

## From the issue editors

### Articles

**Aleksandra Kwiecińska-Korszuń**, The competence of the President of the Railway Transport Office (UTK) as a rail market regulator to issue decisions replacing agreements between railroad undertakings and infrastructure managers

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**Summary:** The main objective of the study is to analyze the functioning of the mechanism of issuing decisions by the President of the Railway Transport Office (President of UTK) that replace agreements on the allocation and use of capacity after the amendment of the Polish Railway Transport Act of 2016. Current regulations described in this study differ significantly from analogous regulations before the amendment of the Act in this regard. Also, the practice of issuing the decisions in question made it possible to indicate the effects of issuing this type of decisions, as well as to identify related problems.

**Key words:** regulation; railroad transport; regulatory body; UTK; railroad market; administrative decisions; contracts; railroad undertaking; railroad infrastructure manager.

**Iwona Miedzińska**, Challenging by railway undertakings of charges for access to rail infrastructure in the light of judgments of the Court of Justice of the European Union in cases C-120/20 and C-563/20

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**Summary:** The article deals with the issue of railway undertakings challenging the charges for access to the railway infrastructure, levied by the railway infrastructure manager, in the light of the judgments of the Court of Justice of the European Union in cases C-120/20 *Koleje Mazowieckie*

– *KM sp. z o.o.* and *C-563/20 ORLEN KoITrans sp. z o.o.* The analysis also covers institutional and legal solutions applicable in this regard in the Polish legal system.

**Key words:** railway undertaking; infrastructure manager; access to railway infrastructure; draft infrastructure manager pricelist; individual charges; regulatory body.

**Mariusz Rypina**, The right of railway undertakings to appeal decisions of the President of the Office of Rail Transport (UTK) that approved the access charges of infrastructure managers based on the CJEU judgment in case C-563/20

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**Abstract:** The CJEU judgment of 24 Feb 2022 in case C-563/20 shows that although railway undertakings are not parties to proceedings before the President of UTK regarding the *ex ante* approval of the amount of charges set by infrastructure managers (procedure established by Polish law – EU directive does not lay down such a procedure), they should, however, be able to appeal decisions ending such proceedings. Although this CJEU judgment was issued on the basis of EU and national regulations that are no longer applicable, it will have an impact on the application of analogous regulations currently in force. The view that the railway undertaking – not being a ‘party’ (or a participant with rights of a party) to the administrative procedure – will nevertheless be entitled to appeal the decision of the President of UTK to the Court of Competition and Consumer Protection (SOKiK), radically changes the current procedural situation of all rail market participants in Poland. There are no relevant procedural rules on such an appeal. Without appropriate actions by the legislator, the President of UTK and SOKiK face the challenge of properly implementing the EU rules as interpreted by the CJEU judgment. The issue of the applicability of the conclusions resulting from this judgment to historical pricelist decisions would also pose a problem.

**Key words:** charges for the use of railway infrastructure; pricelist of the infrastructure manager; draft pricelist; pricing decisions of the President of UTK; approving of the draft pricelist.

**Artur Salbert**, Railway undertakings’ right of appeal decisions approving the unit rates for the basic charge for access to railway infrastructure

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- V. The exercise of the right to appeal the decision of the President of UTK by railway undertakings
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**Summary:** The level of charges for access to railway infrastructure is very important for the development of competition in the rail transport market, especially in the freight market. The current legislation provides restrictions for railway infrastructure managers when they set the level of such charges. The law specifies the categories of costs which may be taken into account when determining infrastructure access charges. Moreover, the introduction of new charges depends on their prior approval by the President of the Office of Railway Transport (UTK). Decisions in this regard are subject to judicial review – the latest jurisprudence of the Court of Justice of the European Union clarifies that besides the railway infrastructure manager, the railway undertakings may also submit a request for judicial review (appeal). The aim of this article is to analyze the exercise of the right of railway undertakings to demand judicial control of UTK decisions on the amount of access charges under EU and Polish regulations.

**Key words:** Unit rates for the basic charge, access to railway infrastructure, infrastructure manager, railway undertaking, judicial review, direct effect of EU directive.

**Karol Kłosowski**, Regulation (EU) 2021/782 – new rights and obligations of passengers and railway undertakings

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**Summary:** From 7 June 2023, the provisions of the recast version of Regulation 1371/2007 on the rights and obligations of rail passengers will apply. The first amendment to this basic legal act introduces significant changes in many areas of the daily practice of passenger railway carriers, infrastructure managers, ticket sellers and the President of the Office of Rail Transport (UTK). The rules on the liability of railway undertakings in the event of a delay, cancellation or missed connection were modified. New rules for the sale and liability of railway undertakings for journeys covered by through-tickets were introduced. The rights of people with disabilities and those with reduced mobility were strengthened. The rules on the possibility for Member States to grant temporary and indefinite exemptions from the application of selected provisions of Regulation 2021/782 were also significantly modified. This article discusses the most important changes in the areas indicated above.

**Key words:** rail transport, passenger rights, Regulation (EC) 1371/2007, Regulation (EU) 2021/782, President of the Office of Rail Transport, UTK.

**Dominik Aptacy**, Major planned changes to technical specifications for interoperability (TSI 2022 revision) and new obligations of railway participants

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- II. System Characteristics of Technical Specifications for Interoperability
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**Summary:** This article looks at the planned revision of the Technical Specifications for Interoperability (TSI) system, describing the characteristics of the current TSI system and the priorities of the European regulatory authorities in relation to this revision. The new TSIs address the need for innovative solutions in the railway system, in particular with the use of IT equipment, such as systems to prevent derailments in freight transport. The revision also takes into account the expected increase in intermodal transport as well as the European Train Control System and the European Rail Traffic Management System.

**Key words:** Technical Specifications for Interoperability, European Train Control System, European Rail Traffic Management System, intermodal transport, Directive 2016/797 on the interoperability of the rail system within the European Union, rolling stock, interoperability, revision of the TSI.

**Ewelina Nieznalska, Anna Głusiec**, The competence of regulatory bodies to set charges for access to railway infrastructure in the jurisprudence of the Court of Justice – Glossary to the judgment of the Court of Justice of 9 September 2021, C-144/20, as *“latrailnet” i vas “latvijas dzelzceļš” v. valsts dzelzceļa administrācija*

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**Summary:** This gloss relates to judgment C-144/20 of the Court of Justice of 9 September 2021 LatRailNet and Latvijas dzelzceļš, on the competence of a regulatory body to set charges for access to railway infrastructure, including in particular the power of the regulatory body to adopt, on its own initiative, a decision requiring an undertaking performing the essential functions of a railway infrastructure manager, to make changes to the infrastructure access charging scheme.

**Key words:** rail transport; rail infrastructure access charges; railway infrastructure; railway infrastructure manager; Directive 2012/34/EU; charging scheme; applicants; public service; Case C-144/20.