

# Inspectors at the door: European Commission and ACM issue new guidance for dawn raids

October 10, 2013

The European Commission issued a [revised guidance](#) for the carrying out of dawn raids earlier this year. The ACM will develop a new policy before the end of 2013 after reviewing consultation submissions. While the European Commission's dawn raid guidance codifies recent case law and practice, ACM is aiming to draft [a uniform procedure](#) that replaces the separate guidelines of the three regulators that merged into the ACM. Both guidance documents merit attention, as significant fines can be imposed for any procedural breach.

In line with last year's imposition of a fine on [two Czech energy companies](#) for failing to block email accounts during an inspection, the European Commission's revised guidance now explicitly requires a company to designate appropriate representatives or staff members to assist inspectors. The guidance requires representatives and staff members to be capable of describing the organisation of the company and its IT environment, and to carry out specific tasks, such as: the temporary blocking of individual email accounts, temporarily disconnecting running computers from the network, removing and re-installing hard drives from computers and providing support for "administrator access rights".

In addition, the guidance codifies events leading up to the fine levied on [E.On Energie](#) for breaking a seal during a dawn raid, outlining that it is the company's responsibility to ensure that affixed seals should not be broken. The revised guidance precedes the recent rulings in the [Nexans](#) and [Prysmian](#) cases and, therefore, does not mention that the Commission needs to have reasonable grounds before carrying out a dawn raid.

The ACM published rather concise dawn raid guidelines when compared to the previous guidelines, which were used in earlier investigations of possible competition law infringements and set out the procedural steps to be taken. This is mainly because the ACM is responsible for the enforcement of a variety of Acts that must be observed during the carrying out of dawn raids, which may result in different procedural steps being followed at different dawn raids. The ACM wishes to present a uniform standard of safeguards to be observed at all inspections. The "sealed envelope" procedure, similar to what can be found in European case law, can further safeguard legally privileged documents during ACM dawn raids. This procedure remains the same but has been incorporated into separate guidelines. If a company refuses to allow ACM officials to have a cursory look at a document because the company considers the document covered by legal privilege, the ACM inspector must not examine it, but must place the document in a sealed envelope and hand it over to

an independent ACM official, the "legal professional privilege officer". The consultation invited stakeholders to make suggestions about how to improve the practicability of the guidelines. Final dawn raid guidelines are expected by the end of the year.