

NEWSLETTER

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The legal nature of the term of notification duties

In today's newsletter we would like to draw your attention to the practical implications of the judgment issued on 2 October 2015 by the Regional Administrative Court (VI SA/Wa 1394/15). This case concerned a dispute about the legal nature of the deadline in which the obligation of notification associated with significant blocks of shares in a public company is to be made (Art. 69 paragraph 1 of the Act on Public Offering and Conditions Governing the Introduction of Financial Instruments to Organised Trading and Public Companies). Finally, the Court decided that, this time limit specified by the legislator is a term of substantive law.

The court pointed out that the distinction between the nature of the procedural and material term depends on the sphere in which to realize the effects of performance or failure to perform tasks on time. In case of failure to observe the deadline for the notification obligation of the issuer and the FSA for exceeding a certain threshold of shares resulting in formation of the legal status of the entity obligated to his behavior - in the above situation in a negative way, in fact it leads to the imposition of administrative sanction of the offending term.

The practical consequences of the decision spread primarily on the question of the method of notification about exceeding the package of shares held. To meet the material deadline is essential that the content of the notification reached the Financial Supervision Commission and the issuer within four (for trading) or respectively six days working (for regulated market). The same letter giving the post office within the time does not mean that the material term will be preserved. For this reason, you should avoid sending this kind of information through the post institution, which may delay delivery of the notification.

It should also be noted that in principle the deadlines of substantive law are not reconstitutable and their restoration is permitted only if such a possibility provide law defining the deadline. However, such provisions, are not found in the Act on Public Offering. Restoration is therefore not possible, even if the misconduct occurred to him as a result of force majeure, and so an independent element on the side and it undeserved. Accordingly, the alert should preferably be made personally, as soon as possible. Outsourcing this type of duties brings with it the loss of time, which in this case is extremely valuable.

What's more, material deadline can not be extended, ie. it is not possible to apply to the

Financial Supervision Authority or the issuer for a few extra days in order to meet the notification message.
