New clarifications on investment control

* **The President of UOKiK has updated his clarifications on reporting transactions in investment control and the UOKiK’s actions in this regard.**
* **The document is a response to the expectations of the market, including business and law firms.**
* **Among other things, the new information addresses issues related to business contacts with the European Commission.**

 **[Warsaw, 09 May 2024]** The revised [regulations](https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20150001272/U/D20151272Lj.pdf) giving the President of UOKiK a capacity to control certain investments came into force in July 2020. The purpose of the new regulations was to protect against the takeover of Polish businesses important to public order, security or health by entities outside the European Union, the European Economic Area (EEA) and the Organisation for Economic Co-operation and Development (OECD). This solution is modelled on regulations that have recently been adopted in Germany and those already existing in other countries (e.g. France or Italy). To date, the President of UOKiK has conducted 15 investment control proceedings.

As the new regulations came into effect, the President of UOKiK published a special document on how UOKiK operates and what the obligations of entrepreneurs are. Among other things, one could find information there on who is obliged to report transactions, in what cases and by what deadline. The study also covered the issues of documents to be submitted, how to conduct investigations and possible fines.

**What’s new?**

The clarifications made it easier for entrepreneurs to apply for approval of transactions and thus cooperate with the Authority. The document has now been updated. The changes stemmed from the need to clarify interpretive doubts and inquiries from entrepreneurs and their attorneys regarding procedural issues. Several years of practice and experience gained in this area led the President of UOKiK to supplement the guidelines with issues related to, among other things, the obligation to send the FDI Form to the European Commission, about which entrepreneurs still have little knowledge. More broadly, issues related to determining who is required to file a notice of planned investment with the UOKiK were addressed. In addition, information on procedural and practical issues has been supplemented, including in particular the obligation to legalise foreign official documents.

**What investment control is**

According to the amendment of the Act on [control of certain investments](https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20150001272/U/D20151272Lj.pdf), the President of UOKiK has a capacity to protect entities based in Poland that are key to the preservation of public safety, order and health, among others:

* those pursuing business activity related to: electricity, gas, fuels, telecommunications, food processing, manufacture of medicines, chemicals and fertilisers, explosives, weapons and ammunition, and products and technology used by the Armed Forces and the Police;
* that create software used in services essential to society, such as energy, fuel, water supply, cash supply, card payments, hospitals, prescription drug sales, transportation, and food supply;
* public companies regardless of the type and industry of their operations.

A sufficiently high revenue of the company is also a condition for protection - it must exceed the equivalent of EUR 10 million in Poland in one of the two fiscal years preceding the desire to take over.

**Who must report to UOKiK**

The obligation to report to UOKiK affects transactions that result in the acquisition, achievement of significant participation or acquisition of dominance by entities based or with citizenship (for individuals) outside a member country of the European Union, [European Economic Area (EEA)](https://www.europarl.europa.eu/factsheets/pl/sheet/169/the-european-economic-area-eea-switzerland-and-the-north) and [Organisation for Economic Co-operation and Development (OECD)](https://www.gov.pl/web/nauka/oecd-organizacja-wspolpracy-gospodarczej-i-rozwoju2).

**Two stages of the proceedings**

The proceedings are divided into two stages, similar to concentration control cases. The first stage is a **preliminary investigation** to separate cases into those that are simple and do not require further inspection from those that are more complicated. This stage lasts up to a maximum of 30 days whereafter the President of UOKiK may issue a decision of no objection.

Only cases that may cause a serious threat to public order, public safety or public health may be referred to the relevant control proceedings (stage two). The clarification specifies that this applies to situations where there is a risk for a company that is important to the public interest, for example, that production will move abroad, a plant will close down, technology will move out, or the business of the entity will otherwise be threatened. This stage of the proceedings lasts a maximum of 120 days.

Sanctions

Achieving or acquiring significant participation or dominance in a protected entrepreneur without filing a notice or despite the objection of the President of UOKiK will be null and void by operation of law. It is also punishable by a fine of up to PLN 50 million and imprisonment from 6 months to 5 years. Sanctions will also be allowed to be imposed cumulatively.

A fine, imprisonment, or both can only be imposed by a common court. The President of UOKiK, as the control authority, may in turn request the imposition of these penalties.

**The President of UOKiK does not consult the Consultative Committee**

Importantly, the Act on control of certain investments does not provide for a procedure for the President of UOKiK to obtain the opinion of the Consultative Committee. Such obligation applies only to decisions issued by the Minister of State Assets, the Minister of Defence and the Minister of Economic Affairs.

The updated document *Procedural Clarifications on Filing Notifications to the President of UOKiK and Conducting Proceedings Covered by the Investment Control Law* can be found and downloaded on the UOKiK website.