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Recent Developments Regarding the Conduct of Dawn Raids in Poland. The Case of Subsequent Searches of Copied IT Data

by

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Abstract

2017 brought about a significant and long awaited change in the rules applicable to dawn raids in Poland. After many years of being criticized by scholars and practitioners, the practice of the President of the Office of Competition and Consumer Protection – consisting of the subsequent review of electronic data copied during an inspection at the authority premises and without the presence of a representative of the inspected undertaking, has been finally overruled by the Court of Competition and Consumer Protection. Even thought there are still several improvements that need to be made in order to guarantee the full respect of fundamental rights of inspected undertakings in the Polish legal order, the Court ruling incontestably constitutes a significant step in strengthening the legal position of inspected undertakings in Poland.

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Resumé

En 2017 les règles applicables aux perquisitions en Pologne ont été modifiées de façon significative et attendue depuis longtemps. Après de nombreuses années de critiques de la part d'universitaires et de praticiens, la pratique du Président de l'Office de la Concurrence et de la Protection des Consommateurs – consistant à examiner des données électroniques copies pendant une perquisition par la suite dans les locaux de l'autorité et en l'absence de représentant de l'entreprise inspectée, a finalement été renversée par la Cour de la Concurrence et de la Protection des Consommateurs. Même si plusieurs améliorations doivent encore être apportées afin de garantir le plein respect des droits fondamentaux des entreprises inspectées dans l'ordre juridique polonais, la décision de la Cour constitue incontestablement une étape importante dans le renforcement de la situation juridique des entreprises inspectées en Pologne.

Key words: inspection powers; dawn raids; electronic evidence; IT data; right to defence; Polkomtel.

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I. Introduction

Last year brought about a significant and long awaited change in the rules applicable to dawn raids in Poland. As an outcome of rulings issued by the Court of Competition and Consumer Protection (hereinafter; **SOKIK** or the **Court**), the President of the Office of Competition and Consumer Protection (hereinafter, **UOKIK**) had to give up its previous, vividly criticized, practice of coping entire digital storage mediums (such as hard drives) for subsequent review in the authority's premises, and in the absence of the inspected undertaking's representatives.

In the decision of 7 March 2017, No. XVII Amz 15/17, (hereinafter: **Decision**) SOKIK clearly limited the investigative powers of UOKIK in this regard by stating that review and selection of electronic data is not a merely technical activity but does constitute one of the core search activities. Therefore, it cannot be conducted at the UOKIK premises and without the participation of the undertaking concerned. SOKIK approach was subsequently repeated in the Court's judgment of 28 April 2017, No. XVII AmA 11/16, in the *Polkomtel* case.

Due to the unquestionable importance of the SOKIK approach (adopted in the above rulings) for the protection of the fundamental rights of undertakings,

in particular their right to defence and right to privacy, last year's developments should be considered a landmark step in strengthening the legal position of inspected undertakings in Poland.

II. Previous UOKIK practice relating to gathering and analyzing electronic evidence

Dawn raids carried out without forewarning by competition authorities clearly constitute an effective instrument of competition law enforcement, given that they often lead to obtaining key evidence of anticompetitive behaviour (Bernatt, 2011a, p. 58; Michałek, 2015, p. 223). Thus, inspections are considered one of the most important activities undertaken by the Polish competition authority – the President of UOKiK – within his investigative powers (Bernatt, 2012, p. 89; Michałek-Gervais, 2016, p. 25). At the same time, dawn raids interfere significantly with the freedom of economic activity as well as fundamental rights of the undertakings concerned, and thus should be used only exceptionally (For instance Bernatt, 2014; Bernatt, 2011b, pp. 208 and 209).

The Polish Act on Competition and Consumer Protection (hereinafter, **Polish Competition Act**) grants UOKIK the power to conduct inspections and obtain evidence of antitrust violations, which in principle are similar to those enjoyed by the European Commission.

Nevertheless, UOKIK used to interpret its investigative powers very broadly as far as the collection and analysis of electronic evidence was concerned. In practice, instead of reviewing the data stored on the IT systems and hardware at the premises of the inspected undertaking, UOKIK officials would indiscriminately copy data carriers and/or contents of e-mail inboxes in their entirety, in order to make the selection of relevant documents and review them later at the UOKIK premises and without the presence of company representatives. Hence, unlike the solutions adopted in the EU[1], in Poland inspected undertakings were not granted the right to be present

[1] If the Commission has not finished the selection of the electronic documents relevant to the investigation on the spot and wants to continue the inspection at its own premises, it invites the undertaking's representatives to be present during the continued inspection process (further selection and subsequent review of the electronic data). Alternatively, the Commission is obliged to return the sealed envelope containing the copied data to the undertaking without opening it or to request the inspected undertaking to store the sealed envelope in a safe place so that the Commission may continue its inspection at the undertaking's premises during a further announced visit.

during the subsequent searches of the electronic data undertaken by the UOKIK officials at the authority's premises. Furthermore, an undertaking's objection to disclose to UOKIK the full content of their hard drives or e-mail inboxes was considered by the authority to form an obstruction of the inspection, and often led to severe financial penalties[2]. For instance, in 2011 UOKIK imposed on Polkomtel, one of the leading Polish mobile telephony operators, an abnormally high procedural fine of EUR 33 million (Kozak, 2011, pp. 283–290)[3].

This practice was criticized by scholars and practitioners as disproportionate, too intrusive and posing a serious threat to the interests and rights of the inspected undertaking (Michałek, 2014, p. 157; See also for instance Turno, 2016a, Skurzyński and Gac, 2017, p. 116). Taking away binary copies of entire hard drives actually equals the unlawful seizure of documents falling outside the scope of the UOKIK investigation, or being covered by the right to privacy or legal professional privilege (hereinafter: **LLP**) (Michałek, 2014, p. 146). It was in particular alleged that coping such a large quantity of data that it contains also information beyond the scope of the inspection, enables UOKIK to actually conduct fishing expeditions.

UOKIK justified its controversial practice by technical problems in coping only data limited to the subject matter of the investigation. It also argued that this measure might also be considered a means to shorten the time frame in which the undertaking's activities are being interrupted by an inspection. According to UOKIK, since the functioning of the undertaking is paralyzed during its inspection, some undertakings may prefer letting the inspectors continue the search at the authority's premises, rather than having their own premises occupied for a longer period of time. Nevertheless, instead of giving the actual choice in this matter to the inspected undertaking, this solution used to be arbitrarily imposed by the UOKIK officials, a fact commonly criticized and considered to be an abuse of its inspection powers (Michałek, 2014, p. 146).

Various undertakings tried to challenge before the courts this controversial UOKIK practice (Materna, 2014)[4], however it was only last year that SOKIK finally declared it unlawful.

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[2] According to the Polish Competition Act, UOKIK may impose by way of a decision a fine of up to the equivalent of EUR 50 million on an undertaking that fails to cooperate during an inspection, even unintentionally. Like in the EU, such fine, imposed for a procedural violation committed in the course of the main proceedings, has an autonomous character and thus each time UOKIK has to institute separate proceedings concerning the imposition of a fine for the obstruction of inspection. (Kozak 2011, p. 288; Michałek, 2014, p. 147).

[3] See part 'The latest SOKIK judgment in Polkomtel case (XVII Ama 11/16)' below.

[4] See the decisions of SOKIK of 16 December 2009, No. XVII Amz 53/09/A, 22 December 2009, No. XVII Amz 54/09/A, 21 June 2011, No. XVII Amz 28/11, XVII Amz 30/11 and XVII Amz 31/11; 14 February 2012, No. XVII Amz 6/12 and XVII Amz 7/12.

III. The SOKIK Decision of 7 March 2017 (No. XVII Amz 15/17)

With reference to the facts, in 2016 UOKIK carried out dawn raids on suspicion of anticompetitive practices of undertakings active in the fitness sector. During the search conducted at the premises of one of those undertakings (hereinafter, the **Company**), UOKIK officials made copies of three hard disks belonging to the Company's CEO, as well as the entire e-mail correspondence of the Company's CFO for the purpose of their subsequent review at the UOKIK premises. The data were copied in their entirety without being pre-selected or reviewed by the officials.

The Company lodged a complaint to SOKIK against the measure undertaken by UOKIK[5]. It argued that making a copy of such a large quantity of data for subsequent review without its previous selection on the spot was unlawful[6] since by doing so UOKIK:

1. exceeded the scope of the inspection by gaining access and coping information not related to the subject matter of the search;
2. conducted a search outside the premises of the Company without its previous consent;
3. obtained access to information covered by LPP;
4. failed to grant the Company the right to actively participate in the proceedings (that is, in the continuation of the search);
5. violated the principle of proportionality as well as the rights of the Company, in particular its right to defence[7] and right to privacy[8]; and
6. conducted a search despite the non-fulfilment of all conditions provided for by the Polish Competition Act.

Due to the action lodged by the Company, the copied data remained sealed and UOKIK refrained from its review until the issuance of the SOKIK ruling.

The approach adopted by the Court in the Decision turned out to constitute a turning point with regard to the rules applicable to UOKIK dawn raids. Even

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[5] In accordance with Article 105p of the Polish Competition Act that entered in force on 18 January 2015, an undertaking being subject to a search and persons whose rights have been breached in the course of a search may file a complaint with SOKIK regarding search-related activities that exceeded the subject matter of the search, or other search-related activities conducted in infringement of the law.

[6] It constituted a breach of several provisions of, *inter alia*: European Convention on the Protection of Human Rights, Polish Constitution, Polish Competition Act, Polish Code of Criminal Administrative Procedure and Polish Code of Administrative Procedure.

[7] By not allowing the Company to participate in the process of verifing the content of copied data at the UOKIK premises.

[8] By seizing information being of a private nature or containing legally protected secrets (LPP).

though the Company's complaint was eventually dismissed[9], SOKIK stressed that the majority of the plaintiff's arguments, concerning the standards which should be met by the UOKIK search, were correct.

SOKIK agreed with UOKIK that searches constitute one of the most effective tools to obtain evidence of competition law infringements committed by undertakings (in particular in cases relating to a suspicion of prohibited agreement[10]). The Court reminded, nevertheless, that at the same time inspections constitute an exception to the right to privacy (granted also to legal persons) and, thus, the UOKIK inspection powers should be interpreted narrowly (On this issue see also Turno, 2016a). In the light of values protected in the constitutional order of a democratic state of law, it is necessary that undertakings subject to dawn raid are provided with appropriate guarantees relating, in particular, to obtaining and using evidence by competition authorities. Therefore, the relevant legal provisions on the conduct of inspections cannot be interpreted to the detriment of the inspected undertakings. Otherwise, the existing guarantees would have a mere 'illusory character'.

SOKIK pointed out the most important safeguards attributed to searched undertakings, namely: (i) limitation of the scope of the search (and of the activities undertaken by the UOKIK officials) solely to the subject matter indicated in the court authorisation; (ii) limitation of the place of the search to the undertaking's premises; (iii) limitation regarding the possibility to use in the proceedings evidence that constitutes legally protected secrets.

With regard to the limitation of the scope of the search, SOKIK noted that the UOKIK right to request information during an inspection (be it control or search), had to be understood as obliging the UOKIK officials to make a strict selection and, thus, request or look for solely the information falling within the scope of the inspection. This restriction applies also to the UOKIK power to make copies of evidence (including printouts and notes). In the Court's opinion, the explicit content of the relevant regulations[11] does not give UOKIK the right to copy and print evidence which is not related to the subject of the search.

[9] Albeit not for reasons stipulated by UOKIK. On this issue see more below at the end of this part.

[10] Such agreements by their very nature have usually a secret nature and due to risk of severe administrative sanctions companies do not voluntarily share with the competition authorities evidence of their inappropriate market behaviour. Therefore, the surprise effect of a search undoubtedly facilitates the gathering of evidence.

[11] Namely Articles 105n, 105 b par. 1 point 2 and 105 o of the Polish Competition Act.

Furthermore, in SOKIK view, there should be no difference in the approach depending on the type of the information carrier. SOKIK noted that with regard to paper documents stored at the undertaking's premises, the UOKIK officials do the selection on the spot and make copies only of those that are related to the subject of the inspection. Nevertheless, in case of electronic evidence, UOKIK claims to see a mainly technical problem impeding the making of a selection on the spot and coping only evidence collected on IT data carriers that relates to the subject of the inspection.

However, according to the Court, in the light of applicable legal regulations, the different character of the information carrier from which copies and printouts are made cannot in any way limit the legitimate rights of undertakings. The competition authority has no right to make notes, copies and printouts (and make use) of information exceeding the scope of the search as indicated in the court authorization. Moreover, contrary to the arguments raised by UOKIK, the authority is always able to make a selection of only the content that may be relevant to the case at hand, irrelevant of the type of information carrier (be it paper or electronic).

Secondly, SOKIK pondered over the limitation of the place of the search to the undertaking's premises. The Court held that in order to ensure that the undertaking's right to defence and right to privacy are appropriately protected, UOKIK is obliged to select the evidence (information to be subsequently copied) in the presence of the undertaking's representative, given that such an action constitutes an integral part of a search[12] and cannot be considered a mere technicality. Otherwise, the UOKIK practice should be regarded as contrary to the provisions of the Polish Competition Act and the Act on the Freedom of Economic Activity. Analysis of hard disks and e-mails conducted in the absence of the inspected undertaking would have significantly undermined its right to defence.

According to the Court, the arguments raised by UOKIK, that due to the length of the process of electronic data analysis conducting it on spot may be disadvantageous for the inspected undertaking, cannot release the authority from being obliged to respect the undertaking's rights to participate in the search (including in the review of the content of IT information carriers).

Lastly, with regard to the third limitation of the possibility to use in the proceedings evidence that constitutes legally protected secrets, SOKIK pointed at Article 225 of the Polish Code of Criminal Procedure[13] as relevant in the case of UOKIK dawn raids. The Court held that the questioned UOKIK practice runs afoul of this provision (excluding the authority from reading

[12] Since UOKIK deals with evidence.

[13] To which refers the Polish Competition Act in the part regarding the UOKIK power of inspection.

the content of documents containing professional secrets and introduces the so-called envelope procedure).

Therefore, in order to prevent the protection of the LPP from being only illusory, UOKIK cannot: firstly, obtain evidence in such a broad scope as expected by the authority (in particular the entire content of disks); and, secondly, make the selection of the information copied from data carriers at its own discretion and in the absence of the undertaking concerned (namely at the UOKIK premises).

SOKIK concluded that the limitations of the inspection powers described above, and the undertaking's rights correlated with them, oppose the interpretation of the inspection rules as adopted by UOKIK, in particular with regard to the practice consisting of the copying of entire data carriers and reviewing (searching) them at the UOKIK premises and in the absence of the undertaking's representatives. Having said that, the Court held, nevertheless, that in the case at hand the Company's claims were premature since the alleged infringement of the provisions indicated in the complaint did not take place. In the Court's opinion, the mere copying of IT data carriers in their entirety did not constitute a search activity. And, as SOKIK noted, the contentious copies of the electronic data were still sealed and hadn't been analysed in any way by UOKIK. This actually meant that (so far) no search activities had been undertaken by UOKIK outside the Company's premises and in the absence of the Company's representatives.

According to SOKIK, the making of binary copies of the IT data carriers (hard drives etc.) in their entirety should be regarded as a particular type of securing evidence and, since the seizure of the original hard drives would have been much more intrusive and onerous for the undertaking inspected, such an action is in accordance with the principle of proportionality. Given that according to the Polish Competition Act secured evidence may be stored at the UOKIK premises, the storage of binary copies in a sealed envelope at the UOKIK premises does not constitute in itself an infringement of the provisions of the act in question.

The Court finally underlined that in order to respect the Company's right to participate in the search activities, and to avoid an infringement of the relevant provisions indicated in the Company's complaint, UOKIK is obliged to undertake the review (search) of the copied IT data in the presence of a representative of the Company and at the Company's premises.

IV. The latest SOKIK judgment in the *Polkomtel* case (No. XVII Ama 11/16)

Soon after the Decision, SOKIK rendered its second judgment in the famous *Polkomtel* case[14].

With brief reference to the facts, in December 2009, UOKIK simultaneously carried out dawn raids at the premises of five undertakings suspected of having concluded an anticompetitive agreement in relation to a mobile television project. Two of the companies inspected – Polkomtel[15] and PTC[16] – were subsequently fined for having obstructed the UOKIK dawn raids. The fine imposed on Polkomtel related to, *inter alia*, the company's refusal to provide a hard drive with the copies of the e-mail inboxes of the selected Polkomtel's employees requested by UOKIK. Further acts of obstruction alleged by UOKIK consisted of delaying the beginning of the dawn ride by preventing the inspectors and police from establishing contact with a person authorised to represent the company[17] and providing only selected documents[18].

In this saga of rulings that appeared in this case, first, the UOKIK decision, imposing a EUR 33 million procedural fine, was challenged before SOKIK which originally reduced the amount of the fine to EUR 1 million[19]. The Court's judgment was appealed to the Warsaw Appellate Court[20] that quashed it and returned the case to the Court for reassessment.

In its second judgment SOKIK upheld its approach as to the unlawfulness of the UOKIK previous practice of subsequent reviews of electronic data. In accordance with the aforementioned Decision SOKIK held here that '*reviewing a copy of electronic data (as well as taking notes and printouts) at the UOKIK office is not just a technical activity*. *The review of the content of copies of hard drives and e-mails undertaken outside the undertaking's premises constitute the essence of the search, because namely at this very moment the authority deals with*

[14] Judgment of SOKIK of 7 April 2017, No. XVII AmA 11/16.

[15] Decision of UOKIK of 24 February 2011, No. DOK-1/2011.

[16] Decision of UOKIK of 4 November 2010, No. DOK-9/2010. See also the subsequent judgments that led to an important reduction of the initial fine imposed by UOKIK, namely judgment of SOKIK of 20 March 2015, No. XVII AmA 136/11 and judgment of the Warsaw Appellate Court of 1 March 2017, No. VI ACa 1076/15.

[17] By preventing the inspectors and police from establishing contact with a person authorised to represent the company.

[18] Instead of all the documents concerning Polkomtel's participation in the contested mobile television project.

[19] Judgment of SOKIK of 18 June 2014, No. XVII AmA 145/11.

[20] Judgment of the Warsaw Appellate Court of 20 October 2015, No. VI ACa 1478/14.

the evidence. This activity is therefore very important for the procedural position of the inspected undertaking and should not be made without its participation'.

Moreover, the Court held that there is no reliable evidence that the analyses of the IT data carriers cannot be made at the premises of the inspected undertakings and in the presence of the undertaking's representatives. Difficulties or inconveniences that UOKIK face cannot release the authority from the obligation to respect the rights of the inspected undertaking, in particular the right to participate in the inspection (that is the search of the information carriers). Furthermore, UOKIK cannot justify its practice by arguing that it would be unfavourable for the inspected undertaking to conduct the search of its IT data on the spot, since it would make the dawn raid last longer. This is so in particular, in the case at hand, where Polkomtel *expresis verbis* asked UOKIK to conduct such activity at its premises.

Thus, SOKIK concluded that although Polkomtel refused to provide access to the hard drive at the UOKIK request, in the light of relevant provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms[21] and the Charter of Fundamental Rights of the European Union[22], this refusal should be considered justified and, thus, could not result in the imposition of a fine on Polkomtel. This conclusion led, *inter alia*, to the significant reduction by SOKIK of the fine initially imposed by UOKIK (EUR 33 million)[23] to EUR 300 thousand[24].

The *Polkomtel* case is one of the examples demonstrating how important full judicial control of decisions taken by the competition authority is, as well as how necessary it is for the appropriate protection of the fundamental rights of undertakings.

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[21] Namely Article 8 (Right to respect for private and family life). For more on the interference of the investigative powers of the competition authorities with Article 8 ECHR see, for instance, K. Kowalik-Bańczyk 2012, pp. 395–402, Bombois, 2012, pp. 137–143, and Michałek 2015, pp. 213–229.

[22] Namely Articles 7 (Respect for private and family life) and 8 (Protection of personal data).

[23] The Court stressed that the fine initially imposed by UOKIK was inadequate to the alleged infringements and violated the principle of proportionality. '*The sanction should be imposed primarily for the retribution and deterrence of the perpetrator and others from similar acts. It has to perform a number of functions, but above all it is a reciprocation of the act. Nevertheless, the fine imposed by the President of the Office has only a repressive dimension*.'

[24] According to SOKIK, Polkomtel should be only fined for unintentional lack of cooperation resulting in the delay of the beginning of the dawn raid.

V. Conclusions

After many years of being criticized by scholars and practitioners, the UOKIK practice consisting of the subsequent review of copied electronic data at the UOKIK premises and without the presence of a representative of the inspected undertaking has been finally overruled by the Court.

The SOKIK Decision incontestably constitutes a significant step in preventing the fundamental rights of undertakings from being undermined during dawn raids. Like the CJEU in the landmark *Hoechst* judgment[25], SOKIK stressed the need to guarantee the protection of the undertaking's right to defence at each stage of any antitrust proceedings, including the preliminary inquiry stage. The ruling also reduces the risk of fishing expeditions being conducted during the subsequent searches of the IT data.

SOKIK noted, however, that the mere coping of the contested electronic data does not constitute in itself an infringement of the undertaking's right. It's only the subsequent analysis of such copied data, conducted outside the undertaking's premises and without the presence of its representatives, that constitutes an unlawful action of UOKIK, and thus may be challenged before the Court.

The fact that SOKIK has finally analysed this controversial issue in detail should be appreciated even more given the avoidance of the CJEU to express its own opinion as to the legality of the measure in question. For instance, in the *Nexans* case, instead of ruling on the legality of the contested practice, the General Court simply declared the undertaking's challenges inadmissible[26].

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[25] See judgment of the European Court of Justice of 21 September 1989 in joint cases 46/87 and 227/89 *Hoechst vs Commission. Para. 15: 'it is also necessary to prevent those rights from being irremediably impaired during preliminary inquiry procedures including, in particular, investigations which may be decisive in providing evidence of the unlawful nature of conduct engaged in by undertakings for which they may be liable.'* See also judgment of the Court of First Instance of 11 December 2003 in the case T-66/99 *Minoan Lines SA*, para. 48.

[26] Judgment of the General Court of 14 November 2012 in the case T-135/09 *Nexans vs Commission*. Nexans contested the inspection measures consisting namely of the taking away of forensic copies of computer hard drives for subsequent review at the Commission premises. According to the undertaking, stored media contained data such as emails, addresses etc., which included those of a personal nature and protected by the right to privacy, the confidentiality of correspondence and legal professional privilege. Nexans argued that measures of this kind should be challengeable since contested acts brought about a significant change in the undertaking's legal position and have seriously and irreversibly affected its fundamental rights – i.e. the right to privacy and the right to defence. Nevertheless, the GC stated that the contested actions do not constitute actionable decisions but are merely measures implementing the inspection decision. Such implementing measures can thus only be challenged in the appeal of the final decision on the infringement, or the decision imposing fines for a failure to cooperate. Such

Unlike SOKIK, the CJEU did not make a distinction between coping electronic data and reviewing such data outside the inspected undertaking's premises.

This ground breaking ruling of SOKIK undoubtedly constitutes a milestone in the process of improving the protection of the rights of undertakings vis-à-vis the UOKIK investigative powers; due to the SOKIK Decision the illegal practice of searching the copied electronic data at the authority's premises and in the absence of a representative of the inspected undertaking has finally come to an end. The course of dawn raids carried out subsequently to the Decision confirmed that in the aftermath of this ruling, UOKIK has changed its practice in accordance with the SOKIK approach[27].

The SOKIK Decision may also be regarded as a spark that will hopefully lead to a legal specification of the question of LPP. The Court clearly stated that the appropriate protection of LPP requires, firstly, selecting the relevant evidence from the data carriers that could potentially contain information covered by LPP at the undertaking's premises, and only subsequently making copies of the selected electronic data. Even though the Court did not rule on the merits of the LPP (leaving for instance the question of its exact scope still open), it has definitely provided grounds for further discussion on the issue[28].

Even thought there are still several improvements that need to be made in order to guarantee the full respect of fundamental rights of inspected undertakings in the Polish legal order (Bernatt, and Turno, 2015, pp. 75–92; Bernatt, and Turno, 2013, pp. 27–29, Turno and Wardęga, 2015, pp. 112–117), the importance of the SOKIK Decision is unquestionable and one may hope that the legal position of the undertakings being subject UOKIK proceedings will continue to improve.

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a stance brings about legal uncertainty for undertakings since it leads to unreasonable delays between the carrying out of inspections and the moment its implementation stands to be reviewed (Michalek, 2015, p. 208. and Michałek, 2014, p. 145).

[27] What understandably has made UOKIK dawn raids last longer than they used to.

[28] By concluding that the relevant provisions of the Polish Code of Criminal Procedure should be considered as the legal basis for the protection of LPP, SOKIK may suggest that the scope of information covered by LPP should be broader under Polish law than under EU law, including not only correspondence exchanged with an external lawyer, but also communication with the company's in-house lawyer). For more on the LPP protection in the EU and Poland see, for instance: Turno and Zawłocka-Turno, 2012, pp. 193–214, Turno, 2016b, Bernatt and Turno, 2013, pp. 17–30, Bernatt, and Turno, 2015, pp. 81–82.

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