

Dawn Raids: Unannounced visits to corporations by authorities

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Recent surprise inspections conducted by the European Commission (hereafter referred to as the “Commission”) at the premises of companies active in the grocery sector in France have brought back the spotlight on the growing powers of competition authorities to conduct unannounced inspections. Amidst growing concern of the economic risks of cartels and abuse of market power, competition authorities have adopted a more aggressive enforcement policy with surprise inspections often acting as the first investigative step.

In fact, alongside the powers of the Commission to conduct surprises on-site inspections, often referred to as ‘dawn raids’, certain national authorities have similar competences. Specifically, in Cyprus, the national authorities which have the power to conduct such inspections are:

- The Cyprus Commission for the Protection of Competition (hereafter referred to as the “CPC”);
- The Office of the Commissioner for Personal Data Protection (hereafter referred to as the “DPC”);
- The Cyprus Tax Department (hereafter referred to as the “CTD”);
- The Superintendent of Insurance (hereafter referred to as the “SI”); and
- The Unit for Combating Money Laundering (hereafter referred to as the “MOKAS”)

Below is a brief outline of the powers of the different national authorities in Cyprus in relation to surprise inspections. S311 (1) CAP113 provides that if in the process of corporate liquidation, it transpires that:

1. THE CYPRUS COMMISSION FOR THE PROTECTION OF COMPETITION:

The CPC has the power to conduct inspections either at a company’s business premises or at the private home of directors, managers or employees if they are used in connection with the business or if documents relating to the business are kept there. Upon inspection, if the CPC deems that a company fails to comply with its regulations, it has the power to impose fines of up to 1% of the total turnover of the company and up to 5% of the average daily turnover for every day of non-compliance.

How it happens:

A. No Prior Notice Required

It is not necessary for the CPC to give notice of an upcoming surprise investigation.

B. Identification

On arrival at the premises, the investigating officers have an obligation to show evidence of their identity and their authorization. They must also hand over a notice explaining what the investigation is about (see (C) below) and describing the penalties that may be imposed if employees or officers of the undertaking do not comply with the investigation.

C. The Notice Must Specify Precisely the Subject Matter and Purpose

The CPC's mandate is written and must specify precisely the subject matter and purpose of the investigation.

D. Sealing the Premises

Investigating officers have statutory power to enter the premises and can require the company to seal not only the business premises or parts thereof but also books and records until the inspection finishes. Once they have been granted access to the company's premises, investigating officers may require any member of staff to produce any documents (and in any form, electronic or otherwise), that they consider is relevant to the investigation. This may include letters, diaries, travel records, etc.

E. Oral Explanations

The investigating officers can also ask for oral explanations on the spot-on facts or documents relating to the subject matter and purpose of the inspection. The answers may be recorded.

F. Taking Copies / List of Documents

The investigating officers can take copies of any document produced (regardless of their form) and ask for any electronic documents to be printed.

G. Presence of Lawyers

Legal advisors may be present during a dawn raid. The investigating officers will grant a request to wait for a reasonable time for legal advisors to arrive before the dawn raid begins. During this wait-period, the investigating officers may impose certain conditions, e.g. suspend the business or part of the business operations, enter and remain in offices of their choosing, etc.

H. Power to Take Statements- Interviews

The investigating officers are entitled to conduct interviews of employees (staff/management) before, during and after a dawn raid, provided the person to be questioned explicitly gives his/her consent. The persons interviewed must also be informed of the purpose of the interview and of any record which may be made.

2. THE OFFICE OF THE COMMISSIONER FOR PERSONAL DATA PROTECTION

The DPC may carry out an investigation, and if necessary, a dawn raid, if it has reasonable grounds to suspect that a company has infringed the Processing of Personal Data (Protection of Individuals) Law 138(I)/2001.

- DPC inspectors are entitled to ask employees to provide testimony or produce documents and evidence relating to the subject matter and purpose of the investigation.
- DPC inspectors may not use force to enter and search premises but may request the assistance of the police in order to carry out the investigation.
- DPC inspectors may collect original documents.
- DPC may seize documents and electronic equipment only subject to judicial warrant.

3. THE CYPRUS TAX DEPARTMENT

Indirect Taxation: The Law on Value Added Tax (VAT) N95(I)/2000, specifically articles 43, 46 and Appendix 10, gives the VAT Commissioner and authorized VAT officers the power to investigate acts or omissions relevant to VAT which constitute offences, for which penalties are imposed by the courts. If there is a legitimate cause to believe that a VAT related offense has been committed, is being committed or will be committed the authority can enter and inspect premises (other than homes), require the production of information, inspect, copy and remove documents and take samples of goods.

Direct Taxation: For the purpose of exercising any of the powers provided in the Law on the Certification and Collection of Tax Law N4/78 as it has been amended, the Director of the Inland Revenue Department (part of the CTD) and authorised officers have the power to investigate professional premises. Under Article 30(4) of the law, they may enter and inspect any facilities used in connection with the exercise of a business, and inspect any goods and documents contained therein. CTD inspectors can ask for on-the-spot oral explanations of documents they examine or for a person to state where a document can be found.

CTD officials may consult and move any documents or other objects which they find in the premises if there is a legitimate reason to believe these constitute evidence for their purposes.

4. THE SUPERINTENDENT OF INSURANCE

The SI is the competent authority of the insurance sector in the Republic of Cyprus and exercises all the powers granted to him by the Law on Insurance and Reinsurance services and Other Related Issues of 2016 N38(1)/2016. For the purposes of protecting policyholders and insurance beneficiaries, the SI can carry out a dawn raid, without notice, in urgent situations or where there are reasonable grounds to suspect

that an individual has committed an offence in breach of the relevant law. The SI has the authority to check records, books, accounts and other documents as well as data stored on computers of any person who reasonably suspects that he possesses elements that may assist the Commissioner in his investigation.

The SI is entitled to address written request for information to any physical or legal person from whom the SI wishes to obtain information. The request must outline the legal or regulatory provisions on which it is based, the reasons for the request, the reasonable time for the information to be provided and the possible sanctions in case of non-compliance with the obligation to provide the information.

5. THE UNIT FOR COMBATING MONEY LAUNDERING

MOKAS is the Financial Intelligence Unit of Cyprus. One of the main functions of MOKAS is to disseminate to the Police and other Governmental Services, as the Tax Department and the Customs and Excise Department, when deemed desirable, information and material (a) for the purposes of conducting investigations whenever there are reasonable grounds for believing that a money laundering offence or terrorist financing offences have been committed or (b) for intelligence purposes. MOKAS can also conduct investigations for the tracing and identification of proceeds of crime and other crime related property, which may become the object of a freezing and/or confiscation order.

For these purposes, article 55(2) of the Prevention and Suppression of Money Laundering Activities Law 2007 No188(I)2007 provides that MOKAS may, following a court order that may be obtained ex parte (without notice), enter any premises and request information and/or documents relating to specific suspicious transactions or assets. They may request any documents which they judge necessary for the purpose of analysing suspicious transactions that may be related to money laundering and/or terrorist financing offenses. This power may also be exercised in cases where requests are received by MOKAS from competent authorities abroad.

For further information regarding dawn raids in Cyprus and practical tips on how to handle a raid, do not hesitate to contact us.

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