



New powers granted to the President of the OCCP – access to information on taxpayers

Another "Anti-Crisis Shield" has come into force, extending the powers of the President of the Office of Competition and Consumer Protection (*Urząd Ochrony Konkurencji i Konsumentów*; UOKiK; "OCCP") regarding access to data held by tax offices and customs and tax offices.

These regulations came into force on 24 June 2020.

Changes introduced with Anti-Crisis Shield 4.0

- » The Act of 19 June 2020 on Subsidies for Interest Rates on Bank Loans Granted to Entrepreneurs Affected by COVID-19 and on Simplified Proceedings for the Approval of an Arrangement in the Context of the COVID-19 Outbreak, also known as "**Anti-Crisis Shield 4.0**" introduces amendments to numerous other acts. Not all of these amendments are directly related to COVID-19.
- » Such amendments include those made to the Tax Ordinance¹ ("t.o."), concerning:
 - > the rules for the disclosure of files considered to be fiscal secrets outside of the authority holding such files, i.e. to whom can the heads of tax offices and heads of customs and tax offices disclose files;
 - > the obligation for the Head of the National Revenue Administration (*Krajowa Administracja Skarbowa*) to provide the President of the OCCP with information on establishing the likelihood of delays in payments related to commercial transactions.
- » Consequently, the President of the OCCP will now receive files in connection with their conduct of the following proceedings:
 - > pursuant to the Act on **competition and consumer protection**²:
 - explanatory proceedings;
 - antitrust proceedings;
 - proceedings regarding the recognition of provisions of standard contracts as prohibited;
 - proceedings regarding practices infringing collective consumer interests.
 - > pursuant to the Act on **contractual advantage**³:
 - proceedings regarding the unfair use of contractual advantage;
 - explanatory proceedings.
 - > pursuant to the Act on, so-called, **payment gridlock**⁴:
 - proceedings concerning excessive delays in payment.
 - > pursuant to the Act on the **control of certain investments**⁵:
 - preliminary investigation proceedings.
 - control proceedings.

¹ Act of 29 August 1997 – the Tax Ordinance.

² Act of 16 February 2007 on competition and consumer protection.

³ Act of 15 December 2016 on counteracting the unfair use of contractual advantage in trade in agricultural and food products.

⁴ Act of 8 March 2013 on preventing excessive delays in commercial transactions.

⁵ Act of 24 July 2015 on the control of certain investments.

- » The powers of the President of the OCCP have been further expanded to include the power to request and receive information on:
 - > **bank or savings accounts** held by taxpayers, the number of such accounts, as well as the turnover and balance of these accounts;
 - > **cash or securities accounts** held by taxpayers, the number of such accounts, as well as the turnover and balance of these accounts;
 - > **credit or loan agreements**, as well as **deposit agreements**, concluded by taxpayers;
 - > **Treasury shares or Treasury bonds** purchased by taxpayers through banks, as well as trade in these securities;
 - > trade in **certificates of deposit** issued by banks, or **other securities**, by taxpayers.
- » This information may come not only from banks, but also: insurance companies, investment funds, voluntary pension funds, banks conducting brokerage activities, brokerage houses and cooperative savings and credit unions.
- » At the same time, the Act standardises the scope of data necessary to analyse the likelihood of late payments related to commercial transactions.
- » The provisions introduced refer to the EU Regulation on cooperation between consumer protection authorities within the European Union (“CPC”),⁶ which provides for new powers in order to effectively enforce consumer protection law. However, the legislature took this opportunity to also expand the competences of the President of the OCCP to cover proceedings under antitrust law as well as proceedings regarding payment gridlocks and contractual advantage. The CPC also provides for other rights which have not yet been implemented.

Powers granted previously

- » It is worth noting that the President of the OCCP has had access to fiscal secrets since 17 September 2019. These powers were granted by an act amending the Act on competition and consumer protection.⁷
- » Since then, the President of the OCCP may access fiscal secrets during proceedings regarding competition and consumer protection matters, as well as those concerning the unfair use of contractual advantage.
- » The intention behind granting such powers was to enable the President of the OCCP to effectively receive information which could constitute evidence in proceedings, thus allowing for the faster elimination of prohibited practices infringing the interests of undertakings and consumers from the market. In practice, the purpose appears to have been to facilitate the calculation and imposition of penalties for infringements. The value of fines depends on the turnover achieved by an undertaking in the year preceding the fine's imposition.
- » At that time, the President of the OCCP noted that obtaining such information was problematic, especially when entrepreneurs failed to receive the relevant correspondence, respond to calls and provide data on the undertaking's turnover.
- » These provisions were meant to help determine whether an entrepreneur was currently conducting business activities, as well as to support the enforcement of penalties and the conduct of proceedings regarding, so-called, “pyramid schemes”.

⁶ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004.

⁷ Act of 4 July 2019 on the amendment of the Act on competition and consumer protection and certain other Acts.