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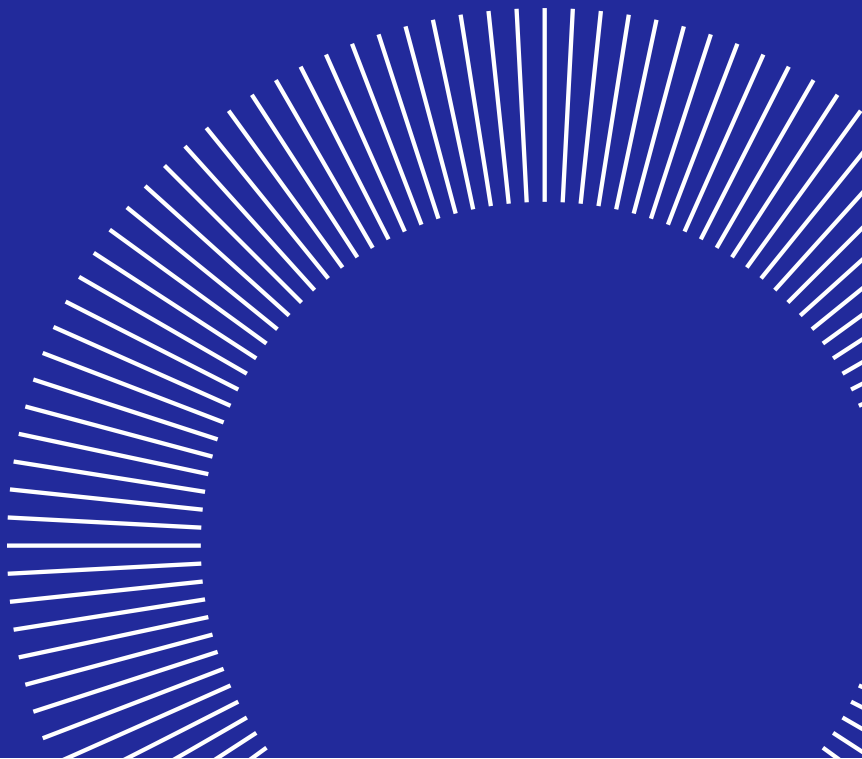
THE RIGHT FOCUS

JUNE 2023



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AN INCLUSIVE ORGANISATION WORKS FOR EVERYONE

ANNA GWIAZDA

MONIKA POLITOWSKA -BAR

The Western world is paying increasing attention to building diverse work environments. Indeed, employers are aware that diversity management and the building of inclusive organisations are essential to both attract candidates and retain existing talent within the organisation.

A successful competition for a satisfied employee

Nowadays, in the age of social media and digitalisation, employees are increasingly keen to share opinions about their workplace, and this disseminates this information to a wide audience of both potential employees and clients.

It's clearly an "employee's market", and so employers must fight harder for workers, taking into account the changing environment and the requirements of new generations. It is therefore important to create an environment that will integrate every employee in the heart of the organisation, make best use their potential and take their ideas into account, regardless of diversities such as nationality, age, gender or orientation.

An inclusive organisation should first and foremost consider the individual and make them feel empowered and secure.

An inclusive organisation means better business performance for the company and a higher level of satisfaction for the individual employees

It has been proven that inclusive organisations perform better financially. This is because the greater the satisfaction of employees, the greater their commitment and effectiveness.
To build an inclusive environment, you need to start from the ground up.

Apart from putting in place appropriate regulations and procedures, it is crucial to apply the underlying ideas and principles in everyday life. Efforts in this field should be made at every stage of the employee life cycle and at every organisational level – beginning with recruitment, through promoting and monitoring the performance of multicompetent teams, to training for managers.

Employers can take measures such as:

- Applying a system of evaluations and reports on equal treatment in employment, including in recruitment, e.g. by implementing transparent recruitment and promotion policies
- Having a transparent remuneration system
- Providing awareness-raising training for employees and managers
- Using appropriate (non-exclusive) language in the workplace
- Promoting inclusivity through diversity in leadership positions
- Building mixed teams with complementary competences

Employers should be aware of the importance of building an inclusive workplace. In fact, this has a direct positive impact on both the quality of work and the attitude of clients towards the services or products offered.

SUCCESSION PLANNING IN FAMILY BUSINESSES / A FEW WORDS ON FAMILY FOUNDATIONS

PAWEŁ MARDAS

It has taken a long time for agreements to be reached between businesses, the Ministry of Economic Development and Technology, the author of the government bill, and the advisory industry, but finally the time has come.

On 22 May this year, the Polish Family Foundation Act entered into force.

Although family foundations are a completely new solution in Polish law, they have been known and used by Polish businesses for many years. However until now, founders of family businesses had to look abroad for tried and tested solutions when thinking about who would continue their life's work.

Many business families in Poland planned and organised successions according to the best models from Western Europe, from countries such as Switzerland, Liechtenstein, the Netherlands, Germany and others. However, this required the transfer of assets to a foreign jurisdiction where a family foundation was established.

The introduction of family foundations into Polish law means that assets no longer need to be transferred abroad.

The need for early succession planning

The multi-award-winning, hugely popular HBO series of the same name is a testament to how much excitement succession can generate.

Telling the story of a family of US media tycoons, "Succession" demonstrates the unpredictability of life and confirms a truth that can be put in simple terms: "Life writes its own script".

Polish business history is also littered with spectacular and well-publicised cases in which the lack of planned succession proved to be a major problem. Relatives and those who had to step into the role of successors from one day to the next, surprised by the sudden and unexpected departure of the head of the family, were deprived of instruments and tools that would have ensured proper family business succession planning and organisation.

Well, now that the last season of the series has come to an end, it's time to delve a little deeper into the details of Polish family foundations on the basis of the Act that has been in force for several weeks.

What is a Family Foundation

The first question that needs to be answered is what a family foundation actually is, and also what a family foundation is not. It is not a so-called charitable foundation, nor is it one of the non-profit organisations established under the long-standing Foundation Act. Nor is it a commercial company, although in some ways it is closer to a company than to an ordinary foundation.

The purpose of a family foundation is to accumulate assets and to manage them in the interest and for the benefit of its beneficiaries. One of the main purposes of a family foundation is to ensure succession to future generations. However, it should not be forgotten that a family foundation also enables the protection of family assets during the founder's lifetime.

The oft-cited example of the famous Formula One driver Michael Schumacher shows that a family fortune worth millions can require special protection and management. Not only in the event of the founder's death, but also if they suffer a serious accident, or if illness prevents them from functioning normally, either permanently or for such a long period that a special organisation such as a family foundation is required to manage the family's assets.

Succession planning also includes arranging appropriate expenses and support for the founder's loved ones. This is especially true for children, whose age may require adequate preparation for their future role. For this reason, the Polish Family Foundation Act stipulates that a family foundation may, in particular, cover the costs of maintenance or education of its beneficiaries.

A family foundation is conceived as a kind of family holding company that holds shares or other participation titles in companies and other business ventures. To a certain extent, it may also carry out business activities directly.

No restrictions under succession law

Family foundations make it possible to organise succession in a way that is completely different from the rules of succession law.

The transfer of family assets to a family foundation means that these assets are not subject to normal succession, which in many cases would lead to their fragmentation among successors. In addition, successors are not always keen to retain the family business, with many thinking of selling their shares, releasing the family business into foreign hands.

A foundation allows the business to remain in the hands of the family, whose members are designated as beneficiaries of the foundation, contribute to its management and collectively benefit from the assets it produces.

However, this does not mean that the rights of "natural successors" can be violated in this way. In fact, according to the law, the family foundation is jointly and severally liable with its founder for the latter's pre-establishment obligations, including maintenance obligations. It is also liable for the fulfilment of the maintenance obligation incurred by the founder after its establishment.

If the enforcement from the founder's assets of the maintenance obligation arising after the establishment of the family foundation proves to be ineffective, the creditor may pursue the enforcement from the assets of the foundation. Its liability in this respect is limited to the value of the assets contributed by the founder at the time of the contribution and at the prices at the time the creditor is satisfied.

Summary

The establishment of a family foundation is a momentous event that requires careful preparation and consideration of complex succession arrangements. In addition to drafting the founding documents, it is necessary to consider the composition of the foundation's bodies, in particular the management board and the supervisory board, as well as the establishment of appropriate legal mechanisms to maintain full control over the assets and their future development.

It's clear that a process involving the legal protection of assets built up over decades, the foundation of a modern organisation based on family values, capable of ensuring the continued growth of multiplied capital whilst caring for the well-being of present and future generations, requires the involvement of professional advisors.

The introduction of family foundations into Polish law is a change that Polish businesses have been awaiting for many years. These should be considered beneficial for Polish businesses, as they allow for a relatively flexible adjustment of the foundation to the individual needs of the family and the business it develops.

DATA AND INFORMATION SECURITY AFTER 5 YEARS OF THE GDPR

MONIKA MAĆKOWSKA -MORYTZ

MACIEJ KURANC

The last few years have seen significant changes in the data protection landscape with this year marking the 5th anniversary of the General Data Protection Regulation, commonly referred to as the GDPR.

t's a good time to take stock and analyse what has changed, and what we can expect in the near future.

What has the GDPR brought us

First and foremost, there has been a significant increase in data subjects' awareness of their rights and the obligations of data processors. This can be seen, for example, in the high number of complaints filed with the supervisory authority.

The need to ensure "GDPR compliance" has also had a significant impact on business operations. Businesses have started to place much greater emphasis on the implementation and practical application of data protection systems, which have become a core area of ensuring business security.

This is undoubtedly influenced by the fines for non-compliance with these data protection regulations.

Thanks to the principles of privacy by design and privacy by default, there has been a huge shift in the approach to data protection, which is now taken into account from the very beginning of data processing, especially where modern technology is used.

With the GDPR, data protection has become a process rather than a single one-off activity, which is very important for the improving of data security, and also in the context of changing technology.

This can be seen with the recent unprecedented development of artificial intelligence systems, in particular generative artificial intelligence where the issue of data protection is a key element in the development and implementation of AI systems, including the learning of algorithms and the building of models related to the processing of large amounts of data.

The importance of cyber security

With the rapid development of technology, cyber security is a key issue. Digital threats are increasingly affecting businesses and are closely linked to the issue of data protection, making it one of the biggest challenges facing organisations today. As an example, we are seeing a significant increase in the use of malware, particularly ransomware.

This has also not escaped the attention of EU regulators, who have addressed the issue of cyber security in legislation such as DORA, the Regulation on digital operational resilience for the financial sector[1], or NIS II, the Directive on measures for a high common level of cybersecurity across the Union[2].

DORA

The objective of DORA is to upgrade and consolidate the requirements for managing the operational digital resilience of financial services market participants at a pan-European level. Upgrading is understood as complementing the traditional quantitative approach consisting in setting capital requirements to cover ICT risks, with a qualitative approach focusing on defining targeted qualitative requirements for the protection, detection and containment of security incidents and the building of operational resilience testing capabilities.

As regards consolidation, DORA focuses on several issues:

- Requirements for the management of financial entities in terms of digital resilience and requirements for the management of ICT-related risk
- Requirements for the management, including monitoring, classification and logging, of ICT-related incidents
- Requirements for testing the digital resilience of financial entities
- Requirements for the management of ICT third-party risk

The proposed regulation covers 20 categories of entity, with financial entities obliged to comply with the regulation expanded to include a new generation of financial market participants, such as crypto-asset and crowdfunding service providers, in addition to the traditional financial institutions such as credit institutions, payment institutions, and investment firms.

In accordance with the principle of proportionality, the DORA requirements vary depending on financial entities' business profile, size and scale of operation. Financial entities identified as microenterprises are therefore exempt from a significant part of the DORA requirements, whilst those identified as significant are required, among other things, to conduct TLPTs.

Importantly, the list of financial entities also includes ICT service providers, which represents another departure from previous sectoral regulations.
Entities covered by DORA must apply the resulting requirements from 18 October 2024.

NIS II

NIS II, which repeals the existing NIS Directive, was adopted by the European Parliament on 10 November 2022.

NIS II introduces a distinction between essential entities and important entities, rather than between operators of essential services and digital service providers, significantly expanding the existing list.

It also clarifies cyber security risk management obligations by making certain solutions mandatory, including but not limited to:

- Risk analysis and IT system security policies
- Incident management policies
- Business continuity plans
- Ensuring supply chain security

In addition, the Directive introduces the possibility of imposing fines on entities failing to comply with their obligations.

The amount of these fines will depend on the type of entity and will be up to the greater of EUR 10 million or 2% of the total worldwide annual turnover in the preceding year for essential entities, and EUR 7 million or 1.4% of the total worldwide annual turnover in the preceding year for important entities.

IThe main objective of NIS II is to further improve digital security in the European Union and the incident response capabilities of both public and private sector entities.

In addition, it aims to harmonise across the Union precisely who will be affected by cyber security obligations.

The NIS II regulations must be applied in all EU Member States from 18 October 2024, so we can expect changes to the National Cyber Security System Act in this area as well.

Summary

The above regulations herald the fact that we can expect even more guidelines, recommendations, good practices and opinions to be issued at both European and national levels in the coming years.

These regulations will inevitably relate to practices in specific market sectors and will provide specific, individual solutions that businesses will need to comply with, and hence directly impact the need for businesses to proactively respond and adapt their business practices and procedures.

Some of these changes may have implications for business strategies. It is clear that there will be a need to focus on technical safeguards and assess their adequacy with a view to avoiding possible fines from the supervisory authority.

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[1] Rozporządzenie Parlamentu Europejskiego i Rady w sprawie operacyjnej odporności cyfrowej sektora finansowego i zmieniające rozporządzenia (WE) nr 1060/2009, (UE) nr 648/2012, (UE) nr 600/2014 oraz (UE) nr 909/2014
[2] Dyrektywa Parlamentu Europejskiego i Rady (UE) 2022/2555 z dnia 14 grudnia 2022 r. w sprawie środków na rzecz wysokiego wspólnego poziomu cyberbezpieczeństwa na terytorium Unii, zmieniająca rozporządzenie (UE) nr 910/2014 i dyrektywę (UE) 2018/1972 oraz uchylająca dyrektywę (UE) 2016/1148)

AMENDMENT TO THE COMPANIES & PARTNERSHIPS CODE EXTENDING THE PRINCIPLE OF FREEDOM OF ESTABLISHMENT IN THE EU

PATRYCJA WAKULUK

On 4 May, the long-awaited draft amendment to the Companies & Partnerships Code, which we wrote about last August, was presented to the Sejm.

Below are some of the changes that will come into force on 1 August 2023.

Implementation of EU legislation

The bill, which enables the implementation of cross-border and domestic reorganisations, is an implementation of EU legislation, i.e.:

- Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions;
- Directive 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law (OJ EU L 186/60, 11.07.2019).

These documents are intended to extend the principle of freedom of establishment in the EU internal market.

Limited joint-stock partnership – another entity involved in reorganisation

According to the amendment, limited joint-stock partnerships will be able to participate in:

- mergers (either as an acquiring or new entity)
- divisions (as an entity being divided)

The above changes will apply to both domestic and cross-border operations. Under the existing provisions of the Companies & Partnerships Code, partnerships, including limited liability partnerships, cannot participate in mergers and divisions as an acquiring or new entity.

The extension of the above list is therefore a significant change.

Division by separation

The current provisions do not govern cross-border divisions. The amendment introduces a new type of division, i.e. a division by separation, which will apply to both domestic and cross-border reorganisations.

PA division by separation is intended to involve a partial transfer of the assets of an entity being divided to an existing or new entity (or entities) in exchange for the shares of the acquiring or new entity (or entities) taken up by the entity being divided.

To date, a partial division by separation has been possible, consisting in a partial transfer of the assets of the entity being divided to an existing or new entity in exchange for shares taken up by the members of the entity being divided – and not by the entity being divided itself, as proposed in the draft amendment.

To distinguish the new form of division from the existing one, it is important to note that a division by separation does not give the members of an entity being divided any rights attached to the shares of an acquiring entity.

It is the entity being divided that becomes the owner of the new shares in the increased share capital of the acquiring entity in exchange for the transfer of assets.

According to the amendment, a spin-off or separation of a new entity takes place on the date of its registration.

In the case of a partial transfer of the assets of the entity being divided to an existing entity, the separation or spin-off takes place on the date of registration of an increase in the share capital of an acquiring entity or the issue of new no-par value shares by the acquiring entity (spin-off or separation date).

Cross-border conversion

NThe amendment introduces the possibility for Polish companies and limited joint-stock partnerships to convert into another legal form of an entity from another EEA state, with the converting entity retaining its legal personality.

This will eliminate a number of formalities associated with the need (as at present) to set up a new entity abroad and, for example, to transfer an undertaking to that new entity, or to carry out a cross-border merger and consequently liquidate the converting entity.

New type of merger

The amendment also introduces a new type of merger, the so-called simplified procedure, which does not require an increase in share capital, the issue of new shares and the payment of related costs, provided that one of the following conditions is met:

- a member holds, directly or indirectly, all the shares in an acquiring entity and in one or more entities being acquired, or
- the proportion of the share capital of the merging entities held by the members is maintained

According to the explanatory memorandum to the draft amendment, there will be no obligation to issue shares in such cases, as the shareholding relationships will not change.

The new type of merger will apply to both domestic and cross-border mergers.

Safeguards for minority members, employees and creditors

The amendment introduces safeguards for persons such as minority members, employees and creditors in all cross-border operations.

Such persons will be able to comment on the plan of a particular cross-border operation at least five business days before the date of the general meeting at which the reorganisation is to be resolved.

With regard to the protection of minority members amendment introduces, inter alia:

- the right to withdraw from an entity and receive consideration for the shares equal to their value as determined by an independent expert; and
- the possibility for members to challenge such consideration

With regard to creditors, the amendment introduces the right to request security for their claims that have not fallen due at the time of the disclosure or making available of a cross-border merger plan if they demonstrate, within one month of the disclosure or making available of the plan, that their satisfaction is at risk as a result of the merger.

The amendment also introduces the possibility for creditors to pursue their claims before the court having jurisdiction over the registered office of a converting company within 2 years from the conversion date.

With regard to employees, the amendment introduces the possibility of requiring management boards to draw up a report explaining the legal basis and justifying the economic aspects of a particular cross-border operation, and of ensuring that employees can comment on the report.

Amendments concerning the cross-border division and conversion plan

The section on a cross-border division and conversion of companies and limited joint-stock partnerships provides for a requirement to indicate the proposed timetable for the cross-border division or conversion.

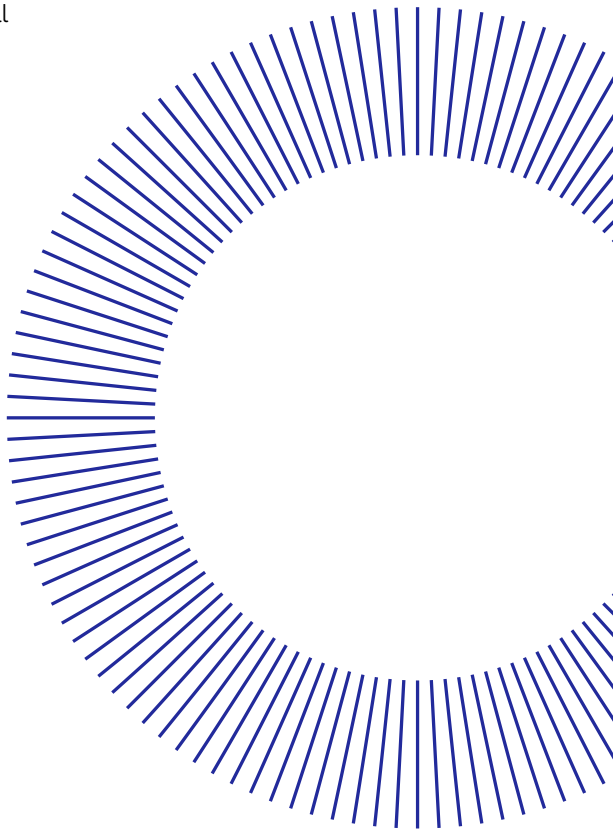
According to the lawmakers, this is intended to ensure transparent reorganisation procedures for the creditors, minority members, employees and potential investors of the entities involved in such operations.

Summary

The changes discussed are not exhaustive, but are just some of the key changes introduced by the amendment to the Companies and Partnerships Code that we believe should be outlined.

We look forward to the next stages of the legislative process.

Link to the bill



INFORMATION ON PRICE REDUCTIONS
DESCRIPTIONS OF DISPLAYED PRICES

KRZYSZTOF ZIĘBA

AMINATA TRAORE -MICHALAK

On 8 May this year, the President of the Competition and Consumer Protection Office (UOKiK) published the "Information on Price Reductions. Explanations of the President of the Competition and Consumer Protection Office" ("Explanations") on how to interpret and apply the rules resulting from the implementation of the Omnibus Directive.[1]

The Explanations contain numerous examples and are intended to help dispel doubts about certain aspects of the new rules.[2] The Explanations do not, however, constitute a source of generally binding law and are not binding on courts and other authorities, but may affect the interpretation of the rules and, as a consequence, traders.

Since the start of work on the implementation of the Omnibus Directive, many questions have been raised about the way in which prices should be displayed, including the need for appropriate price descriptions. Below we discuss price description requirements and different ways of displaying prices in online stores, depending on whether they are displayed in product search engines, on product cards or via a mobile app. Our publication also takes into account the EC Guidance[3], in particular where the Explanations interpret similar issues differently.

Displaying prices: does the Omnibus Directive or the Price Information Act really require a crossed-out price to be described and can the terms "reference price", "prior price", etc. be used

The UOKiK President, both in previous publications[4] and in the Explanations published in May, indicated that crossed-out prices must be properly described and that such price descriptions should have specific wording.

The following wordings were found to be acceptable:
- Lowest price in 30 days prior to the reduction
- Lowest price in the 30-day period prior to the reduction
- Lowest price within 30 days prior to the reduction

The UOKiK President also gave examples of unacceptable wording, including:
- Reference price
- Omnibus price
- Lowest price in the last 30 days
- Prior/last lowest price
- Price 30 days prior to the reduction

When analysing the position of the UOKiK President in relation to the requirement to describe crossed-out prices, it should be borne in mind that the purpose of the new rules (as the President rightly pointed out in the Explanations) is to eliminate false price reductions, i.e. to prevent traders from artificially inflating prices just before a promotion to later present the promotion as more attractive than it actually is. The solution is intended precisely to allow consumers to compare the promotional price with the genuine lowest price existing 30 days prior to the reduction.

The position of the UOKiK President is clear, stating that multiple displayed crossed-out prices (e.g. a crossed-out lowest price from 30 days prior to the reduction displayed simultaneously with a crossed-out regular price) should be explained.

In a situation where several prior reference prices are displayed without their proper description, it is difficult for consumers to assess which of the crossed-out prices is the reference price required by the new rules.

The obligation to explain the differences when a current price and several prior reference prices are displayed at the same time also follows from the EC Guidance, which states that – when a total of three prices (the current price and two reference prices) are displayed – the reference prices should be explained in a clear and not confusing manner. Such price display should also not detract customers' attention from the lowest price in the 30-day period.

However, the EC Guidance does not explicitly state the requirement for a similar price explanation when only two prices are displayed – the current price and the crossed-out price (which is actually the lowest price in 30 days prior to the reduction).

So how should the new rules be applied? Are detailed price descriptions mandatory? Below we present the pros and cons of such a solution in the light of the Omnibus Directive and the Price Information Act.[5]

Arguments in favour of the obligation to describe crossed-out prices

- In practice, traders often cross out different types of price (e.g. the average price, the regular price, or the price from the period immediately before the reduction) – hence the need for such crossed-out prices to be clarified so that there is no doubt about what they refer to
- The Act requires prices (including prior prices) to be displayed in a clear and not confusing manner
- The Act can be interpreted as imposing stricter requirements than the Omnibus Directive in relation to the indication of reference prices. Whereas the Omnibus Directive only requires the lowest price in the 30-day period prior to the application of the reduction to be "indicated", the Act – taken literally – imposes an obligation to provide "information" on the lowest price of a good or service in the 30-day period prior to the application of the reduction (the obligation to provide information in a communication may be understood as going beyond the obligation to only "indicate" the reference price).

Arguments against the obligation to describe crossed-out prices

- The purpose of the Omnibus Directive is to prevent price manipulation for the purpose of presenting false price reductions. This will be fully achieved if traders use a reference to the lowest price in the 30 days prior to the reduction (i.e. if the crossed-out price is the lowest price in the 30 days prior to the reduction), even if the price is not described in any way
- The Omnibus Directive introduces the obligation to indicate a "prior price" and defines it, requiring also that "prior price" be designated in a specific way. These obligations are met if the prior price is indicated as the lowest price in 30 days prior to the application of the reduction. The crossing out itself clearly communicates that the crossed-out price is the prior price
- Neither the Omnibus Directive nor the Act explicitly requires the use of a specific phrase to indicate the required reference price
- The EC Guidance indicates that a description is required when the current price and two different prior prices are displayed, e.g. the lowest price and the regular price. The EC Guidance does not indicate a requirement to explain the prices when only two prices are displayed, i.e. the current price and the prior price

Descriptions of crossed-out prices: websites, search results, mobile apps

Notwithstanding the general obligation in the Explanations to describe prior prices accurately (e.g. in a crossed-out form), the UOKiK President distinguished situations in which price descriptions may be abbreviated.

In particular, with regard to traders offering goods and services on the Internet, these are as follows:

- **Search results** – if there is limited space for price descriptions in search results, it is permissible to shorten the description and use a phrase such as "lowest price". However, when clicking on a product (after navigating to a product card), full explanations should appear next to the prices, stating e.g. "lowest price in 30 days prior to the reduction".[6]

- **Mobile application** – if not technically feasible, prices may be explained in short form, e.g. as the "lowest price", as in the case of search results. However, if prices are described in short form, a full explanation should be provided, e.g. in a tooltip next to such a short description.[7]

- **Product card** – prices on an online product card should be explained directly next to the product prices (without using a tooltip or short form). Full price explanations should be visible without the need for additional action, such as clicking or hovering over a tooltip.

Summary

In our view, the position of the UOKiK President in relation to the price description requirement should be regarded as restrictive.

In a situation where only two prices are displayed (the current price and the crossed-out price), the objectives of the Omnibus Directive and the Act, i.e. the prevention of false price reductions, are properly achieved if the crossed-out price is in fact the lowest price applied in the 30-day period prior to the application of the reduction.

Therefore, if only one prior crossed-out price is displayed, there seems to be no need for a detailed description, let alone a description with specific wording which would seem to reflect the intention of the EU legislature.

However, the safest and therefore recommended solution, in the light of the position presented in the Explanations, is to place the descriptions next to the crossed-out prices, as recommended by the UOKiK President.

Link to the Explanations of the UOKiK President

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[1] Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules (OJ EU L No. 328, p. 7, the "Omnibus Directive").
[2] Act of 1 December 2022 amending the Consumer Rights Act and certain other acts (Journal of Laws 2022, item 2581).
[3] Commission Notice – Guidance on the interpretation and application of Article 6a of Directive 98/6/EC of the European Parliament and of the Council on consumer protection in the indication of the prices of products offered to consumers (OJ EU C No. 526, p. 130, the "EC Guidance").
[4] https://uokik.gov.pl/aktualnosci.php?news_id=19234&news_page=2, last accessed 17.05.2023.
[5] Act of 9 May 2014 on price information for goods and services (uniform text: Journal of Laws of 2023, item 168, the "Act").
[6] Cf. example price display in a result list, Explanations of the UOKiK President, p. 39.
[7] Cf. example price display in a mobile app, Ibidem, p. 33.

BIOMETHANE DEVELOPMENT WILL HELP MEET ENVIRONMENTAL TARGETS / ENERGY TRANSITION AND BIOFUELS

WOJCIECH WROCHNA

BARTOSZ BRZYSKI

Environmental issues are profoundly and irreversibly changing every area of our lives. As the energy transition continues, it is necessary to gradually shift from the use of carbon-intensive energy sources (i.e. mainly fossil fuels) to renewable (RES).

Examples of such renewable sources include solar, wind and hydroelectric energy, and also various types of biofuels. The latter may be of particular interest to today's economy, as the characteristics of biofuels largely resemble those of existing fuels.

This means that current infrastructure could be used without modification, or with some slight adaptation. Biofuels may also be attractive to industry at large, which – in order to meet the environmental objectives of its ESG policies – can thus increase the share of renewable fuels for its own production needs.

What is biomethane

Biofuels can exist in different states – gaseous, liquid or solid. Biogas is an example of a gaseous biofuel, resulting from the processing of organic compounds contained in biomass (which can consist of e.g. sewage, plant materials or municipal waste).

Biogas technologies are an environmentally beneficial solution as they allow the conversion of organic waste pollutants into new types of fuel that can be used to generate electricity or heat. Biomethane is a special type of biogas that has been purified to such an extent that its parameters resemble those of natural gas.

As a result, biomethane can be regarded as a renewable alternative to conventional fossil fuels

Prospects for biomethane production in Poland

Although the share of renewable energy sources in the Polish energy mix is increasing, technologies geared towards the production of biogas (including biomethane) generally seem to be stagnating.

In this respect, Poland is lagging behind e.g. France or Germany, where the number of operational biogas plants is much higher. However, this situation can be viewed as a business opportunity, as the demand for new biomethane production projects is likely to increase. This is evidenced for example by the government's bill amending the Renewable Energy Sources Act and certain other acts, which was submitted to the Sejm on 8 May 2023.

The bill is intended to enable the fulfilment of the EU's energy and climate policy obligations, whilst exploiting the potential of the Polish economy (in particular the agri-food sector). The development of a precise legal framework for biomethane technologies, in particular by introducing a definition of biomethane, will allow investors to better evaluate regulatory requirements before deciding on new projects.

As a result, in the near future it may be possible to inject biomethane into Polish transmission networks, thereby reducing domestic demand for natural gas.

NEW DEADLINES AND SCOPE FOR TRANSFER PRICING REPORTING, AND CJEU VAT JUDGMENT

WOJCIECH ŚLIŻ

KATARZYNA PUSTUŁKA

The deadlines for meeting transfer pricing obligations for 2022 are approaching.

In accordance with the new regulations, related parties are required to:

- Prepare a Local File by the end of the tenth, instead of, as previously, the ninth month after the end of the tax year
- File transfer pricing information by the end of the eleventh, rather than as previously the ninth, month after the end of the tax year
- Attach the Master File to the Local File by the end of the twelfth month after the end of the tax year (this deadline is unchanged from the previous legislation)

At this point, unlike in previous years, there is no information that the Ministry of Finance is working to postpone the deadlines for the fulfilment of transfer pricing obligations.

Compared to previous years, the scope of transfer pricing information to be reported for 2022 has also been expanded. The TPR form has been extended to include (without limitation):

- An indication of the authority (head of the tax office) to which the transfer pricing information is submitted
- A new financial indicator calculated as the share of the costs of operating activity with related parties in the entity's operating expenses
- Information on the value of the reportable transaction per country of incorporation or management of the counterparty
- Information on the type of transaction reported
- Additional information on comparability adjustments made (i.e. whether the comparability adjustment has changed the result by less than or more than 30%, or a statement that the impact of the adjustment on the result cannot be determined)
- The obligation to submit a statement on the preparation of the Local File - as a result of this change, taxable persons will not need to submit two different documents concerning the same subject matter via different electronic channels, but instead only one integrated form

VAT – the right to deduct input tax under EU law

The Court of Justice of the European Union, in its judgment of 25 May 2023 in case C114/22, stated that a taxable person carrying out an economic transaction regarded as fictitious and invalid under the provisions of national law, may not be deprived of the right to deduct input VAT, without it being established that the criteria for classifying, under EU law, that transaction as fictitious are met or that the transaction is the result of VAT evasion.

This CJEU judgment means that Article 88(3a)(4)(c) of the VAT Act is incompatible with Directive 2006/112/EC.
It is worth remembering that in the Polish legal system, any taxable person with respect to whom a decision questioning the right to deduct input tax was issued based on Article 88(3a)(4)(c) of the VAT Act may effectively challenge such administrative decision, and even if it was confirmed to be lawful by a final court judgment.

In accordance with Article 241(2)(2) of the General Tax Code, a taxable person may file a request for the resumption of proceedings within one month from the date of publication of the operative part of the ECJ judgment in the Official Journal of the EU.

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