

Tourist services or RODO – what is more important? (from the Editor-in-Chief)

Daniel Wojtczak, **Undertaking a business activity in the area of tourist services within the economic freedom framework**

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Summary: The subject of this research paper is the analysis of economic activities in the area of tourist services in the context of the economic freedom. The paper mainly focuses on the legal aspect of a business activity as part of the provision of tourist services and regulatory restrictions applied in this economic sector. It should be pointed out that the author's point of view is part of a heated discussion about expanding the scope of the freedom of economic activity by limiting its state regulation. It is advocated that restrictions of the economic freedom should be as infrequent and least intrusive possible for entrepreneurs. In legal terms, it should be noted that the area of regulation of providing tourist services has been deregulated only with regard to legal barriers to market entry, that is, barriers to engage in this activity in the first place. The range of state regulation on the provision of tourist services is constantly increasing in relation to substantive provisions; this is a consequence of EU regulations as well as the needs related to the protection of the beneficiaries.

Key words: social market economy, freedom of economic activity, tourist services, state regulation of economic activity, regulated activity.

JEL: K23

Dominik Borek, **Entrepreneur in the package travel and linked travel arrangements act – the concept of a material approach of the analyzed provisions**

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Summary: The article addresses the legislator's concept of a material approach regarding the legal definition of an entrepreneur in the Polish Act on package travel and linked travel arrangements of 24 November 2017. The Author presents the evolution of the material character of the analyzed provisions in EU legislation, giving special attention to the ECJ ruling in the *Motosykletistiki Omospondia Ellados NPID* of 1 June 2008. The Author also shows the evolution of the legal

definition of an entrepreneur during legislative works on the Polish Act on package travel and linked travel arrangements.

Key words: tourist entrepreneur, package travel, linked travel arrangements, entrepreneur, tourist services, tourism, tourist law

JEL: K12, K22

Piotr Cybula, **On the assessment of the admissibility of invoking by a tour operator of specific provisions limiting the scope or the conditions under which compensation is paid by the travel service provider (i.e. the need to amend Article 50(5) of the Polish Act on package travel and linked travel arrangements)**

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Summary: The purpose of this paper is to assess the conformity of Article 50(5) of the Polish Act on package travel and linked travel arrangements with Directive 2015/2302 on package travel and linked travel arrangements. According to this provision, 'Where specific provisions limit the extent to which, or the conditions under which, compensation is paid by a travel service provider which is part of a package, the tour organizer shall be subject to the same restrictions'. In the opinion of the author of this paper, current rules on the reviewed problem, as set out in Article 50(5) of the Act on package travel and linked travel arrangements, deviate from the standard required by Directive 2015/2302. Therefore, they require an urgent legislative amendment, taking into account the possibilities provided for by the Directive. The purpose of this paper is to present this issue in a broader context, with reference to the provisions of Directive 90/314 and the Act on tourism services.

Key words: tour operator, liability for damages, act on package travel and linked travel arrangements.

JEL: K12

Kamila Maciąg, **Traveler protection based on the Polish Act on package travel and linked travel arrangements and related to the Act on tourist services – comparative analysis**

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Summary: The article presents an analysis and legal regulations regarding the protection of consumers using tourist services based on Directive 2015/2302/EU of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC. Directive 2015/2302/EU will, as of 1 July 2018, be implemented into the Polish legal order. The presented issues concern also contractual liability of the tourist entity as far as the failure to perform or improper performance of the contract by the tour operator.

Key words: travel protection, contract of participation of the package travel, tour operator, consumer, tourism entrepreneur.

JEL: K23

Adrian Misiejko, **New regulations on local council resolutions in the field of upbringing in sobriety and counteracting alcoholism - selected aspects**

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Summary: The amendment to the Polish Act on the Upbringing in Sobriety and Counteracting Alcoholism of 26 October 1982 modified the competences previously granted to local councils (in Polish: *gminy*) in regard to the regulation of alcoholic drinks. In particular, local councils became competent to issue new types of resolutions while, at the same time, involving their auxiliary units in the resolution process. The subject of this article is to present the results of the analysis of these changes together with a discussion of selected issues that raise interpretational doubts.

Key words: community; local community council; regulation of alcoholic drinks; upbringing in sobriety and counteracting alcoholism;

JEL: K23

Marcin Rojszczak, **The reform of Polish data protection law and the issue of the independence of the supervisory authority in the context of Regulation 2016/679 and Directive 2002/58 – a critical view**

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Summary: The article discusses the genesis of the principle of independence, the way it is defined, as well as the consequences for the legal status of the supervisory authority body. The concept of '*complete independence*', introduced by the provisions of Directive 95/46, is presented along with its fundamental importance for understanding the legal position of data protection authorities appointed in EU Member States. Differences between '*complete independence*' and the independence of supervisory authorities in the area of electronic communications are indicated. Polish experiences related to the implementation of relevant EU laws are discussed, using the example of the GIODO and the President of the Office of Electronic Communications (UKE). The draft of the new Polish Data Protection Act is analyzed in the last part of the article, in particular the rules leading to the appointment of a new supervisory body - the President of the Data Protection Office. In summary, key areas are identified that need clarification in order to avoid the risk of introducing laws that may be considered incompatible with EU regulations.

Key words: data protections; right to privacy; independent supervisory authority; regulation 2016/679.

JEL: K23

Joanna Kaźmierczak, **Right to data portability – selected issues in connection with exercising a new right granted by the GDPR**

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Summary: The implementation of a new right derived from European regulation on personal data protection has given unknown possibilities to natural persons, imposing at the same time a number of obligations on data controllers. The aim of this article is to discuss the structure of the right to data portability from the data controllers' point of view. The study focuses on selected elements that compose the right to data portability, which according to the author are likely to prove the most challenging for the data controllers. This publication includes also newest recommendations in terms of exercising the abovementioned right resulting from the Guidelines on the right to data portability according to Article 29 Data Protection Working Party.

Key words: personal data; right to data portability; data subject, data portability; processing; protection of personal data; data controller;

JEL: K24, K3

Legislation and Case Law Review

Aleksandra Dziurkowska, **Online Tour Booking Software as a mechanism of coordinated anti-competitive activities**, Case comment to the judgment of the Court of Justice of the European Union of 21 January 2016 in case C-74/14 Eturas UAB v. Lithuanian Competition Authority

Summary: The reviewed court judgment addresses the issue of algorithmic pricing, which is of major importance especially in the current digital age. In the investigated case, the liability for infringing competition law was also assigned to a third party (software provider) active on a different market than the travel agencies (original competitors). However, this issue is not further investigated by CJEU. In its judgment, the court emphasizes also the grounds for applying the principle of the presumption of innocence to anti-trust proceedings.

Key words: online tour booking, liability, competition law, presumption of innocence

Bartosz Wyżykowski, **Effective consumer protection and effective judicial protection for entrepreneurs**, Case comment to the judgment of the Court of Justice of the European Union (Fifth Chamber) of 21 December 2016 in Case C-119/15 Biuro podróży 'Partner' sp. z o.o. sp.k. w Dąbrowie Górniczej v. Prezes Urzędu Ochrony Konkurencji i Konsumentów

Summary: Subject of the commentary is the judgment of the Court of Justice of the European Union (Fifth Chamber) of 21 December 2016 in Case C-119/15, Biuro podróży 'Partner' Sp. z o.o., Sp. komandytowa w Dąbrowie Górniczej v Prezes Urzędu Ochrony Konkurencji i Konsumentów. In essence, the court expressed therein its opinion on whether European law (Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, the Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests and the Charter of Fundamental Rights of the European Union) must be interpreted as precluding the use by another seller or supplier of standard contract terms with content identical to terms which have already been declared unlawful by a judicial decision having legal force. The Court considered if the use, by another entity, of terms which have earlier been entered into the register of unlawful standard contract terms can be considered an unlawful act for which a fine may be imposed.

According to the judgment, the mentioned European regulations do not preclude such a possibility, provided – to be verified by Member States' courts – that the seller or supplier has an effective judicial remedy against the decision declaring the equivalence of the terms when it comes to the question whether (in the light of all relevant circumstances particular to each case) those terms are in fact materially identical, having regard in particular to their harmful effects for consumers. The seller or supplier must also have an effective judicial remedy against the decision fixing the amount of the fine imposed, where applicable.

Key words: Court of Justice, unfair terms, consumer contacts, consumer protection, procedural guarantees

Book Reviews

Piotr Piskozub, **Odpowiedzialność przedsiębiorcy turystycznego za niewykonanie lub nienależyte wykonanie umowy o świadczenie usług turystycznych** [Liability of tour-operator for non-fulfilment of a tourism service agreement], Wydawnictwo UMCS, Lublin 2017, ss. 271 (Dominik Wolski)

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Report from the Seminar: Personal Data Protection in the Light of the GDPR, Białystok, 18 May 2018 (Katarzyna Biegańska, Magdalena Rutkowska-Sowa)