Railways arbitration and the main problems of railways regulation (From the Volume Editors)

***

Arbitration in railway transport (Zbigniew Szafrański, Marek Pawlik, Filip Dopierala)

***

Articles

Michał Będkowski-Kozioł, Status and tasks of the European Railway Agency – current situation and future prospects in the light of the Draft Fourth Railway Package

Table of contents:

I. Introduction
II. Agencies in the institutional system of the European Union
III. Rationale and legal basis for establishing a European Railway Agency
IV. Structure of the European Railway Agency
V. Tasks and competences of the European Railway Agency
   1. Issuance of recommendations and reviews
   2. Evaluation of compliance with TSI infrastructure projects co-financed from the EU budget
   3. Preparing and presenting analyzes and reports
   4. Surveillance of certain organs or specific activities (processes)
   5. Collection, processing and sharing of information
   6. Compiling the European Register of authorized types of vehicles
   7. Organizing a „network” of authorities competent in matters of security and interoperability
VI. Prospects for the functioning of the European Railway Agency in light of the proposals of the Fourth Railway Package
VII. Summary

Abstract: This article presents the structure, functions and powers of the European Railway Agency considering the functions and tasks of EU agencies as well as the legal basis of their operation, which determine the scope of their respective competences. Discussed are the premises for the establishment of the European Railway Agency, its structure and tasks as well as proposals for improvements in this area in the draft of the Fourth Railway Package.

Key words: rail transport; European Railway Agency; 4th Railway Package; security of rail transport; interoperability of rail transport.

Piotr Bogdanowicz, What is of (EU) interest? And how? Some reflections with regard to Article 5 Regulation No 1370/2007

Table of contents:

I. Introduction
II. Regulation 1370/2007 and the so-called contracts of EU interest
1. The so-called EU interest in EU public procurement law
2. Application of the principle of transparency of public service contracts

III. Providing services of public interest in the field of public passenger transport by rail – is EU interest of interest?

IV. The importance of the proposed amendments to Regulation 1370/2007

V. Conclusions

Abstract: The ECJ has recently been significantly expanding the scope of the applicability of EU public procurement legislation as well as the obligation to abide by generally applicable rules, primarily the principle of transparency. In this light, the following article poses the question whether the approach taken by the ECJ could lead to the conclusion that directly commissioning services of public interest in the field of public passenger transport by rail might be found to be in breach of EU law. The article discusses key provisions of Regulation 1370/2007, certain ECJ rulings, and the standpoint of the EC. Considered also are proposals for amending Regulation 1370/2007 in order, among other things, to introduce an obligation to conduct tender proceedings when awarding rail services contracts.

Key words: EU law, public services, rail sector; public contracts; the transparency principle.

Łukasz Gołąb, The independence of railway infrastructure managers in the jurisprudence of the Court of Justice of the European Union

Table of contents:
I. Introduction
II. Scope of the application of EU rules on the independence of infrastructure operators
III. Jurisprudence of the Court of Justice with regard to the concept of “basic functions” listed in Annex II to Directive 91/440/EEC
   1. Basic functions with regard to decisions related to the allocation of train paths
      1.1. Principal findings of the Court of Justice of the European Union
      1.2. Judgments of the Court of Justice of the European Union
   2. Basic functions with regard to decisions related to charging for the use of railway infrastructure
      2.1. Principal findings of the Court of Justice of the European Union
      2.2. Judgments of the Court of Justice of the European Union
IV. Requirements for the independence of infrastructure managers from railway undertakings
   1. Principal findings of the Court of Justice of the European Union
   2. Judgments of the Court of Justice of the European Union
V. Summary

Abstract: It is noticeable that the European Commission has recently increased its activities with respect to the evaluation of the national implementation process of European Rail Transport Law. As a result, the Commission has submitted a number of claims to the Court of Justice of the European Union against those Member States which – in the opinion of the EC – have infringed their obligations to implement the relevant EU provisions. The following article discusses a number of cases examined by the Court of Justice in the context of the requirements on the independence of infrastructure managers arising from EU jurisprudence.
Key words: rail transport, rail transport sector, regulation of rail transport, management of railway infrastructure, independence of infrastructure managers, European Union law, Court of Justice of the European Union.

Wojciech Pawłuszko, An appraisal of the level of legal independence of the President of the Polish Office of Rail Transportation based on Fabrizio Gilardi’s model

Table of contents:
I. Introduction
II. Dimensions of legal independence of regulatory agencies
III. Quantifying the level of legal independence of the President of the Polish Office of Rail Transportation
IV. Summary

Abstract: The subject of this article is an appraisal of the level of legal independence of Poland’s railway regulatory authority – the President of the Office of Rail Transportation – by using Fabrizio Gilardi’s model. The assessment considers the social and legal background of the regulator’s actions, as well as a variety of factors determining the authority’s legal position. The assessment is made by quantifying the most important of these circumstances. The article considers also to what a degree the Polish legislator has fulfilled its role to ensure an appropriate status of the national railway regulator.

Key words: President of the Office of Rail Transportation, independence, Transport Secretary, rail transport.

Katarzyna Wróbel, The property tax exemption for buildings and land belonging to railway infrastructure applicable if the infrastructure manager is obligated to share them with licensed rail carriers

Table of contents:
I. Legal position
II. The scope of the existing relationship between Polish Tax and Local Charges Law and its Transport Legislation
III. The case of the Rail Infrastructure Manager
IV. The exemption from Perpetual Usufruct’s Charge
V. The case of side-tracks
VI. Conclusion

Abstract: The wording of Article 7 of the Act of 12 January 1991 on Local Taxes and Charges creates many doubts. The paper presents the scope of the existing relationship between Polish Tax and Local Charges Law and its Transport Legislation. The article considers in particular the property tax exemption available to buildings and land belonging to railway infrastructure under the Rail Transport Law provided the infrastructure manager is obligated to share those building/land with licensed rail carriers.

Key words: Property tax, Rail Infrastructure Manager, side-track, Perpetual Usufruct’s Charge.
Legislation and case law reviews

Anna Piszcz, **NCRAs rather than NRAs and NCAs? Short review of Spanish, Estonian and Dutch “super-regulators”**

Table of contents

I. Consolidation trend in Europe
II. Small rain from large clouds? Spanish reform
III. Starting to retreat from the chosen road? Estonian reform
IV. The maximum version? The Dutch approach
V. Future?

*Force majeure does not exclude the right to a partial reimbursement of the ticket price.*

Case comment to the judgment of the Court of Justice of the European Union of 26 September 2013 in case C-509/11 ÖBB-Personenverkehr AG (Karol Kłosowski)

Judicial review of decisions and orders issued by the President of the Polish Railway Transport Office by the Court of Competition and Consumer Protection.

Case comment to the judgment of the Competition and Consumers Protection Court of 27 November 2013 in case XVII AmK 22/13 (Łukasz Gołąb)

**Calculation of the basic fee for access to the railway line with different parameters.**

Judgment of the Court of Appeals in Warsaw of 4 December 2013 in case VI ACa 649/13 (Ilona Szwedziak-Bork)

**Decisions of the President of the Polish Railway Transport Office replacing contracts for rail infrastructure access.**

Judgment of the Competition and Consumers Protection Court of 25 November 2013 in case XVII AmK 3/12 (Monika Floriańczyk-Kardas)

**Reports**

Report from the conference “The consumer on the market for rail passenger transport services”, Katowice, 10 March 2014 (Marcin Kraśniewski).