

## From the Editorial Board

### Guest Article

Marek Żylicz, **International Air Transport Law: Unification Problems**

#### Contents:

- I. Introductory remarks
- II. Appraisal of the current system
- III. Drivers of economic regulation in air transport
- IV. Is there a chance for a good global system?
- V. Final remark

**Summary:** The article indicates that the historic advancement of international relations in aviation has led to the development of a complex structure of international economic regulations. This regime, which encompasses multilateral as well as thousands of bilateral agreements, does not guarantee global uniformity in the laws on commercial air transport. The hereto harmonization of international air law has generally embraced problems of air safety, but has so far been very limited when it comes to economic issues and competition. Numerous factors drive air policies in different States. Therefore, just as in other spheres of international relations, the major difficulty with the development of global economic regulation in aviation lies in the establishment of a common denominator for developed as well as less-developed countries.

**Keywords:** economic regulation, air transport, air law, ICAO, Chicago Convention, air sovereignty, air policy, GATS.

**JEL:** K33, L93

### Articles

Marian Bujnowski, **External Aviation Policy of the EU**

#### Table of contents:

- I. Genesis
- II. Development of the EU aviation policy
- III. Future of the EU aviation policy

**Summary:** The article concerns the External Aviation Policy of the EU. The Author considers the genesis and development of international policy in the air transport sector. Also covered are the role and legal, economic and political implications of judgements rendered on 5 November 2002 by the European Court of Justice, as well as three pillars on which the EU External Aviation Policy is based. The paper describes also EU's cooperation in the aviation field with key regional and global partners and presents the perspectives and general objectives of the future external aviation policy of the EU.

**Key words:** transportation; EU external aviation policy; EU aviation international cooperation; Regulation of international air services; Open Skies.

**JEL:** L93, L98

Tomasz Chudziński, **Files of proceedings for the approval of fees for access to and use of railway infrastructure – between the obligation to provide public information and the protection of business confidentiality**

**Table of contents:**

- I. Introduction
- II. Qualification of administrative files as public information
- III. Limiting access to public information in order to protect business confidentiality
  1. General issues
  2. Argumentation that the description of the calculation of rates for access to and use of infrastructure doesn't constitute business confidentiality
    - 2.1. Participation of public organizations in proceedings concerning the approval of rates for access to and use of infrastructure
    - 2.2. "Historic" nature of documents describing the methodology of calculating rates for access to and use of railway infrastructure
    - 2.3. PKP Polskie Linie Kolejowe S.A. as an entity executing public duties?
- IV. Conclusions

**Summary:** The author describes the nature of the legal documentation related to applications for the approval of tariffs for access to and use of railway infrastructure. It also outlines the dispute between infrastructure managers and the President of the UTK, and the railway undertakings who apply for access to the documents in question. Gaining access to this documentation is necessary in order to calculate the amount of damages incurred in connection with an incorrect implementation of Directive 2001/14/EC.

**Key words:** the methodology for the calculation of rates for access to and use of railway infrastructure, business confidentiality, access to the public information, General Director of the Office of Rail Transport.

**JEL:** K23, K49

Jakub Kociubiński, **Consumer Interest Criterion in Competition Cases in Air Transport – On the Need of a Definition**

**Table of contents:**

- I. Introduction
- II. Categories of consumers
- III. Dynamics and forms of airline cooperation
- IV. Consumers and general competition law
- V. Growth of airline economic effectiveness and consumer interests
- VI. Summary

**Summary:** This article seeks to contribute to the discussion that surrounds the European Commission's Aviation Strategy for Europe issued in 2015. The Strategy was heralded as an attempt to create a comprehensive regulatory framework for the air transport sector. The paper focuses on the "consumer interest" criterion, as one of the factors taken into account in antitrust and merger cases. The presented line of inquiry postulates the creation of a cohesive interpretation

standard of “consumer welfare” for both antitrust and merger control proceedings and advocates its inclusion into the newly-created aviation strategy.

**Key words:** EU Law; air transport; competition law; merger control; consumer interest; consumer welfare.

**JEL:** K21, K23, L93

## Natalia Kohtamäki, **Institutional Autonomy of EU Regulatory Agencies: the Case of the European Aviation Safety Agency**

### **Table of contents:**

- I. “Agencification” of the European Administrative Space
- II. European Aviation Safety Agency
  1. Origins
  2. Institutions
  3. Competencies
- III. Autonomy of the European Aviation Safety Agency
- IV. Overview

**Summary:** The paper analyzes problems connected with the processes of “agencification” identified in the European administrative space. The growing number of European regulators, especially decentralized agencies, is analyzed through the prism of their evolving institutional autonomy. From more than thirty such bodies existing in the EU, the Author chose to focus on the example of the European Aviation Safety Agency, which has a wide catalogue of decision-making and quasi-regulatory powers.

**Key words:** EU regulatory agencies, delegation of power, institutional autonomy, democratic legitimacy, agencification process, European administrative space

**JEL:** K33, L93

## Marcin Król, **Open-access operators – a new phenomenon in railway passenger transport in the European Union**

### **Table of contents:**

- I. Introduction
- II. Present-day extent of the phenomenon in the European Union
- III. Conclusions from prior experiences

**Summary:** The objective of this paper is to present an increasingly widespread phenomenon in railway passenger transport in the EU – open-access operators. They are defined as railway undertakings which (1) are newcomers to the market, (2) their operations are not subsidized by public authorities (of whatever level) and (3) they compete with their rivals “on the tracks”. The first section of the paper shows the context of the analysis. The second presents the extent of this phenomenon in the European Union. The third section focuses on formulating conclusions for competition resulting from prior experiences in this field.

**Key words:** railway transport, passenger transport, open-access, open-access operator.

**JEL:** K23, K29

Agnieszka Kunert-Diallo, **Access to the air transport market as part of international regulations**

**Table of contents:**

- I. Background of international law
- II. Definition of scheduled and non-scheduled international air services
- III. Regulation of scheduled international air service
  1. Basic market access rights
  2. Number and nationality of air carriers
  3. Air transport capacity
  4. Regulation of air tariffs
  5. Agreements between air carriers
- IV. Regulation of market access for non-scheduled air services
- V. Access to the air transport market on the basis of EU law (division between air transport within the EU and that beyond the EU).
- VI. Summary

**Summary:** The main purpose of this paper is to identify existing obstacles in access to the air transport market, which arise mostly from bilateral air transport agreements. The Author examines restrictions for both scheduled and non-scheduled international air services. On the one hand, these obstacles restrict competition and yet, on the other hand, they allow the conclusion of agreements which may fall under antitrust prohibitions. The analysis conducted by the Author shows the lack of a global compromise on the economic regulation of the air transport market. The Author illustrates effective liberalization on the example of the liberalization of air transport within the EU.

**Key words:** access to the air transport market, tariffs, liberalization, capacity, traffic rights, nationality of air carrier, economic regulation of the market.

**JEL:** K23, K33, L93

Iwona Miedzińska, **Ensuring the interoperability of the rail system in the EU – selected issues**

**Table of contents:**

- I. Introduction
- II. European Union law
  1. Primary law
  2. Acts of secondary law
- III. Interoperability of the rail system
  1. Implementation of the Directive on the Interoperability of the Rail System
  2. Technical Specifications for Interoperability – essence and use
- IV. Duties and powers of the National Safety Authority
  1. Conducting proceedings under EU law
    - 1.1. Authorization for the placing in service of structural subsystems
    - 1.2. Granting exemptions from the application of Technical Specifications for Interoperability
  2. Information and reporting duties to the European Commission and other Member States

- 2.1. Keeping registers
- 2.2. Providing information

#### V. Conclusions

**Summary:** The article concerns EU law in the rail transport field meant to ensure the interoperability of rail systems by national safety authorities. The first part of this paper discusses relevant EU legislation. The second part is devoted to the interoperability of the rail system within the EU, including the implementation of the Directive on the Interoperability and Technical Specifications for Interoperability (hereafter, TSI), taking into account the practice of their application. Examined next are the duties and powers of national safety authorities arising from EU law. In particular, the Author characterizes the authorization procedure for the placing in service of a subsystem and granting an exemption from applying TSI with regard to the competence of the national authorities and EU institutions.

**Key words:** interoperability of the rail system, a structural subsystem, the Directive 2008/57/EC, the authorization, the TSI, the derogation

**JEL:** K23

Wojciech Pawłuszko, **Legal status of particular railway companies as entities of special economic and defence significance**

#### Table of contents:

- I. Introduction
- II. Entities of special economic and defence significance in Polish law
- III. Railway companies as entities of special economic and defence significance
- IV. Final remarks

**Summary:** This article covers the characteristics of the rights and obligations of railway companies in light of the fact that they have the legal status of entities of special economic and defence significance. This legal status is connected to the performance of a number of public, classified obligations which limit the freedom of their economic activity. It also means that, in times of danger to the sovereignty of the country and in times of war, railway companies are actively involved in the national security system and are thus of crucial importance for the efficient and effective defence of the national territory.

**Key words:** railway companies, national defence, national security

**JEL:** K23

#### Legislation and Case Law Reviews

Karol Kłosowski, **Interpretative Guidelines on Regulation (EC) No 1371/2007 on rail passengers' rights and obligations – clarification or increasing doubts?**

#### Table of contents:

- I. Introduction
- II. Scope of Regulation (EC) No. 1371/2007
- III. Contract of carriage, right to information, tickets
- IV. Liability for delays, missed connections and cancellations

V. Rights of disabled persons and persons with reduced mobility

VI. Enforcement of Regulation (EC) No. 1371/2007 by competent bodies

**Summary:** This article analyses the European Commission's Statement entitled Interpretative Guidelines on Regulation (EC) No 1371/2007 on rail passengers' rights and obligations. The Statement discusses issues concerning all areas covered by Regulation 1371/2007 i.e. technical issues (such as the scope of the application of the provisions of the Regulation or the possibility for Member States to get a temporary exemption from its applicability), protection of the interests of passengers (such as the contract of carriage, the right to information, the right to compensation), including also the needs of disabled persons and persons with reduced mobility, and finally the guidelines for the competent authorities for the enforcement of the Regulation. The article is meant to assess the importance of the Statement to the provisions of Regulation 1371/2007 in practice – for railway companies and national authorities. It also assesses the impact of that document on the unification process of the interpretation of Regulation 1371/2007 in the entire European Union.

**Key words:** passengers' rights, Regulation (EC) No 1371/2007, European Commission, railway transport

**JEL:** K23

Dagmara Kuźniar-Kwiatek, **Flight delay and the right to compensation under Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denial boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 - review of the rulings of the Court of Justice of the European Union**

**Table of Contents:**

- I. Introduction
- II. Judgment of the Court of 19 November 2009: Joint Case C-402/07 and C-432/07
- III. Judgment of the Court of 23 October 2012: Joint Case C-581/10 and C-629/10
- IV. Judgment of the Court of 26 February 2013: Case C-11/11
- V. Summary

**JEL:** K13, L93

**Marketing services agreements concluded with an airline in light of EU State aid rules.**

Commentary to Commission Decision (EU) 2015/1227 on State aid SA.22614 (C 53/07) implemented by France in favour of the Chamber of Commerce and Industry of Pau-Béarn, Ryanair, Airport Marketing Services and Transavia (Piotr Bogdanowicz)

**Table of Contents:**

- I. Introduction
- II. Commission decision
  1. Assessment of the aid
  2. Marketing services agreements and airport services agreements
  3. Application of the private investor test to marketing services agreements
  4. Airport benefits arising from a marketing services agreement
  5. Private investor test

III. Commentary

IV. Summary

**JEL:** K13, L93

**Technical problems with the aircraft and the “extraordinary circumstances” clause as a ground for exemption of an air carrier’s liability in the event of long delays.** Case comment to the Judgment of the Court of Justice of the European Union of 17 September 2015 in case C-257/14 *Corina van der Lans v. Koninklijke Luchtvaart Maatschappij NV* (Lidia Brodowski, Marcin Paćzek)

**Table of Contents:**

I. Initial remarks

II. Facts

III. Legal conclusions of the Court

IV. Commentary

**JEL:** K13, L93.

**Legal interest of rail carriers in supervisory proceedings conducted by the Chairman of the Rail Transport Office against rail infrastructure managers – jurisdiction review** (Marcin Trela)

**JEL:** K23, K40.

**Student’s essay**

Marcin Kraśniewski, **Competition in the polish rail transport sector**

**Table of contents:**

I. Introduction

II. Development of regulations in the rail transport sector

1. Essential objectives of regulations in the rail transport sector

2. European Union acts regulating the rail transport sector

3. Polish acts regulating the rail transport sector

III. Structure and direction of change in the polish rail transport sector

IV. Regulated competition in the polish rail transport sector

1. General issues

2. Railway infrastructure as an essential facility in the rail transport sector

3. Chosen pro-competitive mechanisms in the polish rail transport sector

3.1. *Unbundling*

3.2. Access to railway infrastructure

3.3. Independent regulatory organ

V. Entry barriers

VI. Conclusions

**Summary:** The article presents vital rules meant to increase competitiveness in the rail transport sector in Poland outlining both market structure and its development tendencies. Among the key parts of this paper are: unbundling, the rule of 3<sup>rd</sup> party access, as well as the independence of the Chairman of the Rail Transport Authority. The Author specifies which major factors result in the

slower development of railways in comparison to other competitive means of transport, especially road transport as well as considers relevant entry barriers.

**Key words:** competition, rail transport sector, passenger, regulation, entry barriers.

**JEL:** K23

## Books Reviews

Jan Walulik, *Progressive Commercialization of Airline's Governance Culture*, EuroPrawo, Warsaw 2015 (reviewed by Małgorzata Polkowska)