

SK&S – Competition and Consumer Protection Law Newsletter

The amendment to the Act on Competition and Consumer Protection, widening the powers of the Polish Competition Authority in consumer matters, as well as introducing a change in the model of control of template agreements with consumers, has been adopted by Parliament and signed by the President. The Amendment will enter into force upon the lapse of 6 months from the day of its announcement in the Journal of Laws.

Parliament has adopted amendments to the Act of February 16 2007 on Competition and Consumer Protection (“the Act”) aimed at increasing the effectiveness of the actions of the President of the Office of Competition and Consumer Protection (“the OCCP”) with regard to counteracting so-called ‘misselling’ practices, i.e. the sales of financial products which do not match the consumer’s needs. The new provisions also introduce the possibility for the OCCP to undertake ‘soft’ actions against traders, thus giving the traders the opportunity to stop infringing the Act, without the need for the Office to commence proceedings. Furthermore, the amendments introduce a new model of control of template agreements with consumers.

Misselling

The new provisions introduce a ban on traders offering financial services which do not match a consumer’s needs taking into the information the trader has available about characteristics of the consumer; or proposing the purchase of these services in a manner which is inadequate to their character. Traders should evaluate their financial products as regards their usefulness for a specific group of consumers and address them to those groups for whom a given product is indeed intended, in a manner which is not misleading and which is in compliance with good practices.

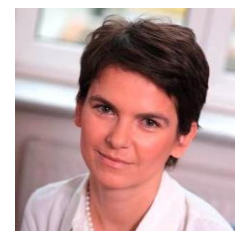
New regulations extending the powers of the OCCP

The new regulations extend the powers of the OCCP in the scope of practices consisting in the infringement of collective consumer interests, which include in particular:

Please do not hesitate to contact us for further information on this topic.



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This information was prepared to advise the Firm’s Clients of selected important changes in Polish law and does not represent a legal advice on a specific situation of any Client and should not be treated by Clients as such. Should you have any questions concerning the legal matters outlined above as they may apply to your business in Poland, please contact Mr. Krzysztof Kanton (krzysztof.kanton@skslegal.pl) or the partner in charge of your account.



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- a) **Temporary decisions:** The OCCP will have the possibility of issuing temporary decisions in consumer cases, i.e. before proceedings are completed. The OCCP will also be able to obligate a trader to discontinue specific actions for the purpose of avoiding threats to consumer interests. Filing of an appeal against the temporary decision will not withhold its implementation.
 - b) **Mystery shopper:** The institution of the ‘mystery shopper’ will allow the OCCP to verify information which traders convey to consumers at the pre-contract stage. It will be possible to use this tool only for the purposes of verifying the manner in which products or services are offered, as well as the procedures for concluding agreements. The OCCP will only be able to use this measure after obtaining the court’s consent. The OCCP will not be able to use entrapment methods.
 - c) **Public warning:** The OCCP will have the possibility to publish free-of-charge communiqués and public warnings concerning a trader’s conduct or about practices which could constitute a material threat to consumers’ interests.
 - d) **Searching:** The OCCP will be able to carry out searches in consumer cases. To carry out a search, the OCCP will have to obtain the consent of the Regional Court in Warsaw – the Court of Competition and Consumer Protection (“the CCCP”).
 - e) **Approaching the trader:** The OCCP may approach a trader in matters involving competition and consumer protection. This is to enable the trader to explain its practices and voluntarily withdraw from anti-consumer practices without the need to commence proceedings.
 - f) **Important view in a matter:** The OCCP may present the courts with an important view in matters concerning competition and consumer protection. This allows the OCCP to transfer its knowledge and experience to the common courts.
 - g) **Extension of period of limitations:** To increase the effectiveness of the OCCP’s actions in consumer matters, the period of limitations for practices infringing collective consumer rights has been extended from 1 year to 3 years, i.e. no proceedings can commence if 3 years have elapsed since the end of the year in which the practice infringing collective consumer interests was ceased.
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New model of control of template agreements with consumers

The new regulations provide for a change in the system of control of template agreements with consumers. The **control of template agreements will be entrusted to the OCCP**, whilst the CCCP will retain control as to merits over the decisions of the OCCP. To date, this control has laid with the CCCP. Significant changes in this respect include:

- a) **The right to commence proceedings.** Consumers, consumers' ombudsmen, the Ombudsman for Insured Persons, and consumer organizations will be able to make notifications to the OCCP concerning a suspicion of a trader applying abusive clauses.
- b) **Fines.** The introduction of fines for traders applying abusive clauses in template agreements (similar to the penalties imposed in the case of practices infringing collective consumer interests).
- c) **Resignation from the extended effectiveness of a decision.** Pursuant to the new regulations, a final decision ruling a given provision as abusive will have an effect towards the trader considered by the decision, as well as towards all consumers who concluded an agreement with the trader on the basis of the template in question. This decision will not be effective vis-à-vis other traders (current regulations provide for the effectiveness of the CCCP's final judgments also vis-à-vis other traders, so-called erga omnes effectiveness).
- d) **Resignation from maintaining the Register of Abusive Clauses.** Under the new regulations, the Register of Abusive Clauses will no longer exist. Pursuant to the Amendment, the OCCP will publish its decisions ruling a given clause as abusive, e.g., on a website specially designated for this purpose. The OCCP's decisions will always be accompanied by a detailed justification

