

From the volume editor (Stefan Akira Jarecki)

Articles

Mirosław Antonowicz, **Considerations on mechanisms for resolving conflicts on the rail transport market**

Table of content

- I. Introduction
- II. Essence of the conflict in the rail transport market
- III. Mediation or arbitration
- IV. Access to railway sidings as a potential source of conflict
- V. Summary

Summary: The aim of the article is to present possible ways of resolving conflicts in the rail transport market in a regulatory sense. The article defines the notion of conflict and presents alternative forms of conflict resolution - mediation and arbitration. The issue of siding is also presented as a potential source of conflict in the future. Finally, in the summary, the conclusion is presented that there is a need to use alternative conflict resolution methods by modern management of a public institution in the area of regulatory issues for the rail transport market.

Key words: conflict; mediation; arbitration

JEL: K23, K29

Ignacy Góra Joanna Bartochowska-Jaśniewska, **Regulations for railway service facilities in the Railways Act of 28 March 2003 after the recent amendment of 16 November 2016**

Table of contents:

- I. Introduction
- II. Notion of railway service facility
- III. Railway service facility managers
- IV. Operators' obligation to provide access to railway service facility
- V. Competence of the President of the Office of Railway Transport (UTK) in the supervision of railway service facilities
- VI. Summary

Summary: Recent amendments to the Act of 28 March 2003 on Railway Transport came into force on 30 December 2016. The new law introduces the obligation to provide access for railway undertakings to railway service facilities starting from 10 December 2017.

According to the amendments in the Act on Railway Transport, the term 'railway service facility' means the building and the ground area on which it is situated, the installations and equipment, wholly or in part, dedicated to the provision of one or more of the services referred to in paragraphs 2 and 3 of the Annex 2 to the Act on Railway Transport.

In accordance with the provisions of the Act amending the Act on Railway Transport, a new entity – the operator of service facilities – has appeared. The concept of an 'operator of service

facility' means an entity managing the service facility or supplying one or more services to railway undertakings referred to in paragraphs 2 and 3 of the Annex 2 to the Act on Railway Transport. According to the new regulations, the President of the Office of Railway Transport (UTK) supervises fair and non-discriminatory treatment of all railway undertakings in terms of access to service facilities.

Key words: railway service facility; operator of the railway service facility; railway infrastructure

JEL: L, L.5, L.59

Michał Beim, **Legal conditions of independent railway infrastructure managers in Germany**

Table of content

- I. Introduction
- II. History
- III. Regulation of the constitution concerning rail transport
- IV. Railway reform and independent railway managers
- V. Control of the functioning of independent infrastructure managers
- VI. Federal support to independent railway infrastructure managers
- VII. Regional support to independent railway infrastructure managers
- VIII. Technical standards of independent infrastructure managers
- IX. From the unrealized privatisation of Deutsche Bahn to the creation of infrastructure managers' markets
- X. Economic importance
- XI. Summary
- XII. Bibliography

Summary: The liberalization of the railway market creates the possibility for the functioning and development of independent managers of the railway infrastructure. No universal, systemic solutions to support independent railway infrastructure managers have been developed in the European Union. The paper presents the German experience in this area. Independent infrastructure managers already run more than ten percent of the German rail network. The paper presents the legal conditions applicable to the managers as well as the principles of their financial support. Although the German state has undertaken to support independent infrastructure managers, it seems that their economic and social importance is still underestimated. The merit of independent rail infrastructure managers is to halt the decommissioning of the network and provide the infrastructure for the last mile. They fill the gap between railway siding managers and DB Netz's nationwide network. The establishing of independent managers of the railway network has its roots in historical legal conditions and also in the current situation of the railway market.

Keywords: railway network, railway infrastructure management, abandoned railway tracks, demonopolization, state aid, transport policy

JEL: H54, O18, R42

Łukasz Gołąb, **Co-operation of the President of the Railway Transport Office (UTK) with the authorities of the European Union and of other Member States in the light of the provisions of the Act of 16 November 2016 amending the Railway Transport Act and certain other acts**

Table of contents:

- I. Introduction
- II. Co-operation of the President of the Railway Transport Office (UTK) with the European Commission
- III. Co-operation of the President of the Railway Transport Office (UTK) with the rail transport regulatory authorities of other Member States
- IV. Co-operation of the President of the Railway Transport Office (UTK) with the European Union Agency for Railways
- V. Summary

Summary: On 21 November 2012, the European Parliament and the Council adopted Directive 2012/34/EU establishing a single European railway area (recast). Although the deadline for implementing the provisions of the Directive has expired on 16 June 2015, the lower chamber of the Parliament of the Republic of Poland (Sejm) only adopted the Act amending the Railway Transport Act and some other acts on 16 November 2016. This is by far the most extensive and important change to the Railway Transport Act introduced in recent years. The purpose of this paper is to present changes in the cooperation between the President of the UTK and the Commission, the EU Railway Agency and the regulators of other EU Member States on the basis of the Act of 16 November 2016 amending the Railway Transport Act and certain other acts.

Key words: rail transport; rail transport sector; regulation of rail transport; EU law; regulators; Network of regulators; President of the Railway Transport Office; European Commission; European Union Agency for Railways; Directive 2012/34/EU

JEL: K23

Mikołaj Goss, **Legal character of duties and competences of the President of the Polish Railway Transport Office (UTK) concerning the interoperability of the European railway network, with particular emphasis on the authorization for operation of a railway vehicle consistent with TSI**

Table of contents

- I. Introduction
- II. President of the Polish Railway Transport Office (UTK) as a national authority competent for railway transport regulation
- III. Regulatory supervision of the President of the UTK. Origin, purpose and legal character
- IV. Authorization for operation of a railway vehicle consistent with TSI as an instrument of task performance of the President of the UTK in the area of railway transport regulation
- V. Summary
- VI. Bibliography

Summary: The paper provides a scientific analysis of the legal character of duties and competences of the President of the Polish Railway Transport Office (UTK) concerning the interoperability of the European railway network, with particular emphasis on the authorization for operation of a railway vehicle consistent with TSI. The author presents an overview of the administrative law doctrine with reference to issues such as regulatory function of the state, its legal position, and the characteristic forms of the operations of its regulatory authorities. Moreover, the author proposes

an addition to the approach prevailing in the doctrine consisting of a distinction of the specifics concerning the supervision of the regulatory authority over this sector. Furthermore, the article contains a presentation of the features regarding the abovementioned supervision in accordance with the typical material supervision applied by administrative authorities within the framework of the performance of the regulatory function of the state. In the author's opinion, the characteristics of the supervision exercised by the regulators make it possible to clearly distinguish this legal institution from material supervision, and define it as 'regulatory supervision'. Finally, the author analyses the legal character of the authorization for operation of a railway vehicle consistent with TSI and assigns this administrative act to a group of regulatory instruments applied by the President of the UTK, with ancillary influence on the security in the railway sector.

Key words: rail transport; regulation of rail transport; President of the Railway Transport Office; regulatory supervision; permission for operation authorization of a railway vehicle consistent with TSI

JEL: K23

Jakub Kociubiński, **Challenges placed by EU Merger Control in Cargo Rail Transport in the Light of Industry Liberalization**

Table of contents

- I. Introduction
- II. Problem of determining the relevant market – the risk of a 'cellophane trap'
- III. Concept of 'significant limitation of effective competition'
- IV. Elimination of potential competition
- V. Elimination of existing competition
- VI. Summary

Summary: The competitive situation in rail transport is peculiar because the liberalisation process is still ongoing. As a result, there is a significant difference in scale between various undertakings active on the market, where existing dominance is inherited from the pre-liberalisation monopolist status. The challenge faced by the European Commission is thus not the safeguarding of the competitive process, but rather creating a level playing field to foster future competition and thus making it possible to achieve the goals of liberalisation. In this context, this paper presents a detailed analysis of the application of merger control rules in EU Law.

Keywords: rail transport; merger control; EU Law; dominant position; liberalisation

JEL: K21, L12, L13, L92, G34

Stefan Akira Jarecki, **The opening of domestic passenger rail markets and public services**

Table of contents

- I. Introduction
- II. Public service within the meaning of Regulation 1370/2007
- III. Latest case law of the EU courts
- IV. Conclusions

Summary: In 2016, the fourth railway package has finally been adopted. The fourth railway package completes the process of the gradual opening of the rail passenger market in the EU. It establishes the general right for railway undertakings established in one member state to operate all types

of passenger services everywhere within the EU. Thus, the package introduces open access to railway infrastructure for domestic passenger services (competition in the market). Does it really mean that open access competition will develop? However, services provided under public services obligation (as defined, entrusted and financed by national authorities) might be an important barrier to entry in the rail passenger market for open access operators. This article will examine the new EU legislation regarding the opening of the domestic passenger rail market through the prism of the absence of a precise EU definition of what constitutes a public service in railway transport.

Key words: fourth railway package; railway transport; rail passenger market; open access, open-access operator; public services; public services obligation; services in general economic interest.

JEL: K23, K29, K33

Marcin Kraśniewski, **Open access in the light of the decisions of the President of the Polish Railway Transport Office (UTK)**

Table of contents

- I. Introduction
- II. Applicable legislation concerning open access
 1. Rail Transport Act before the amendment of 16 November 2016
 2. Rail Transport Act after the amendment of 16 November 2016
- III. The analysis of selected decisions of the President of the Polish Railway Transport Office (UTK)
 1. Analysis of the factual circumstances of the chosen cases
 2. Basis for the rejection of granting open access
 3. Analysis of arguments presented in the decisions
- IV. Conclusions

Summary: The aim of the article is to present the open access mechanism in the Polish legal system (before and after the amendment of Rail Transport Act of 16 November 2016). The presentation of the mechanism is based on selected decisions of the President of the Polish Railway Transport Office (UTK). The author analyses both the applicable legislation concerning open access and the factual circumstances of the cases. He pays attention to collected information and documents, points out the basis for granting open access and evaluates the decisions issued. The article indicates also the shortcomings of the open access mechanism in Poland.

Key words: open access, Chairman of the Rail Transport Authority, railway undertaking, public services, commercial transport

JEL: K23

Roman Gąszczyk, **Financing public service compensation by European Structural and Investments Funds – selected civil law aspects**

Table of Content

- I. Introductory remarks
- II. Relations between parties to public service contracts and financing institution
- III. Bundle of contracts
- IV. Closing remarks

Summary: This article constitutes an attempt to describe relations among parties to a public services contract and the institution managing ESIF implementation aimed at the financing of compensation for such services from ESIF sources. The said description is done by means of applying terminology coined by civil law doctrine. The author analyses the above mentioned legal relationships and concludes that they may be classified as so-called 'bundle of contracts'. Such observation confirms the thesis that financing of compensation from ESIF sources (in part used for supporting rolling stock or infrastructure projects) does not exclude the legal compliance of such operation. Moreover, these reflections may be treated as recommendations on suggested ESIF projects' institutional structure and ways of proving the accordance of investments with State Aid law for the purpose of applying for EU funds.

Key words: public service compensation, public service, European Structural and Investments Funds, bundle of contracts

JEL: K120, K230

Legislation and Case Law Review

Ignacy Góra, Jan Siudecki, **Implementation of the technical pillar of the fourth railway package**

Table of contents:

- I. Reasons for establishing the fourth railway package
- II. Structure of the fourth railway package
- III. ERTMS preauthorisation
- IV. Vehicle authorisation for placing on the market and single safety certificates
- V. Revision of national rules
- VI. Other changes introduced with the technical pillar
- VII. Conclusions

Summary: The authors analyze the most important changes in the railway legal framework introduced with the technical pillar of the fourth railway package of the European Union. New procedures for issuing an authorization for placing railway vehicles on the market and for issuing a single safety certificates are discussed. The ERTMS preauthorisation procedure and the revision of national rules are described also. The analysis is based on the practical experience of the authors gained through their cooperation with the European Union Agency for Railways on the implementation of the new legal framework.

Key words: railway transport; fourth railway package; technical pillar; single safety certificate; vehicle authorisation for placing on the market; ERTMS; national technical rules; national safety rules, technical specifications for interoperability; common safety methods; European Union Agency for Railways; Office of Railway Transport.

JEL: K23

Adrian Misiejko, **Acts regulating the structure of metropolitan unions and public collective transport - comparative article**

Table of content

- I. Introduction
- II. Mass public transport in Act on metropolitan unions (u.z.m.)

1. Basic regulations
2. Organizing of mass public transport
- III. Mass public transport in Act on the metropolitan union in the Silesia County (u.z.m.w.ś.)
 1. Basic changes
 2. Organizer's property and types of transportations
 3. Sustainable development of mass public transport act
 4. Reduced entitlements in mass public transport
- IV. Recapitulation

Summary: The topic of this article is a comparison of the legal aspects of organizing public transport established under the Act on metropolitan unions ('ustawa o związkach metropolitalnych' – u.z.m.), which is no longer binding, and the Act on the metropolitan union in the Silesia County ('ustawa o związku metropolitalnym w województwie śląskim' - u.z.m.w.ś.). In the first place, the author analyzed regulations of the Act on metropolitan unions, discussing the introduced solutions and related concerns. The second part of the paper discusses the legal aspects of the organization of public transport under the current law: Act on the metropolitan union in the Silesia County. The author compares their most important legal institutions resulting in the determination in what areas does the new law lead to the solution of earlier legal doubts, and where it leads to the emergence of new ones. As a result, in particular, the author provides a critical evaluation of the Act on the metropolitan union in the Silesia County.

Keywords: mass public transport; metropolitan union; organizer of mass public transport; metropolitan union in the Silesian County;

JEL: K23

Book reviews

Rail Economics, Policy and Regulation in Europe edited by Matthias Finger and Pierre Messulam, Edward Elgar Publishing 2015, p. 392; review by Wojciech Pawłuszko,

Reports

Report from the conference *The consumer on the market for rail passenger transport services*, Łódź, 26 April 2017 (Marcin Kraśniewski).