu

[17] ŅESTEROVA, I. (2009). Advokāta profesionālais noslēpums un pienākums ziņot par likumpārkāpumu. *Jurista vārds*, 6. janvāris, Nr. 1 (544) [online]. http://www.juristavards.lv/doc/185566-advokata-profesionalais-noslepums-un-pienakums-zinot-par-likumparkapumu

of such sanctions in the implementation of financial restrictions, it is stipulated that persons under the supervision of competent authorities are required to report immediately – but no later than the next working day – to the State Security Service regarding a breach or an attempted breach of international or national sanctions and any resulting frozen funds. They must also inform the relevant competent authority accordingly.

In cases of suspected circumvention or attempted circumvention of international or national sanctions in the execution of financial restrictions, such suspicions must be reported to the Financial Intelligence Unit in accordance with the procedures laid down in the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing.

As regards the interplay with the EU Law and the need for doctrinal clarity, reporting duties under national law must be reconciled with EU Regulations No. 269/2014 and 833/2014, which preserve the legal professional privilege. Regulation 269/2014 (Article 8) allows Member States to require the provision of information, but expressly subjects this to national confidentiality rules. Similarly, Regulation 833/2014 (Article 6b) recognises the confidentiality of communication between lawyers and clients, particularly wherever related to ongoing or anticipated legal proceedings.

These provisions suggest that the EU Law provides for more robust protection of lawyer-client confidentiality than the Latvian legislation currently reflects. The ambiguous interaction between national reporting obligations and EU-level confidentiality protections requires systematic doctrinal clarification. For instance, if a client approaches a lawyer regarding a transaction potentially in breach of sanctions, must the lawyer report this as a violation, or may they rely on EU confidentiality provisions?

The Latvian sanctions regulation currently imposes substantial compliance burdens on the legal profession without clearly delineating the boundaries of legal immunity, confidentiality, and the right to defence. Clarifying the competence of Latvian Council of Sworn Advocates to issue interpretative guidance and general licences, harmonising national norms with EU confidentiality protections, and refining the legal standard for mandatory reporting are necessary to restore the balance between legitimate security interests and fundamental rights.

A revised Article 13(4.4) of the Law on International Sanctions and National Sanctions of the Republic of Latvia should explicitly include the Latvian Council of Sworn Advocates authority to issue special permits and interpret EU regulation exceptions. Such a framework would promote legal certainty, uphold the independence of the legal profession, and ensure that the constitutional guarantees of fair trial and access to legal counsel are not rendered illusory by the overly broad compliance duties.

2. Tensions between Client Loyalty and State-Imposed Supervision: A Constitutional Perspective

One of the foundational principles of the legal profession across jurisdictions is the lawyer's duty of loyalty to the client. This obligation is closely interlinked with the principles of confidentiality and legal privilege, and it serves as an indispensable safeguard of the right to legal defence. However, the introduction of *gatekeeping* responsibilities under the anti-money laundering and counter-terrorism financing (AML/CFT) regime places legal professionals in a normative conflict. Specifically, lawyers are expected to simultaneously serve as protectors of individual rights and as agents of state supervision – which is a dual role that risks undermining the integrity of the profession.

This regulatory dualism may erode public confidence in the legal profession and create a chilling effect, deterring individuals from seeking legal assistance out of concern that their confidential information may be disclosed to authorities. Accordingly, reconciling the objectives of AML policy with

the inviolability of the right to defence constitutes a pressing legal policy challenge for the European Union and its Member States, including the Republic of Latvia.

Concluding Observations

This article identifies several normative and practical tensions arising from the intersection of AML regulation and the constitutional guarantees applicable to the legal profession. The following conclusions synthesise the core findings and serve as a basis for informed recommendations addressed to legislators, regulators, and legal practitioners.

1. The independence of the legal profession is a structural prerequisite for a democratic state governed by the rule of law. It functions as a constitutional guarantee for the effective protection of fundamental rights, in particular the right to a fair trial and legal defence.
2. The extension of AML/CFT obligations to lawyers, and especially the requirement to report suspicious transactions, generates inherent tensions between the state's legitimate interest in combatting illicit financial activity and the client's fundamental rights, including the right to confidentiality, legal assistance, and protection against self-incrimination.
3. European Union law and the jurisprudence of the European Court of Human Rights (ECHR) permit the application of AML obligations to lawyers only under strict conditions – namely, that such obligations must not interfere with the lawyer's core function as a defender. It is therefore essential that the Latvian legislation explicitly delineates the limits of these reporting duties.
4. The current Latvian regulatory framework does not always clearly distinguish between a lawyer's activities as a legal representative in defence proceedings and a lawyer's ancillary roles in financial or transactional matters. This lack of clarity risks misapplication of AML duties to constitutionally protected activities.
5. An excessively broad or ambiguous interpretation of lawyers' reporting duties undermines the perception of trust in the legal profession and threatens to restrict access to justice by compromising the right to a fair trial.

Recommendations

To ensure coherence between AML/CFT regulation and the constitutional role of the legal profession, the following measures are proposed:

1. Legislative clarification: To amend the relevant legal provisions to explicitly exclude information obtained in the context of providing legal defence or legal assistance in criminal proceedings from reporting obligations, regardless of the procedural status of the client.
2. Constitutional review: Wherever necessary, to refer contested norms to the Constitutional Court of Latvia so that to assess their compatibility with Article 92 of the Satversme and the guarantees provided by the European Convention on Human Rights concerning rights to fair trial and privacy protection.
3. Institutional strengthening: To enhance the role of the Latvian Council of Sworn Advocates by empowering it to issue binding interpretative guidelines and oversee the application of AML/CFT measures in a manner that respects the independence of the legal profession.
4. Professional education: To promote awareness among legal practitioners regarding the boundaries between legitimate legal representation and potential involvement in suspicious financial activities, while reinforcing adherence to ethical standards that protect confidentiality and client loyalty.

5. Compliance with international standards: To ensure that future regulatory developments align with the evolving case law of the European Court of Human Rights (ECHR) and the guidelines issued by the Council of Bars and Law Societies of Europe (CCBE), particularly with regard to the protection of professional independence and the clients' fundamental rights.

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