



Maximum prices in the Anti-Crisis Shield

In light of the ongoing state of epidemic, the government decided to introduce measures to regulate prices of certain products by means of the possibility to set maximum prices. The maximum prices themselves have not been introduced at the moment. Under the new regulations, it is the minister competent for the economy who may, by way of regulation, set maximum prices or maximum wholesale and retail margins applicable for the sale of goods or services which are essential for the protection of human health or safety or for household living costs.

This is a measure that significantly interferes with the freedom to conduct business activity and, for that reason, it is necessary to prepare for its implementation. The competencies to act in connection with a violation of the prohibition on applying prices higher than the maximum prices have been granted not only to the relevant inspection authorities, but also to the President of the Office of Competition and Consumer Protection (UOKiK).

Key information

- » It is prohibited to apply in respect of trade in the territory of the Republic of Poland prices or margins that are higher than the maximum prices or margins established under the newly introduced regulations.
- » A violation of the prohibition may result in the imposition of a fine in the amount of PLN 5,000 to 5,000,000 (a so-called "ordinary" infringement). In the case of a repeated violation, the President of the UOKiK is competent to intervene (with the possibility to impose a financial penalty of up to 10% of turnover).
- » The intervention of the President of the UOKiK may be based on: (i) a repeated violation of the prohibition on exceeding maximum prices where, at the same time, (ii) the violation involves a number of goods or services or it is a large scale violation.
- » So far, no specific maximum prices have been established. However, the law gives the relevant minister the possibility to do so.
- » The new regulations do not introduce an obligation to sell at the maximum price i.e. if an entrepreneur is not interested in selling at a price lower than or equal to the maximum price, then it is not obliged to offer the product for sale at all.
- » Separate (new) provisions regulate the possibility of introducing maximum prices for more broadly defined pharmaceutical and biocidal products. A violation of such maximum prices may also give rise to the intervention of the competent inspections or the President of the UOKiK.

How to read the maximum price regulations?

What do you need to know about maximum prices?		Comment
Products/services	Maximum prices or maximum wholesale and retail margins may be set for the sale of goods or services which are essential for the protection of human health or safety or household living costs .	> The maximum price may apply to both products and services > There is no closed list of goods i.e. there is significant discretionary leeway on the part of the competent minister in terms of assessing which products or services fall under the maximum price regulation
How to calculate the maximum price?	When setting maximum prices, reference may be made to price levels in the period preceding the introduction of the state of epidemic threat, as well as to justified changes in the cost of production and supply.	> There are very general grounds for setting the maximum price > There are no mandatory elements influencing the price by reference to which the maximum price is determined > There is a risk that setting a maximum price will result in sales being blocked in general (too low a price) > For products or services of the same type, but different quality, there is a risk of overpricing of inferior products
Maximum margin	The regulation: (i) lays down the base for calculating maximum margins; and (ii) maximum margins may be set for individual types of goods, or the wholesale price.	> These provisions allow for setting of margins at all distribution levels > The maximum price can be set at different levels of trade > There are no guidelines on how to calculate the margin
Officially	The maximum price is introduced by means of a regulation.	> The maximum price has the effect of generally applicable law > There is no concept of "appeal" against a maximum price that has been set > Given the current situation, any consultations on the maximum price are likely to be very limited.

What are the risks?

- » **Financial penalties** - penalties for violation of the maximum prices may be imposed by the Pharmaceutical Inspection, the Agricultural and Food Quality Inspection, the State Sanitary Inspection, or the Trade Inspection, plus high penalties may be imposed by the President of the UOKiK for repeated violations.
- » **Risk of inspection** - the authorities will be entitled to initiate an unannounced inspection at an entrepreneur's premises and, in the event of a repeated violation, an inspection may also be carried out by the President of the UOKiK.
- » **Procedural chaos** - due to the complexity and interaction between various provisions, it can be challenging to understand the rules, and may require specialist knowledge to determine which provisions will apply in a particular situation and how to safeguard the interests of an entrepreneur.
- » **Vague indications as to the products and services and as to the level of prices** – the lack of specificity makes it impossible to determine clearly for which products and services maximum prices may be set and what their level should be, however, while this is obviously detrimental to businesses, on the other hand, it creates the possibility to challenge any decisions imposing penalties and seek further remedies in the event of improper decisions.