THE INVESTMENT CONTROL REGULATIONS ENTER INTO FORCE

* **On 24th July, new investment control regulations came into force. The President of UOKiK is able to protect Polish companies that are of critical importance to order, security or public health.**
* **The UOKiK has published a document that guides potential investors on how they should report a transaction.**

**[Warsaw, 27 July]** The new law on investment control is part of the government's [Anti-Crisis Shield 4.0](https://www.uokik.gov.pl/aktualnosci.php?news_id=16465). These regulations were adopted as a result of the COVID-19 pandemic and the risk of taking over Polish companies that are crucial for public order, safety or health. It is a solution modelled on the regulations recently adopted in Germany and those existing in other countries (e.g. France or Italy).

*"The regulations aim at protecting key Polish enterprises - we do not intend to obstruct foreign investments, so important for the country's economic growth. Most decisions will be issued in less than 30 days, ensuring full independence of the authority. The published guidelines shall assist entrepreneurs in applying for the transaction authorisation,”* stresses President of UOKiK Tomasz Chróstny.

Who is obliged to report the transaction, under which circumstances and when? What documents should be submitted, how will the procedure proceed? Which sanctions can be imposed, for what and who imposes them? These are just some of the questions that are addressed in the guidelines published by the Office. They will substantially support entrepreneurs in submitting transaction authorisation requests and thus their cooperation with the Authority.

**Who is protected**

Pursuant to the amendment to the Investment Protection Act the President of UOKiK will be able to protect entities based in Poland that are crucial for maintaining public safety, order and health, *inter alia*

* conducting business activities related to: power, gas, fuels, telecommunications, food processing, manufacture of medicines, chemicals and fertilizers, explosives, weapons and ammunition, as well as military and/or police technologies;
* developing software for core services for society, such as energy, fuels, water supply, cash supply, card payments, hospitals, sales of prescription drugs, transport and food supply, and
* public companies regardless of the type and sector of activity;
* The prerequisite for protection is also a sufficiently high revenue of the company - it must exceed the equivalent of EUR 10 million in Poland in one of the two financial years preceding the intention to take it over.

**Who must report to the UOKiK**

The UOKiK notification obligation shall apply to transactions resulting in the acquisition, achieving substantial shareholding or acquiring dominance by entities with a registered office or citizenship (for natural persons) outside a EU Member State, [the European Economic Area (EEA)](https://www.europarl.europa.eu/factsheets/pl/sheet/169/the-european-economic-area-eea-switzerland-and-the-north) and [the Organisation for Economic Cooperation and Development (OECD)](https://www.gov.pl/web/nauka/oecd-organizacja-wspolpracy-gospodarczej-i-rozwoju2).

**Two stages of the procedure**

The procedure is to be split into two phases, as in concentration control-related cases. The first phase will be a **preliminary verifying procedure**, which is intended to distinguish between simple cases that do not require further examination and more complex ones. This phase is to last up to 30 days. As expected, most of the transactions under consideration will be completed in this phase. In such cases, the President of UOKiK will issue a notice of non-opposition. The Office shall strive to conclude cases that do not raise doubts as soon as possible. To ensure more efficient processing of such cases - if a given transaction is also subject to notification to the President of UOKiK under concentration control regulations, then both cases shall be handled by the same official.

Only a small number of specific cases will be referred to the appropriate control procedure (phase two), i.e. those that may pose a major threat to public order, public security or public health. According to the Office's guidelines, this shall refer to situations where, for example, there is a risk that an undertaking of substantial value for public interest might be forced to move abroad, close down its plant, siphon technologies or that this entity's business operations might be compromised otherwise. This phase of the procedure is to last a maximum of 120 days.

Sanctions

Achieving or acquiring a significant shareholding or dominance in a protected undertaking without filing a notification or despite the President of UOKiK's objection will be null and void by law. This will also be subject to a fine of up to PLN 50 million and to imprisonment from 6 months to 5 years. Sanctions may also be ordered in combination.

The published guidelines specify that a fine, imprisonment or both can only be ordered by a common court. The President of UOKiK, on the other hand, as the control authority, may request that these sanctions be imposed.

*"We are dealing with new regulations, so the practice of jurisprudence will evolve along with the cases under consideration. Should further relevant issues arise, we will publish the questions and answers that will be helpful to entrepreneurs,”* says President of UOKiK Tomasz Chróstny.

The document titled [*Procedural guidelines for submitting notifications to the President of UOKiK and conducting proceedings covered by the provisions of the Investment Control Act*](https://www.uokik.gov.pl/download.php?plik=24681)is available for downloading on the UOKiK website.